

**IMMIGRATION AND NATURALIZATION
HOUSEKEEPING AMENDMENTS ACT OF 1992**

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

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IMMIGRATION AND NATURALIZATION HOUSEKEEPING AMENDMENTS ACT OF 1992

WEDNESDAY, MAY 20, 1992

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, Charles E. Schumer, Bill McCollum, and Lamar S. Smith.

Also present: Eugene Pugliese, counsel; Kevin Anderson, assistant counsel; Judy Knott, clerk; and Carmel Fisk, minority counsel.

OPENING STATEMENT OF CHAIRMAN MAZZOLI

Mr. MAZZOLI. The subcommittee will come to order.

I invite our colleague, Barney, and Congressman Abercrombie and Congresswoman Mink, who are welcome to come forward. I'd just ask staff, as Members do come in—we have several who are listed—just ask them to join the others at the table.

My comments will be very brief and then I'll yield to the gentleman from Texas and the gentleman from New York, if they have opening statements.

We have had a very busy year or so, and we found, as we worked on many things like the O and P's, the judicial naturalization, the technical amendments package, and other matters, that we probably should get into what we would call a housekeeping bill, just a series of changes, some administrative and technical, some substantive, and try to put them together in a package, discuss them, and then hopefully move something like that. So that's why we're here today.

There will be a series of witnesses. We have several distinguished members, colleagues, as well as three separate panels, constituted in each case of four or five witnesses. So we'll have to be very brief today to get our work done.

But it will, at the end of this day, give us an opportunity to have surveyed a number of different suggestions made by our colleagues, made by staff members of our committees, made by agencies of government, made by outside groups that monitor immigration legislation, and we'll then at least have before us all the data, and then we can decide what to do.

With that, I'll yield to my friend from Texas.

Mr. SMITH. Thank you, Mr. Chairman. I would like to make a brief opening statement.

First of all, I'd like to thank you for including amendments, some of which we're going to be hearing about today from panelists, on a bill that I introduced and a similar bill which was introduced by our colleague, Mr. Mineta. That's in regard to granting citizenship to individuals who were born to American mothers outside the United States.

Incredible as it may seem, and I know you're aware of this, prior to 1934, if a child was born to a father who was the citizen and they were born outside the United States, that child was deemed to be an American citizen. If the child was born to a mother who was a citizen but whose father was not, the child was not deemed to be a U.S. citizen—clearly, a discrimination against the American mother. And we're trying to rectify that in this bill. I appreciate your doing that.

Also, I want to mention that, unfortunately, I have another hearing that begins at 10 o'clock and I will have to excuse myself, but I will be back, I hope in time for the first panel.

Speaking of that first panel, one reason to come back is to give a special welcome to a personal friend of mine, Chase Untermeyer from USIA. If I'm not here at the beginning of that panel, I'll make this my special welcome, Chase, and we're glad you're here.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Very nice. Thank you very much, Lamar.

The gentleman from New York.

Mr. SCHUMER. Thank you, Mr. Chairman. Let me add my thanks to you for putting together this markup and dealing with so many issues that are outstanding.

I am particularly pleased about sections 109 and 110 of the draft bill. As you know, we have been working together on these sections which deal with two serious problems. No. 1 is the illegal immigration through the airports, and second is the long waiting time for arriving international air passengers. I introduced H.R. 4556 which contained a bunch of these provisions aimed at these problems, and I want to thank you for including them in the omnibus bill.

Just to be a little brief but just to give a little synopsis—

Mr. MAZZOLI. Certainly.

Mr. SCHUMER [continuing]. Of those two provisions, illegal immigration at the airports is very urgent. American airports, particularly Kennedy Airport in my area, have become open borders for illegal aliens arriving with fraudulent documents, and because the INS lacks detention space, the aliens are released into the community and they simply disappear. Two-thirds never come back for any adjudication, and of the ones who do come back, 85 percent are found not to be legitimate asylees. This is because in asylum you declare it here and you get your hearing 14 or 15 months later. What the bill would do would be to establish INS preinspection stations at overseas airports, so undocumented aliens are identified before they come to the United States.

The second problem is that waiting time for legitimate passengers is increasing, in part because of the undocumented arrivals clogging the INS processing facilities, but in part because the INS system has become in some ways outmoded. I'm concerned that

during the summer, which, as you know, is peak travel season, lines at the airport will become intolerably long, the way they were a few years back. People had to wait 4, 5, sometimes even 6 or 7 hours. That's a very bad way to greet business travelers and foreign tourists when you consider that international travel reduces the trade deficit by \$5 billion a year. So the bill would speed the inspection process by permitting the INS to take full advantage of new technologies.

I hope both of these parts of the bill will be considered favorably. Once again, I thank you, Mr. Chairman. I, too, have another hearing, but I will be back for questions as well, and I want to apologize.

Mr. MAZZOLI. Well, I was talking to the gentleman from New York earlier today; it looks like we really picked maybe the worst day. We have a Democratic Caucus underway now, and the energy bill, and the gentleman from Texas has a markup or a meeting; the gentleman from New York also has one; in our committee, Chairman Brooks has a subcommittee hearing. This is really going to be some kind of a day.

But, anyway, having said that, I very much welcome our colleagues. In the order in which we've signed up, but it's only in that order, we'll call on the gentleman from Massachusetts, Mr. Frank.

**STATEMENT OF HON. BARNEY FRANK, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MASSACHUSETTS**

Mr. FRANK. Thank you, Mr. Chairman. It's a little strange for me to be on this side of the bench, having spent so many years on the committee, but I very much appreciate the chance to work with you.

I would just like to follow my leader, the gentleman from Texas, in welcoming Mr. Untermeyer, because it's always nice to have a former student who's made good show up. Mr. Untermeyer was one of my students, so it's nice to have him back.

[Laughter.]

Mr. FRANK. I want to speak about two matters which are small in the overall scheme of things, but very important to people. One, I have a bill that I think Mr. Bilirakis has also sponsored, which says if you're old enough and you've lived here long enough as a good citizen, as a good resident, you can become a citizen without passing a test which many people in this room would have a hard time passing if they didn't do a lot of study.

The citizenship tests, as members here know because we have more experience with immigration than the average individual, the citizenship tests are serious tests. They are things that many Americans would have a hard time passing without study. I do not object to them in general. I think they are a useful tool, but when we're dealing with people who came here when they were younger, have lived here for a long time, and have reached the age—I think we say 55—and English was not their native language. They are people who probably, through economic circumstances weren't given the chance for much of a formal education, either in their home country or here. I don't think that we do any harm whatsoever to this country by waiving for them a fairly difficult test. It's a controlled kind of a point. I think we are explicitly proposing it

as an exception to the general policy, and I would hope that we could accept it.

I have spoken to people who are in their sixties and seventies and have lived here for a while and now want to become citizens. There are a variety of reasons why people don't apply for citizenship earlier. Obviously, I think all of us think that people should. There may be some familial connection back home. There are a whole number of reasons. I don't see why we want to put obstacles in the way of very decent, very hard-working, older people who have lived very good lives in this country and deny them the right to citizenship.

The second bill has to do with those international civil servants who are in Washington who have spent many, many years living in Washington, whether they were working for the World Bank or the IMF or other international agencies, and who—and I guess we're talking about their dependents—have lived here for a very long time, really have a lessened connection with back home, and we allowed a few years ago legislation that would have authorized them to stay here. There was a sunset, and it seems to me that we should remove the sunset. To my knowledge, no one has ever reported any problems from these people. They tend, in fact, to be people who on the whole kind of contribute to the economy, and we're not talking about vast numbers. It seems to me that in this case compassion argues in favor of letting them stay. We're talking about people where there may have been a death in the family and we're talking about avoiding uprooting. I think this is a perfectly reasonable way to go.

I understand we have this problem. I think it's useful, let me just say in closing, as we contemplate our own societal problems which we are collectively dedicated to fixing, to remember that to much of the rest of the world this looks like a pretty nice place to be. We ought to keep that in balance. It's a place that we want to improve, but we continue to be pressed with people who want to come here. I understand why they want to come here, but we can't accommodate everybody who wants to. But I think in these two cases we are making very reasonable accommodations at no cost whatsoever to ourselves.

I thank you, Mr. Chairman.

Mr. MAZZOLI. Barney, thank you very much. Let me just ask a couple of very brief questions.

Essentially, since we can waive under existing law the English language requirement for people who are of an age of 50 or older, the question here is: Should we also provide a waivable situation for the history and the civics exam?

Mr. FRANK. For the test.

Mr. MAZZOLI. Exactly. Would you have any idea how many waivers are today exercised under the English language—

Mr. FRANK. Under the English language?

Mr. MAZZOLI. Yes.

Mr. FRANK. I don't know.

Mr. MAZZOLI. I just wondered.

Mr. FRANK. I don't know.

Mr. MAZZOLI. Well, we'll ask the question. I just wondered.

And are you familiar at all, perhaps in doing the research, how the exam is today given?

Mr. FRANK. How the exam is what?

Mr. MAZZOLI. How the exam is propounded on history and American Government to people who may have language difficulties, or do you have any idea?

Mr. FRANK. Well, I just assume they just give it to them in their own language.

Mr. MAZZOLI. Their own language?

Mr. FRANK. But I've seen the test and I know it's a significant test. I know that the average citizen would probably have to study for it because it asks for fairly specific knowledge. My assumption was that they just gave that in the native language.

Mr. MAZZOLI. Let me just ask you, do you have any comments about another waiver in here: In the event a person is developmentally disabled or physically disabled or mentally disabled, should they also achieve a waiver of their test?

Mr. FRANK. Again, it's waivable; it's not an automatic thing. I think there are circumstances where that might be appropriate. I must say in a physical way the fact that someone had lost the use of his or her limbs would certainly be no reason why they couldn't pass a test, so I wouldn't apply it there. But there may be some form of paralysis or other thing that would be a problem.

Again, there is a significant residency requirement, I believe, here. So we're certainly not going to have a situation where people might be given an incentive to come here and slip in under the wire. There is that residency requirement.

Mr. MAZZOLI. And then to the G-4 matter, what you seek to do here is to simply extend the program beyond 1993, which is currently the sunset or the deadline for the G-4's to apply?

Mr. FRANK. Yes, I don't think we've got a lot of people in that category. I know we could get the numbers from INS. It doesn't seem to be a very difficult number. It's probably—

Mr. MAZZOLI. If I understand correctly, they have to be here at least 15 years?

Mr. FRANK. Yes. So Washington and New York would probably be the only places affected because it would be the international organizations here or the U.N., and it's people, as I said, who have been sort of international civil servants. It's unlikely to be the case with embassies because 15 years is longer than that happens.

Mr. MAZZOLI. Are you aware of any of these people becoming public charges or having any kind of a problem that way?

Mr. FRANK. No, quite the contrary, frankly, my understanding is the salaries at those places are pretty good. They get tax exemptions and stuff. So my guess is that we are not talking—and I would say, based on the people who have been representing them, I don't think we're talking poverty here.

Mr. MAZZOLI. And you would then, if I understand correctly, your section 102 would just simply take the 1993 date out and they would just have—

Mr. FRANK. As usual with legislation of this sort, Mr. Chairman, you understand that better than the author in most cases because you've read it more carefully. So whatever you say is probably right.

Mr. MAZZOLI. The gentleman from Texas. Does the gentleman from Texas have any questions?

Mr. SMITH. Thank you, Mr. Chairman; briefly, yes.

Barney, I'm somewhat sympathetic to the two provisions that you're talking about. In the case of the first, you're talking about individuals who have already been exempted from the English language requirement and now you'd exempt them from the history exam, so to speak. And they're individuals who, depending on which category they're in, they have either been here 15 years or 20 years, as I understand it as well.

The reason I'm sympathetic is because two summers ago I got or obtained the two booklets that are required for study and spent a month with my children reading through those booklets one chapter a day at a time. One book was about 75 pages, and it was pretty detailed and it was pretty tough, I have to concede. It was enlightening to see what immigrants were being asked to study.

I don't think it's insurmountable. I think that they are good provisions in the normal course of events, but maybe not for individuals who have already sort of proved themselves to be worthy. So I'd appreciate—

Mr. FRANK. Well, I appreciate that. As you point out, Mr. Smith, we are already dealing with people for whom we've waived the English language provision. So the notion that it's OK in special circumstances if you can't speak English, but we are, therefore, going to give you this history test in Hungarian about American history to make sure you're a good citizen, seems to be a little strange.

Mr. SMITH. If you're going to be exempt for one, you probably ought to exempt for the other.

Mr. FRANK. Having exempted the greater, we might as well exempt the less.

Mr. SMITH. We won't get into whether we ought to have exempted the English to begin with, but I think once you've done that, you may have set the precedent. So thank you, Barney.

Mr. FRANK. Thank you very much. Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, Barney.

And now we welcome our colleagues, Congresswoman Mink and Congressman Abercrombie. Patsy.

STATEMENT OF HON. PATSY MINK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Ms. MINK. Thank you very much, Mr. Chairman. I'm here to express my support and appreciation to the subcommittee for including in section 107 a bill that I had earlier introduced, H.R. 3345. It's a small matter, but one of extreme concern to a number of constituents in my district, as well as in my colleague's district.

It has to do with an expedited process which is now covered in section 107, which the Attorney General is to provide so that there would be a regular process by which families can come into the United States to attend funerals of blood relatives. There is a process that presumably should operate to make this humanitarian, compassionate process automatic, but it simply doesn't work, Mr. Chairman. The humanitarian parole provisions in the current law have not been applied in any consistent manner with respect to my

constituents. So this is an extremely agonizing situation that is constantly being brought to my attention. As you know, Members of Congress have to often intervene, and it is in that process of trying to be of assistance that I came across this problem.

I introduced the bill, and the curious thing is that I discovered it's not a problem that is unique to my State. Fifteen other Members of Congress, upon knowing about the bill that I introduced, also indicated that they have experienced problems with reference to their constituents, not just from the Philippines, but from other Asian countries, and also from South America. So I submit that this is a problem that's not confined to one constituency, but is one that is experienced by other communities throughout the country.

It seems to me that in circumstances like this, where a close relative dies, that the process ought to be very automatic. Currently, I'm told by my staff, that even such things as: "Do you own property in the country where you reside?" is a determinant of whether a compassionate, humanitarian parole is issued. It should have no bearing whatsoever, and certainly in the experience that I've had with respect to the Philippines, most of the people are poor. They don't have property; they can't meet the requirements which are being leveled in terms of, "Well, will you go back?" There's a suspicion that people are going to come to attend funerals and never return. I submit that there are enough enforcement avenues and opportunities to make that kind of consequence a rarity, indeed.

So I'm very happy to have the support of this subcommittee, and hopefully of the Congress itself, in including and retaining section 107, because it means a great deal, not to large numbers of people, but certainly to the constituents whose loved ones reside in other places in the world.

Thank you very much.

Mr. MAZZOLI. Thank you, Patsy.

[The prepared statement of Ms. Mink follows:]

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STATEMENT BY U.S. REPRESENTATIVE PATSY T. MINK
BEFORE THE JUDICIARY SUBCOMMITTEE
ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES
IMMIGRATION AND NATURALIZATION HOUSEKEEPING AMENDMENTS ACT
MAY 20, 1992

Chairman Mazzoli and members of the subcommittee, I appreciate this opportunity to come before you today and testify in support of Sec. 107 of the Immigration and Naturalization Housekeeping Amendments Act of 1992.

Sec. 107 would provide expedited procedures for aliens to enter this country to attend the funeral of an immediate family member. This provision is identical to H.R. 3345, legislation I introduced in the House on September 15, 1991 to insure a fair and equitable system of granting parole to family members to be with loved ones during a time of family loss.

When relatives pass away it is the family that provides strength and comfort. And I don't think anyone here today would argue that family members that live outside of the U.S. should be able to enter this country in an expeditious manner to be with loved ones and properly grieve their loss.

Although this seems to be a fairly simple and reasonable request, for many it is a nightmare. In addition to the difficulty in coping with the death of a family member, many individuals must undergo rigorous, excessive, red tape just to enter the U.S. for a few days to be with their family in time of need. Delays often cause these individuals to miss the funeral and in many cases outright denial prevents family members from being together in times of grief.

Current policy allows aliens to enter the country for this purpose under the humanitarian parole provisions of Section 212(d)(5) of the Immigration and Nationality Act. However, there is no reference or regulations regarding the procedures for this specific type of parole.

Through my work assisting constituents in this type of situation, I have found that in practice the procedure to allow aliens into the country to attend a funeral is often not clear, it is inconsistent, and the final decision is left to the discretion of the embassy or consulate in a particular country, rather than what is prescribed by law.

The result is that people from certain nations are denied entry into the U.S. The experience of the people in my own district shows that relatives from certain countries, mainly the Philippines, face far greater difficulty in being granted parole status to be with their grieving families in the U.S.

Mr. Chairman, this is blatant discrimination against the people that live in the Philippines and their relatives who live in the U.S.

While the situation in my district has centered around the Philippines, I would like to note that 15 other Members of Congress have cosponsored this legislation and have relayed to me stories about similar incidents involving constituents in their districts and their relatives from East Asian and South American Countries.

In many cases individuals are denied entry into the country because they have pending applications to immigrate to the U.S. or because they have no property or assets to prove that they have a compelling reason to return to their native country.

Mr. Chairman, I understand the need to be cautious in these situations and to have assurances that aliens will return home, but we are talking about poor people from poor countries, who do not own property and sometimes do not even have a job, yet they are willing to scrape every last penny they have to come to the U.S. to pay their respects and comfort family members.

This discrimination against individuals from certain countries, against the poor and the disadvantaged must end. To outright deny someone the ability to travel to the funeral of a loved one is cruel and heartless.

Sec. 107 would help to correct this injustice by establishing a fair and balanced criteria for allowing aliens into this country to attend the funeral of a family member.

The provision specifies that anyone who wishes to enter the country to attend a funeral must prove the death of an immediate blood relative with death certificate. The relative must be the alien's mother, father, son, daughter, brother, sister or spouse. Those allowed into the U.S. in accordance with this provision would be allowed to stay in the U.S. for no more than thirty days.

Mr. Chairman, our country has a proud tradition of providing humanitarian solace to those who are suffering. And I urge the members of this subcommittee to uphold this tradition of fairness and human compassion in our country and swiftly approve the Immigration and Naturalization Housekeeping Amendments Act.

Mr. MAZZOLI. Neil.

**STATEMENT OF HON. NEIL ABERCROMBIE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF HAWAII**

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman. I'm here to speak in support of what is now section 107. I, too, have in my office experienced the same conditions that Congresswoman Mink has just outlined.

It sounds strange, Mr. Chairman, that we'd have to come to you to ask for something like this. Currently policy does allow people from other countries to enter the United States to attend funerals of immediate family members, but aliens from certain countries—in our instance in Hawaii, the Philippines, but, as Congresswoman Mink has pointed out, other Asian countries as well as Latin and South America are denied entry into this country.

Mr. Chairman, I recall when I was here briefly in 1986 I was privileged to sit with you through the entire immigration debate. You managed that very complicated, detailed, comprehensive bill and did an extraordinary service, I think, to the United States of America and to the people who would otherwise not have had representation.

I note, Mr. Chairman, that if we look at all of our last names, every single one of us in this room virtually has had a history, a legacy. We are the bearers of a legacy, rather, of people who have had to struggle from elsewhere to come here.

In this particular instance, it has to do with the most profound circumstances that happen in any family; that is to say, a death. Mr. Chairman, I'm sorry to say that there appears to be a pattern here in which, if it's Asian countries or Latin or South American countries, difficulties seem to get put in the way. If they come from some other areas of the planet, there seem to be less difficulties. I think that's why we need the legislation that Congresswoman Mink has put together.

I had four different incidents myself just recently where families' pain and suffering were compounded by the fact that immediate relatives were denied entry to the United States to attend funerals of their loved ones. This is not an abstraction, Mr. Chairman. This is something that takes place.

I know these people. It is not just frustrating, but it is shameful. It gives me a sense of inadequacy to have to say to hard-working, taxpaying, decent people who are working hard in this country and making a contribution that their blood relatives cannot come to this country for a funeral, and be unable to explain why it happens; it offends my whole sense of decency and fair play in America.

It's difficult enough, then, in conclusion, Mr. Chairman, to learn of a loved one's death, and to be outright denied the opportunity to pay one's last respects I think is downright cruel. I do not see how we can possibly continue to deny family members from reuniting to mourn their loss.

We're talking here, to be specific, Mr. Chairman, about an alien's mother, father, son, daughter, brother, sister, or spouse, and the stay in the United States is just for 30 days, except in exceptional circumstances. It comes down, as Congresswoman Mink said I believe, to a question of compassion. We want to be a nation of com-

passion. This is supposed to be a nation of fairness, and what Congresswoman Mink's bill allows is that family members be able to pay their respects, be briefly reunited to mourn their loss, and I think we should not deny them this opportunity which they rightly deserve.

Thank you very much, indeed, for your kind attention.

Mr. MAZZOLI. Thank you very much, Neil.

[The prepared statement of Mr. Abercrombie follows:]

**TESTIMONY OF CONGRESSMAN NEIL ABERCROMBIE
TO THE SUBCOMMITTEE
ON INTERNATIONAL LAW, IMMIGRATION, AND
REFUGEES
MAY 20, 1992**

H.R. 3345 - TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO PROVIDE FOR PROMPT PAROLE INTO THE UNITED STATES OF ALIENS IN ORDER TO ATTEND THE FUNERAL OF AN IMMEDIATE BLOOD RELATIVE IN THE UNITED STATES

Mr. Chairman and Members of this Committee,

Thank you for this opportunity to testify in favor of H.R. 3345.

I have joined Congresswoman Mink in cosponsoring this legislation which I believe makes immigration law fairer to people from all countries who wish to enter the United States in order to attend funerals of immediate family members.

Although current policy allows people from other countries to enter the U.S. to attend funerals of immediate family members, aliens from certain nations, mainly the Philippines, are delayed or denied entry into this country.

Although some cases go unnoticed, four different incidents were brought to my attention last year where the families' pain and suffering were compounded by the fact that immediate relatives were denied entry into the U.S. to attend the funerals of their loved ones.

Mr. Chairman and members of this committee, it is difficult enough to learn of a loved one's death - and to be outright denied to pay one's last respects is downright cruel! How can we possibly continue to deny family members from re-uniting to mourn their loss?

We must not allow this injustice to continue. H.R. 3345 will address this unfair policy and grant entry into the U.S. to an alien who can prove the death of an immediate blood relative with a death certificate. The relative must be the alien's mother, father, son, daughter, brother, sister or spouse and can stay in the U.S. for up to 30 days except under exceptional circumstances.

The heart of H.R. 3345 reflects what America is all about - a nation of compassion. A nation of fairness. This bill allows family members to pay their respects and be briefly reunited to mourn their loss. Let us not deny them of this opportunity which they rightfully deserve.

Mr. MAZZOLI. Patsy, just a couple of very quick questions.

Ms. MINK. Yes.

Mr. MAZZOLI. Later panels this morning will come before us, and in one case the Immigration Service argues section 107 is too rigid because it would require a certified death certificate in all cases. The statement goes on: "Current parole procedures do not insist on this requirement." And then, at the same time, INS proceeds, "section 107 is too flexible"—in one case too rigid, in one case too flexible—by not requiring that the alien provide the INS with evidence of the immediate blood relationship.

So let me ask both of you to comment a little bit on that. Is it your understanding that there would have to be a certified death certificate provided? And, second, how about the establishment of consanguinity or blood relationship?

Ms. MINK. Well, it would seem to me that, since the provision of 107 calls for this process only for immediate blood relatives, that the person applying for entry would have to establish that fact. I mean, that's implicit. However they establish it, I did not want to specify that it must be a certified birth certificate or anything to that extent because in other aspects, where we're dealing with immigration applications, one of the primary problems that I have encountered, especially applicants from the Philippines, is determining their birth, their date of birth, their parentage, and all of that. Sometimes all we have is baptismal certificates or affidavits of people. So I didn't want to specify that it had to be a certain kind of document.

But when we're talking about the State of Hawaii and other States, and someone has died, we have a death certificate. That is something which is given, easy to produce. It seemed to me that that would be all that we would have to have, a death certificate, and the process would begin.

Mr. MAZZOLI. And some kind of credible proof of blood relationship?

Ms. MINK. That's right.

Mr. MAZZOLI. Something like that. Neil.

Mr. ABERCROMBIE. Yes, that's precisely the point. It's an irony, Mr. Chairman, that they say, on the one hand, well, it's too rigid with the death certificate; we thought that that was the easiest way to show it. You have a death certificate, unless we're speaking about outright forgeries, in which case there would be a violation of law which could be prosecuted.

So when you have the death certificate, that allows you the flexibility because then you have something solid upon which to base the claim of wanting to enter on compassionate parole.

Mr. MAZZOLI. Let me ask one other question, Neil. INS continues by saying that, "We oppose any provision that makes a discretionary grant of parole mandatory, particularly in the case of aggravated felons or others whose entry would be deemed contrary to the national interest."

Are you aware of evidence of where people trying to come into the country have been convicted of felonies and they're trying to come in on some—

Mr. ABERCROMBIE. Yes, you've had Yacuzas, criminals, say in Japan criminals who have been convicted in Japan but that also

violates the law, if you knowingly conceal past criminal behavior which would in other circumstances forbid your entry into this country—

Mr. MAZZOLI. I don't think that kind of person ought to be cleared to come in.

Mr. ABERCROMBIE. To the best of my knowledge, this bill has nothing to do with that, and it doesn't abrogate it in any way.

Mr. MAZZOLI. OK. And then the very last comment—

Mr. ABERCROMBIE. By the way, those people are caught and they are sent—the moment that kind of knowledge is received, those people have been prosecuted.

Mr. MAZZOLI. The last was the FAIR group, the Federation for American Immigration Reform, suggests that the real problem in coming in is maybe not even establishing blood relationship, but just the delay in getting the documentation, the proof of death and that sort of thing. So are you aware of that, Patsy? Do you think that this could be—

Ms. MINK. Not in our instance, none whatsoever.

Mr. MAZZOLI. Fine. Thank you all—

Ms. MINK. Mr. Chairman, may I ask unanimous consent that my entire statement be inserted in the record?

Mr. MAZZOLI. Thank you very much for making that statement. It certainly will be made a part of the record, as will all of the statements earlier given and to be delivered.

Mr. ABERCROMBIE. May I comment very briefly on that last question, Mr. Chairman?

Mr. MAZZOLI. Yes.

Mr. ABERCROMBIE. The families that are involved, this is a family situation. It's not even distant relatives. So the question of delay, I think, is one that would only in rare instances be invoked, because the families stay in close contact with one another.

Mr. MAZZOLI. Thank you very much, Patsy and Neil.

Ms. MINK. Thank you very much.

Mr. MAZZOLI. Cal Dooley, welcome, my friend from California.

STATEMENT OF HON. CALVIN M. DOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLEY. Thank you, Mr. Chairman. I'm here to testify in strong support of section 111 of the committee bill which would make legalized aliens eligible to receive public assistance during a national emergency.

The need for this legislation was made abundantly clear in my district in central California when a deep freeze struck in December 1990. The freeze wiped out the citrus and other cold-sensitive crops and devastated our farm-based economy in the region. Most of the 15,000 people put out of work by the freeze were farmworkers, many of whom are aliens legalized under the Immigration Reform and Control Act of 1986.

In the span of 2 chilling weeks, many of those farmworker families lost their sole means of support. They suddenly were in desperate need of items like food, including infant formula, and required assistance in paying rent and mortgage payments and utility bills. The problem is IRCA prohibits legalized aliens from receiving many forms of public assistance for a 5-year period.

On February 11, 1991, when President Bush declared 15 counties in California, including almost all of my district, a disaster area, many of these families in the United States legally through IRCA were not eligible for available emergency assistance. Worst, many immigrant families did not apply for assistance that they could have received because they were confused about their status under IRCA. They incorrectly assumed that they were ineligible for all forms of help.

Compounding this problem, the Immigration and Naturalization Service has been unwilling or unable to put forward a clear directive on this issue. This lack of a clear signal has had a chilling effect on many farmworkers and their families in need, who for all intents and purposes have stayed in hiding.

I understand that the purpose of the IRCA restrictions was to minimize the financial burden on U.S. taxpayers by guaranteeing that these aliens would not draw on welfare or other cash-based subsistence programs. However, a report drafted by the Congressional Budget Office indicates that the cost of providing assistance to aliens legalized by IRCA during federally declared emergencies would have an insignificant budgetary impact. In times of emergency, it's only right that people be allowed to receive help.

In January 1991, I introduced H.R. 2198 to remedy this problem. The text of my bill has been incorporated into the committee bill as section 111. It would lift the ban on public assistance in cases of emergencies declared by the President. Assistance would be available only for the prescribed length of the emergency and in the designated emergency area. As I stated earlier, CBO has found that this section would have a negligible budgetary impact.

I believe that the United States has a moral obligation to assist within our borders in times of crisis. I think this section provides us with an opportunity to do that. It tells legal aliens in need that during times of disaster they can get public assistance with no strings attached. There will be no reprisal. Their immigration status won't be jeopardized, and their families won't go hungry. They won't be turned out of their homes.

The legislation is supported by many farmworker assistance groups, and I ask the committee's permission to submit statements for the record from the California Rural Legal Assistance and Ola Raza, Inc.

Mr. MAZZOLI. Without objection, so ordered.

[The prepared statements of the California Rural Legal Assistance and Ola Raza follow:]

LAW OFFICES OF
**CALIFORNIA RURAL LEGAL ASSISTANCE
MIGRANT FARMWORKER PROJECT**

2115 Kern Street, Suite 370
Fresno, Ca. 93721
(209)-441-8721
1-800-343-7752
FAX (209)-441-8443

May 19, 1992

Congressman Calvin M. Dooley
17th District, California
1022 Longworth Building
Washington, D.C. 20515

RE: Proposed Legislation To Amend the Immigration and
Nationality Act

Dear Congressman Dooley:

Thank you very much for the opportunity to comment on your proposed legislation to amend the Immigration and Nationality Act to make legalized aliens eligible for public assistance during declared disasters. (See Section 111.) In light of our experience during the 1990 - 91 arctic freeze, we wholeheartedly support this legislation.

CRLA's Migrant Farmworker Project provides legal services to migrant and seasonal farmworkers throughout rural California. In the San Joaquin Valley, its service area encompasses the following counties: Kern, Tulare, Kings, Fresno, and Madera.

As you know, a devastating arctic freeze in the winter of 1990 - 91 destroyed many crops in the San Joaquin Valley, causing massive unemployment and displacement of farmworkers. Lindsay, a citrus center in Tulare County, was especially hard-hit. During that time, it looked like something out of the depression of the 1920's. Instead of being on the job in the groves and packing sheds, citrus workers lined up daily at a local food bank for basic necessities. Men, women and children suffered through one of the worst natural disasters to hit California and perhaps the nation. Lindsay, however, was not unique; virtually every community in the San Joaquin Valley had a similar experience.

Because the freeze did not have the "media appeal" of other natural disasters, many did not fully appreciate the devastation and utter despair it created. You and your staff responded quickly and helped literally thousands of families throughout the Valley and California access assistance from FEMA and other public and private sources.

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Letter to Congressman Dooley
May 19, 1992

Inasmuch as many of the farmworkers were newly legalized under IRCA, they were ineligible for most federal programs. Specifically, they risked becoming a "public charge" and being banned from legalization under IRCA if they applied for and received assistance from programs that provide basic necessities for families. Newly legalized farmworkers were ready, willing and able to work but because the freeze had wiped out their jobs they were unable to find any work. Consequently, they were unable to provide their families with basic necessities. Most importantly, they could also not look to federal programs as an interim measure until the disaster passed.

Your legislation would enable newly legalized aliens to receive assistance on basic needs during times of disaster. Had this legislation been in effect during the freeze, suffering and displacement would have been minimized and our ability to provide a full range of services to farmworker families would have been enhanced. We look forward to working with you on this legislation and would be happy to provide examples of how this legislation would have made a difference to many families during the freeze disaster. Thank you for your attention.

Sincerely,



Valeriano Saucedo, Esq.
Director - CRLA Migrant Farmworker Project

IMMIGRATION AND NATURALIZATION HOUSEKEEPING AMENDMENTS
ACT OF 1992

OLA RAZA, INC.

SUSPENSION OF BAN ON PUBLIC ASSISTANCE FOR LEGALIZED
ALIENS DURING FEDERALLY DECLARED NATIONAL EMERGENCIES:
SECTION 111

INTRODUCTION: THOUSANDS OF ALIENS IN THE
LEGALIZATION PROCESS OR WHO RECENTLY IMMIGRATED
TO THE UNITED STATES DO NOT APPLY FOR ANY FORM OF
ASSISTANCE FOR FEAR OF LOSING THEIR IMMIGRATION
STATUS. THE IMMIGRATION AND NATURALIZATION SERVICE
HAS SUCCESSFULLY CONVINCED SUCH ALIENS THAT RECEIVING
PUBLIC ASSISTANCE CONVERTS THEM INTO PUBLIC CHARGES.
DURING THE 1990-1991 CENTRAL CALIFORNIA FREEZE
DISASTER, UNTOLD NUMBER OF NEWLY LEGALIZED ALIENS,
THEIR FAMILIES AND CHILDREN WENT HUNGRY AND BECAME
HOMELESS (OR WERE EVICTED) FOR LACK OF GOVERNMENT

PUBLIC ASSISTANCE. PUBLIC DECLARATIONS FROM THE
IMMIGRATION AND NATURALIZATION SERVICES TO THE EFFECT
THAT F.E.M.A. ASSISTANCE WOULD NOT JEOPARDIZE THE
LEGALIZED ALIEN'S STATUS, WAS INSUFFICIENT TO OVERCOME
THE FEAR OF BECOMING A PUBLIC CHARGE. THE SAME
SITUATION WAS EVIDENT IN WATSONVILLE, CALIFORNIA
DURING THE EARTHQUAKE DISASTER. WITHOUT THE NECESSARY
LEGISLATION, IT IS CERTAIN THAT THE FREEZE DISASTER
AND THE EARTHQUAKE SITUATIONS WOULD REPEAT THEMSELVES
IF THERE WAS ANOTHER DISASTER ANYWHERE IN THE UNITED
STATES.

Mr. DOOLEY. I urge you, Mr. Chairman and members of the committee, to support the passage of this legislation. I thank you for the opportunity to come before you, and would be more than willing to provide additional assistance and respond to any questions that you or members might have.

Mr. MAZZOLI. Cal, thank you very much.

[The prepared statement of Mr. Dooley follows:]

SUBMITTED BY CONGRESSMAN CAL DOOLEY
BEFORE THE HOUSE JUDICIARY
SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES
MAY 20, 1992
(submitted for the record)

Mr. Chairman and members of the Committee, I appreciate the opportunity to express my strong support of Section 111 of the committee bill, which would make legalized aliens eligible to receive public assistance during a national emergency.

The need for this legislation was made abundantly clear in my District in central California when a deep freeze struck in December of 1990, wiping out citrus and other cold-sensitive crops and devastating the farm-based economy of the region.

Most of the 15,000 people put out of work by the freeze were farm workers, many of whom are aliens legalized under the Immigration Reform and Control Act of 1986 (IRCA).

In a span of two chilling weeks, many of these farm worker families lost their sole means of support. They suddenly were in desperate need of items like food (including infant formula) and required help in making rent and mortgage payments and paying utility bills.

The problem is, IRCA prohibits legalized aliens from receiving many forms of public assistance for a five-year period. On February 11, 1991 when President Bush declared fifteen counties in California, including almost all of my District, a disaster

area, many of these families -- in the United States legally through IRCA -- were not eligible for available emergency assistance.

Worse, many immigrant families did not apply for assistance that they could have received because they were confused about their status under IRCA. They incorrectly assumed that they were ineligible for all forms of help.

Compounding this problem, the Immigration and Naturalization Service has been unwilling or unable to put forward a clear directive on this issue. This lack of a clear signal has had a chilling effect on many farm workers and their families in need who for all intents and purposes have stayed in hiding.

I understand that the purpose of the IRCA restrictions was to minimize the financial burden on U.S. taxpayers by guaranteeing that these aliens would not draw on welfare or other cash-based subsistence programs. However, a report drafted by the Congressional Budget Office indicated that the cost of providing assistance to legalized aliens during federally declared emergencies would have an insignificant budgetary impact. In times of emergency it's only right that people be allowed to receive help.

In January of 1991 I introduced H.R. 2198 to remedy this problem. The text of my bill has been incorporated into the committee bill

as Section 111. It would lift the ban on public assistance in cases of emergency declared by the president. Assistance would be available only for the prescribed length of the emergency, and in the designated emergency area.

As I stated earlier, CBO has found that Section 111 of this bill will have a negligible budgetary impact.

We in the United States have a moral obligation to assist people within our borders in times of crisis. Here is an opportunity to do that. Section 111 of this bill sends a clear signal. It tells legal aliens in need that during times of disaster they can get public assistance with no strings attached. There will be no reprisal. Their immigration status won't be jeopardized. Their families won't go hungry. They won't be turned out of their homes.

I urge you, Mr. Chairman and members of the Committee, to support the passage of this legislation.

Thank you for the opportunity to come before you. I will be happy to answer any questions that you might have, or provide you with additional information.

Mr. MAZZOLI. I know you and I have talked about this at some length on the floor at different times. Let me just ask you a couple of questions.

One is a comment that will be made later today by the Immigration Service with respect to section 111, which says that, "While the Immigration Service itself has no objections to this provision, the Office of Management and Budget has advised that the section would involve direct spending and, therefore, is subject to the pay-as-you-go provisions of the 1990 Budget Act."

Have you studied that? CBO, apparently, says something different. They say that the budget impact would be minimal or something.

Mr. DOOLEY. Mr. Chairman, we've worked with members of your committee in requesting that CBO basically score this provision, and their report, which I think you and your staff have received a copy of it, did analyze it as being an insignificant impact.

Mr. MAZZOLI. When it's insignificant, are those words of art and, therefore, they don't really run into the 1990—

Mr. DOOLEY. You know, Mr. Chairman, I'll have to check on that because I don't know.

Mr. MAZZOLI. If you would, please understand that we would certainly have to check into it.

Mr. DOOLEY. The same problem that we are facing in the Central Valley was faced in the region that Mr. Mineta also represents during the Watsonville earthquake where once again we had a large number of legal aliens that were facing tremendous financial hardships and suffering tremendous human cost, through no fault of their own. Even if it does result in some cost, we should find a way to provide at least minimal assistance.

Mr. MAZZOLI. Thank you. Staff has handed me the CBO report, and apparently if the budget impact is really insignificant, apparently it doesn't subject itself to the 1990 Budget Act, but we will look into it. Cal, one other thing. Do you have any idea how many aliens are still in that 5-year period?

Mr. DOOLEY. I don't have the precise numbers on that, but some of the agencies or associations serving affected groups can provide the information. Obviously, this legislation in some respects has an a built-in sunset to it, because most of these folks are going to be working through that 5-year period in a short period of time.

Mr. MAZZOLI. If you get any kind of credible estimates that you could forward to us, we would appreciate it.

Mr. DOOLEY. Sure.

Mr. MAZZOLI. We'll be asking the other agencies as well.

And, also, you said in your statement—and I'm glad to hear you say it, though apparently the staff suggests that the bill is a little bit looser on this—the alien would have to have been personally affected or personally live in the area in which there has been designated the emergency. You seem to feel like they should be, but the bill—

Mr. DOOLEY. It was certainly our intention to limit the provisions of this legislation to areas which have been specifically designated, and those people who should be eligible should be those that were personally impacted.

Mr. MAZZOLI. Somehow impacted? So you would have no difficulty if we were to tighten the language—

Mr. DOOLEY. No, they would have to document their hardship as being disaster related.

Mr. MAZZOLI. So this would be sort of following in that same scheme?

Mr. DOOLEY. Exactly.

Mr. MAZZOLI. My very last question would be the issue of what happened in Los Angeles the other day which has been, I believe, declared by the President as an emergency, and I don't know whether they declared a geographical area or just Los Angeles. Would you speculate as to how that would affect—

Mr. DOOLEY. Well, again, this legislation, if passed, would make those legal aliens who could demonstrate that they suffered from the disaster, eligible for the public assistance that would be made available through the disaster declaration.

Mr. MAZZOLI. And this would be to the—

Mr. DOOLEY. This is only for those people—

Mr. MAZZOLI. This is only for those IRCA people—

Mr. DOOLEY. IRCA people, right.

Mr. MAZZOLI [continuing]. Because other aliens who are in Los Angeles—

Mr. DOOLEY. Illegal aliens have basically no status or no eligibility.

Mr. MAZZOLI. And these are legal aliens who are here but under a different standard than the IRCA workers—

Mr. DOOLEY. This would just pertain to those that are within that 5-year window.

Mr. MAZZOLI. Cal, thank you, my friend. I appreciate it.

Mr. DOOLEY. Thank you.

Mr. MAZZOLI. If we have any further questions, we'll send them to you or get in touch. Thank you.

Your Excellency—

[Laughter.]

Mr. MAZZOLI [continuing]. I'm sorry, I'm meant "Mr. Chairman."

Mr. MINETA. Is that a bridge or a highway you were referring to? I'm sorry.

Mr. MAZZOLI. Full committee chairmen so very seldom have a chance to be in our presence here. The gentleman from California, Mr. Mineta.

STATEMENT OF HON. NORMAN Y. MINETA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MINETA. Well, thank you very much, Mr. Chairman. I very much appreciate your arranging for this hearing today and your continued leadership in matters dealing with immigration.

Mr. Chairman, I'm here today to urge the subcommittee's support for the Equity in Citizenship Act, H.R. 4007, which appears as section 201 of title II of your proposed Immigration and Naturalization Housekeeping Amendment Act of 1992. Since its introduction, H.R. 4007 has garnered bipartisan support here in the Congress. Congressman Berman and Congressman Kopetski, members of the subcommittee, are cosponsors. It has been endorsed by the American Immigration Lawyers Association, and it is my un-

derstanding that the State Department has no objection to the bill. I also note that my very good friend from Texas, Mr. Smith, has introduced legislation that is very similar in intent.

Mr. Chairman, this Equity in Citizenship Act will remove a long-standing discriminatory relief from our immigration code. As you know, prior to 1934, only men were allowed to transmit their U.S. citizenship to their foreign-born children. Although the Congress granted American women the right to transmit U.S. citizenship to their children in 1934, that reform was not made retroactive. As a result, any individual born outside the United States before May 24, 1934, to an American mother and a foreign national father is not considered to be an American citizen. If it is adopted, the Equity in Citizenship Act will finally grant them U.S. citizenship.

There have been many people affected by the provisions of current law, the most famous of them being Winston Churchill. But I would like to share with the subcommittee the case of one individual, Charles DeWitt of Seattle, WA, and I think his story points out how necessary this bill is today. Mr. DeWitt was born in Ontario, Canada, in 1932. His mother was American and his father was Canadian. After his parents divorced in 1936, his mother returned to the United States with her two sons. She was assured, incorrectly as it turns out, that her sons would automatically become citizens when they reached the age of 12.

Mr. DeWitt has lived his entire life as an American citizen. He has an American passport, served in the Marine Corps, paid taxes, voted regularly as a Republican, and was granted security clearances. But in 1987, the INS informed Mr. DeWitt that he was not an American citizen because he had an American mother rather than an American father. His passport was then invalidated. The INS suggested that he apply for a green card.

Several individuals like Mr. DeWitt have filed suit in Federal court. Although the initial ruling was in their favor, the State Department has appealed. Mr. Chairman, Mr. DeWitt is a constituent of our fine colleague, Mr. Chandler of the State of Washington. Congressman Chandler is an original cosponsor of H.R. 4007, but was unable to be here today. He has prepared a statement, and I would ask unanimous consent that it be placed in the hearing record.

Mr. MAZZOLI. Without objection, so ordered.

[The prepared statement of Mr. Chandler follows:]

STATEMENT OF THE HONORABLE ROD CHANDLER
BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION AND REFUGEES
IN SUPPORT OF H.R. 4007
MAY 20, 1992

Mr. Chairman, distinguished Members of the Subcommittee, I would like to thank you for the opportunity to express my strong support for H.R. 4007. I have cosponsored this legislation because it provides a reasonable solution to a problem impacting many Washington state residents and thousands of other Americans.

Mr. Chairman, let me provide a real life example of this inequity. A Redmond, Washington resident, Charles Dewitt, was born to an American mother and Canadian father in 1932. At age four, following his parent's divorce, he was brought to the United States by his mother. Over the last fifty-five years, Mr. Dewitt attended school in the U.S., graduated from an American college, served honorably in the U.S. Marine Corps, raised a family in Washington state and currently is employed by the Washington State Department of Transportation. Words cannot express the shock Mr. Dewitt experienced when told he was not a U.S. citizen because he was born to an American mother in a foreign nation prior to 1934.

Legislation to correct this injustice is long overdue. Children of U.S. citizens born overseas have derived their citizenship from either their mother or father since 1934. There is no reasonable or justifiable argument for the continued discrimination against the pre-1934 foreign born children of American mothers. I wholeheartedly support this measure as a means of correcting this injustice.

H.R. 4007 provides the privilege of citizenship to people who would be Americans but for the year of their birth. I urge Members of the Subcommittee to favorably consider enactment of this legislation. Thank you.

Mr. MINETA. Mr. Chairman, I know you will agree that discrimination against women in this country is something we cannot ignore. If this policy were simply a relic of the past, we could take note of it and resolve not to make a similar mistake in the future. But people like Chuck DeWitt are still being affected today. Individuals who, in all fairness, should be considered American citizens are spending time and money on costly litigation.

The State Department, on the other hand, is also expending taxpayer dollars defending a policy that really has no defense. By moving expeditiously to pass the Equity in Citizenship Act, either as a separate bill or as a provision of broader immigration legislation, the Congress can resolve this issue. All indications are that the support exists in the Congress and the administration to place the bill into law.

Certainly this will result in ending a chain of costly and time-consuming litigation. But, more importantly, it will finally grant American citizenship to a group of people to whom it never should have been denied.

Once again, Mr. Chairman, thank you for arranging for this hearing and for your continued leadership. I hope that the subcommittee will move quickly to adopt this legislation as part of your larger bill.

Mr. MAZZOLI. Thank you very much, Norm.

[The prepared statement of Mr. Mineta follows:]

Testimony of Norman Y. Mineta, M.C.
before the Subcommittee on International Law,
Immigration and Refugees
May 20, 1992

Thank you, Mr. Chairman. I very much appreciate your arranging for this hearing today, and for your continued leadership in immigration policy.

Mr. Chairman, I was very pleased to see that you chose to include my legislation, the Equity in Citizenship Act, H.R. 4007, as Section 201 of Title II of the proposed Immigration and Naturalization Housekeeping Amendments Act of 1992.

I introduced H.R. 4007 in October of last year, and the bill now has 29 cosponsors. Mr. Berman and Mr. Kopetski, Members of the Subcommittee, have joined me as cosponsors, as have Congressman Moorhead, Congresswoman Schroeder, Congressman Edwards, Congressman Frank and Congressman James, Members of the Full Committee. I have also noted that my good friend from Texas, Mr. Smith, has introduced legislation that is similar in intent.

In addition, my office has received a great deal of assistance from the State Department in this matter, and it is my understanding that they have no objections to the bill.

Mr. Chairman, the Equity in Citizenship Act will remove a long-standing discriminatory relic from our immigration code. As you know, prior to 1934 only men were allowed to transmit their U.S. citizenship to their foreign-born children.

Perhaps the most famous individual affected by this provision was Winston Churchill. When Prime Minister Churchill was invited to address a Joint Session of the Congress on December 26, 1941, he made note of the fact, saying ". . . I cannot help reflecting that if my father had been an American and my mother British, instead of the other way round, I might have got here on my own."

Although the Congress granted American women the right to transmit their U.S. citizenship to their children in 1934, that reform was not made retroactive. As a result, any individual born outside the United States before May 24, 1934 to an American mother and a foreign national father is not considered to be an American citizen. Although almost 60 years have passed since that time, this discriminatory practice continues to affect people today.

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If it is adopted, The Equity in Citizenship Act will finally grant them U.S. citizenship.

I'd like to share with the Subcommittee the story of one individual whose case points out how necessary this bill is.

Charles DeWitt of Seattle, Washington was born in Ontario, Canada in 1932 to an American mother and a Canadian father. After his parents' divorce in 1936, his mother returned to the United States with her two sons. She was assured, incorrectly it turns out, that her sons would automatically become citizens when they reached the age of 12.

Mr. DeWitt lived his entire life as an American citizen. He held an American passport, served in the Marine Corps, paid taxes, voted Republican and held security clearances. But in 1987, the INS informed Mr. DeWitt that he was not a citizen. Because he had an American mother, rather than an American father, his passport was invalidated. The INS suggested he apply for a green card.

Mr. Chairman, Mr. DeWitt is a constituent of our colleague Rod Chandler of Washington state. Congressman Chandler is an original cosponsor of H.R. 4007, but was unable to be here today. He has prepared a statement, and I would ask unanimous consent that it be placed in the hearing record.

In a 1989 Federal Court ruling in the case of Elias v. U.S. Department of State (721 F. Supp. 243 (N.D.Cal. 1989)), Judge Robert Peckham held that the State Department's denial of a passport in a case similar to Mr. DeWitt's was unconstitutional. That case was appealed by the State Department and is currently before the 9th Circuit Court of Appeals. Several other plaintiffs have joined the case.

Mr. DeWitt has chosen not to file suit. He feels uncomfortable with the idea of suing the federal government, and hopes that the Congress will act to acknowledge him and those in similar situations.

Mr. Chairman, I think we all understand that discrimination against women in this country is something we cannot ignore. If this provision of our immigration code were simply a relic of the past, we could take note of it and resolve not to make a similar mistake in the future.

Testimony of Norman Y. Mineta, M.C.
May 20, 1992
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But the simple fact of the matter is that people are still being affected today. Individuals who, in all fairness, should be considered American citizens are spending time and money on costly litigation. The State Department is expending taxpayer dollars defending a policy that really has no defense.

By moving expeditiously to pass the Equity in Citizenship Act, either as a separate bill, or as a provision of broader immigration legislation, the Congress can resolve this issue. All indications are that the support exists in the Congress and the Administration to place the bill into law.

Certainly, this will result in ending a chain of costly and time-consuming litigation. But ultimately, it will finally grant American citizenship to a group of people to whom it never should have been denied.

Once again, Mr. Chairman, thank you for arranging for this hearing and your continued leadership. I hope the Subcommittee will move quickly to adopt the bill.

Mr. MAZZOLI. INS will later testify this morning that they support section 201, which is your bill, at least subsection 201(a), which is designed to address the inequity inherent in current law. However, INS believes that subsections 201(b) and (c) are unnecessary and could create confusion if passed as currently drafted. They suggest that those be deleted.

This has to do with the parents having to come back to the United States, and so forth. This leads into another question I have: Whether or not the effect of your bill would be to allow people to claim U.S. citizenship who have never lived in this country or whose parents have never lived here. I'm not sure how that plays out, because you can construct, I guess, all kinds of different scenarios, but staff seems to think that there may possibly be some arrangement here which would then confer in this retroactive sense citizenship on people who have really very little, if any, contact with the United States.

If you haven't had a chance to think it out, I would be happy to have your comments even later.

Mr. MINETA. Right. First of all, Mr. Chairman, the State Department did request that we change the language that was introduced by Mr. Smith in his bill 4139, so that in our bill we used the language, "to outside the limits and jurisdiction of the United States" as compared to Mr. Smith's language which said, "outside the geographical limits of the United States." This was done by the State Department, requested by the State Department, which we have included in our bill in order to conform to the language that was used in 1934.

We also deal with retroactivity and we also say in our bill that the State Department is allowed to automatically waive retention requirements for those affected. I think those requirements would be waived anyway, but only after a lengthy review process. I'm not sure whether or not that goes to the issues that you're raising, and if they are not, then I will respond to you in writing—

Mr. MAZZOLI. I'm not quite sure either, and I would be happy to have your comments.

Mr. MINETA [continuing]. To your inquiry.

Mr. MAZZOLI. We'll pursue this with the INS when they come forward.

I guess my last question is: Have you any idea, Norm, how many people we might be talking about? You have the DeWitt case, which you've worked with very intimately. Is he capable or anybody else of giving you some idea of how many might have been in that zone prior to 1934?

Mr. MINETA. Well, if you take a look at the number of cases that are filed in Federal court, then I would say that it's probably two, three, four per year. So the number of cases is really very, very small.

So, again, I think most of the people who will be impacted by this bill are those who have already immigrated back here to the United States, rather than to those who are—

Mr. MAZZOLI. We also want to be fair to them.

Mr. MINETA. That's right. They have some close and continuing connection with the United States.

Mr. MAZZOLI. Yes. Let me ask you to read, if you will, at your leisure the comments delivered by the Federation for American Immigration Reform on section 201. They go on for quite a few pages, but the comments are essentially that this would open up applications to rampant fraud, using—perhaps incorrectly—references to other immigration programs which have been faced with illegal documentation problems and fraudulent documentation problems, and that type of thing. Just take a look at that statement, just in order to see if there is any type of response that you have, either today or later, to that part of it, which would be that people might hoke up papers and say that my grandmother was this person or my grandfather was this person and, you know, that type of thing.

Mr. MINETA. I recognize that, and I think there are safeguards in terms of the process beyond the legislation through rules and regulations to implement this piece that would make sure that we don't have that. On the other hand, Mr. Chairman, from some of the material that I have seen from FAIR, I'm not sure that they would allow anybody into the country.

Mr. MAZZOLI. Well, I thank you. There are times when all groups on the outside tend to lapse into hyperbole, but every now and then certain of these things are worth attending to because when we debate these issues—and we hope to bring a bill to the floor—

Mr. MINETA. I recognize that.

Mr. MAZZOLI [continuing]. Any person might adopt those views. I think to counter them or to respond to them would be useful.

Thank you very much, Norm.

[Mr. Mineta's responses to Department of Justice and FAIR testimony follows:]

RESPONSES OF HON. NORMAN Y. MINETA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, TO DEPARTMENT OF JUSTICE AND FAIR TESTIMONY

Thank you very much for the opportunity to testify before the Subcommittee today. I appreciate your decision to include the Equity in Citizenship in your legislation.

As you requested, I am writing to respond to the testimony of the Department of Justice and the Federation for American Immigration Reform on the Equity in Citizenship Act.

JUSTICE DEPARTMENT

Immigration and Naturalization Service Commissioner Gene McNarry indicated that the Justice Department supports the Equity in Citizenship Act, but asks that Subsections (b) and (c) be deleted. I must object to this request.

Section (b) pertains to the granting of waivers of retention requirements for individuals affected by the Act. It was drafted to eliminate an unnecessary administrative burden that might be placed on the State Department in administering the Act.

The State Department currently grants waivers of retention requirements in cases where individuals can be demonstrated to have been ignorant of them. As such, the State Department must confirm that they themselves have never acted to inform the applicant. This can require extensive research and documentation, delaying final determination of a case.

Since individuals affected by this legislation had no American citizenship to retain, they are by definition ignorant of the retention requirements. Subsection (b) simply allows the State Department to proceed without a costly review process that would be utterly unnecessary in these cases.

I would note that the State Department specifically endorsed Subsection (b) in the testimony of Deputy Assistant Secretary John H. Adams today.

Subsection (c) was drafted to make the bill effective retroactively. The State Department agrees with the intent of this subsection, but has requested a minor technical change. Upon review, I feel their request is reasonable and would not alter the principle or effects of the provision.

I would not support removing Subsection (c) entirely, as requested by the Justice Department. It is important to clarify both that the effect of Section 201 is retroactive, and that its enactment should not affect the citizenship of individuals who have gained it under existing law.

It is my understanding that the State Department will request that INS and Justice defer to their opinion on both subsections.

FEDERATION FOR AMERICAN IMMIGRATION REFORM:

I strongly object to the characterization of Section 201 in the statement provided by FAIR. Calling Section 201 "an open invitation to rampant fraud" is flatly wrong. FAIR's belief that "people all over the world will suddenly discover their mothers or grandmothers were U.S. citizens" grossly misstates the likely outcome of this bill.

While the bill may result in some instances of descendants being granted citizenship under Section 201, FAIR's testimony overlooks the fact that transmission requirements are not waived under the bill.

Those directly granted citizenship could pass their citizenship on to their children only if they complied with the transmission requirement in place at the time. As you know, transmission requirements have varied over time but have always required some period of residency in the United States prior to a child's birth.

The transmission requirements will represent an increasingly difficult test for each succeeding generation that remained abroad. It will be difficult for an individual directly granted citizenship to pass his or her citizenship to a child, and will be virtually impossible for it to pass to a third generation. The only instances where this might occur would be cases where the family has had such strong, ongoing ties to the United States that the stringent residency requirements for transmission have been met.

In light of this, I expect the number of individuals deriving citizenship from this legislation to be relatively limited. Many, if not most, will already have immigrated to the United States through normal channels.

On the question of potential fraud, I believe that the State Department and the INS are fully capable of verifying the validity of claims to citizenship under this Act. While there will be administrative costs associated with claims under the Act, we should not overlook the ongoing litigation costs which the State Department rightly acknowledges as insupportable.

Ultimately, however, I believe this is a question of principle. I strongly disagree with FAIR's claim that "trying to go back and correct wrongs that are a minimum of 58 years old is ... an absurd proposition." The discriminatory effect of current law is more than a historical curiosity. It continues to affect people to this day, and we have an obligation to remedy it as best we can.

I hope this will serve to clarify some of the issues raised in the hearing today. If you or your staff have further questions, please do not hesitate to contact my office. Once again, thank you for your consideration of the Equity in Citizenship Act.

Sincerely yours,



NORMAN Y. MINETA
Member of Congress

NYM:cws

Mr. MAZZOLI. We welcome the gentlelady—is it from Kentucky or New York? I haven't quite——

Ms. SLAUGHTER. Both.

Mr. MAZZOLI. Both?

[Laughter.]

Mr. MAZZOLI. As I've said many times, New York's gain was Kentucky's loss when you left.

Ms. SLAUGHTER. That's very nice of you and very welcoming, Mr. Chairman.

Mr. MAZZOLI. The gentlewoman from New York, Ms. Slaughter.

**STATEMENT OF HON. LOUISE M. SLAUGHTER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Ms. SLAUGHTER. I'm really delighted to be here this morning. I want to talk about some clarifying amendments to section 701 of the 1990 Immigration Act, a provision that I originally authored and one in which I still have a great deal of interest.

That provision, commonly referred to as the "battered spouse waiver," allows foreign spouses to petition for permanent residency independently of the citizen or resident spouse in cases of domestic violence. Your amendment, Mr. Chairman, section 108 of this new legislation, is of vital importance to the immigrant victims of violence, cruelty, and abuse. It will ensure that congressional intent is followed and the protective nature of the waiver is maintained, as the Immigration and Naturalization Service acts to implement the provisions of the 1990 law.

Allow me to present you with some background. I first introduced the bill that created the battered spouse waiver when a friend in Rochester, NY, brought to my district office a young woman looking for help. She had been viciously beaten by her American husband, was afraid even to seek shelter, let alone a divorce, because her husband threatened to have her deported if she left him. It was so abhorrent to me that U.S. immigration law was being used as a tool of control and violence that I committed myself to helping the victims.

The bill we passed in 1990 waives the joint petition requirement for permanent residency only where a foreign spouse can demonstrate that he or she entered into marriage with a citizen or resident spouse in good faith, and can establish through credible evidence that he or she was battered or subjected to extreme cruelty by the American spouse.

Additionally, a foreign spouse and his or her children, regardless of their immigration status, would be eligible for a waiver under section 701, if the child or stepchild is subject to abuse by the resident or the citizen parent.

By enacting section 701 of the Immigration Act, the 101st Congress made its intent very clear. In the committee report and during debate on the floor, the protective nature of the battered spouse-child waiver was underscored. The House Judiciary Committee found that the existing law did "not go far enough in ensuring the safety and protecting the legal rights of immigrants in situations of domestic violence."

No individual, whether immigrant or resident, adult or child, should be trapped in a situation of domestic violence, abuse, and

terror. Promulgating regulations for the waiver, however, INS has made some changes by establishing such restrictive evidentiary requirements that access to the waiver for most victims is effectively blocked. In its report on the original bill, the House Judiciary Committee gave examples of what it considered to be acceptable and sufficient evidence to support the claims of abuse. They were affidavits and reports from police, medical personnel, psychologists, school officials, social service agencies. Furthermore, the committee directed that waiver denials be limited to rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest.

Despite the clear direction provided by Congress on this question, the INS issued restrictive regulations which require applicants filing for a waiver on the basis of extreme cruelty to have such abuse verified by a licensed mental health professional. As anyone who works with the immigrant and battered populations will tell you, it is pure fantasy to expect that a battered foreign woman will have access to the services of such a licensed professional.

Consider carefully the population which section 701 intends to protect. It is a group new to the American society, usually speaking little English. The vast majority of foreign spouses that are abused are women. They are completely dependent upon the sponsoring spouse for their immigration status, for their legal status, for their right to work, and their right to social services. They may have little, if any, working knowledge of our country's public and community services or our legal intricacies; so they tend not to seek out battered women shelters.

Coming largely from traditional families and cultures, these immigrant spouses tend to rely on the American spouse for food, clothing, shelter, and health care. Rarely do they have their own resources to pay for a psychiatrist. The church is often the only trusted support system to which immigrant women will turn or can turn. Given this profile, it's easy to see how immigrant spouses are especially vulnerable to the exploitation, intimidation, and control inherent to situations of domestic violence. One survey of Korean immigrant women found that 60 percent had been abused by their spouses.

It is also easy to recognize the INS evidentiary requirements for the waivers as unduly restrictive and, indeed, prohibitive. Few women, immigrant or American, who are victims of domestic violence are fortunate enough to obtain professional psychological or medical treatment. A 1991 survey of 2,00 domestic violence programs nationwide by the National Battered Women's Law Project found that not a single shelter—not one—had a psychiatrist, a psychologist, or a licensed clinical social worker on the staff. To require that battered immigrant women present INS with documentation from such a professional is plainly to deny them the protection from abuse which was guaranteed them by Congress.

In meetings with INS officials, these evidentiary requirements were justified by the administration's concern that the battered spouse waiver not be used as a means of fraudulently obtaining immigration status. I submit to the committee, however, that the regulations implementing the battered spouse waiver are

unprecedentedly stringent and inconsistent with INS practice in adjudicating marriage fraud waivers prior to the 1990 act.

Attorneys and advocates have advised me that the INS previously granted waivers to women who submitted as the only supporting documentation copies of restraining orders obtained against their abusive spouses or letters from women shelters or their own personal statements. The INS has never before requested that additional collaborative evidence be submitted by licensed professionals in the context of marriage fraud waivers or in any other immigration adjudication.

For example, the INS, the Board of Immigration Appeals, and the Federal courts have concluded that an applicant for political asylum may submit as sufficient evidence of a well-founded fear of persecution his or her own uncorroborated testimony when unrefuted and credible. The INS routinely accepts personal declarations and letters as credible evidence in other immigration adjudications, and the evidentiary standards for battered spouse waivers should be similarly expansive.

Finally, Mr. Chairman, I would like to raise one other issue critical to the human and civil rights of battered immigrant women and their children. The INS has recently issued draft regulations relating to the statutory requirement for measures to protect the confidentiality of the information concerning any abused alien or child, including information regarding the whereabouts of such spouse or child. This confidentiality provision is critical to the safety of the victim. It is well documented that the danger of domestic abuse increases, rather than decreases, directly after the battered spouse escapes, and the batterers consistently use all available means to continue perpetrating attacks on their victims.

As proposed, the regulations are insufficient to ensure that batterers will not be able to trace their victims through the INS records. Interim regulations only provide for closed hearings before the immigration judge. We need to do more than this to ensure that the disclosure of information on the waiver application does not further endanger the victim. We need an absolute enforceable ban on disclosure of any information provided to the INS by an abused person.

In closing, I want to thank the chairman personally for his active interest in and support for my work on these issues. On behalf of thousands of abused immigrant women and the children who have no voice, I appreciate the opportunity to testify here today. Thank you.

Mr. MAZZOLI. Thank you very much, Louise.

[The prepared statement of Ms. Slaughter follows:]

STATEMENT OF CONGRESSWOMAN LOUISE M. SLAUGHTER
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION AND REFUGEES

MAY 20, 1992

Thank you, Chairman Mazzoli, for inviting me to testify on your proposed "Housekeeping Amendments." I am gratified that this legislation includes critical clarifying amendments to Section 701 of the 1990 Immigration Act, a provision I originally authored and one in which I still have great interest. That provision, commonly referred to as the battered spouse waiver, allows foreign spouses to petition for permanent residency independently of the citizen or resident spouse in cases of domestic violence. Your amendment, Mr. Chairman -- section 108 of this new legislation -- is of vital importance to the immigrant victims of violence, cruelty and abuse. It will ensure that Congressional intent is followed and the protective nature of the waiver is maintained as the Immigration and Naturalization Service (INS) acts to implement the provisions of the 1990 law.

Allow me to present the Committee with some background. I first introduced the bill creating the battered spouse waiver when a friend in Rochester, New York brought to my district office a young foreign woman looking for help. She had been viciously beaten by her American husband but was afraid even to seek shelter

let alone a divorce, because her husband threatened to have her deported if ever she left him. It was so abhorrent to me that United States immigration law was being used as a tool of control and violence, that I committed myself to helping the victims.

The bill we passed in 1990 waives the joint petition requirement for permanent residency where a foreign spouse can demonstrate that he or she entered into marriage with a citizen or resident spouse in good faith and can establish through credible evidence that he or she was battered or subjected to extreme cruelty by the American spouse. Additionally, a foreign spouse and his or her child, regardless of the child's immigration status, would be eligible for a waiver under Section 701 if the child or stepchild is subject to abuse by the resident or citizen parent.

By enacting Section 701 of the Immigration Act, the 101st Congress made its intent clear. In the Committee Report and during debate on the floor, the protective nature of this battered spouse/child waiver was underscored. The House Judiciary Committee found that the existing law did not "go far enough in ensuring the safety and protecting the legal rights of immigrants in situations of domestic violence." No individual -- whether immigrant or resident, adult or child -- should be trapped in a situation of domestic violence, abuse and terror.

Promulgating regulations for this waiver, however, INS has undermined Congressional intent by establishing such restrictive evidentiary requirements that access to the waiver for most victims is effectively blocked. In its report on the original

bill, the House Judiciary Committee gave examples of what it considered to be acceptable and sufficient evidence to support claims of abuse: affidavits and reports from police, medical personnel, psychologists, school officials and social service agencies." Furthermore, the Committee directed that waiver denials be limited to "rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest."

Despite the clear direction provided by Congress on this question, the INS issued restrictive regulations which require applicants filing for a waiver on the basis of extreme cruelty to have such abuse verified by a "licensed" mental health professional.

As anyone who works with the immigrant and battered populations will tell you, it is pure fantasy to expect that a battered foreign woman will have access to the services of such a licensed professional. Consider carefully the population which Section 701 intends to protect. It is a group new to American society and which, generally, speaks little English. The vast majority of abused foreign spouses are women. In good faith, they came to this country and married. They are completely dependent upon the sponsoring spouse for their immigration status, their legal status, their right to work, and their right to social services. They have little, if any, working knowledge of our country's public and community services or our legal intricacies, so they tend not to seek out battered women's shelters. Coming largely from traditional families and cultures, these immigrant spouses tend to rely on the American spouse for food, clothing,

shelter and health care; they do not have their own resources to pay for a psychiatrist. The church is often the only trusted support system to which immigrant women will turn, can turn.

Given this profile, it's easy to see how immigrant spouses are especially vulnerable to the exploitation, intimidation and control inherent to situations of domestic violence. One survey of Korean immigrant women found that 60 percent had been abused by spouses. It is also easy to recognize the INS evidentiary requirements for the waiver as unduly restrictive and, indeed, prohibitive.

Few women -- immigrant or American -- who are the victims of domestic violence are fortunate enough to obtain professional psychological or medical treatment. A 1991 survey of 2000 domestic violence programs nationwide by the National Battered Women's Law Project found that not a single shelter had a psychiatrist, psychologist or licensed clinical social worker on staff. To require that battered immigrant women present INS with documentation from such professionals is, plainly, to deny them the protection from abuse which was guaranteed them by Congress.

In meetings with INS officials, these evidentiary requirements were justified by the Administration's concern that the battered spouse waiver not be used as means of fraudulently obtaining immigration status. I submit to the Committee, however, that the regulations implementing the battered spouse waiver are unprecedentedly stringent and inconsistent with the INS practice in adjudicating marriage fraud (IMFA) waivers prior to the 1990 Immigration Act.

Attorneys and advocates have advised me that the INS previously granted waivers to women who submitted as the only supporting documentation copies of restraining orders obtained against their abusive spouses, letters from women's shelters and their own personal statements. The INS has never before requested that additional collaborative evidence be submitted by "licensed" professionals in the context of marriage fraud waivers, or in any other immigration adjudication. For example, the INS, the Board of Immigration Appeals, and the federal courts have concluded that an applicant for political asylum may submit as sufficient evidence of a "well-founded fear of persecution" his or her own uncorroborated testimony, when unrefuted and credible. The INS routinely accepts personal declarations and letters as credible evidence in other immigration adjudications and the evidentiary standards for battered spouse waivers should be similarly expansive.

Finally, Mr. Chairman, I would like to raise one other issue critical to the human and civil rights of battered immigrant women and children. The INS has recently issued draft regulations relating to the statutory requirement for "measures to protect the confidentiality of information concerning any abused alien or child, including information regarding the whereabouts of such spouse or child." This confidentiality provision is critical to the safety of the victims. It is well documented that the danger of domestic abuse increases rather than decreases directly after the battered spouse escapes; and, the batterers consistently use all available means to continue perpetrating attacks on their victims.

As proposed, the INS regulations are insufficient to ensure that batterers will not be able to trace their victims through INS records. Interim regulations only provide for closed hearings before the immigration judge. We need to do much more than this to ensure that the disclosure of information on the waiver application does not further endanger the victim. We need an absolute, enforceable ban on the disclosure of any information provided to the INS by abused persons.

In closing, I want to thank the Chairman personally, for his active interest in and support for my work on these issues. On behalf of thousands of abused immigrant women and children who have no voice, I appreciate the opportunity to testify here today.

Mr. MAZZOLI. Let me get right into that, the last statement you had—and I appreciate the compliment—about the thousands of battered women. INS will testify later this morning about having serious concerns about your bill on two grounds really. One is that they believe that the current system is working OK, citing as a statement of fact that they've received no complaints from persons who felt that the professional evaluation prevented their receiving a waiver—

Ms. SLAUGHTER. From battered spouses?

Mr. MAZZOLI. That's the statement that's made by INS.

Ms. SLAUGHTER. That wouldn't surprise me at all, Mr. Chairman.

Mr. MAZZOLI. OK.

Ms. SLAUGHTER. The battered spouse is very likely to go to complain to—

Mr. MAZZOLI. Because you said in your statement the fact that these are maybe from countries where that's not permitted, so that you would not think it's unusual that INS would have no complaints from these people?

Ms. SLAUGHTER. Not at all.

Mr. MAZZOLI. But you would also be pretty clear that there would be several thousands, as you sort of said in the last sentence of your statement, that there are that many battered immigrant spouses?

Ms. SLAUGHTER. Well, the domestic violence in this country, as you know, is increasing. Three out of our battered spouses who apply for help are turned away. Of those numbers, very few of them are the immigrant spouses. These are people who are usually brought to the attention of shelters by churches, social workers, or schools. As we pointed out in our testimony, in the past evidence from these types of sources that has usually been sufficient for the INS to believe that abuse has taken place.

Mr. MAZZOLI. It's interesting, the data that the staff at least has provided me here, coming from INS—these are INS data that gives, starting in 1988 through 1992, applications for spousal waivers. They really number in the several thousand. For example, in 1989, 7,951; 1990, 7,004; 1991, 6,593, almost 6,600; and so far this year, almost 2,000. The data are certainly there.

The other reason INS would say that they have reservations about—

Ms. SLAUGHTER. Those are under, I assume, the present regulations of having a mental professional certify?

Mr. MAZZOLI. I assume that that's the case, but I assume that that would—

Ms. SLAUGHTER. If that is the case—

Mr. MAZZOLI. If these are the applications—

Ms. SLAUGHTER [continuing]. If these are the numbers—

Mr. MAZZOLI [continuing]. Now whether they're going to be denied because they don't have that supporting data, I don't know; we'll find out.

Ms. SLAUGHTER. All right, I'd like to know that.

Mr. MAZZOLI. It would be very useful.

Another reason, Louise, that they have serious reservations about your bill and it is also brought up by the FAIR group later this morning, regarding the questions of fraud, and standards of

proof. If you move to credible evidence from something like a verified statement of a licensed worker in this field, you open up potentially to fraud. So let me just ask that question, since it will be brought up today. How do you deal with that problem?

Ms. SLAUGHTER. Well, I think that the Marriage Fraud Act dealt with that problem. All we're trying to do is say that within that act, which obviously had the support of the Congress of the United States—none of us are trying to bring in citizens fraudulently—but under that act, we did not believe that Congress intended that that 2-year waiting period be a time of horror for persons who were living in unspeakable conditions and had absolutely no recourse. It was for that person, male or female, that we were trying to speak up, believing that the law does not permit that kind of control and abuse.

Certainly I would imagine that the numbers of people who have applied—and I have not seen those, and I would like to have some supporting documentation—probably reflect, without too much stretch of imagination, the kind of domestic violence that's taking place in this country today. But American women don't have to go through the process of going to the U.S. Government and pleading for their lives.

Mr. MAZZOLI. Thank you very much.
The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much.

Louise, I certainly support the concept that you've got here, and I'm, as you know, the original author of the Marriage Fraud Act.

Ms. SLAUGHTER. Yes, indeed.

Mr. MCCOLLUM. We have recognized for some time that the battered spouse situation is important to address. The real question involved in this is how far we can go in these terms and how loose they are. And I guess the issue is what is "credible evidence?" And I'm curious (a) what you think it is and (b) is there any way to better restrict it or define it than just leaving it like it is and what you've proposed?

Ms. SLAUGHTER. We certainly want to do that, but it seems to me that the INS itself, as we pointed out before the Marriage Fraud Act, often accepted as credible evidence uncorroborated statements. But we feel that adequate evidence has always been in this country evidence that has been given by people who are working in the field, by teachers at school. We take that for child abuse. We don't require that every child that claims that he has been abused has to go to a medical professional, a licensed medical professional, as the statement goes, to try to prove that case. The same kind of evidence that should apply for abuse for any other person in this country should certainly not be disallowed for someone because they are not an American citizen.

Mr. MCCOLLUM. Well, at one time we were considering other language that would not be as broad as credible evidence. "Included but not limited to reports and affidavits from police, medical personnel, psychologists, school officials, or social service agencies," was the language being used; so I wanted to make that point to you.

Would language somewhat similar to this, if not that language, to further refine "credible evidence" be acceptable to you, and if it

isn't, what problems do you have or what can you do to give us some better guidance?

Ms. SLAUGHTER. Well, I think I'd like to work with you on that, if I may, because one of the important points that I wanted to make a while ago, and I maybe didn't make it strongly enough, is that we think that evidence from battered shelters or evidence of bruising, pictures of the spouse brought into the shelter, certainly ought to be also corroborating evidence. But battered women shelters are run by people who basically are volunteers; some of them are professionals, but they don't have on staff licensed mental professionals.

Mr. MCCOLLUM. No, I understand why you want to get away from that.

Ms. SLAUGHTER. Yes.

Mr. MCCOLLUM. And I understand that completely. My concern, and I think probably some of my colleagues would share it, is simply in not making the door too wide. Without any further refinement, a court should interpret "credible evidence" to mean just about anything. The real concern is not what INS's discretion will be or the Attorney General's. It's that if a court goes in and reviews it, they could interpret the language you put into the statute such that, well, if the spouse herself comes in there and says, "I was beaten up," and maybe she has her neighbor friend say that, and that's it. Maybe that is sufficient, but it seems to me that at some point that's awfully easy to have fraud. The question is: How can we put it in there so that there can be some other credible evidence. They don't have to go to a mental health professional, but it seems to me you ought to at least have somebody—school officials, social workers, somebody—

Ms. SLAUGHTER. There was an intent that this would not be verified by someone else other than complaining spouse. But I have to say this: It seems to me that because these are mostly women, there's the same sort of underlying attitude which is present in the legislation of the United States that we often promulgate—that women don't know what they're talking about, and somebody else is going to have to verify it for them. We pass legislation like that; the gag rule is an example.

Mr. MAZZOLI. Would my friend yield?

Mr. MCCOLLUM. I would be glad to yield—because I can assure you that's not true from my perspective.

Ms. SLAUGHTER. But let me finish this. These are women in most cases who have come from societies where to fail here is almost tantamount to death. I mean, the worst thing in the world for them is deportation, to be sent back to a society that says you are a failure, an outcast. These are not women who are frivolously going to risk even aggravating that American spouse. The way the law is written, after the 2-year waiting period, it takes the cooperation of the American spouse to apply for the status for the foreign spouse. We've had a number of cases, Congressman, where they could live together for years and that American spouse wouldn't go down and even make that initial application for conditional status, as a way of iron control. In those abusive conditions, it is deplorable that the Congress would say that the law we passed allows this. So that's what we're trying to—

Mr. MCCOLLUM. Before I yield to the chairman, Louise, I just want to make this comment that you're absolutely right. But the converse of that is also true, where the spouse who's doing the alleged battering, the husband, the male presumably in most of these cases, is really not wanting to live with the wife. Maybe he didn't batter her but she is just as desperate as you're saying wanting to stay here. It is very opportune in some cases for her to gerryrig that and to claim being battered when she wasn't, since that's her only option to stay here. So it's a two-edged sword.

I want to address the problem that you perceive women have—

Ms. SLAUGHTER. Absolutely.

Mr. MCCOLLUM [continuing]. But I also don't want to make it too loose, so that somebody can come along and really take advantage of the situation when they were not battered; that's all.

Ms. SLAUGHTER. And I don't either, but remember that battering is a physical act which leaves bruising and scars. Some scars and bruises are physical, but the mental ones remain.

Mr. MAZZOLI. If the gentleman would yield—

Mr. MCCOLLUM. I would be glad to yield.

Ms. SLAUGHTER. The battering is not that difficult to determine.

Mr. MAZZOLI. This gets to exactly what you're saying, Louise, and maybe you could help me. And thanks for yielding, Bill.

Mr. MCCOLLUM. Sure.

Mr. MAZZOLI. And that is, you said prior to 1990 the INS was routinely accepting certain kind of proof—

Ms. SLAUGHTER. Absolutely.

Mr. MAZZOLI [continuing]. But since that time not. What were they accepting prior to 1990, because that may be what the gentleman from Florida and I and you could craft as something more than just simply the words "credible evidence?" What were they accepting and what do they not now accept? Or are you aware of what they were accepting prior to 1990?

Ms. SLAUGHTER. Well, we met with INS, and of course I testified to what they had done before 1990. We found them very helpful and very forthcoming. I have every indication that the people that we worked with very much want to have this work well.

Another important part of this, in addition to the corroboration, is the secrecy part of it that we've testified to. It is very important that somehow we make sure that these records of where the battered spouse is located is not made on a routine basis available to the batterer.

Mr. MAZZOLI. Let me just ask, are you familiar with what they were accepting prior to 1990? Maybe it's that kind of information that we could look at and—

Ms. SLAUGHTER. Let me get back to you, if I could.

Mr. MAZZOLI. Yes, there's no hurry, at whatever point you can supply that, Louise; there's no hurry. The INS will come forward and we can ask them the same thing.

Ms. SLAUGHTER. All right, I will get that for you today. We'll work on clarifying it.

Mr. MAZZOLI. Just like Bill was saying, we could maybe work something out.

Ms. SLAUGHTER. None of us wants to be used as party to fraud, but we certainly do want to alleviate that cruel—

Mr. MAZZOLI. The gentleman from Texas.

Mr. SMITH. I don't have any questions.

Mr. MAZZOLI. Well, thank you very much, Louise.

Ms. SLAUGHTER. Thank you.

Mr. MAZZOLI. We appreciate very much your coming.

The gentleman from Illinois, Mr. Lipinski. Oh, I'm sorry, and Bill. Come on forward, Bill. I'm sorry. I apologize, I didn't see you come in. Actually, Bill got here first. There are two Bills here, but Bill Lipinski got here first; Bill Alexander is listed first on the witness sheet. But, with your permission, we'll go on with Bill Lipinski. Bill.

Mr. ALEXANDER. I'm glad to know that seniority still counts around here.

[Laughter.]

Mr. MAZZOLI. I was even going to try to figure it out maybe alphabetically, but it doesn't work that way either.

Mr. ALEXANDER. But I would defer to my friend.

Mr. LIPINSKI. Well, the only thing I can say is I did arrive before you did. That's the only thing I can say.

[Laughter.]

STATEMENT OF HON. WILLIAM O. LIPINSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. LIPINSKI. Thank you very much. I appreciate this opportunity to appear before the committee this morning. I appreciate your taking your time and giving your interest and attention to this problem that I'm going to bring before you today.

Mr. Chairman, members of the committee, I thank you for this opportunity to testify today. I am here on behalf of 832 Polish and Hungarian immigrants who are seeking permanent residency in the United States. Through a combination of bad luck and restrictions on their immigration status, they are living legally in the United States but cannot become residents. I have introduced H.R. 3389 to give them U.S. residency and I am seeking committee approval for its incorporation into the Immigration and Nationality Act revisions under consideration.

To give you some background, this group of immigrants was paroled into the United States by the Attorney General in 1989. As you know, Mr. Chairman, parole is a limbo status which gives them the right to live in the United States indefinitely, but denies them the opportunity to acquire permanent residency or citizenship.

When I referred to the parolees' "bad luck," I was referring to the circumstance of their acceptance into the United States. All of the parolees were on the verge of gaining refugee status when U.S. refugee policy for those two nations changed. The change occurred on November 21, 1989, when the INS announced it would sharply reduce the admission of Poles and Hungarians as refugees. The decision was compelled by the fall of communism in those nations, which means that most refugee applicants no longer had reasons to fear persecution.

In fairness to those who were well along in the refugee application process, the INS decided to parole some of the applicants. Those people who had been granted an interview and had family

connections in the United States received a public interest parole. Qualifying were the 832 Poles and Hungarians.

The parolees have now been living in the United States for more than 2 years. They are working and paying taxes. They have made new homes and adjusted to American life. They have new lives here in this country.

Unfortunately, the parole status places strict limitations on these new lives. Without residency or citizenship, they lack some of the rights Americans take for granted. These include the right to vote and the ability to qualify for instate resident tuition at public universities.

More dramatically, parolees do not have the right to acquire a passport. The implications of this for them and their families is staggering. They have no international travel privileges, and if they travel abroad, cannot return to the United States. They cannot even visit their families in Poland or Hungary.

Parolees also cannot sponsor their families as immigrants into the United States. U.S. immigration law allows only residents and citizens to petition for their relatives.

Mr. Chairman and members of the committee, for the last 27 years our immigration laws have placed the highest priority on family reunification. Yet the parolees suffer the opposite. They face forced family separation. They can neither visit their families abroad nor bring them to the United States. I am sure you can imagine that hardship on families facing many years of—or perhaps even permanent—separation is unbelievable.

The INS is not entirely unsympathetic to their plight. It takes the position that the family connections of the parolees will allow them to adjust through normal family reunification channels. Unfortunately, this is not completely accurate.

In many cases it is not possible to apply for adjustment through family members, and in other cases it could take many years. This is because U.S. immigration law allows permanent residents to petition only for their spouses and children. Citizens can only petition for their spouses, children, and siblings. Grandparents and cousins, regardless of status, can never petition.

Many of the parolees were brought by cousins and other distant family members. These unlucky individuals will never be residents.

Some of the parolees were brought by brothers and sisters, many of whom came as refugees and are not yet citizens. In these cases, a parolee would have to wait 5 years for his or her sibling to become a citizen, then another 9 years for a fourth preference petition to become current. It would take 14 years for this kind of parolee to become a resident.

I think this is a terrible injustice. The parolees were fully expecting to become U.S. residents, but current rules do not give them many opportunities. And those who do have the opportunity should not be forced to wait 14 years to even visit their spouses and children.

My legislation, H.R. 3389, would give all the parolees the opportunity to become residents in a timely manner. This is not a special break for one group not available to others. The circumstances are very unique to these immigrants; no other class of immigrants

faces these restrictions. The bill simply redresses the obstacles faced by these immigrants that other immigrants do not face.

I also want to emphasize that this would be a one-time, one-group adjustment. There will not be additional Polish and Hungarian parolees seeking adjustment in the future. There is no reason to fear that this legislation will open the door for additional immigration.

Finally, the bill has long precedence. On many occasions during the past 20 years, similar adjustments have been made for other groups of parolees. The most recent example is the 1990 Lautenberg adjustments, which provided residency for Soviet and Indo-chinese parolees.

To conclude, Mr. Chairman, these 832 Poles and Hungarians are here to stay. And they are here legally. They deserve the same rights and opportunities that other immigrants have. We should not let them fall through the cracks of our immigration system. Let's give them the residency that they deserve.

Thank you very much, Mr. Chairman and members of the committee.

Mr. MAZZOLI. Thank you very much, Bill.

[The prepared statement of Mr. Lipinski follows.]

**Testimony
of
Rep. William O. Lipinski
before
Subcommittee on International Law, Immigration and Refugees
May 20, 1992**

Mr. Chairman, members of the subcommittee, I thank you for the opportunity to testify today. I am here on behalf of 832 Polish and Hungarian immigrants who are seeking permanent residency in the United States. Through a combination of bad luck and restrictions on their immigration status, they are living legally in the United States but cannot become residents.

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When I referred to the parolees' "bad luck," I was referring to the circumstances of their acceptance in the United States. All of the parolees were on the verge of gaining refugee status when U.S. refugee policy for those two nations changed.

The change occurred on November 21, 1989, when the INS announced it would sharply reduce the admission of Poles and Hungarians as refugees. The decision was compelled by the fall of Communism in those countries, which meant that most refugee applicants no longer had reason to fear persecution.

In fairness to those who were well-along in the refugee application process, the INS decided to 'parole' some of the applicants. Those people who had been granted an interview and had family connections in the United States received a public interest parole. Qualifying were the 832 Poles and Hungarians.

The parolees have now been living in the United States for more than two years. They are working and paying taxes. They have made new homes and adjusted to life in America. They have new lives.

Unfortunately, the parole status places strict limitations on these new lives. Without residency or citizenship, they lack some of the rights Americans take for granted. These include the right to vote and the ability to qualify for in-state resident tuition at public universities.

More dramatically, parolees do not have the right to acquire a passport. The implications of this for them and their families is staggering. They have no international travel privileges and, if they travel abroad, cannot return to the United States. They cannot even visit their families in Poland or Hungary.

Parolees also cannot sponsor their families as immigrants into the United States. U.S. immigration law allows only residents and citizens to petition for their relatives.

Mr. Chairman, for the last 27 years our immigration laws have placed the highest priority on family reunification. Yet the parolees suffer the opposite. They face forced family separation. They can neither visit their families abroad nor bring them to the United States. As I'm sure you can imagine, the hardship on families facing many years of – or even permanent – separation is unbearable.

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Some of the parolees were brought by brothers and sisters, many of whom came as refugees and are not yet citizens. In these cases, a parolee would have to wait 5 years for his or her sibling to become a citizen, then another 9 years for a fourth preference petition to become current. It would take 14 years for this kind of parolee to become a resident.

I think this is a terrible injustice. The parolees were fully expected to become U.S. residents, but current rules do not give many the opportunity. And those who do have the opportunity should not be forced to wait 14 years to even visit their spouses and children.

My legislation, H.R. 3389, will give all the parolees the opportunity to become residents in a timely manner. This is not a special break for one group not available to others. The circumstances are unique to these immigrants - no other class of immigrants faces these restrictions. The bill simply redresses the obstacles faced by these immigrants that other immigrants do not face.

I also want to emphasize that this would be a one-time, one-group adjustment. There will not be additional Polish and Hungarian parolees seeking adjustment in the future. There is no reason to fear that this legislation would open the door for additional immigrants.

Finally, the bill has long precedence. On many occasions during the past 20 years, similar adjustments have been made for other groups of parolees. The most recent example is the 1990 Lautenberg Adjustments, which provided residency for Soviet and Indochinese parolees.

To conclude, Mr. Chairman, these 832 Poles and Hungarians are here to stay. And they are here legally. They deserve the same rights and opportunities that other immigrants have. We should not let them fall through the cracks of our immigration system. Let's give them the residency they deserve.

Mr. MAZZOLI. Obviously, when you have sort of a smaller universe of 800-and-some-odd people here, less than 1,000, that's always an attractive way to solve the problem. The other side of it is, of course, that it may create a precedent and make it very much more difficult for us in later times to handle an emergency or a refugee or a parole-type situation as correctly as we should. So we're going to certainly look at this thing. I intend to study it very carefully. It poses some concerns, I guess, to all of us. I haven't really received any information from the other groups, but we will solicit their views on this to see just how this thing would work.

But you say there are 833 people?

Mr. LIPINSKI. Eight hundred and thirty-two.

Mr. MAZZOLI. Thirty-two, and these are already in the United States?

Mr. LIPINSKI. They are already in the United States.

Mr. MAZZOLI. And paroled into the country?

Mr. LIPINSKI. They are legally here.

Mr. MAZZOLI. And can they go back home, because there's nothing going on that's terrible in Poland now or in Hungary?

Mr. LIPINSKI. They could go back home to Poland and Hungary, but these are people who came here legally, who applied for refugee status—

Mr. MAZZOLI. I think they failed to make the case that they were entitled to refugee—

Mr. LIPINSKI. I don't know that it's so much that or if it was the fact that the conditions in their homeland changed. But based upon the information that I had, these were people who came here legally to ultimately become American citizens and they have established that. Consequently, they have been given this limbo status, and this has gone on for several years now. These people are working, productive members of the American society.

Mr. MAZZOLI. It shows you the problems that we have when we parole people into the country because once they're here, and whether or not they ever become refugees, whether they ever pass the test of having a fear of persecution that's real, they pretty much stay.

But, in any event—

Mr. LIPINSKI. I don't think we can make a case that there is persecution that's going to hit them in their homeland if they go back, but I think it is very unfair of us to have given them—

Mr. MAZZOLI. But haven't they been here since what year, basically, 1988, 1989?

Mr. LIPINSKI. Well, they're 1988, 1989. There are some that may go back as far as 1987.

Mr. MAZZOLI. Good. Thank you very much.

The gentleman from Florida.

Mr. McCOLLUM. Thank you very much, Mr. Chairman.

Bill, as I understand it, your legislation is truly restricted to just these individuals?

Mr. LIPINSKI. Absolutely.

Mr. McCOLLUM. It doesn't have any broader implication?

Mr. LIPINSKI. No, none whatsoever, no.

Mr. McCOLLUM. Well, I think you've made a good argument for it. Like the chairman, I'd like to digest, not because you don't have

merit, but just because I haven't thought through the question of precedent that's involved in it. But, other than that, it is certainly compelling from a personal standpoint.

Thank you.

Mr. LIPINSKI. I just want to conclude by saying that I really think it's very unfair of people to have the opportunity to live in this country for several years legally and not have the opportunity to become American citizens. If we are going—if we are not going to give them that opportunity in a reasonable amount of time, we probably should have never let them stay here in the first place.

Mr. MAZZOLI. Well, we're going to have the opportunity, Bill, to follow through on this in tens of thousands of cases in the not too distant future, where we're going to have that very same situation put to us: Is it fair to have let them in this country at all if we weren't sure they were going to qualify to be a refugee? Maybe, in fairness to them, we shouldn't have let them come in in the first place, because then they develop equities and they develop friendships; in some cases they have relationships even maturing into marriage, and so, anyway, we probably are going to be faced with that more than once.

But, Bill, thank you very much.

Mr. LIPINSKI. Thank you very, very much for your attention.

Mr. MAZZOLI. The gentleman from Arkansas, Mr. Alexander.

STATEMENT OF HON. BILL ALEXANDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ALEXANDER. Thank you, Mr. Chairman and members of the subcommittee. I appreciate your interest in my cause.

As you all know, several thousand unsuspecting Americans residing outside the United States discover that their unborn children are not American citizens. Under current law, when an American citizen marries a foreign national and lives outside the United States, he or she is eligible to transmit citizenship to the child born overseas only—only—if the U.S. citizen parent physically resides in the United States for 5 years, at least 2 of which were after the age of 14.

Now contrast this situation with the fact that the United States is one of the most generous nations in the world where it comes to granting American citizenship to children born within its own borders. The effects of the current law are discriminatory and they're unfair, and virtually impossible to counteract once the child is born abroad of an American parent. They, in effect, penalize Americans living and working overseas and do so by withholding U.S. citizenship from our country's most valuable resource, our children.

Since 1979, I have reintroduced legislation in every Congress aimed at correcting this problem, the Overseas American Children's Human Rights Act. Now I am pleased that the provisions that were previously introduced by my bills have been incorporated into the Immigration and Naturalization Housekeeping Amendments Act of 1992.

If enacted, title II, section 202, of this bill would make it easier for Americans abroad to marry persons who are not U.S. citizens to pass American citizenships on to their children. These amend-

ments would remedy the problems caused by current section 301 of the Immigration and Nationality Act by, one, reducing the required residency period for transmitting citizenship to children under section 301(g) to 1 year in the aggregate; two, applying the change to children age 18 or under at the time of enactment, so that all minor children in one family can be U.S. citizens; and, three, protecting any child born abroad of a U.S. citizen from being stateless.

Also by inserting the term "natural born" into 301 of the Immigration and Nationality Act of 1952, these amendments would clear up any question as to whether a child born as an American citizen qualifies under the Constitution to run for President when he or she grows up. There seems to be a dwindling supply of candidates for that office, so we want to make available all the resources that we have.

[Laughter.]

Mr. ALEXANDER. There are unacceptable implications present in the law as it now reads. One of these has to do with the residency requirement for American parents of children born abroad. Remember that when an American marries a non-U.S. citizen and lives outside the United States, a child born abroad to this marriage is not an American citizen unless the American parent has physically resided in the United States for 5 years, at least 2 of which were after the age of 14. Yet, children born out of wedlock to an American abroad now become citizens at birth if the American parent has physically resided in the United States for only 1 year in the aggregate.

The law, as it now stands, is antifamily. It discriminates in favor of those Americans abroad who enter into parenthood with a foreign partner without the benefit of marriage. It discourages marriage, a much valued American institution. The amendments contained in section 202 of the bill would rectify this situation by applying the 1-year residency requirement to all U.S. citizens abroad who become parents, no matter when the circumstances of the child's birth.

Also, if these provisions become law, it is important to ensure that brothers and sisters who are still minors with the same parents are all guaranteed identical privileges of American citizenship. Therefore, under section 202, these amendments will apply to all persons born on or after the date of enactment of the legislation and to persons who have not attained the age of 18 years as of the date of the enactment of this legislation.

Some U.S. citizen parents who are prevented by section 301(g) of the Immigration and Nationality Act from transmitting American citizenship to their child born abroad can be faced with the problem that their child is stateless. The situation arises if the laws of the country of a non-U.S. parent preclude that parent from transmitting his or her nationality to the child and/or if the country in which the child is born does not grant automatic citizenship to persons born on its soil.

Section 202 of this bill would add a safeguard by providing that all children born to American citizens abroad will automatically be citizens at birth if they would otherwise be born stateless.

Over the years, gentlemen of the committee and members of the staff, I have worked extensively in expanding American exports. In fact, the first 10 or so years that I was here that was my primary and preeminent involvement. I have come in contact with citizens living abroad, and I understand that the overseas Americans living abroad are the single most vital link in the export chain that must occur in order for the United States to compete in global markets. The current laws have discouraged Americans from living abroad and becoming involved in international trade, as representatives of our country and economy in foreign lands where the transactions are negotiated and most frequently consummated.

As an American who decides to take part in this endeavor of living and working abroad, it is difficult enough to uproot one's self and move to an unfamiliar country where the language, customs, and economy are oftentimes dramatically different from those in the United States. It is especially difficult when there is the possibility that your children could be disadvantaged by this decision and this action.

The amendments considered today will merely guarantee a right that all of us enjoy as our fellow countrymen living abroad: The right to transmit our American citizenship on to our children, no matter where they may be born. I feel that section 202 of the Immigration and Naturalization Housekeeping Amendments of 1992 by helping Americans living abroad will improve the lives of Americans living abroad and at the same time help to improve the life, the economic well-being, and the security of our Nation, as well as guaranteeing the citizenship of our children born abroad.

Mr. MAZZOLI. Thank you very much, Bill.

[The prepared statement of Mr. Alexander follows:]

STATEMENT BY THE HONORABLE BILL ALEXANDER
TO THE SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION AND REFUGEES
OF THE COMMITTEE ON THE JUDICIARY

May 20, 1992

MR. CHAIRMAN and Members of the Subcommittee, thank you for giving me this opportunity to appear before you today. My statement will focus on legislation designed to address a situation that has been overlooked for quite some time, the citizenship of children born to American citizens living abroad. Each year several thousand unsuspecting Americans residing outside the United States discover that their newborn children are not American citizens.

Under current law, when an American citizen marries a foreign national and lives outside the United States, he or she is eligible to transmit U. S. citizenship to a child born overseas only if the U. S.-citizen parent physically resided in the United States for five years, at least two of which were after the age of 14.

Contrast this situation with the fact that the United States is one of the most generous countries in the world when it comes to granting American citizenship to children born within its own borders.

The effects of the current law are discriminatory, unfair and virtually impossible to counteract once the child is born abroad. They penalize Americans living and working overseas, and they do so
ALEXANDER -- PAGE 1 -- OF 5 PAGES

by withholding U. S. citizenship from our country's most valuable resource: our children.

Since 1979, I have reintroduced legislation in every Congress aimed at correcting this problem, the "Overseas American Children's Human Rights Act." Now I am very pleased that these provisions have been incorporated into the "Immigration and Naturalization Housekeeping Amendments Act of 1992."

If enacted, Title II, Section 202 of this bill would make it easier for Americans abroad who marry persons who are not U. S. citizens to pass American citizenship on to their children. These amendments would remedy the problems caused by current Section 301 of the Immigration and Nationality Act by:

- (1) reducing the required residency period for transmitting U. S. citizenship to children under Section 301(g) to one year in the aggregate;
- (2) applying the change to children age 18 or under at the time of enactment so that all minor children in one family can be U. S. citizens;
- (3) protecting any child born abroad of a U. S. citizen from being stateless.

Also, by inserting the term "natural born" into section 301 of the Immigration and Nationality Act of 1952, these amendments would clear up any question as to whether a child born abroad as an American citizen qualifies under the Constitution to run for President when he or she grows up.

There are unacceptable implications present in the law as it now reads. One of these has to do with the residency requirement for American parents of children born abroad. Remember that when an American marries a non-U. S. citizen and lives outside the United States, a child born abroad to this marriage is not an American citizen unless the American parent has physically resided in the United States for five years, at least two of which were after the age of 14.

Yet, children born out of wedlock to an American abroad now become citizens at birth if the American parent has physically resided in the United States for only one year in the aggregate.

The law, as it now stands, is blatantly anti-family. It discriminates in favor of those Americans abroad who enter into parenthood with a foreign partner without the benefit of marriage. It discourages marriage, a much valued American institution. The amendments contained in Section 202 of the bill would rectify this situation by applying the one-year residency requirement to all U. S. citizens abroad who become parents, no matter what the circumstances

of the child's birth.

Also, if these provisions become law, it is important to insure that brothers and sisters who are still minors with the same parents are all granted identical privileges of American citizenship. Therefore, under Section 202 these amendments will apply to all persons born on or after the date of enactment of the legislation and to persons who have not attained the age of 18 years as of the date of the enactment of this legislation.

Some U. S.-citizen parents who are prevented by Section 301(g) of the Immigration and Nationality Act from transmitting American citizenship to their child born abroad can be faced with the problem that their child is stateless. The situation arises if the laws of the country of the non-U. S. parent preclude that parent from transmitting his or her own nationality to the child and/or if the country in which the child is born does not grant automatic citizenship to persons born on its soil.

Section 202 of this bill would add a safeguard by providing that all children born to American-citizens abroad will automatically be citizens at birth if they would otherwise be born stateless.

Over many years of working to expand American exports I have come to understand that the American citizen living abroad is the most vital link in the export chain. As an American who decides to

take part in this endeavor, it is difficult enough to uproot yourself and move to an unfamiliar country where the language, the customs, and the economy are very different from those in the United States. It is especially difficult when there is the possibility that your children could be disadvantaged by this decision.

The amendments considered today will merely guarantee a right that all of us enjoy to our fellow countrymen living abroad, the right to transmit our American citizenship on to our children, no matter where they may be born.

I feel that Section 202 of the "Immigration and Naturalization Housekeeping Amendments of 1992", by helping Americans living abroad, will improve the lives of Americans living abroad and at the same time help to improve the life, economic well-being and security of the United States as well by guaranteeing the citizenship of our children born abroad.

Mr. ALEXANDER. Thank you very much.

Mr. MAZZOLI. It would come as no surprise to you, I guess, that the Immigration Service would not approve your language and that other groups testifying later would not either. I think they set up the idea of ties to the country. Your bill I think would suggest that the relationship that a U.S. citizen parent would have to the country would be a 1-year residency sometime after the age of 14.

Mr. ALEXANDER. Yes.

Mr. MAZZOLI. Current law says 5 years, 2 years of which have to be after the age of 14. Are you concerned that that does suggest that people could become citizens of the world rather than citizens of the United States, and confer the benefits of U.S. citizenship, but really have only peripheral contact with the country, kind of be more visitors than active citizens?

Mr. ALEXANDER. There may be some possibility of abusing the law; there always is. I suppose that if you set out to abuse any law, that you could find a way to do so. But the advantages conferred by this change in the law, in my judgment, far outweigh any disadvantages, because we as a nation must compete in a global economy. You know, all signs indicate that we now live in an era where economic power is vastly more important than military power, although there's always a place for both. Our laws and our processes in the United States are not adjusted to this change in circumstances in the global economy.

We must encourage our citizens to live abroad and to compete in that global economy. It's up to us, as lawmakers, to try to find ways to do that, so that will be least abused or least subject to abuse.

Mr. MAZZOLI. Well, I guess we're getting into that. I'm going to yield because we have to go and vote, and then Mr. McNary has to leave by 11:30. So we have a very problematical morning.

But your bill also changes the transmittal requirements where one parent is a U.S. citizen and one is a U.S. national, but not a citizen? You would change that and you would also provide citizenship to a person who would be stateless otherwise?

Mr. ALEXANDER. Yes. Yes.

Mr. MAZZOLI. Well, OK.

Mr. ALEXANDER. Well, that is a terrible situation. I can't even conceive of it, but we can talk about how—

Mr. MAZZOLI. Of course, the theory that the INS has, is that our citizenship laws should not be driven by some other country. So if they decide that that individual is not a citizen of that country, that shouldn't more or less make it required upon us to grant citizenship.

Mr. ALEXANDER. Well, I would agree in part with the INS. We should not pass laws for any reason other than our own citizens and to serve our own foreign policy and economic policies. No, we should not consider this as a reaction to other nations. We're doing this because it's good for our citizens and it's good for our country.

Mr. MAZZOLI. I thank you, Bill. Thank you very much.

The gentleman from Florida.

Mr. MCCOLLUM. I have very little to ask, Bill, but a comment that you're raising a whole area—you may not realize it—of great debate that we have not yet had over whether citizenship should

follow our country or follow the person. Then there is the Elton Gallegly approach, your colleague and mine from California, who wants to restrict the right of citizenship to someone born even here in the United States to the nationality and citizenship of the mother alone. So we have a policy question of fairly sizable proportions here which I know you didn't totally intend to get into, but your legislation certainly does.

Mr. ALEXANDER. Well, I've been getting into it for over a decade.

Mr. MCCOLLUM. Right.

Mr. ALEXANDER. I specifically intend to raise that public policy issue for debate, and I add to that the commanding economic need for our country to adjust our laws in such ways that we can compete in a global economy.

Mr. MCCOLLUM. Thank you.

Mr. MAZZOLI. Thank you very much, Bill.

We'll take a short recess. We'll vote and we'll come back and take Mr. McNary separately and then give him as much time as he has for us. We'll stand in recess.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

I want to apologize to the Commissioner of the Immigration Service for the problem, but you can certainly leave when you feel like you have to leave and your colleagues will stay on to answer some of our questions. But you're recognized, Gene, and welcome.

STATEMENT OF GENE McNARY, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY LAWRENCE J. WEINIG, DEPUTY ASSISTANT COMMISSIONER, INS ADJUDICATIONS DIVISION, AND JAMES A. PULEO, ASSOCIATE COMMISSIONER, EXAMINATIONS

Mr. McNary. Mr. Chairman, thank you, and I apologize for having to leave, but I'm supposed to go to Laredo to meet with the Border Patrol and look at bridges and all kinds of things, and I just can't—

Mr. MAZZOLI. Everybody's schedule is tough. There may be some opportunity for us to ask a question specifically of you later on.

Mr. McNary. And I've brought my experts with me.

Mr. Chairman, let me say, first of all, that many of the provisions of the Housekeeping Amendments Act of 1992 are excellent and we urge that these provisions be passed into law. In the case of certain provisions we share the goal of the sponsors in introducing the amendments, but we believe that modifications are necessary for the provisions to be fully effective and not create other problems. Some provisions, however, do not further goal of streamlining or otherwise improving the administration of the Immigration and Nationality Act, and I'll highlight a few of those. Let me just run through the provisions.

We support section 101. We support section 102(a)(1)(A). We support section 103(a). We support section 103(b). We oppose section 104, and we know what the objective is and would like to work with the committee in rewriting or improving upon that.

Section 105 deals with adoptions, and we've been through the wringer on adoptions with regard to the Romania children. We oppose all of the provisions in 105 because we believe that it will en-

courage baby buying and selling. I know that there's a penalty attached thereto which is designed to prevent that. We don't believe the penalty will be effective and that actually it will work as a disservice to the child being adopted and to the adopting parents.

Section 106 we support. We oppose 107. We think the law works now. We oppose 108. We oppose 109, even though our friends from State are ready to make it permanent. We have added 13 countries just in the last year. Justice would like to see how that works before it's made permanent.

We oppose all the provisions in 109. Section 110 we oppose. We're in favor of electronic manifest, but we don't see it as replacing the inspection. We still need to eyeball people to make sure that this is the person who's claiming to be that person, but we think that we're making significant progress with ACE and APIS and now new technology that may enable us to control certain people who are frequent flyers and have been cleared, so that they will be separated out and we'll have more time to inspect those who are at risk.

Section 110 we support. That has to do with preinspection stations. We have one that's going up soon in London. We would not be forced into that. We would not want to be forced into it. It takes foreign cooperation plus resources, and so that's our reservation in that regard.

Section 113—

Mr. MAZZOLI. Do you have 111 in there, Gene?

Mr. McNARY. No, I don't have 111.

Mr. MAZZOLI. OK. That's Cal Dooley's bill.

Mr. McNARY. We don't have any position on that.

Mr. MAZZOLI. All right. OK.

Mr. McNARY. Section 113 we support. We don't have any objection. Section 114, Mr. Chairman, is probably than housekeeping. It's very difficult and I appreciate your genuine concern. It's a concern of mine. The administration feels strongly that this is not the time to change policy, to send a message to Cuba that might be misconstrued, and that for that reason we oppose the repeal of the Cuban Adjustment Act at this time.

Section 115 we oppose, and we oppose it vigorously and vehemently, and with all our might, because we're trying to get these examinations under control. We take a blast, and we took one last weekend, for people in lines. If we don't have the revenue to complete the data processing, the direct mail, the claims, a program that is in process, then we're going to have more of this. We hope that the moratorium would not be put on our examination fees and we'll be allowed to straighten that out and go into the 21st century.

Mr. MAZZOLI. Well, of course, you realize we had talked earlier about these fees, and the question that I'll ask your colleagues, and maybe you too is the issue of whether these fee increases are connected to anything, whether they result from increased costs to you, or whether it's driven by market considerations. That I think is as much the problem as the actual fee increases. So, anyway, we'll talk about that.

Mr. McNARY. Section 201(a) we support, but 201(b), 201(c) we oppose as being unnecessary. Section 202 we oppose. We don't be-

lieve that you can change the definition of a natural born citizen; it's in the Constitution.

Section 202(a)(2), 202(a)(3), we oppose as weakening ties to the United States necessary for citizenship, and 202(a)(4) we oppose for the same reasons, as we would also oppose 202(a)(6).

Section 203, we would like to work with the committee. The language does not concern us, somebody who can speak a language, some language, or has a disability, and we think that there's a genuine concern there. We would not be in favor of reducing the civics requirement. People need to know the history of this country and what it stands for, if they're going to be citizens.

We support Representative Lipinski's proposal on adjusting Poles and Hungarians. We think that there's about 1,000 of those people. Some of them may have adjusted already, but that can be justified in connection with the Lautenberg amendment. So we would support it.

It's always nice not to have to face any questions.

Mr. MAZZOLI. That's right. That's always easy.

Mr. McNARY. I have to leave and—

Mr. MAZZOLI. Make your statement and then leave.

Mr. McNARY [continuing]. My compatriots will respond.

Mr. MAZZOLI. Leave your brave and stalwart counterparts here to take the heat.

Mr. McNARY. Thank you very much, Mr. Chairman.

Mr. MAZZOLI. Thank you. Thank you very much, Gene.

[The prepared statement of Mr. McNary follows:]

**PREPARED STATEMENT OF GENE McNARY, COMMISSIONER,
IMMIGRATION AND NATURALIZATION SERVICE**

Mr. Chairman and members of the Committee:

I appreciate the opportunity to appear before you today to express the views of the Department of Justice on the Immigration and Naturalization Housekeeping Amendments Act of 1992. The Department of Justice welcomes any legislation designed to streamline and improve the implementation of our immigration laws. Many of the provisions of the Housekeeping Amendments Act of 1992 do just that, and we urge that these provisions be passed into law. In this regard, we would particularly point to the provisions affording direct admission of refugees as lawful permanent residents, a nonimmigrant status for spouses and children of alien members of the Armed Forces, and nonimmigrant and special immigrant status for certain United States Information Agency employees.

In the case of certain provisions, we share the goal of the sponsors in introducing the amendments, but we believe that modifications are necessary for the provisions to be fully effective and not create other problems. Some provisions, however, do not further the goal of streamlining or otherwise improving the administration of the Immigration and Nationality Act. I will highlight a few of each of these provisions in my testimony.

Section 101 of the bill authorizes nonimmigrant entry for spouses and children of alien members of the U.S. Armed Forces. Almost without exception, these military personnel and their spouses and children are natives of the Philippines. Presently, spouses and children of aliens serving in the Armed Forces of the United States are admitted as B-2 nonimmigrants for six months. As a matter of INS policy, at the end of the six-month period, alien spouses and children concede their deportability and are granted "voluntary departure." This allows alien spouses and children to remain in the United States, with work authorization, until the end of the serviceman's or servicewoman's military enlistment. We support the enactment of Section 101. This section provides clear statutory direction relating to this limited class of aliens. Although the result can be achieved under existing statutory and regulatory provisions, this section has the advantage of eliminating the necessity of relying on policy to achieve the desired result, and the Immigration and Naturalization Service (INS) supports its enactment.

Section 102 eliminates the sunset provision for certain G-4 special immigrants. This provision for former and current officers and employees of international organizations and their spouses and unmarried sons and daughters has proved beneficial, and the INS applauds this proposal to make it a permanent part of the Immigration and Nationality Act.

Similarly, the INS supports Section 103, which provides special immigrant status and nonimmigrant status for certain employees of the United States Information Agency (USIA). These employees provide an invaluable service as foreign language broadcasters. However, we suggest that Section 103 be drafted in generic form, to allow for the potential needs of other agencies throughout the government who employ highly specialized foreign nationals.

Section 104 provides for limited nonimmigrant status for alien spouses of citizens. The premise for permitting families to be joined during the petitioning process is an admirable one. However, the whole immigrant admission system of the Immigration and Nationality Act is based upon numerical limitations. Section 104, as currently written, seems to be in conflict with that premise. In addition, an alien who is the spouse or child of a United States citizen is already eligible for Immediate Relative classification and admission as a non-quota immigrant. The vast majority of such aliens are able to immigrate in a very short period of time, normally in just a few months. In addition, this section has no provision for the investigation or adjudication of the validity of the marriage. We stand ready to assist this committee in any effort to achieve the goals of this section, while at the same time treating all immigrants fairly and reducing the possibility of marriage fraud.

Section 105 is designed to address the problem of child buying and selling. While we strongly support legislative efforts to curb these abuses, this section's proposed liberalization of the orphan provisions of the Immigration and Nationality Act promises to be detrimental to adoptive American parents and foreign children. This section marks a radical departure from a 44-year course that Congress has maintained regarding the adoption of eligible orphans. Throughout this period, Congress has continued to refer to the statute as being applicable to homeless children and has distinguished it from the provisions of the "adopted child" under which any child adopted under the age of 16 could be eligible for immigrant visa benefits pursuant to certain conditions of physical residence and legal custody.

Except for the penalties for child buying, Section 105 sacrifices certain protections for the child and his or her natural family in the name of easier administration by treating children in functioning families the same as orphans. By allowing direct contact between the birth parents and the adopting parents, subparagraph (a)(1)(A) may encourage the type of meetings which resulted in children being bought and sold in countries such as Romania. Although the bill makes child buying and selling a criminal offense, these acts are extremely difficult to uncover and even more difficult to prove. Moreover, it would appear that successful prosecutions for such offenses will be particularly difficult in view of the fact that the jurisdictional element,

i.e. the intent to establish lawful permanent residence on the adopted child, is merely an incidental part of the adoption process.

The INS also has serious reservations about raising the eligible age to 18. It is questionable whether many adoptive parents would adopt a person who in most states would be considered an adult. Combined statistics for fiscal years 1989 through 1991 show that 74 percent of orphans admitted into the United States entered by the age of one; 90.6 percent entered by the age of six; and 98.5 percent entered by the age of fourteen. These data suggest that the previous legislative initiative to raise the age from 14 to 16 was of minimal value. We believe that this section has more potential for encouraging "immigration adoptions," and thereby circumventing normal visa issuance procedures, than it does for assisting homeless children.

The INS is currently drafting a proposed revision of the orphan regulations which would make them more responsive to adoptive parents without sacrificing safeguards for the children involved. We would prefer to implement these regulations under the existing statute. Further, we will work with the Department of State to address this issue in any federal legislation implementing the Hague Convention on International Cooperation and Protection of Children in respect of Intercountry Adoptions, assuming that the United States becomes a signatory to that agreement.

Section 106 would allow persons admitted as refugees to be granted permanent resident status, eliminating the present one-year wait for such persons to apply for that status. We support this change. As a matter of practice, the adjustment of status is time-consuming and serves no enforcement purpose. Further, historically there have been virtually no adverse actions. Assimilation of the alien is hampered during the one year waiting period. Elimination of this work-intensive adjustment requirement would likely result in savings to the Service of over \$1 million per year.

Section 107 provides that the Attorney General shall provide, on an expedited basis, for the parole of an alien whose immediate relative has died and whose funeral will be held in the United States. Once again, we share the concern of the sponsors but believe that the existing practice of the INS already addresses the purpose of this section. The parole contemplated by this section can be and has been frequently granted under section 212(d)(5) of the Immigration and Nationality Act. That section allows for greater flexibility in addressing these emergent situations. Section 107 is too rigid by requiring a certified death certificate in all cases. Current parole procedures do not insist on this requirement. At the same time, Section 107 is too flexible by not requiring that the alien provide the INS with evidence of the immediate blood relationship. Furthermore, this

section creates practical problems for an alien in securing and transmitting documents to the INS in sufficient time to allow a response by cable to the foreign consulate. We oppose any provision that makes the discretionary grant of parole mandatory, particularly in the case of aggravated felons or others whose entry would be deemed contrary to the national interest.

Section 108 requires the Attorney General to consider any credible evidence in spousal waiver applications for battered spouses, whether or not that evidence is supported by an evaluation of a licensed mental health professional. The INS has serious concerns with this provision. First, we believe that the battered spouse provision enacted by the Immigration Act of 1990 has been effectively implemented. In the 11 months that the interim regulations have been in effect, we have received no complaints from persons who felt that the professional evaluation prevented their receiving a waiver. The current regulations balance the need to make the evidentiary requirements as simple as possible against the need to ensure that unscrupulous aliens do not use the waiver to circumvent the immigration laws. Second, we are concerned that the removal of the requirement for an evaluation by a licensed mental health professional could increase instances of fraud. Finally, as most INS officers have not received training in this area and may not be qualified to make reliable evaluations of an abused applicant's mental or

emotional state, we feel it is preferable to rely on the judgment of a professional.

Section 109 would make the Visa Waiver Pilot Program a permanent part of the Immigration and Nationality Act. The Immigration Act of 1990 extended the pilot program to September 30, 1994. There was insufficient data to evaluate the program's impact as of the 1990 Report to Congress. The Department of Justice feels that the decision to make this program permanent should be made only after more data about the effectiveness of the program are captured and analyzed. For example, at the time of the 1990 report to Congress, 6 of the 8 countries in the program had been in the program for less than one year. INS is facing a similar situation at present, since 13 countries were added to the waiver program in October of 1991. It is too early to determine whether removing the overseas screening procedure has resulted in more violations of immigration laws.

Section 109 (b) and (c) would eliminate the requirement that an alien execute a form by which they waive their right to an exclusion hearing. Such individually executed forms are essential to establish knowledge that attempting admission to the United States without a visa under the Visa Waiver Pilot Program waives the statutory right to an exclusion hearing.

Section 110 relates to expediting airport immigration processing. We are deeply committed to providing better quality and faster service to people arriving at United States' ports of entry. Our primary mission as an agency is the administration of the immigration laws. A key mechanism for preventing unlawful entry is careful screening at ports of entry. Unlike other federal agencies, the INS can perform its inspectional task only by reviewing travel documents as they are presented by the person seeking admission. This is especially true in the current operating environment which is marked by the prevalence of fraudulent documents. Because no technology is currently implemented that can safeguard against the use of fraudulent documents, a personal interview is currently required. Therefore, the INS opposes this section which would allow inspection to be conducted by methods other than a personal interview. Furthermore, if other methods of inspection become available as a result of new technology, the method of inspection could be modified by existing regulations. However, INS supports and welcomes the use of an electronic manifest in addition to paper manifests. We believe that regulatory flexibility governing manifest requirements can be maintained.

We do support the expansion of preinspection at high volume airports. However, establishment and maintenance of preinspection is costly and requires the cooperation of foreign governments and various U.S. federal agencies. Therefore, the

INS should not be statutorily required to expand the preinspection program if political, diplomatic, or fiscal conditions would prevent it or adversely affect its operation.

Subsection (e) of Section 110 calls for the implementation of an expedited process for the inspection of United States citizens at ports of entry. The INS has already taken steps to improve and expedite the screening of citizens. In 1991, we implemented the Accelerated Citizen Examination (ACE), in which immigration inspectors conduct a selective inquiry of an automated database while examining all United States citizens and their documents. Although ACE has been working extremely well, it has been and continues to be supplanted by the use of the Advance Passenger Information System (APIS). APIS will provide the same expedited processing advantage as ACE while maintaining border security. The INS has consistently promoted the expansion of APIS among air carriers. I am pleased to report that participation in the program has continually increased since its inception in 1990.

The Attorney General submitted a legislative proposal, the Port of Entry Inspections Improvement Act, on April 31, 1992. The proposal is carefully crafted to provide expedited procedures in fraudulent document cases without sacrificing either procedural fairness or the substantive rights of persons with colorable claims to admission. This draft is particularly careful with respect to persons who may have used fraudulent documents in an

effect to escape persecution. But substantive generosity is not inconsistent with procedural rigor. By concentrating our administrative and judicial resources on persons with colorable claims to asylum or other relief, we can give each case the careful consideration it deserves. This can be accomplished only by deterring the abuse of these processes by persons who are interested not in justice, but in delay. I commend this proposal for your consideration.

Section 111 would suspend the ban on public assistance for legalized aliens during federally-declared national emergencies. This section would amend Section 245A (h)(2) of the INA to add periods of national emergency as declared by the President as another exception to the times an alien legalized under IRCA is disqualified from receiving certain public welfare assistance. The INS has no objection to this provision. However, the Office of Management and Budget advises that this section would increase direct spending and that it therefore is subject to the "pay-as-you-go" provision of the Omnibus Budget Reconciliation Act of 1990, § 252 (a), 2 U.S.C.A. §902 (a) (Supp. 1992).

Section 112 would extend the authorization for appropriations for refugee assistance for three years through fiscal 1995, and establish the authorized level for fiscal 1993 through 1995. The INS supports extension of this assistance, however the funding level more than twice exceeds the President's request.

Section 113 would amend Section 132 (e) of the Immigration Act of 1990 to permit the waiver of the ground of exclusion dealing with aliens previously removed for persons applying under the diversity transition program established by Section 132 of IMMACT. This would not affect aliens who were deported on criminal, narcotics, and similar grounds, and INS has no objection to this limited expansion of the authority to waive grounds of exclusion.

Section 114 would repeal the Cuban Adjustment Act of 1966. This Act allows Cubans who are inspected and admitted or paroled into the United States to adjust to permanent resident status after one year of physical presence in the United States. The Cuban Adjustment Act should not be repealed at this time. The human rights abuses and restrictive immigration practices of the Cuban government have resulted in the displacement of many Cuban nationals. As long as these conditions are prevalent in Cuba, a change in immigration policy is unwarranted. Cuban nationals will continue to arrive in the United States seeking to remain permanently in this country. Any Cuban national who flees the Castro regime is subject to a 3-year prison sentence upon return. The deportation of Cuban nationals from the United States to Cuba is a complicated procedure, with the Cuban government only sporadically agreeing to accept a small number of deportees after prolonged political negotiations. Since deportation is not a

viable method of returning Cuban nationals, there continues to be a need for a method by which to grant these individuals a legal immigration status.

Section 115 imposes a 24-month moratorium on the ability of the Attorney General or the Service to increase current fees or impose new fees on current benefits. It does not prohibit the establishment of a fee for new benefits not presently in existence. We strongly oppose this provision and feel that it will have a significant negative impact on our ability to provide timely service to the public. Statutory constraints of this type remove the administrative flexibility INS needs to carry out its mission.

On February 21, 1992, we published a new fee schedule raising fees for most of the applications and petitions received by the INS. These increases reflect the increased costs to the INS of adjudicating these same applications and petitions. Our planning for fiscal year 1993 presumed that fees would increase to keep pace with the cost of providing the services; otherwise, the February 21 fee increases would have had to have been greater to meet both 1992 and 1993 expenditures. Should a moratorium on fee increases be imposed, fee revenue would be insufficient to keep pace with inflation. Further, as we stated in the Examinations Fee Account reprogramming request for FY 1992, recently approved by Congress, the FY 1993 Examinations budget is based on a fee

increase of at least 8 percent. A moratorium would jeopardize our ability to fund the existing level of service to the public; necessitate a hiring freeze which will adversely impact the offices which are currently understaffed to handle the workload; and cause a delay in the implementation of initiatives designed to improve service to aliens, such as the Direct Mail program.

Section 201 seeks to provide certain children of female United States citizens and their descendants with the same rights to citizenship at birth as children born abroad to male citizens and their alien spouses. INS supports Section 201 (a) which is designed to address the inequity inherent in current law. However, we believe that subsections 201 (b) and (c) are unnecessary and may create confusion if passed as currently drafted. We suggest they be deleted.

Section 202 seeks to clarify the status of children who are citizens by virtue of birth abroad to United States citizen parents. The issue arises in the context of the constitutional requirement that the President of the United States be a natural born citizen. Although we appreciate the concern underlying this provision, we note that no statute can affect the meaning of the constitutional term "natural born citizen".

Section 202 (a) (3) changes the physical presence requirement for eligibility for citizenship in Section 301 of the INA from a

"continuous" period of time to an "aggregate" period of time. Section 202 (a) (4) would reduce the number of years of physical presence required in the U.S. for a citizen to transmit citizenship to his or her child born abroad from five years, of which two were after the age of 14 years, to one year in the aggregate. We cannot support these proposals as they would permit the further wakening of ties to this country that have been considered essential to qualify for citizenship. It has been the rationale of our nationality laws that citizenship should be based on an attachment to the United States, and at least five years physical presence here was one way of developing such an attachment. One year physical presence, particularly when it can be accrued in the aggregate, is insufficient for developing an understanding or attachment to the United States.

Section 202 (a) (6) would add as natural born citizens under Section 301 of the INA persons born outside the U.S. of one United States citizen who would otherwise be stateless. INS cannot support a provision that would make U.S. citizenship dependent on the laws of other countries. United States law should make clear whether or not a person is a citizen. Findings of citizenship made by other nations should not be permitted to control that determination.

Thank you for the opportunity to testify before you today. I am pleased to answer any questions you may have.

Mr. MAZZOLI. In order to kind of complete the thing now, let me just ask the first question. If I have my data correct, Mr. Weinig, the INS would have no objection to section 101, which is to provide temporary visas for spouses and children of alien members of the armed services. Is that correct? Is that your understanding?

Mr. WEINIG. That's correct.

Mr. MAZZOLI. And then you have no objection to section 102, the G-4 provision, which in effect just gets rid of the sunset provision on that; is that correct?

Mr. WEINIG. Yes.

Mr. MAZZOLI. And before I go any further, it probably would be useful for the stenographer to know who's who here. So let me just start from my far left, Mr. Adams. In working our way across the board, if you could just give your name and your position, the reporter will record that and then when I use your name, she'll have that as her reference. Mr. Adams.

Mr. ADAMS. John Adams, Deputy Assistant Secretary of State for Visa Services.

Mr. MAZZOLI. Thank you.

Mr. Puleo.

Mr. PULEO. James Puleo, Associate Commissioner for Examination, INS.

Mr. WEINIG. Lawrence Weinig, Acting Assistant Commissioner for Adjudications, INS.

Mr. MORGAN. James Morgan, Jr., Assistant Legal Counsel, Bureau of Naval Personnel.

Mr. UNTERMEYER. Chase Untermeyer, Associate Director of the U.S. Information Agency for Broadcasting.

Ms. BRAMBILLA. I'm Janice Brambilla, the Director of Personnel for the Bureau of Broadcasting, U.S. Information Agency.

Mr. MAZZOLI. OK, good.

Let me then go back. Section 103 provides nonimmigrant visas and in some cases permanent residency for members of the USIA. Whose field is that, yours, Mr. Untermeyer?

STATEMENT OF CHASE G. UNTERMEYER, ASSOCIATE DIRECTOR FOR BROADCASTING, U.S. INFORMATION AGENCY, ACCOMPANIED BY JANICE H. BRAMBILLA, DIRECTOR OF PERSONNEL, BUREAU OF BROADCASTING

Mr. UNTERMEYER. Yes, Mr. Chairman.

Mr. MAZZOLI. INS has no objection; you obviously do not have any objection to that; is that correct?

Mr. UNTERMEYER. That's correct.

Mr. MAZZOLI. Are we preferring these people? Do we really need to do this to get language specialists?

Mr. UNTERMEYER. Mr. Chairman, the Voice of America for years has had to employ people from overseas because of the specialty languages that are not available in the United States. Currently, we have about 130 of them who are in this particular category using the J visas, which is for exchanges. This is highly unsatisfying to us and definitely highly unsatisfying to them because they are in such a difficult position, not only for their own employment, but for the possibility of being unable to travel abroad for us, for example, when returning to this country.

Mr. MAZZOLI. I guess what I was getting at is: Do you think that we are not trying to encourage language studies in the United States among U.S. people, and we've become too reliant upon foreign talent, just like in some cases graduate programs at U.S. universities are virtually staffed and peopled with foreign students and there is a charge made that that happens in part because we're not out recruiting U.S. students, giving them the kind of encouragement and maybe even resources they need in order to move into those programs? Are we doing the same thing here, just using this program as a crutch?

Mr. UNTERMEYER. Mr. Chairman, we can certainly get U.S. citizens who speak French, Portuguese, Spanish, Swahili, and many other major languages, but when we get down to the very specialized languages, the 46 foreign languages which the VOA uses, such as Kurdish and Tibetan, to mention two which we have just added to the list, then almost certainly you have to go overseas to find those people. That, to go down the list, is to see many, many languages such as the Afghan languages, Darl, Pashto, Urou, and various others that perhaps there are in this large country people who speak them, but they also have to have the skills of being good broadcasters and journalists, and for that we have to recruit very far and wide.

Mr. MAZZOLI. OK. Section 104, newly wed spouses of U.S. citizens. This I guess is an immigration matter; is that correct, Mr. Puleo?

Mr. PULEO. That's correct.

Mr. MAZZOLI. You oppose section 104?

Mr. PULEO. Yes; that's correct.

Mr. MAZZOLI. And what, again, are the reasons for that opposition?

Mr. PULEO. Well, they can come in now, many of the relatives. It appears to be an opposition of time. We are working currently on improving our response to I-130 or relative petitions. And if I may harken back to my testimony before you last week, I incorrectly gave you some information that it was taking us from 30 to 60 days. As a matter of fact, the longest it takes us right now is 37 days to do a relative petition.

Mr. MAZZOLI. That was, I think, with regard to spouses of permanent residents?

Mr. PULEO. Permanent residents, but the process is identical. They apply under the same process.

Mr. MAZZOLI. So, in other words, if I understand you correctly, the spouse of a U.S. citizen would not have to wait more than a month or a month and a half in order for that spouse to clear and come into the country; is that correct?

Mr. PULEO. That's right. Currently, our processing times for our relative petitions range from an average of 17 calendar days at the low to 37 calendar days at the high in our foreign service processing center.

Mr. MAZZOLI. Do you see any inconsistency in the fact that when a U.S. citizen marries an alien here, the fiance can come in and be married and there is no wait at all, but when a U.S. citizen goes abroad and marries, in what was his or her hometown, they cannot bring their spouse with them?

Mr. PULEO. Well, there is an inconsistency. However, it's one that's in both instances to the person marrying the foreign-born national. They make a conscious choice to either have the fiance arrive here in the United States under a K visa and marry within the 90-day period or they make the conscious choice of marrying overseas and accepting the consequences.

Mr. MAZZOLI. Well, staff just handed me a note that we heard from a staffer here on the Hill that it took that staffer 3½ months to get the paperwork cleared. So I guess the average is 37 days, but it can be higher than that; is that correct?

Mr. PULEO. Yes, it could run higher for certain cases. If, in fact, the application is deficient for documentation, or whatever, there needs to be correspondence to clarify that. But, on the average, right now it's taking us at the most 37 calendar days.

Mr. MAZZOLI. If there was some way to give us some data on that, to make sure that we're comparing apples and apples and oranges and oranges—

Mr. PULEO. We'd be happy to supply it for the record.

Mr. MAZZOLI. Thank you.

[The information follows:]

Determining the average number of days that it takes to process an immigrant visa petition depends on a number of factors. First, it must be pointed out that the Service captures data on the number of petitions filed by spouses of citizens and permanent residents and on the number of petitions filed by other relatives (siblings, parents, etc.). Although further refinements to the data capturing procedure are being developed which would allow us to identify immediate relatives as a distinct statistical group, at the present time the most representative figures available relate to spouses of both citizens and lawful permanent residents.

Second, even though adjudication of petitions for immediate relatives is given a high priority, staffing levels, other caseloads, special projects, and other factors can all impinge on the process. Furthermore, the average processing times vary from one Service Center to another; and within the same Service Center will vary from month to month. For example, our Northern Service Center recently took over nationwide responsibility for the adjudication of all re-entry permits filed from anywhere in the country and our Western Service Center has experienced a marked increase in the number of petitions filed by newly-legalized aliens.

Average processing times are normally calculated by dividing the number of cases received in a given month into the number of cases pending at the end of that month to arrive at an average processing time expressed in months. Dividing that amount by 30 gives us the average processing time expressed in days. As the chart below indicates, at the end of May 1992, the Service had a nationwide average processing time of 43.39 days for immediate relative I-130 petitions. The average processing times for each of the centers ranged from a low of 23.52 days at the Eastern Center to a high of 66.81 days at the Western Center.

Additionally, it should be noted that while these figures represent the average processing times, some cases may take longer due to the need for an individual interview or investigation of suspected marriage fraud, and other cases which are not properly presented must be returned for additional documentation.

Because of increasing workloads, the Service has identified various efficiency measures to ensure that I-130 petitions are adjudicated in a timely fashion. Among those initiatives is the revision of the Form I-130, relative petition, which is used by a U.S. citizen to petition for a spouse. The revised form will include information vital to the adjudicative process which will reduce the need for field review in most cases and consequently reduce the overall processing time for I-130 petitions.

The Service is also developing an automated processing system which will track all petitions and applications through the

adjudicative process. This will enhance the fee receipt system currently used by the Service to track petitions and applications by providing adjudicating officers with administrative support necessary for a 30 to 45-day processing time. The inventory management capability of this system will sort all petitions by classification to permit processing control. The Service will be able to allocate available resources to process priority cases such as relative petitions.

	A	B	C	D
OFFICE	RECEIVED IN MAY	PENDING AT THE END OF MAY	CASELOAD IN MONTHS (Col. B/ Col. A)	CASELOAD IN DAYS (Col. C/30)
Servicewide	26,890	39,221	1.46	43.76
Eastern	7,922	6,210	0.78	23.52
Northern	3,032	5,351	1.76	52.95
Southern	6,158	5,883	0.96	28.66
Western	9,778	21,777	2.23	66.81

Mr. MAZZOLI. In section 105, adopted children, once again, the Immigration Service—I guess the State Department would perhaps be involved in here—you oppose the changes that we would—

Mr. WEINIG. Yes, sir. Yes, we do, very much so. We have serious concerns with basically all the provisions contained in section 105. We recognize that there were certainly problems that arose because of the Romanian situation, and there is currently a General Accounting Office study underway of the adoptive process. The United States is party to the negotiations, the Hague Convention negotiations, and we feel that it is not appropriate at this time to consider making changes of this serious nature.

Mr. MAZZOLI. When is the best time? Or do you think that the current situation has corrected itself?

Mr. WEINIG. From our experience presently, there is no like situation to the Romanian situation. Some of the problems which this legislation would address, raising the age limit to 18, we think are rather unnecessary. When the age limit was raised from 14 to 16, it increased the immigration by about 1 percent. It simply isn't a thing that's very heavily used. We think going from 16 to 18 would be more of the same, and we would think that those—our experience has been with older children.

Mr. MAZZOLI. How about maybe taking countries where we verify that they have suitable adoption procedures and then not having the INS go through the same thing over again? Do you see any worthwhileness to something like that? And is that not what eventually, if this Hague Convention ever gets off the ground and becomes a fact, isn't that what they're driving at? They have a kind of uniform adoption situation around the world, so that then parents can adopt; adoptive parents could get children without having to go through not just the country's examination, but then yours as well?

Mr. WEINIG. I would defer to State on that in terms of deciding whether that is workable.

Mr. MAZZOLI. Mr. Adams, you're from State. Where are we with that Hague Convention?

STATEMENT OF JOHN H. ADAMS, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. ADAMS. You're correct, Mr. Chairman, the objective is to harmonize intercountry adoption procedures. I'm told that they expect to have a draft convention ready by the end of this year. It will clearly require some implementing legislation, once the provisions of that convention are known.

Mr. MAZZOLI. But don't you see things happening in Yugoslavia or what's left of that country and the six republics that used to make it up? Don't you see something like that maybe in Russia, that we had in Romania 2 years ago?

Mr. ADAMS. To date, we have not, Mr. Chairman, no.

Mr. MAZZOLI. You don't really have that same kind of problem? You don't have situations where children are left homeless and children are left parentless and children are the detritus of war, and parents want to adopt them; people here want to take them?

Should we position ourselves to be able to move more quickly than we did in the Romanian situation?

Mr. ADAMS. There are certainly a number of homeless children around the world; there's no question about that. But other countries seem to have been instituting procedures which will obviate the Romanian-type situation from occurring again. We see no evidence of it.

Mr. WEINIG. Again, I would think that the current regulations cover the majority of those types of cases. Some of the provisions here, again talking about raising the age limit or having situations where both parents are living, simply signing over their children to a private party, I think is a dangerous situation and one that would open the process up to rampant fraud.

Mr. MAZZOLI. OK. Let me go back to section 101 and speak to Mr. Morgan. That's your section; right?

Mr. MORGAN. Yes, sir.

Mr. MAZZOLI. One of the witnesses later today will, or at least in the prepared remarks addresses the question of whether or not this whole program ought to be examined, the whole program of having Filipinos mostly come in as mess people and mostly come in as servants to the officers, and that has become a kind of tradition, but that witness makes the case that it's a historic anomaly, and we ought to be looking at it more than just simply making it easier for spouses to come in for up to 6 years, which the bill would propose to do, but that we should eliminate that category of people entirely, people who are here to do menial work and other things for officers in the U.S. Navy.

STATEMENT OF JAMES F. MORGAN, JR., ASSISTANT LEGAL COUNSEL, BUREAU OF NAVY PERSONNEL, DEPARTMENT OF THE NAVY

Mr. MORGAN. Sir, I appreciate that concern. However, the steward's rating to which that testimony refers was eliminated—I'm not sure exactly—probably 20 years ago. We have 97 ratings in the Navy. Over half of them are open to the Filipinos. Under last year's Immigration Adjustment Act, we'll have 94 ratings available as these Filipino service members achieve permanent resident status.

Mr. MAZZOLI. So you would say that the comment was talking about something that doesn't exist any more and these people are not here now, not in the service doing menial work?

Mr. MORGAN. That's correct, sir.

Mr. MAZZOLI. Thank you.

Section 106, refugee adjustments, the Immigration Service supports that; is that correct?

Mr. WEINIG. Yes, we do.

Mr. MAZZOLI. And that essentially gives refugees immediate permanent residency?

Mr. WEINIG. That's what it would do. It would be extremely helpful for us if that were the case.

Mr. MAZZOLI. It might be helpful, but does that allow you to screen out the people who should be screened out for things other than whether or not they're persecuted?

Mr. WEINIG. As long as there's a rescission provision, yes, it would.

Mr. MAZZOLI. And is there a rescission provision in here?

Mr. WEINIG. I don't believe the way it's currently drafted there is one. The general rescission provisions for other immigration categories would probably cover it.

Mr. MAZZOLI. So rescission, you mean that you could rescind what you did if—

Mr. WEINIG. If there was a mistake made.

Mr. MAZZOLI. You heard Mr. Lipinski. You were in the room when Mr. Lipinski came up here, and you find out that, in fact, you can't rescind them realistically, can you?

Mr. WEINIG. Realistically, we don't—we could rescind; that doesn't necessarily mean we deport.

Mr. MAZZOLI. Well, of course, that's a play on words. You rescind the category, but then convert it to parole, which means they stay, and I guess that's one way to do it.

Yes, I think it would certainly eliminate some paperwork, but I'm sure some of my colleagues worry that that might open up an area in which we would take a lot more people, because it's much easier to do so, take them in quickly and then say, "Well, we'll look at them while they're here, and then if they don't cut the mustard, then we'll send them back," when, in fact, you can't do that.

Mr. WEINIG. The rates on the number of people that we let come in and are not adjusted to permanent resident is so low that I just don't think that argument—

Mr. MAZZOLI. I was going to ask you that question, because it's just a very few percent. Is it because you accept the inevitable, and if they don't pass in a very technical sense, you let it go because you can't do anything about it anyway, or is it because those people uniformly measure up to the standard of the refugee definition?

Mr. WEINIG. I think more the latter than the former.

Mr. MAZZOLI. All right. Section 107, parole for funerals, you would oppose that?

Mr. WEINIG. We would oppose that.

Mr. MAZZOLI. State Department, are you in on this, Mr. Adams, on section 107?

Mr. ADAMS. Yes, sir.

Mr. MAZZOLI. Do you all have any position on that?

Mr. ADAMS. We have no particular position. The parole authority, of course, is with the Attorney General. We do frequently, as consular officers, see humanitarian requests for expedited B-2 tourist visa issuance to people coming here to attend funerals. I would submit that in the vast majority of the cases the visas are issued expeditiously.

Mr. MAZZOLI. Well, let me ask you about that because there is some evidence that, based on our hearing last week—and you may have attended it—about the bill offered by the gentleman from Michigan, Mr. Vander Jagt, which is sort of a derivative of this, would be spouses of permanent residents want to come in for visits, and, in fact, the consular officers consider that they are intending immigrants because they have papers already filed for their eventual immigration status. Therefore, they don't, for the most part, issue that kind of visa.

Would that be the case here where you may have humanitarian grounds, but if people come from certain countries—and Ms. Mink

and Mr. Abercrombie talked about the situation in Hawaii with Japanese and maybe other Asian nations in the Pacific Rim—would your consular officers consider them to be intending immigrants and make it almost impossible for them to attend funerals?

Mr. ADAMS. I would say as a rule not. Clearly, there may be some exceptional cases, but consular officers recognize the concept of dual intent. If the individual is coming for the purpose of attending a funeral and then subsequently has plans to immigrate, we may very well issue the tourist visa.

Mr. MAZZOLI. What sort of proof do your people look for, Mr. Adams, as far as blood relationship and the fact that there is a funeral, that somebody, in fact, died? What do you look for? What do you accept?

Mr. ADAMS. Again, it would depend on a case-by-case basis how credible we believed the individual is. We have seen instances of false claims to emergencies in the family in which people are simply trying to wring a tourist visa out of a consular officer.

Mr. MAZZOLI. Do you take for example, obituaries from the newspaper published in, say, the Honolulu paper or San Francisco paper or the Louisville paper? Would that be enough?

Mr. ADAMS. Yes, something like that or notification from the Red Cross. There are a number of possibilities.

Mr. MAZZOLI. Do you accept one or do you have collaborating data that is required?

Mr. ADAMS. It would, again, depend on—

Mr. MAZZOLI. It depends on the country, does it, basically, from what country they're coming?

Mr. ADAMS. It depends on the immigration pressures from the country that we're dealing in and the credibility of the applicant before us.

Mr. MAZZOLI. OK. And how about the blood relationship? Some testimony indicated that's the real delay, the problem of trying to prove blood relationship. What does that take?

Mr. ADAMS. Generally—

Mr. MAZZOLI. A birth certificate?

Mr. ADAMS. Yes, a birth certificate or some documentation that would prove that the individual—

Mr. MAZZOLI. But if I want to come in to visit my grandmother for her funeral, would that be on my birth certificate? Would that relationship be established?

Mr. ADAMS. In a case like that, we're probably not going to be asking for a birth certificate.

Mr. MAZZOLI. Yes, OK. How would I establish who my grandmother is?

Mr. ADAMS. Telegraphic notification from family in the United States, the obituary, something that would give some credence to the applicant's claim that it is, indeed—

Mr. MAZZOLI. But it's your position that people who try to come in aren't being hassled in that sense or are not being turned down sort of routinely, and that the burden is still on you to show that they shouldn't come in rather than on them to show that they should? Or who has the burden? The applicant probably?

Mr. ADAMS. Under the Immigration Act, as you know, the burden is on the applicant, not the consul. But I would say in the over-

whelming majority of cases consuls take a humanitarian approach to individuals coming for family emergencies, not just funerals, but for—

Mr. MAZZOLI. Unless the funeral is delayed, you don't really have a whole lot of time in many of these cases. Now in some families I do know that the funeral has actually been deferred until people can gather.

Mr. ADAMS. That's correct.

Mr. MAZZOLI. But, in fact, you don't really have a whole lot of time. So I guess the question is: Does the consular officer feel pressured by that to grant the entrance or do they, in fact, say, look, that's exactly the dodge that people always use, by saying it's an emergency, and we're going to not issue papers because it's claimed to be an emergency?

Mr. ADAMS. No, I would think the former, that the consul generally is sympathetic to a person's allegation that there's an emergency. And speaking as a consular officer myself, I recall having gone into the Embassy on Saturday nights and Sunday mornings to issue visas in exactly those circumstances.

Mr. MAZZOLI. OK, thank you. The battered spouse provision—Ms. Slaughter was here—Immigration opposes that? You heard the conversation we had about maybe finding something other than just the words "credible proof," but maybe to designate what that credible proof might be other than the statement or affidavit, I believe, of a licensed professional?

Mr. WEINIG. Yes. In our regulations and in the earlier testimony there was reference to the fact that under previous regulations before the changes made by ImmAct, that the Immigration Service accepted all sorts of other affidavits and things. I'd like to correct the record in that regard. What we accepted was affidavits when we were dealing with physical abuse, where there was other—

Mr. MAZZOLI. That was prior to 1990?

Mr. WEINIG. Yes.

Mr. MAZZOLI. What did you accept prior to 1990?

Mr. WEINIG. We accepted—the regulation in that regard hasn't changed at all. We would accept any kind of evidence, including the regulation allows for court records or restraining orders or any sort of affidavits, but generally these refer to physical abuse situations where you had individuals with bruises and broken bones and police reports, and that sort of thing. It's much easier—those are easier sorts of things to document.

Getting into the area of extreme mental cruelty, we felt that our officers are not really competent in that field. They're not mental health professionals. They're immigration examiners. We felt that it was extremely necessary to have outside opinions—

Mr. MAZZOLI. So it was the intervention of the 1990 act which brought this new category into play—

Mr. WEINIG. That's correct.

Mr. MAZZOLI [continuing]. That caused you to then have to go to the licensed data?

Mr. WEINIG. That's correct.

Mr. MAZZOLI. But not because you used the 1990 act as a way to make it tougher for—

Mr. WEINIG. Not at all.

Mr. MAZZOLI [continuing]. For spouses who claim to be battered to make that case?

Mr. WEINIG. That's correct.

Mr. MAZZOLI. So that you still take affidavits where there's a physical abuse case; you don't have to get the——

Mr. WEINIG. Absolutely. That regulation is intact; it has not changed.

Mr. MAZZOLI. It's only in the category of mental abuse——

Mr. WEINIG. In the mental abuse area is the only area where we use the mental health professionals. I'd like to point out, also, that's an interim rule and we have a number of comments that say the requirement of psychological evaluation is too strict and we need to broaden it, and we're considering that now.

Mr. MAZZOLI. The figures I used with Ms. Slaughter of the 7,951 applications for waiver in 1989, 7,004 in 1990, and on and on. Of these, how many are proved? Does this tell me anything? Does it tell her anything?

Mr. WEINIG. Yes. I don't suppose that shows approval or denial rates?

Mr. MAZZOLI. The question is: "Please provide a historical comparison of how many applications from spousal waivers are received each year." And the answer from the Immigration——

Mr. WEINIG. That's strictly received then.

Mr. MAZZOLI. Yes. And so how many of these are approved or do you have to——

Mr. WEINIG. I would have to provide that. I don't have the information at hand.

[The information follows:]

**REQUESTS FOR REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT
STATUS UNDER SECTION 216 OF THE INA
CALENDAR YEARS 1989 THROUGH 1992**

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992**</u>
Total Requests for Removal	124,031	114,525	103,292	41,232
Total Waivers	7,928	6,972	6,563	2,140
Divorce	4,337	4,233	4,070	1,366
Children or Widow(er)	2,093	1,499	1,300	365
Hardship	1,498	1,240	1,152	347
Battered*	N/A	0	41	62

*Includes waivers based upon both physical abuse and extreme mental cruelty. The Service's record keeping system does not reliably differentiate between applications based upon physical abuse and extreme mental cruelty.

**Applications received prior to 6/05/92.

Q. How many applications for spousal waivers were filed and approved each year for 1989, 1990, and 1991?

A. In calendar year 1989, the Service received 124,031 requests for removal of conditions, including 7928 requests for waivers of the joint petitioning requirement.

Fifty-five percent of the 1989 waivers were "divorce" cases, in which the conditional resident claimed to have entered in good faith into a marriage which was subsequently legally terminated by divorce or annulment. Twenty six percent were "children or widow(er)" cases, in which the conditional resident child could not be included on a parent's petition because of the timing of their arrival in the United States or a joint petition could not be filed by the conditional resident because the petitioning spouse or parent had died. Ninety percent were "hardship" cases, in which conditional residents claimed extreme hardship would result if they were to be deported from the United States.

The overall 1989 denial rate for waivers of the joint petitioning requirement was 16 percent. The denial rate was 22 percent for "divorce" cases; 2 percent for "children and widow(er)" cases; and 18 percent for "hardship" cases.

In calendar year 1990, 114,525 requests for removal of conditions were received, including 6972 waiver requests. Sixty-one percent of the 1990 waiver requests were "divorce" cases; 21 percent were "children and widow(er)" cases; and 18 percent claimed "hardship."

Mr. MAZZOLI. This suggests that there is a tremendous amount of action in this category now; right?

Mr. WEINIG. It does.

Mr. MAZZOLI. Thousands a year——

Mr. WEINIG. The bulk of them——

Mr. MAZZOLI. These, I understand, are immigrants, mostly women, possibly, who are saying that they have been abused and they want out from under the requirement——

Mr. WEINIG. No.

Mr. MAZZOLI. No? OK, what are these?

Mr. WEINIG. The bulk of those would be cases where the spouses are either divorced or legally separated, not necessarily because of any kind of abuse.

Mr. MAZZOLI. How many would stem under the law that Mr. McCollum and Ms. Slaughter talked about today?

Mr. WEINIG. I understand the receipts so far are around 84, 85 cases that have been filed under that.

Mr. MAZZOLI. Seeking a waiver from that under that law, the 1990——

Mr. WEINIG. Yes, sir.

Mr. MAZZOLI [continuing]. Marriage fraud law? Why would these come to INS?

Mr. WEINIG. These are all 2-year conditional cases where the individuals are seeking to take advantage of the other waiver provisions, that the marriage was not fraudulent from its inception. They're just general waivers.

Mr. PULEO. If I might clarify, the number of cases we have received specifically on battered since October 1991, has been 84 cases, 79 of which are spouses and 5 which are children. So the number dealing specifically with the battered provisions are very low in comparison to the total waivers that we received under the Marriage Fraud Act.

Mr. MAZZOLI. So spousal waivers, these thousands may not be batterings?

Mr. PULEO. No, that's the total waiver request we received, of which 84 deal specifically with the battered spouse provisions.

Mr. MAZZOLI. And was it the 1990 act that brought the battered situation into the law?

Mr. PULEO. It brought the mental——

Mr. MAZZOLI. The mental part?

Mr. PULEO [continuing]. The mental cruelty.

Mr. MAZZOLI. The physical cruelty——

Mr. PULEO. Would be a part of that.

Mr. MAZZOLI. So those 84 may not be necessarily psychological or mental abuse cases. They could also be physical, but they just came since 1990?

Mr. PULEO. Yes, I believe that's correct.

Mr. MAZZOLI. Well, I may have to have a little bit of understanding of these numbers, and they don't always mix very well, kind of like oil and water. But I think it's important to answer Ms. Slaughter's question. First, whether or not the change from 1990 in the sense of requiring an affidavit from a licensed professional has anything to do with the INS trying to make it tougher for these thousands of people that she's referring to and represents for mak-

ing their case. Second, I would like to find out just exactly how these numbers break out as far as who's applying for which waivers and how many of them are actually granted.

Mr. PULEO. We'd be more than happy to provide that for the record.

[The information follows:]

	<u>1989</u>	<u>1990</u>	<u>1991</u>
Total Requests for Removal	124,031	114,525	103,292
Total Waivers	7,928	6,972	6,563
Divorce	55%	61%	62.0%
Children or Widow(er)	26%	21%	19.8%
Hardship	19%	18%	17.6%
Battered			.6%
Overall Waiver Denial Rates	16%	11%	6%
Divorce	22%	15%	6%
Children or Widow(er)	2%	1%	1%
Hardship	18%	13%	8%
Battered			0%

Mr. PULEO. Also, Larry crossed over the fact about training of INS officers to handle the experience of the licensed practitioners. Of course, we're opposed to that because we don't have the expertise on that. I also may remind the committee that you at times have chastised us for doing adjudications in areas where we did not have the expertise.

Mr. MAZZOLI. The visa waiver program, I guess that's State and the Immigration Service? It's been in a pilot program for something like 3 or 4 years and we are wondering whether or not it should be made permanent? I guess that's the essence of what the bill does, would make visa waiver permanent.

Mr. ADAMS. Yes, Mr. Chairman. We believe the program has proven to be a success. We are told that over 14 million travelers have come into the United States under the waiver program since its inception, which actually goes back to 1988. With ImmAct 1990, the program was extended and expanded for 3 additional years, and we have added 13 countries to the original 8. We now have 21 countries participating in the program. Clearly, foreign travel and tourism is now the U.S.'s largest export, if you will, industry. It has surpassed agriculture. It represented \$59 billion to the U.S. economy last year, and we think the program should be made permanent. We endorse this provision.

Mr. PULEO. And, of course, INS and the Justice Department, since we've just added the 13 countries as of October of last year, we think that it's a little premature to make it a permanent program, since we just have several months of experience by adding these additional 13 countries.

Mr. MAZZOLI. They were added October of last year?

Mr. PULEO. October 1 of last year; correct.

Mr. MAZZOLI. There's something here about the section which would replace the requirement of an affirmative right to waiver on the part of the individual with a declaration that all visa waiver passengers automatically waive their right to contest removal if they're found not to be properly admitted. Do you see any problem with that?

Mr. PULEO. Well, we believe that the alien should execute the form at this time so that they have an understanding of the rights by which they have waived the exclusion hearing.

Mr. MAZZOLI. Rather than having a general blanket waiver.

Mr. McNary said that the Immigration Service opposed the airport processing and I guess citizen bypass, the reinstatement of citizen bypass, which was suspended last summer. Can you give me some idea on that, Mr. Puleo, as to why we ought not to, first of all, reinstate citizen bypass and whether or not some of the ideas of having preinspection positions are worthwhile—the bill suggests a total of 10, 5 in those airports that are most heavily traveled and then 5 in the airports where fraud is most evident, to keep them out of the country in the first place, so that they don't come here.

Mr. PULEO. If I may address those all—

Mr. MAZZOLI. Please.

Mr. PULEO. Commissioner McNary said that we do not oppose all provisions under section 110. For example, the inclusion of the electronic manifest we believe is very helpful to us. It allows us to streamline the idea of inspection. In fact, he mentioned the smart

card technology. We're looking at right now trying to do a more technology-innovative inspection of the frequent flyers. We believe that the inclusion of the word "electronic manifest" will certainly be beneficial to us.

The way we do our inspection, however, the fact that we do have to look at the documentation, we think it is unnecessary to go through statutorily. We believe that we have some flexibility regulatorily, so that we can take care of that.

But the fact that the word "electronic" is included will allow us to do the latter by other means.

Mr. MAZZOLI. So you think, if I understand, that the passenger should still fill out by hand the card, but they also could be on an electronic manifest? You'd see it two ways and you might use the electronic filing or you might still want to see face-to-face people and look at the card? Is that the idea?

Mr. PULEO. We see the inclusion of the word "electronic" as finally maybe eliminating the reason for the I-94, and we think that's quite beneficial to us and would not only assist the traveling public, but also assist INS in getting into the electronic age finally.

The fact that we at times may be required to look at the documentation, for example, for other substitution or fraudulent document is necessary. However, we think we can do something creative through regulation rather than needing statutory requirements.

On the establishment of the preinspection, of course, we are for preinspection. We have the London preinspection test which we believe was quite successful. It was completed last January. We are, in conjunction with the State Department, negotiating with London, the United Kingdom's Government, to make that permanent.

However, dictating that we, in fact, go to specific locations may be problematic because we are there at the pleasure of the foreign government.

Mr. MAZZOLI. You have to have their approval to have it?

Mr. PULEO. Right.

Mr. MAZZOLI. Wouldn't, though, countries be very, very anxious—wouldn't they be very happy to have a preclearance, make it easier for their people to travel? I would think that the tour people there would be happy; we'd be happy. Reciprocity is a big part of all this anyway. So if they help us, then we more or less have to help them, the reverse process?

Mr. PULEO. You're correct; we've already been approached by several countries beyond the United Kingdom who are interested in us moving forward into those areas. But the mandate where we should go I think will be problematic.

Also, by putting preinspection in the high-risk areas is both problematic operationally and we believe that there are other ways of doing it. If that is a high-impacted area for fraud, the smugglers simply go to another area. We have—

Mr. MAZZOLI. We have a question about the amount of time it takes to clear, I think 45 minutes, which is—what—the International Convention or something? If I understand correctly, the Service's position is you're entitled to all the 45 minutes, and some argue, and some will argue today probably, that that 45 minutes is you, Agriculture, Customs, and everybody else. All who should

be done within that 45 minutes. Do you have a basis for saying you're entitled to the full 45?

Mr. PULEO. Yes, I believe it's part of the inspections user fee provisions that states that INS has the 45 minutes. I notice that there is a provision in your bill to reduce the Immigration's aggregate to 30 minutes.

Mr. MAZZOLI. Yes.

Mr. PULEO. Now that would be problematic for two reasons—or for several reasons, actually. One, there are certain locations—for example, Hawaii comes to mind—where the facility itself will never allow us to meet a 30-minute requirement. In fact, it's difficult right now for us to meet the 45-minute requirement because of two instances. One, the physical constraints of the facility and, two, the peaking. There are times within a 2- or 3-hour period that we have 5,000 passengers on the ground attempting to be inspected and going through a facility which has a throughput of not more than 1,000 per hour. That may be problematic.

You also shouldn't lose sight of the fact that there are some discussions that the European Community has a 45-minute standard for all inspections. They also have certain police powers within their country that are more expansive than ours. We certainly don't advocate that. We are the inspectors of people at the ports of entry.

Mr. MAZZOLI. Since my colleague from New York has joined us, I would ask if he would like to ask any questions. We happen to be propitiously on the section that he's introduced and talked about.

Mr. SCHUMER. Well, thank you very much, Mr. Chairman. As I'm sure you on the panel know, I feel very strongly about overseas preinspection, conducting INS inspections at foreign airports.

Last time INS was here, Commissioner McNary indicated support for the program, but I understand that in his opening statement today he said that Congress should not mandate going forward in this area. I'm sort of befuddled by that. We're not picking the 10. As you know, we give you 10; you can pick 5. Then we give you another 10; you can pick 5. So you're just choosing from among those.

You also, I'm sure, are aware that it has taken forever to get London preinspection going. I think it would be very important to have a clear statement of congressional policy, so we won't have to wait so long for the next station. If you really support preinspection, this provision won't do any harm. Don't you agree with that?

Mr. PULEO. We, as an agency, do support preinspection.

Mr. SCHUMER. I know that. So why aren't you supporting this section of the proposal? What harm will it do?

Mr. PULEO. We believe that the language is much too specific. We would be willing to work with you on trying to get language that allows us certain flexibilities on the expansion of the preinspection program.

Mr. SCHUMER. I'm trying to limit the flexibility because in the past flexibility hasn't worked very well. Now I know INS has been positive about this. We have another department that has been, in my opinion, not very positive. I'll talk to him in 1 minute.

[Laughter.]

Mr. SCHUMER. But the question really is: Too specific in choosing the 10, too specific in choosing the 10 cities; is that it?

Mr. PULEO. Exactly, Congressman, because——

Mr. SCHUMER. Well, what if we said you had to implement it in five cities and didn't tell you which ones?

Mr. PULEO. I think that would be more palatable.

Mr. SCHUMER. Palatable enough for you to support the section?

Mr. PULEO. I'm sorry, I didn't hear you.

Mr. SCHUMER. Palatable enough for you to support the section, tasty morsel it is?

[Laughter.]

Mr. PULEO. I'd obviously have to confer on that, but——

Mr. SCHUMER. OK. Well, maybe we should talk about that.

Mr. PULEO. Absolutely.

Mr. SCHUMER. I'm just a little disappointed. You know how difficult this is, and I know you want it, but the kind of statement the Commissioner issued I don't think helps things along.

Mr. Adams, I was, as you could imagine, disappointed in your opening statement. It seems to me the State Department still intends to drag its feet on preinspection. That's one of the reasons the State Department drives me crazy in a lot of different areas.

[Laughter.]

Mr. SCHUMER. They missed the boat. They're so concerned with the niceties of diplomacy, whether it be in trade or in economic areas, and I'm a freetrader, by the way; I support the administration's position usually. But they're always missing scales, missing weighing on the scales. Geopolitics is way up here; economics and internal things in American society are way down on the list.

I guess what I would tell President Bush, if he ever talked to me about this, which is not likely, Mr. Adams, is that he's making even a political mistake. I'd like to have this issue in November: That for some kind of philosophical objection the State Department doesn't want to do this, when we have thousands of people each week coming over here illegally and just staying in this country. I'm sure the President gives a good speech on too many illegal aliens coming in the country, and this is another classic example, when it comes time to doing something about it, he lets you diplomats get in his way. I'm being somewhat—but only somewhat—facetious here.

So let me ask you, Mr. Adams: You say that we can't unilaterally implement preinspection. I know that. But doesn't the State Department understand that we want preinspection to move forward as quickly as possible? I mean, your opposition isn't just that we can't unilaterally implement it; it probably is you don't want to trade off with some foreign country on this particular issue for something else.

Just tell me why the State Department is opposed to preinspection and how they would propose to deal with the problem of thousands of people coming in each week or each month illegally. The INS documents it very well. They claim asylum. They rip up their documents. They're not seen for 14 months. Then when they are asked to come back, they don't come back.

Mr. ADAMS. Congressman, I think you have it wrong. The State Department does not oppose in concept the preinspection program.

Mr. SCHUMER. No, just opposed to doing it.

[Laughter.]

Mr. ADAMS. No, that's not correct, either. And our colleagues here from INS and Justice can support that we have been working cooperatively and collegially in recent months to make the London program a fact. It is a large and complicated operation, however. There are issues of national sovereignty involved. We would like to see the London program up and running and fully evaluated before it is extended to other countries.

Mr. SCHUMER. You realize that in terms of costs, the costs you'll spend in London you'll make up for by not spending them here? Now that may not be State Department budget; that may be INS budget, but it's another place where we need some mediation. But I guess costs are not an issue for you, are they?

Mr. ADAMS. We are told it will be a fairly expensive program, but we will be reimbursed for our part of the program from the INS user fund.

Mr. SCHUMER. Right. So cost is not the issue for you; right?

Mr. ADAMS. That's correct.

Mr. SCHUMER. Is that right? So your basic objection is you don't know if it works; is that it?

Mr. ADAMS. That's correct. This is a very large and complicated program. INS is proposing something on the order of 124 inspectors in England for that program alone.

Mr. SCHUMER. Right.

Mr. ADAMS. In order to fully evaluate it, we would like to see the program up and running before we consider extending it to other countries.

Mr. SCHUMER. The problem, of course, is when you only have it in one place, since a lot of these—I don't know, I guess they're not called coyotes, but the people who make money from these hapless immigrants by telling them to come here—you'll set up London preinspection, and if you wait to see if it works and you don't set it up in other cities, you will find out it doesn't work. Then there will be two alternatives; that is, to either do it in all the cities and just say it didn't work in London. In addition, INS, which is the expert, they think it does work. So who the heck are you guys to say it doesn't when we have the experts sitting right to your left?

Mr. ADAMS. Very clearly, unless preinspection is set up at major gateways leading into the United States, people intent on alien trafficking are going to simply bypass the places where INS has a presence. Now—

Mr. SCHUMER. So tell me how that squares with your—excuse me for interrupting.

Mr. ADAMS. Now there are innumerable ports of entry for the United States, as we know, and we are certain that there are some countries that will never tolerate having a U.S. law enforcement agency working there. It's as simple as that.

Mr. SCHUMER. Yes, but those would tend to be countries that don't have too many flights to the United States every day. They wouldn't be the major gateways; isn't that correct?

Mr. ADAMS. That's not necessarily the case.

Mr. SCHUMER. Well, give me a country that you're worried about would never tolerate it and is a major gateway.

Mr. ADAMS. I'd prefer not to name individual countries at this point, but I'm sure that there are certain countries in Europe that would object on national sovereignty grounds to having a U.S. law enforcement agency working there.

Mr. SCHUMER. Why don't you want to name the countries? Why aren't we entitled to know, if we want to push this policy?

Mr. ADAMS. Because we haven't discussed the issue with a number of these countries to date.

Mr. SCHUMER. Well, you can't do that to me.

[Laughter.]

Mr. SCHUMER. You can't say, "We know countries that would object, but we can't tell you because we haven't discussed it with them yet."

OK, well, let's go to more pleasant—I think your answer speaks for itself. How about a more pleasant area where we agree more? That is the visa waiver program where the State Department says it is successful, and you're the experts on that one maybe. I'd like to know, Mr. Puleo, considering that it's been successful and there haven't turned out to be enforcement problems in the 6 years since it was enacted, why does the INS oppose making it permanent?

Mr. PULEO. Basically, because although it's been in existence for that 6-year period, it really only was with 8 countries until October of last year. We added an additional 13 countries beginning October 1. We really haven't felt the impact of it. We have gone really through a low travel period, the fall and winter months. We're now coming up into a peak. We think it's premature at this time to classify that as a success.

We are the ones who do the work at the ports of entry. It does cause us a little more time to do the inspection. I think it would be best for us to evaluate, at least give us the time to spend 1 year in the program of adding those additional 13 countries.

Mr. SCHUMER. OK, let me ask you one more question about the visa waiver form, or the first question. It's a small issue but I think it's important for what it says about our commitment to welcoming international business travelers, tourists, making it easy for them to come here. Because of the way this visa waiver statute was drafted, passengers are required to fill out a long and complicated form stating they waive their rights to contest deportation if they're found to be a problem. It's so long to check over and so often filled out wrong, that it seems to cause lots of delay in processing people when they arrive here.

The bill eliminates that form and it simply declares all visa waiver passengers automatically forfeit their rights to contest deportation, which seems to be having the best of both worlds, the short form and yet you're in the driver's seat. What's the matter with doing that kind of form?

Mr. PULEO. Congressman, you are correct, in the inception of the program, we did have a separate form that was long and cumbersome to fill out. However, beginning July of last year, we incorporated the separate form into the I-94, giving a new acronym if I-94W, and it has streamlined the process. We think it's important that the passenger, in fact, does understand the waiver rights that that passenger has, in fact, waived the rights to——

Mr. SCHUMER. I know it's streamlined some, but not enough. Why wouldn't you go to the kind of proposal that we make in our legislation?

Mr. PULEO. Well, it's a Department of Justice opinion that the execution of that form is still necessary.

Mr. SCHUMER. Why?

Mr. PULEO. That the individual person does, in fact, understand the rights that they have waived.

Mr. SCHUMER. We don't have anyone from Justice here, so we'll have to ask them. If Justice said it was OK, would you say it's OK?

Mr. PULEO. Well, we're all part of the Department of Justice. So I guess I am supposedly speaking for the Department of Justice. Currently, our position is that the——

Mr. SCHUMER. Now you're sounding like Mr. Adams.

[Laughter.]

Mr. PULEO. No, I'm a simple, humble bureaucrat, not a diplomat.

[Laughter.]

Mr. SCHUMER. There's only one category that's regarded probably worse by the American people than a bureaucrat or diplomat; that's politicians.

[Laughter.]

Mr. SCHUMER. Used car salesmen I think came out last under politician in the Michigan Research Survey they did a few years back.

Mr. PULEO. I'm glad I'm not at the bottom anyway.

Mr. SCHUMER. Yes, you may be if you don't move on these things.

[Laughter.]

Mr. PULEO. I appreciate the comment.

Mr. SCHUMER. What is Justice's objection? Can you tell me that?

Mr. PULEO. Currently, our position is that each individual should execute a form waiving their rights of——

Mr. SCHUMER. Don't restate what you think. Why? Why won't this form work? You told me because Justice objects. Then I said, well, we'll take it up with Justice. Then you said, "I am Justice, representing Justice." So why do you object, your other half?

Mr. PULEO. As I said, our current position is that each should fill out——

Mr. SCHUMER. I know that. Why?

Mr. PULEO. That's the legal opinion that we have received.

Mr. SCHUMER. Will you make that legal opinion available to the committee?

Mr. PULEO. Certainly.

Mr. SCHUMER. That's not top secret information, is it? OK.

[The information follows:]

Question from Congressman Schumer: Would you make available that legal opinion to the committee [concerning the continuing need to further study the program's impact on law enforcement and for a written waiver of rights for each applicant]?

Answer: Under current law, an alien may not participate in the visa waiver pilot program unless he waives any review or appellate rights regarding determinations as to his admissibility to this country. Section 217(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1187(b). In addition, an alien seeking admission to this country under the visa waiver pilot program must first waive any right he otherwise may have had to contest an action for deportation or exclusion, other than on the basis of an application for asylum, brought against him. Id. Since, as the law is now written, a waiver of such rights is not automatic, an alien seeking to participate in the visa waiver pilot program must affirmatively waive such rights before he may be admitted to this country without a visa.

Section 217(a)(3) of the Act requires an alien to complete, before the time of admission under the program, "such immigration forms as the Attorney General shall establish." To facilitate the waiver of rights process, the Immigration and Naturalization Service currently requires program participants to complete and sign Form I-94W, the Nonimmigrant Visa Waiver Arrival/Departure Form. 8 C.F.R. § 217.2(a)(4). The reverse of this form contains a waiver of rights clause. By signing the Form I-94W, the alien thereby affirmatively waives his rights to review or appeal an immigration officer's determination as to his admissibility, or to contest, other than the basis of an application for asylum, any action in deportation.

In an opinion dated October 19, 1990, the INS General Counsel stated that, since "whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," then "[i]f the law were amended to provide simply that VWPP aliens had no right to contest any action for deportation, [previous visa waiver pilot program Form I-791] would be unnecessary." Genco Opinion 90-85, quoting Knauff v. Shaughnessy, 338 U.S. 537 (1950).¹

In the context of consideration of H.R. 5555, the Department proposed a statutory amendment that would provide that all visa

¹The General Counsel issued this opinion with respect to former section 217(b)(3) of the Act. Under this section, an alien participating in the visa waiver pilot program was specifically required, before the time of admission, to execute a waiver of review and appeal. Former Section 217(b)(3) of the Act, 8 U.S.C. § 1187(b)(3). This provision was repealed by section 201(a) of the Immigration Act of 1990.

waiver passengers automatically forfeit their rights to contest exclusion or deportation. Such a statutory change would thus eliminate the necessity for an alien to complete and sign an individual waiver form. An alien who chooses to participate in the visa waiver pilot program would have, ab initio, no such rights to waive; his admission to this country under the program is conditioned on the fact that he has no right to challenge an order of exclusion or deportation. It would therefore not only be superfluous, but also improper, under the proposed amendment, to require the alien to complete a form waiving such nonexistent rights.

Mr. SCHUMER. Thank you, Mr. Chairman. I appreciate it.

Mr. MAZZOLI. Thank you very much. I appreciate it.

Just a couple of very quick questions and then we'll move on. With regard to the Cuban Adjustment Act, if I understood Mr. McNary correctly, the Immigration Service would oppose changing the Cuban Adjustment Act; is that correct?

Mr. WEINIG. Yes.

Mr. MAZZOLI. I'm just wondering, is there any equivalent benefit given to any people from any other country in the world than for Cuba?

Mr. WEINIG. No.

Mr. MAZZOLI. There is none? Would you consider it to be, therefore, on its face an uneven policy, not just to nations in the Caribbean, but to nations of the world, to have that situation? If I understand correctly, the Cubans, for one thing, who are treated this way have to come from Cuba, not Cubans who are coming in from Mexico or Cubans who are coming in from Germany, but Cubans who come from Cuba; is that correct? Is that your understanding?

Mr. PULEO. No. No, that's incorrect.

Mr. MAZZOLI. That's not the case?

Mr. PULEO. It covers all Cubans.

Mr. MAZZOLI. It's all Cubans?

Mr. PULEO. Regardless of where they come from. If I may give you an example of the differences in the numbers, there are 57,700 Cubans who arrived in 1991 under this provision. All but 3,500 of them came from Cuba. So the majority do come from Cuba, but it covers from whatever country they came.

Mr. MAZZOLI. And the Cubans who come in, is there any data you have on how many of the Cubans who arrive not on boats, in effect not having fled the country, but come in as visitors or come in as business people and overstay, fall out of status and then adjust under the Cuban Adjustment Act?

Mr. PULEO. I believe we do have the data. Unfortunately, I don't have it with me. We certainly could provide it for—

Mr. MAZZOLI. Is it a great number? Is it most of the Cubans who are coming in?

Mr. WEINIG. I would say it's a minority. Certainly, the bulk of the 3,000 or so that are non-Cuban residents, the bulk of those would have come in legally. Many of them stay legally and are still taking advantage of the Cuban Adjustment Act, even though they're here in lawful status.

Mr. MAZZOLI. I'm not sure I follow that. Do you mean they come in legally as tourists or visitors or something—

Mr. WEINIG. They come in and remain in lawful status.

Mr. MAZZOLI. And remain in lawful status?

Mr. WEINIG. Yes, lawful nonimmigrant status, and then apply for benefits under the Cuban Adjustment Act.

Mr. MAZZOLI. But there are also people who fall out of status—

Mr. WEINIG. There are, yes.

Mr. MAZZOLI [continuing]. And then surface and then they've been here a year, and—

Mr. WEINIG. Yes.

Mr. MAZZOLI [continuing]. So there are no questions asked, one way or the other, if you're from Cuba, whether you come directly

from Cuba or from another country but are Cuban, whether you come in here legally, illegally, however it is? One year later, you're a permanent resident?

Mr. WEINIG. That's correct.

Mr. MAZZOLI. OK. Fee increases, I think that Mr. McNary used the term "vehemently." The rest of the time he opposed it, but he vehemently opposed changes in the fees structure, which I can understand. But let me go back to what we had. We had a lively session on that whole thing.

Are your fees constructed on the basis of costs and how much it costs to deliver a document or deliver a service, or are they constructed along the lines of where you feel like you can get a dollar, because it's a valuable service and there's no other service like it? You are unique. You deliver a unique service, and that drives the cost? Some people wonder.

Mr. PULEO. I wish we could do it the latter, but we do not, in fact. We take each application that we receive and that we adjudicate. We take each on its face value. We determine, because we have statistics that show how much time we, in fact, spend on each application. We know the types of individuals that, in fact, adjudicate each application, salaries, and on top of the salaries we provide overhead cost for each application.

Mr. MAZZOLI. So, in effect, there's a kind of an accounting procedure or there is some type of costing program that is done prior to the implementation of fee increases?

Mr. PULEO. That's correct. We do a fee review—

Mr. MAZZOLI. Are they published, Mr. Puleo, like under the APA where there's notice of intention to change fees and you get public comment, and that type of thing? Is that done or—

Mr. PULEO. Yes, we publish each fee increase in the Federal Register and receive comment on them.

Mr. MAZZOLI. Well, my time has expired here. We have to vote. So I'll yield to the gentleman from Florida.

Mr. MCCOLLUM. Thank you. I just wanted to know if I could get from the INS a little bit more explanation with regard to the Cuban Adjustment Act in terms of right now, if somebody is here in the United States and they're Cuban and we want to see them returned or they do return, what happens to them? I know there are some that Castro has accepted, but what happens if he doesn't want them and we get them back? What do you do with them?

Mr. WEINIG. They just stay here either in parole status or, if they're criminals, they might be incarcerated and retained.

Mr. MCCOLLUM. Yes, but what would happen if somebody went back over to Cuba today? Does he threaten to lock them up or shoot them or what, if they go back against his wishes?

Mr. WEINIG. I couldn't answer that. I don't know.

Mr. MCCOLLUM. OK. Does anybody know? Does the State Department know? Anybody here? Mr. Adams.

We have a long history of concern in Florida, and I've heard it for years—and maybe that comes from the history of what happened 10 years ago or 15 years ago—that anybody who went back to Cuba was incarcerated automatically.

Mr. WEINIG. I believe in our testimony there's a statement to the effect that those who have left Cuba to escape, as it were, and then

returned are subject to a 3-year jail penalty. I believe that's included in our testimony, but I don't know that firsthand.

Mr. MCCOLLUM. Well, it says that here, and that's why I asked. It says, "Any Cuban national who flees the Castro regime is subject to a 3-year prison sentence." But you don't have any anecdotal evidence of that currently?

Mr. WEINIG. No, I don't.

Mr. MCCOLLUM. All right. With regard to the Cuban Adjustment Act as well, can you elaborate on how the INS sees the condition of the Cubans as different from the Salvadorans or the Haitians? I'm sure that's what Members of Congress have on their minds.

Mr. WEINIG. Certainly the vast majority of the Cubans that we encounter at this point would be entitled to asylum were they to apply for it. The Cuban Adjustment Act certainly gives us a lot of relief in terms of having to process and go through an asylum process, which, as you know, is rather time-consuming. So from a resource point of view, the Cuban Adjustment Act is a lot easier for us to administer than the asylum program.

Mr. MCCOLLUM. Where as—what?—the Haitians might not, for example, all be entitled to asylum if they go through the asylum process? In fact, we know from the screening going on on Guantanamo right now that that's the case; is that correct, Mr. Puleo?

Mr. PULEO. Well, we're running around 40 percent of those that we've screened on Guantanamo have a cullable claim of asylum. Those are the ones we're allowing into the country to pursue it. So it's not as low as maybe you understood.

Mr. MCCOLLUM. So what you're saying is that in the case of the Cubans, just virtually all would be qualified for asylum, whereas in the case of the Haitians, that's not true. So you might as well have a Cuban Adjustment Act and not to have to go through the extra hassle of the asylum process with them? Is that the bottom line?

Mr. PULEO. It's an accurate statement. I think I want to differentiate also, in the countries that you specified, that the likelihood of being allowed to return someone to Cuba is much less than the other two countries you explained. Also, as explained in the testimony, those who do return to Cuba are immediately incarcerated for a minimum of 3 years. So there are differences in the countries to which these individuals may be returned.

Mr. MCCOLLUM. Could you do, somebody here at INS or perhaps the State Department do, a little research and submit to the committee the history of back when the last person or persons were returned to Cuba were, indeed, incarcerated? In other words, I know that's the law, and we're not returning them against their will now. So it may have been some time ago, but I would simply like to know that and I think it would be good for the subcommittee to know.

Mr. PULEO. We'll provide it for the record.

[The information follows:]

Section 114

Question from Congressman McCollum:

Could you provide for the Subcommittee the history as to whether Cubans (who were returned to Cuba from the United States) were indeed incarcerated?

Answer from the State Department:

Cuba is a nation which does not recognize its obligation under Article 13 of the Universal Declaration of Human Rights, which states that: "Everyone has the right to leave any country, including his own, and to return to his country." The Cuban government does not allow its own citizens to travel freely abroad. The Cuban government requires that a Cuban citizen obtain an exit permit before leaving the country. Exit permits are issued for specific periods of time (limited extensions are usually available -- for a fee -- from Cuban diplomatic missions abroad). If a Cuban does not return before the period he has been granted to stay abroad has expired, he would, in effect, no longer have permission to re-enter his own country.

Cuba does not recognize its obligation under international law to accept the return of its own nationals from another country. This is one of the issues raised by the problem of the Cuban excludables who arrived during the 1980 Mariel boatlift. The Cuban government has thus far refused to accept the return of any such excludables who were not identified on a list compiled when the bilateral migration agreement was concluded in December 1984. Although we may determine that an individual Cuban is excludable under U.S. immigration law -- whether he arrived here during Mariel, or at some other time -- the Cuban government does not acknowledge its responsibility to accept the return of such Cuban nationals. Since Cuba is an island, legal entry and exit can be controlled fairly easily. Thus, the answer to your question technically is zero.

However, under current Cuban law, it is illegal to leave or try to leave the country without government permission. The law provides for a penalty of up to three years imprisonment for those found guilty of the crime of illegal departure. Although enforcement of the law may vary depending upon the circumstances of a particular case, there have been numerous instances over the years of individuals incarcerated for attempting to leave the country. The officials who operate the U.S. government refugee program at our Interests Section in Havana have seen the penal records in many such cases.

Current information indicates that although the ability of the Cuban government to patrol its coast has been hampered by fuel shortages, an attempt to leave the country without permission is still considered to be a criminal offense. Although sentences may vary depending upon the circumstances of a particular case, the illegal nature of an attempt to flee the country is well understood by all Cubans, as are the potential penalties.

Mr. MCCOLLUM. In light of the vote that is on, Mr. Chairman, I don't have other questions at this time.

Mr. MAZZOLI. I thank the gentleman. I would like to have that data as well, because we have to have some foundation for why you have a Cuban Adjustment Act. I mean, it sits there as either an anomaly or as a special privilege, and I think it looks very bad to other nations, not just in the Caribbean but around the world, who have situations reasonably comparable to what we have in Cuba whose people would have the same kind of problematical future. We hear that constantly with regard to those who were sent back to Haiti. I think it's very important, if we have this kind of a clearly preferential situation on our books, that we ought to have some constant attention to the data that undergirds it, so that it stays fresh and pertinent, or else it ought to be jettisoned like so many other things in our law books are eventually, if they prove not to be needed any more.

Well, having said that, we'll stand in momentary recess until we can return to take up our next panel. Thank you, gentlemen and lady.

Mr. WEINIG. Thank you.

[The prepared statement of Messrs. Untermeyer, Adams, and Morgan follows:]

PREPARED STATEMENT OF CHASE G. UNTERMAYER, ASSOCIATE DIRECTOR FOR BROADCASTING,
U.S. INFORMATION AGENCY

Mr. Chairman, Mr. McCollum, Members of the Subcommittee, I appreciate the opportunity to address you on a matter of the greatest concern to the Voice of America and the United States Information Agency: obtaining a new visa to employ non-U.S. citizens to broadcast in our 46 foreign languages. With me today are Ms. Janice Brambilla, Director of Personnel for the Bureau of Broadcasting, and John Welch, Chief of Personnel Operations.

The Voice of America, USIA's international broadcasting service, is a half a century old this year. We currently transmit more than 1100 hours of programming a week in English and 46 other languages to an estimated weekly worldwide audience of some 130 million listeners.

To accomplish this, we employ broadcasters who serve as reporters, writers, translators, adapters, editors, producers, and announcers in our foreign language services. They are truly at the frontlines of our efforts to promote democracy, human rights, and free enterprise around the world.

These broadcasters must possess: native fluency in the language in which they broadcast; an in-depth knowledge of the people, history and culture of the broadcast area in order to produce materials tailored to the target area; and professional journalistic skills.

The American workforce simply does not contain a sufficient number of people who possess this unique combination of skills and knowledge. Therefore, we must bring non-citizens to the United States.

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For years, we have been forced to rely upon the J visa, which is simply not designed for this purpose. Unfortunately, every other available visa is far less suited to our needs.

We currently, employ 130 J visa holders as broadcasters.

Because the J visa was not intended for our purposes, it has caused a number of longstanding problems, problems which have been the source of serious employee morale problems, union concerns, and the subject of a 1989 GAO report.

For example, each year we sponsor a large percentage of our J visa holders, whose services are needed beyond the limited term of the visa, for immigrant visas. To do so, we have to pursue a lengthy and difficult bureaucratic process. J visa holders sponsored for immigrant visas cannot travel overseas, even to carry out their official duties as reporters and representatives of the Voice of America, until they obtain immigrant visas. And, J visa holders are excluded from government-sponsored retirement coverage.

We have revised our internal policies regarding employment of non-U.S. citizens in concert with the employees union to address some of the problems. But our authority to make changes is limited, and major problems remain.

We have worked closely with the Immigration and Naturalization Service, the Office of Personnel Management, other agencies and the union to remedy these problems.

We all have concluded that the only solution to our problems is a new visa tailored to the requirements of our valued staff.

Sec. 103 of the bill before you would resolve many long-standing problems. In brief, it would:

- provide retirement coverage for nonimmigrants;
- expedite and simplify the process of adjusting to immigrant visas; and
- minimize problems involved in traveling overseas during the adjustment process.

This new visa is our highest management priority.

In the interest of VOA and its employees, I urge its passage.

Thank you.

I would be happy to answer any questions you might have.

PREPARED STATEMENT OF JOHN H. ADAMS, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF
CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, Members of the Subcommittee, I am pleased to appear today to discuss the **Immigration and Naturalization Housekeeping Amendments Act of 1992**, "A bill to amend the Immigration and Nationality Act to improve the administration of the immigration laws, and for other purposes." This bill contains a series of proposals. I propose to address those which are of operational concern to the Department of State.

Section 101 of the bill would add to section 101(a)(15) of the Immigration and Nationality Act, as amended, a new paragraph (S) according a nonimmigrant classification to the spouse or child of an alien member of the Armed Forces accompanying or coming to join the member of the Armed Forces. Most nonresident alien members of the Armed Forces are citizens of the Philippines who were initially enlisted in the Navy outside the United States under a long-standing authority. It is the Department's understanding that the number of nonresident alien members of the Armed Forces is relatively small. The Department believes that these members of the Armed Forces deserve special consideration because they risk their lives in service to this nation. The Department therefore defers to the comments of the Navy on this proposal to establish a new category of nonimmigrant visa classification for the spouse or child of an alien member of the Armed Forces.

Section 102 of the bill would amend section 101(a)(27)(I) of the Act to remove certain time limits in that section. Section 101(a)(27)(I) grants special immigrant status to certain retired employees of international organizations, surviving spouses of deceased employees, and children of such employees. The benefit extended to these aliens was originally limited in time. This proposal would make the benefit a permanent one for any qualifying alien. The Department perceives no objection to this proposal.

Section 103 of the bill would amend section 101(a)(15) of the Act to add a new paragraph (T) according a nonimmigrant classification to an alien coming to the United States to be employed by the United States Information Agency, and to the spouse or child of the employee. The Director of USIA would have to certify to the Attorney General that the alien possessed essential foreign language skills and that USIA had been unable to find an equally qualified alien in the United States. No more than 50 aliens could be admitted per annum for such employment and an alien could not remain in T nonimmigrant status for more than five years.

Section 103 would also amend section 101(a)(27) of the Act to add a new paragraph (L) according special immigrant status to an alien who meets the requirements for classification as a nonimmigrant under section 101(a)(15)(T) and who has been employed

by USIA for one year in a capacity requiring the essential foreign language skills in question. Within the overall limitation of 10,000 annually on those classes of special immigrants included in section 203(b)(4) not more than 150 visas would be available to aliens under this proposed new classification during fiscal year 1993 and not more than 50 visas in any following fiscal year.

As the Department understands it, USIA has up to now brought such aliens to the United States for such employment pursuant to section 101(a)(15)(J) of the Act. The 150 limitation for fiscal year 1993 and a provision in section 103 waiving the two-year foreign residence requirement of section 212(e) of the Act appear designed to take care of cases of aliens currently employed by USIA under the exchange visitor program. This provision would be a one-time occurrence since proposed section 214(j) would prohibit prospectively the classification of such employees as nonimmigrant exchange visitors. The Department has no objection to this proposal.

Section 104 of the bill would further amend section 101(a)(15) of the Act to add a new paragraph (U) according a nonimmigrant classification to the spouse of a United States citizen. A new section 214(l) would also be added to the Act specifying the period of admission of a nonimmigrant classified under section 101(a)(15)(U).

The Department finds this proposal both puzzling and extremely troubling. Spouses of United States citizens are classifiable as Immediate Relatives under section 201(b) of the Act and, as such, are not subject to the numerical limitations on immigration. Once the United States citizen has filed the appropriate petition to accord the spouse Immediate Relative status and the petition has been approved, the processing of the spouse's immigrant visa application can normally be completed in no more than thirty to ninety days. In addition, many spouses of United States citizens are already in the United States and, thus, are residing with the U.S. citizen spouse while the petition and other applications are being processed. The Department thus cannot find any need for a nonimmigrant classification such as this one.

The troubling aspect of section 104 lies in the provisions of proposed new section 214(l). As the Department reads the text of that section, an alien could qualify for issuance of a nonimmigrant visa under proposed new section 101(a)(15)(U) even prior to the filing of a petition in the alien's behalf by the U.S. citizen spouse, and without, much less the approval of such a petition. The Department finds this very troubling. It appears that the effect will be to short-circuit the necessary and proper adjudicatory process which occurs whenever an immigrant visa petition is submitted by a United States citizen in behalf of his or her alien spouse.

A proposal of this sort raises in its starkest form the entire question of having a system to control the entry of aliens into the United States. Since the 1920s the United States has made a distinction between immigrants (those coming for permanent residence) and nonimmigrants (those coming for various time-limited purposes). While this distinction has never been perfect -- alien treaty traders and treaty investors, while technically speaking, nonimmigrants, can remain in the United States for protracted periods and nonimmigrant fiance(e)s are admitted as nonimmigrants with the express purpose of subsequently becoming permanent residents -- it has been a useful one.

The distinction has been the basis, for example, for steps taken by the Department over nearly thirty years to expedite the processing of nonimmigrant visa applications. On the theory that, where an alien was seeking to enter only temporarily, detailed, labor-intensive background checks were not imperatively necessary. The Department has since the early 1960s reduced the nonimmigrant processing requirements in order to accommodate the ever-increasing volume of international travel, with static or only minimally-increased resources.

On the other hand, while the processing of intending immigrants has been expedited also, it has always been believed

that immigrants, who seek to become a permanent part of our society, should be more carefully screened. The abolition of the old "national origins" quota system in 1965 and its replacement with a system which directed itself much more specifically to individual qualifications, has put a premium upon appropriate verification of claims to qualify.

In the case of claims to qualify as the spouse of a U.S. citizen the mere existence of a certificate of marriage between the alien in question and a U.S. citizen is not sufficient. The parties must establish that the marriage is a genuine one, not entered into for the purpose of evading the immigration law. The adjudication of an immigrant visa petition filed by the U.S. citizen party to the ceremony in behalf of the alien party is the process established by law to determine which are genuine and which not. While there is no doubt but that most such marriages are genuine, it must never be forgotten that some are not. The proposal contained in section 104 appears to reflect either a failure to take this fact into account or a decision that it is irrelevant. It can only be hoped that it is the former, as the latter would be disheartening indeed.

Section 105 contains several proposals related to alien adopted children. Section 105(a)(1)(B) would amend section 101(b)(1)(F) by deleting therefrom the word "abroad." It is not

clear to the Department what purpose would be served by this amendment. As now written, section 101(b)(1)(F) includes both children adopted abroad and children coming to the United States to be adopted after entry. As best the Department can understand it, this current text covers all possible cases and, thus, there appears to be no need to remove the word "abroad." The Department is not raising an objection to its removal; it is simply that its removal does not appear to produce a materially different outcome.

Section 105(a)(2) would amend section 204 of the Act by adding a new subsection (h) relating to the adjudication of petitions to accord status under section 101(b)(1)(F). Under this provision, a petition to accord status under section 101(b)(1)(F) would be deemed to be approvable if the proceedings through which the adoptive parent or parents obtained the child were accomplished in a country certified by the Secretary of State, in consultation with the Attorney General, to meet certain standards.

The Department cannot recommend the enactment of Section 105(a)(2) which would add a subsection (A) to section 204 of the INA requiring that the Department in consultation with the Attorney General certify that a foreign government has complied with the standard specified in new section 204(b)(B) and its own laws on adoption.

Certification requirements can prove difficult and impractical to implement. In the case of adoption, where the violations may be committed by U.S. citizens or on behalf of U.S. citizens, they could be extremely cumbersome. Moreover, the Department is not in a position to issue such a certification when so many countries have confusing or conflicting laws (civil code/minor's code/criminal code). A better approach may be that of the Hague Conference on Private International Law. The United States, as well as all the major source countries, is participating in a group which has prepared a draft multilateral convention on intercountry adoption.

We also have difficulty with Section 105(b) which would establish criminal penalties for trafficking in children. Our first objection is that the bill, if it is to have extraterritorial scope, should explicitly so state to ensure that it is not construed as only criminalizing illicit activities that occur within the United States. Similar legislation, such as narcotics interdiction laws, are explicitly extraterritorial. Secondly, we believe that any such law should reach not only U.S. citizens, but also legal permanent residents, foreign entities, and aliens over whom the United States may properly assert jurisdiction (for example, if they are doing business in the United States). Also, the proposed legislation is extremely vague in its definition of what constitutes buying and selling of

children. Unless these terms are strictly defined, they are open to myriads of legal interpretations. Of specific note, interpretation of what would constitute excessive charges in connection with a foreign adoption is open to wide interpretation depending on the country of origin and the laws of that country.

As a final point, you may know that the General Accounting Office is conducting a study of international adoption in response to a request from the U.S. Senate (Senator Arlen Specter). It may be of interest to this Committee that any legislation on foreign adoptions await the findings of the GAO.

Section 107 of the bill would amend section 212(d)(5) of the Act to add a new subsection (C) under which the Attorney General would be required to grant parole to an alien to permit the alien to attend the funeral of the alien's spouse, parent, son, daughter, or sibling. The alien would have to submit a certified copy of the relative's death certificate. The alien would be paroled for not more than thirty days unless the Attorney General granted a longer period because of exceptional circumstances. The Attorney General would have to report to the Congress, two years after enactment of the provision, whether there had been abuses or violations of immigration law as a result of the provision.

While the Department will defer to the comments of the

Department of Justice on this proposal, it does raise questions. Aliens do apply for nonimmigrant visitor visas from time to time in order to attend the funeral of a close relative who has died in the United States. Consular officers are quite well aware of the humanitarian considerations involved in such situations and are ready to process their applications promptly, giving sympathetic consideration to them.

There have no doubt been individual cases in which a consular officer felt that other factors made it impossible to issue a visitor visa to such an applicant, but I am confident that such cases are rare. Moreover, the Department is ready and willing to look into such cases on an expedited basis, if requested to do so. Accordingly, the Department has to question whether a proposal such as this one is necessary.

Section 109 would amend section 217 of the Act, the provision establishing the Visa Waiver Pilot Program (VWPP). Section 109(a) would make a series of amendments removing the current time limit on the program and all references to a time limit. The Department views the VWPP as a success and supports making the VWPP permanent. Its existence has greatly facilitated legitimate international travel, especially so since the countries which have been included in the program are precisely those having the greatest numbers of legitimate tourists and business travellers to

the United States. Precise statistics are maintained by the Immigration and Naturalization Service, but it is our understanding that since the Program began, over 14 million visitors have traveled to the United States under the auspices of the Visa Waiver Pilot Program.

The VWPP has made it possible for international tourism, now the largest single export for the United States, to continue its long expansion without the need for major increases in consular staffs abroad. Without the VWPP, this most useful aspect of our economy would have been hampered by resource constraints. In addition, there is no evidence that the VWPP has created enforcement problems for the Executive Branch, either in terms of our immigration law or in any other area of law enforcement. The Department hopes that this proposal can become law without delay. The Department would emphasize however that we would want to see this provision amended to include section 201(d) of Public Law 101-649 which gives the Secretary of State and the Attorney General the authority to rescind any waiver or designation previously granted under section 201(d).

Section 110(d) of the bill would mandate one year after enactment the expansion of INS preinspection to five airports overseas, and to five additional airports by 1994. This proposal appears to reflect a failure to recognize that the United States

cannot unilaterally initiate these programs. The prospective host countries must agree not only to accommodate INS inspectors at their airports but also to provide the circumstances necessary for INS to perform its duties. Negotiations to achieve such agreements could be difficult and protracted, as national sovereignty issues are often involved.

Additionally, any expansion of preinspection to other countries before the London pilot program is completed is premature. This is because we are working closely with INS and the Department of Justice to produce the most realistic and best possible preinspection program model in London. We believe this is extremely important since full implementation of a London program is the only way to answer questions which remain about such a large and complex overseas endeavor.

We are concerned by the additional resources our embassies need to support a contingent of 124 INS officers and their families overseas. For the London program alone, estimates show that 31 new support personnel are required with first year costs at \$2.1 million and yearly costs at well over \$1.4 million after that. Such increases will, of course, be multiplied if preinspection is expanded to ten additional countries as proposed in this amendment. The Department is reimbursed for these costs by the INS Immigration User Fee Account.

What should also be considered is the reality that within a short time after preinspection is realized at a particular airport overseas, "alien smugglers" will simply route their clients through other departure points. If, indeed, we are looking to enhance law enforcement, U.S. Government efforts might be better directed towards initiatives such as summary exclusion for those who attempt entry with fraudulent, forged and unrepresented travel documents, provided that there are adequate procedures to address the circumstances of persons genuinely fleeing persecution.

Section 113 would amend section 132(e) of the Immigration Act of 1990 to add section 212(a)(6)(B) as a ground of ineligibility which may be waived in the case of an applicant for an immigrant visa under the Transitional Diversity Program -- the AA-1 program. An alien previously removed or deported from the United States is ineligible to receive a visa for five years following such removal or deportation (or twenty years, if the alien also has been convicted of an aggravated felony) unless the ineligibility is waived.

An applicant for an AA-1 immigrant visa who is ineligible under section 212(a)(6)(B) may apply for a waiver of that ineligibility even without enactment of this proposal. Under the generally- applicable waiver provision, the granting of such a

waiver is entirely within the discretion of the Attorney General. Including it within section 132(e) would require that the application be approved unless the Attorney General found that it was not in the national interest to do so. This could have an effect on the outcome of individual applications.

The Department supports fully the concept embodied in Section 201 of equal treatment for U.S. citizen women in transmitting citizenship to their children born before 1934. The existing law, Section 1993 of the Revised Statutes, clearly discriminates against U.S. citizen mothers with offspring born before 1934. Not surprisingly, it has resulted in costly litigation, the defense of which, from the standpoint of governmental interests, is unproductive.

Moreover, we endorse subsection (b)'s waiver of the retention of citizenship requirements as they apply to a person descended from a female individual described in subsection (a). The Department further believes that, consistent with prior amendments, there should be no waiver of the transmission of citizenship requirements. This proposal is consistent with that view.

Finally, we believe the first sentence of subsection (c) is unclear and, in light of subsection (b) unnecessary. Accordingly,

we suggest that sentence be deleted.

With respect to Section 202, we have a number of concerns. Specifically, while we have no objection to subsection (a)(1)'s addition of the words "natural born," this inclusion would not necessarily satisfy the constitutional requirements for eligibility for the Presidency.

We adamantly oppose the substantial reduction of the transmission of citizenship requirement articulated in section 202 (a)(4). It has always been difficult to quantify an "appropriate" transmission period. The legislative histories of citizenship statutes makes clear that Congress has long been concerned that a child who is to acquire U.S. citizenship at birth be exposed to American political and social values by being raised by a parent who had spent sufficient time in the United States to have absorbed some of those attributes.

While reasonable persons can disagree as to the length of exposure which is adequate, it appears difficult to contend that a mere year (achieved, perhaps, by various stays of several months) would suffice to accomplish that purpose. In the Department's view, the 1986 liberalization of transmission requirements was, and is, far more consistent with the goal of the transmission requirement.

We also must state our opposition to the language, though not the underlying goal, of Subsection (a)(6). Our recent experience has been that it is virtually impossible to administer a statute in which "statelessness" is a criteria for obtaining U.S. citizenship. Essentially, this statute would require parents to prove a negative, i.e. the fact that no other citizenship is available to their child. Moreover, it would be to persons' advantage to, in effect, "create" statelessness by not filing proper documentation or allowing deadlines to lapse. Thus, legal and administrative problems render such a section of law virtually impossible to administer.

We also have difficulty, primarily on an administrative level, with Subsections (c)(2) and (c)(3), respectively. Subsection (c)(2) applies not only to those born after its enactment, the usual formulation in citizenship law, but also those who have not yet reached age eighteen. Subsection (c)(3) also runs counter to the usual formulation in citizenship law which is that the applicable law is the one in effect as of the date of an individual's birth.

Having said this, we believe that it is possible to fashion appropriate relief for children who have a U.S. citizen parent who, for whatever reasons, is unable to confer U.S. citizenship on

his or her offspring. Such relief would be in the form of an amendment to Section 322 of the INA to permit the expeditious administrative naturalization of a child brought to the United States by the U.S. citizen parent. This would provide a means to eliminate statelessness among such children, as well as confer citizenship on a child whose parent had spent insufficient time in the U.S. Revision of Section 322 INA will also benefit children who are under age 18 as of the date of its enactment.

The Department of State is currently working with the Department of Justice on legislation which will address a number of citizenship matters.

Thank you for providing the Department of State an opportunity to address some of the issues raised by the proposed legislation.

PREPARED STATEMENT OF JAMES F. MORGAN, JR., ASSISTANT LEGAL COUNSEL, BUREAU OF
NAVAL PERSONNEL, DEPARTMENT OF THE NAVY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear before this Subcommittee to present the views of the Department of the Navy on the provision of the Immigration and Naturalization Housekeeping Amendment Act of 1992, that would authorize nonimmigrant visas for spouses and children of alien members of the United States armed forces. I request that my written statement be included in the report of the hearing. I am prepared now to make a brief statement in support of the nonimmigrant visa provision and to answer any questions you may have.

INTRODUCTION

The purpose of this legislation is to amend the Immigration and Nationality Act to eliminate an anomaly in the law that creates hardship for the families of our non-United States citizen service members who are serving this nation honorably and with distinction.

Under current law, contained at 8 U.S.C. §1354, an alien service member is permitted to depart from and reenter the United States without restriction provided he or she possesses U.S. military identification and official military orders. This section does not, however, address the need of the alien spouse and children of the service member to depart and reenter the

United States with their military sponsor. As a result, on many occasions, the spouse of an alien service member who previously was lawfully present in the United States has been denied reentry after having departed for any reason including family emergency or travel to accompany the military member pursuant to transfer out of the United States.

The proposed legislation would eliminate this hardship by creating procedures, in the form of a special nonimmigrant visa category, that would permit spouses and children of alien service members to reside in and travel to and from the United States just as their family member serving the United States in the armed forces is permitted to do.

BACKGROUND

At present there are several hundred alien service members in the U.S. armed forces. The Navy recruited approximately 400 Filipino citizens per year under the provisions of the Philippine Military Base Agreement of 1947 and has also been recruiting nationals of Micronesia and the Marshall Islands. Although the Filipino recruitment program ended this year due to the impending expiration of the Base agreement on December 31, 1992, several hundred nonresident alien servicemembers will remain on active duty within our armed forces after this date. The services also

recruit aliens who have been granted lawful permanent resident status.

Although service regulations require that aliens be unmarried when they enlist, many alien service members marry after enlisting in the U.S. armed forces and their spouses are frequently foreign nationals. In order for alien spouses and their children not born in the United States to enter the United States to join the alien service members, they must apply for a visitor visa, also known as a B-2 visa. This visa is valid for a maximum of one year. At the expiration of the visa, the foreign spouse may apply for extensions in increments of six months. However, in most instances, in lieu of extension, the spouse is granted what is known as "voluntary departure status." The benefit of this status is that the spouse may be authorized to obtain employment which is not permitted for B-2 visitors. The disadvantage of voluntary departure status is that if the spouse departs the United States for any reason, he or she risks being denied reentry.

Most spouses of alien service members are employed due economic necessity. Therefore, a military member such as a petty officer third class (pay-grade E-4) and his family would find it very difficult to subsist without a second income.

The spouse of a permanent resident alien servicemember may file a petition with the Attorney General (INS) for classification under the second preference category for allocation of immigrant visas. Visas in this category are issued on a quota basis. Because this is an oversubscribed category, there may be a wait of several years before the qualified spouse of a lawfully admitted permanent resident alien service member receives a visa to join the servicemember in the United States. The proposed legislation would also eliminate this problem by allowing these affected spouses to enter the United States if accompanying, following, or rejoining the foreign service member who is under official orders or other permit of the armed forces.

ILLUSTRATIONS

The following examples illustrate the hardship imposed upon non-U.S. citizen servicemembers and their families by current immigration law.

A Filipino national, (first name) Ballestar, who enlisted in the U.S. Navy and after numerous years of honorable service achieved the rank of Chief Petty Officer, is married to another Filipino national who entered the United States on a B-2 visitor's visa in 1981. They have two children who were born in the United States and thus are U.S. citizens. When Mrs.

Ballestar's visa expired in 1982, she entered into voluntary departure status.

In 1989, the Ballestars travelled to the Philippines to attend to Mrs. Ballestar's father who was seriously ill. Upon their return to the United States, Chief Ballestar and the children were permitted to enter the country. However, Mrs. Ballestar was not able to return to the United States with her family because the U.S. Embassy in Manila refused to grant her a visa. She applied a second time two weeks later but was still denied by the embassy. Even the intervention of a Member of Congress and the Department of the Navy were of no avail.

Mrs. Ballestar remains in the Philippines separated from her family. Chief Ballestar, while performing his Navy duties, is forced to care for his children alone. If Chief Ballestar is assigned to ship scheduled for deployment, there will be no one at home to care for his children.

The Navy ship, USS BELLEAU WOOD, currently homeported in San Diego, is scheduled to change its home port to Japan. There are a number of foreign national servicemembers assigned to the BELLEAU WOOD whose spouses are also foreign nationals in the U.S. on B-2 visas or in a "voluntary departure status." When the BELLEAU WOOD moves to Japan, these spouses face the risk of deportation from the United States if they do not accompany their

husbands. If they do accompany their servicemember spouses to Japan, they face the risk of being denied reentry into the United States when their servicemember spouses must return to the United States with the Navy.

U.S. Navy Airman Paul Kattah has lawful resident alien status. However, his wife, from whom he has been separated for over two years, unfortunately does not. He has filed a petition for his wife under the second preference category discussed earlier, but because this category is oversubscribed, they are still waiting to obtain a visa for her.

Petty Officer Vital, a Filipino national, married another Filipino national in Hawaii in 1988. When his wife attempted to renew her B-2 visa, her request was denied by the INS. She sought the advice of an immigration lawyer who advised her to return to the Philippines to apply again for the visitor visa. She did so, but was denied reentry into the United States by the Consular Office at the U.S. embassy in Manila.

These are just a few examples of the hardships faced by our some of our servicemembers that would be eliminated by the passage of this legislation.

COSTS

We anticipate that this proposal, if passed, would not cause an increase in the budgetary requirements of the Department of Defense. In fact, it should result in reduction of administrative costs not only the Department of Defense and the affected service members, but also for the Department of State and the Department of Justice (Immigration and Naturalization Service).

CONCLUSION

In summary, the number of service members who would be benefitted by this provision is small compared to the total number of military service members but the benefit is tremendously important to that small population. Providing this benefit will increase the efficiency of the services to the extent that it eliminates a source of concern that must be considered in planning worldwide assignment of our service members.

[Recess.]

Mr. MAZZOLI. We'll call our next panel forward: Mr. Michael Adler, chairman, Citizenship Committee, the World Federation of Americans Abroad; Mr. Peter Alegi, director of issues for the Federated League of Americans Around the Globe; Ms. Martha Davis, staff attorney, NOW Legal Defense and Education Fund; Mr. Howard S. Myers, president of the American Immigration Lawyers Association; and Mr. William L. Pierce, president, National Committee for Adoption.

As you know, we have a very busy day here. I'm going to ask you all to very, very rigidly adhere to the 5-minute rule, and we'll have to watch it by the clock. You have been in the room, most of you have been, during the day and you see what questions were asked and what objections to your particular bills the Immigration Service might have had, or even some members. So I think it might be useful to use those moments that you have to address those issues, but you're free to use your time as you wish.

Mr. Adler, we'll recognize you first.

Ms. ADLER. "Mr. Adler" is a "Ms. Adler."

Mr. MAZZOLI. Ms. Adler, I apologize.

Ms. ADLER. It happens all the time, Mr. Chairman.

I have some remarks to make and I'll take my 5 minutes doing that.

Mr. MAZZOLI. Sure.

STATEMENT OF MICHAEL ADLER, CHAIRMAN, CITIZENSHIP COMMITTEE, AND MEMBER, BOARD OF GOVERNORS, WORLD FEDERATION OF AMERICANS ABROAD

Ms. ADLER. On behalf of the World Federation of Americans Abroad, I thank you for the opportunity to be heard here today. I am a member of the World Federation's Board of Governors and chairman of the Citizenship Committee. I am a U.S. citizen and I reside in Paris, France.

The World Federation represents, through its membership, more than 50,000 Americans living overseas and all of the regional groups of American Chambers of Commerce Abroad. We are a federation of American organizations and we're dedicated to improving laws and policies affecting the 3 million Americans overseas.

I won't go into what is now very obvious: To compete in the global marketplace today, Americans overseas are vital. Americans abroad, Mr. Chairman, translate as jobs at home. Yet, our own country, instead of supporting Americans overseas, all too often places obstacles in our path. In the area of citizenship, which is the one under consideration today, we often feel penalized just because we live abroad. I'd like to just briefly highlight the issues with some case examples which might serve to really illustrate how it is to live out the laws we're discussing when you are a family overseas.

The first hurdle that is placed in our path is that if our children are adopted overseas or if they are ineligible to be U.S. citizens at birth, U.S. law does not allow us to naturalize them unless we move back and reside in the United States. We're blocked from that for the time that we're overseas, which is the time when we want our adopted children to be U.S. citizens.

Let me cite the case of Ben Davis who is an American, a Harvard-trained lawyer working at the International Chamber of Commerce in Paris. Ben and his American wife have adopted two children. By serving the ICC, which is the leading institution of international arbitration in the world—and I add, thereby also serving American interests abroad—Ben is fulfilling his dream of having an international career overseas in the private sector. Ben also loves his children. He wants them to be U.S. citizens.

Under current law, in order for Ben's children to be U.S. citizens, he would have to give up his job in Paris, bring the family back to the United States and reside there permanently. We wonder what interest is served in requiring Ben and many others like him to choose between their jobs and their children's U.S. nationality.

There's a second area, Mr. Chairman, and it relates in some ways to Congressman Mineta's bill in that it deals with the vestiges of an archaic law that was enacted 50 years ago. There are presently from 2,000 to 5,000—we don't even know exactly the number—Americans who had their citizenship taken from them when they were teenagers and young adults because they didn't fulfill requirements that no longer exist in the law. We really feel for that these persons who still sorely feel the loss of their U.S. nationality, there should be a way to reinstate them as U.S. citizen. We have proposed an amendment which would not be retroactive, which would not grant citizenship to a class, but which would enable each individual who wanted to come forward and reacquire his or her U.S. nationality to do so.

I would add, Mr. Mazzoli, that in doing that, this also opens them up to paying U.S. taxes. These are people who were Americans at birth, and when they were 17, 20, 23 years old, because they couldn't leave their families abroad to go back to the United States, they lost their nationality and this should be restored to them.

The real problem, though, comes in transmitting U.S. nationality to the children of U.S. citizens abroad. I want to tell you the story of M.S. Leroy Barnes. A career soldier in the Army, he was awarded two Purple Hearts, several Army commendation medals, a Presidential citation, and the Air Medal. He volunteered to return to Vietnam because he was a patriot and wanted to serve his country.

He died in combat a hero. After his death, his daughter married a Swiss citizen and had her children born abroad. When she went to the U.S. Embassy to register her children, Sergeant Barnes' grandchildren, she was told they were not eligible. The daughter had lived with her father for 17½ years as an Army dependent and that qualified her as having the U.S. residence requirements. Unfortunately, her father died in Vietnam when she was 17½. The law required 5 years after the age of 14. If Sergeant Barnes only had waited to die until his daughter had been 19, his grandchildren would be U.S. citizens, but they're not under this law.

Another problem is that most Americans abroad do not know about these onerous requirements until it's too late and then there is nothing to be done, because it all has to have happened before the child born.

Mr. MAZZOLI. Ms. Adler, I apologize, and I wish it were otherwise, but in order for us to proceed with getting this day's work

done, could you summarize in just a few seconds basically any other statement? I know it's tough, but we've got to do it.

Ms. ADLER. In closing I'd like this committee to consider the possibility that Americans abroad, who number 3 million, we think—we don't know because we're not even counted in the census, actually provide a service to this country, Mr. Chairman. We haven't rejected our nationality. We're not malcontents or dropouts. We're not tax cheats. We're normal human beings, and we are proud to be Americans. Read our formal testimony and the case histories it contains concerning people who worked for Johns Manville, National Cash Register and other U.S. firms who were transferred abroad—if I could just finish.

Americans abroad would like to be considered by the United States as a resource. Instead, these laws, which seem to make sense when you're sitting in Washington, DC, really cause problems for Americans abroad. Surely, you do not want to see these Americans be cut out.

Mr. MAZZOLI. We appreciate that very much, Ma'am. Thank you. [The prepared statement of Ms. Adler follows:]

PREPARED STATEMENT OF MICHAEL ADLER, CHAIRMAN, CITIZENSHIP COMMITTEE, AND MEMBER, BOARD OF GOVERNORS, WORLD FEDERATION OF AMERICANS ABROAD

SUMMARY OF W.F.A.A. POSITIONS

THE WORLD FEDERATION OF AMERICANS ABROAD:

- 1) **Endorses H.R.4561, the Alexander bill, and the changes it would make to Section 301(g) of the INA.** H.R.4561 would rectify current problems related to transmitting U.S. citizenship to children born abroad to Americans. Specifically, this bill would:
 - reduce to one year in the aggregate the prior U.S. physical presence requirement for transmitting U.S. citizenship to children;
 - apply this change to children age 18 or under at the time of enactment;
 - protect any child born abroad of a U.S. citizen from being stateless;
 - redefine birth abroad of any U.S. citizen as "natural born".

- 2) **Endorses H.R.4007, the Mineta bill, to provide the children of female U.S. citizens born abroad before 1934 and their descendants with the same rights to citizenship at birth as children born of male citizens abroad.**

- 3) **Recommends an amendment to Section 322 of the INA which would permit American parents residing overseas to expeditiously naturalize their children -- adopted or otherwise -- without being required to reside in the United States.** (See p. 6 for W.F.A.A.'s suggested text.)

- 4) **Supports providing U.S. citizenship to those who lost it through failure to reside in the U.S. under "old" Section 301(b).** Restoration of citizenship could be accomplished through *either*:
 - Adopting an amendment to Section 324 of the INA which would individually reinstate such persons. (See p. 14 for W.F.A.A.'s suggested text.)

Or, in the alternative:

 - Expanding H.R.4007 to grant prior U.S. residence requirement waivers to persons born abroad after 1934. (See p. 14 for additional background.)

Mr. Chairman, on behalf of the World Federation of Americans Abroad, I thank you for the opportunity to testify before you today. I note, too, how grateful we are to this subcommittee for the consideration and support it has extended to Americans overseas in the past. I also would like to acknowledge Congressman Bill Alexander, a very special friend of Americans overseas who, over the years, has worked tirelessly on our behalf. Most recently, he has introduced a citizenship bill, H.R.4561, co-sponsored by Congressman Benjamin Gilman, for which we are very appreciative.

The World Federation of Americans Abroad (W.F.A.A.), represents through its membership approximately 50,000 Americans living overseas and, through their regional groups, all of the American Chambers of Commerce abroad. The W.F.A.A. is a non-profit, non-partisan federation of American organizations dedicated to improving U.S. laws and policies affecting the estimated three million U.S. citizens who live and work abroad. The W.F.A.A. member groups include American business, cultural, professional, educational, social, civic, and veterans' groups in all parts of the world.

The W.F.A.A. founding members are:

- The Association of Americans Resident Overseas (AARO), a Paris-based organization founded in 1973;
- American Citizens Abroad (ACA), established in Geneva in 1978;
- The European Council of American Chambers of Commerce (ECACC), founded in 1965 with its headquarters currently in London;
- The Federation of American Women's Clubs Overseas (FAWCO), established in 1931 and currently based in Vienna.

The W.F.A.A. is headquartered in Paris. Our funds come from group member dues and grants from corporate sponsors. We wish particularly to acknowledge our founding sponsor, AT&T, for its generous support.

I am speaking to you today as a member of the World Federation's Board of Governors and as Chairman of the Citizenship Committee. I am also before you today as an American who lives overseas, one of many who proudly defend our nation's interests around the world.

WHO ARE THE AMERICANS WHO LIVE ABROAD?

Mr. Chairman, I was born and reared in Baltimore, Maryland. I am a graduate of the University of Maryland and the George Washington University Law School. I entered Government service in Washington, D.C., working first at the National Institute of Mental Health and later as a legislative staffer to the Director of the National Institutes of Health. Frankly, it had never entered my mind to leave the United States. I simply got married . . . to a Frenchman. He and I decided to begin our life together by living for "a while" in France. Thirteen years later, I find myself still there, knowing a lot more about France than I had imagined, yet in the process becoming more "American" than I ever was when I lived here in Washington.

Most Americans living overseas are just as "home-grown" as I am. We have accepted or chosen to live overseas to represent our businesses or for family reasons or to follow our dreams, but we are also conscious of the fact that we are unofficial representatives of the United States in everything we do and say abroad. We maintain strong ties to the U.S. with trips home as often as possible. We educate our children in American schools abroad if we can afford it and if they are available where we live. We go to great lengths to send our children to college in the U.S. whenever possible. We ensure that our U.S. tax obligations are met. We vote in U.S. elections, casting our absentee ballots as Overseas Citizens.

We are an educated group, one that speaks foreign languages and is familiar with foreign cultures. We also take our American culture to the places we visit and live, thus strengthening the influence of the United States and its values of democracy and free enterprise around the world. Through our work overseas -- in industry, commerce, the professions, and the arts -- we advance the nation's economic goals and promulgate its cultural values. As U.S. citizens abroad, we have great potential for fostering a positive image of America throughout the world while at the same time contributing to America's economic and cultural well-being at home.

Unfortunately, the public image of Americans abroad is sometimes very distorted. It is a sad but true fact that many Americans who have never lived abroad often assume that we have abandoned our country, that we have rejected our citizenship, that we are tax cheats, or that an American who can easily converse in a foreign language has somehow *become* foreign. Perhaps they also confuse the word "expatriate" with "expatriot." Yet, nothing could be further from the truth. In many ways, we may be more "patriotic" than Americans living at home because we constantly find ourselves in situations where we explain or defend American actions, policies, and events.

THE NEED FOR POLICIES WHICH SUPPORT AMERICANS ABROAD

In the 1990s, as the U.S. moves to compete in the international marketplace and to buttress democracy around the world, the W.F.A.A. believes that America's three million "unofficial ambassadors" living and working overseas have an extremely important role to play -- both in

being on the "front lines" of the effort to advance U.S. business competitiveness internationally, and in helping to foster a positive image of America and Americans around the world.

Yet, as the need grows for more Americans overseas, it is ironic that all too often U.S. law and policy toward citizens overseas actually places impediments in their paths and even penalizes them for going abroad. U.S. citizens who live and work overseas experience problems which emanate from their own government in such areas as citizenship, voting, taxation, education, and access to health care, social security and other benefits. These are benefits for which they have paid and which they would receive if they lived in the United States.

How did these problems arise? Mostly through benign neglect. To the best of my knowledge, no federal policy exists to support Americans who live abroad. We have yet to be recognized as a group for which a comprehensive federal policy is appropriate and necessary. In fact, we don't even show up in the U.S. Census. One of the reasons I am here testifying today is to participate in the process of helping to develop policies which more fully recognize the positive potential of Americans overseas and which acknowledge Americans abroad as the major national asset they are.

The United States of America is a unique country. Unlike colonizing nations like Britain and Spain, which historically built vast colonial empires and have centuries-old traditions of recognizing the value of establishing their citizens in foreign lands, the United States is first and foremost a nation of immigrants. Our country has been a place people immigrate to -- a vast melting pot where foreigners reaching our shores leave the vestiges of their "old" countries behind and take on the new role of being "American." Traditionally, unlike our trade competitors, Americans have not thought of themselves as people who live and work abroad.

Yet, particularly since the end of World War II, U.S. citizens have increasingly traveled outside of the U.S. and sought to widen their personal and professional horizons overseas. They have also increasingly sought to expand U.S. business internationally and to open new markets -- at the level of the individual American entrepreneur, as well as that of major U.S. corporations. Moreover, in the last decade, thanks to such factors as easy access to international air transportation and telecommunications, the world has shrunk immeasurably. To compete in the global marketplace of services, ideas, and products, and to stay in the forefront, America needs to have U.S. citizens overseas.

It is time for Americans at home to re-think how they look at U.S. citizens abroad and how they can begin to support them. I am honored to be here today to request that you consider ways in which this could be done in the area of citizenship.

THE NEED TO AMEND CURRENT CITIZENSHIP LAW

There is perhaps no more precious a right for an American than the right to be a U.S. citizen and to transmit this citizenship to his or her children.

Americans who live in the U.S. automatically assume that their children will be U.S. citizens at birth. For Americans who live overseas and whose children are born abroad, the whole question of transmitting one's citizenship is far from certain. If the American in question is married to a non-American, for example, requirements must be met regarding time spent in the U.S. It is estimated that some 4,000 children of U.S. citizens are denied U.S. citizenship annually because of such requirements. If the child is adopted by Americans living abroad, he or she has no hope of becoming American while the family lives overseas.

More often than not, in my experience, Americans abroad do not even know about these onerous requirements until they fail to meet them. At that point, it is too late. The news comes as a most unwelcome surprise, a real slap in the face. I am certain that Congress did not intend to hurt individuals this way. But imagine how it feels to be told at a U.S. Consulate that one's child is barred from U.S. citizenship because one has failed to fulfill a U.S. residence requirement that one did not even know existed. Moreover, as the law now stands, some children within the same family are Americans and others are not. Under the law, citizenship can be an arbitrary matter dependent upon the date before or after which the children happen to be born.

Some American parents, attempting to get around restrictions in current law, undertake the medical and financial nightmare of sending an expectant mother to the United States so that the baby will be born on U.S. soil. We know of several U.S. citizen mothers who have postponed marriage and chosen to have their children out of wedlock in order to take advantage of a shorter residency requirement provided under law for unwed U.S. mothers abroad. Shocking though it may be, children of Americans can even be born stateless. Surely Congress did not intend such absurd and unfair situations.

These restrictions, in effect, penalize U.S. citizens for living abroad by withholding U.S. citizenship from what is our country's most valuable resource: our children. American interests are not served by this policy. Further, it makes no sense that the children of U.S. citizens overseas -- bi-lingual, bi-cultural young people who represent the best of what America has to offer at home and abroad -- are being shut out and cut off from the American heritage which they and their parents value so highly.

LEGISLATIVE RELIEF

To resolve these problems, the following amendments to the Immigration and Nationality Act (INA) are needed. They are presented below as five specific and distinct issues.

(1) Expeditious Naturalization for Minor Children, Adopted or Otherwise

The Need: Under current Section 322 of the INA, children who are not American citizens at birth and those adopted abroad by U.S. citizens living or working overseas cannot be naturalized

as U.S. citizens unless the family moves back to the United States with the intention of residing there permanently. American families overseas simply cannot meet this requirement while living abroad. Yet, they very much want to have their children be American, and these children are in every other way eligible for naturalization.

An estimated 4,000 children born abroad each year to American parents are not considered U.S. citizens at birth under current law. Also, many hundreds of non-American children are legally adopted abroad each year by U.S.-citizen parents living overseas. Because these children cannot be naturalized as long as the family resides abroad, family members become and remain separated by nationality. Moreover, the children run the risk of never becoming American if their parents die while living abroad.

To add insult to injury, American parents who move back to the U.S. at the request of an employer (or for other reasons) for any period of time -- however short -- may naturalize their children under current Section 322. U.S. parents and their children residing overseas who visit the U.S. for any period of time -- however long -- are not eligible.

The Case of Ben Davis

Ben Davis is an American and a Harvard-trained lawyer working at the International Chamber of Commerce (ICC) in Paris. Ben and his American wife have two adopted children in France: Anne-Laure, born in 1988, and Daniel, born in 1990. Ben Davis loves his job. By serving the ICC, the leading institution for international arbitration in the world, he is fulfilling his dream of having an international career overseas in the private sector. Ben also loves his children. Despite living in Paris, he and his wife are raising their children in an American family setting. Ben Davis wants them to be U.S. citizens. Under current law, however, the only way he can do this is to quit his job, move back to the U.S., and reside there permanently

The Case of Jerry Di Giacomo

Jerry Di Giacomo is an American actor who lived exclusively in the U.S. from birth until he was 23, when he came to Europe to study mime. In France, he met and married Nadia, a French citizen. In 1986, the French Court awarded them full adoption of their son, Nicholas-Geordie, then age 18 months. In Jerry's work as an actor, he often plays roles of Americans in films and TV productions produced or co-produced by U.S. companies. His career as an actor and member of the entertainment arts community has been built in France. For Nicholas-Geordie Di Giacomo to be a U.S. citizen, Jerry and his family would have to leave that career behind and return to the U.S. to reside permanently.

The Case of Ruth Atkin Etienne

Ruth Atkin Etienne, a U.S. citizen whose ancestors were pioneers in what is now the State of Michigan, was born in Lakewood, Ohio. She married her husband, a French physician, in 1967 and has lived in France since then. The Etiennes have four children: two boys, who are their biological sons (born in 1968 and 1981) and who were both French and American citizens at birth; and a French girl and boy whom the Etiennes adopted as young children in 1975 and 1987, respectively. As Ruth Etienne puts it: "Our French-American children have always been proud of being both French and American Our two adopted children do not understand how they, too, can be our children and not have the same [American] status as their brothers."

Suggested Remedy: Amend Section 322 of the INA to enable all Americans who live abroad -- whether their children are adopted or not -- to expeditiously naturalize these children as U.S. citizens, if they so desire, without the parents or children being required to reside in the United States.

To achieve this, W.F.A.A. suggests the following amendment to Section 322 of the INA:

In Subsection (a), delete the words "residing permanently" and insert in lieu thereof "*physically present*".

In Subsection (b), delete the word "only" and delete the word "residing" and insert in lieu thereof "*physically present*".

The W.F.A.A. feels strongly that in addition to new legislation, new administrative procedures implementing such legislation would need to be put in place. We would urge that such procedures be straightforward, feasible, and manageable -- logistically and financially -- for American families residing abroad who would be traveling to the U.S. with their minor children to avail themselves of the opportunity to naturalize their children.

(2) Residency Requirement for Transmitting U.S. Citizenship

The Need: Under Section 301(g) of the INA, an American, married to a non-U.S. citizen, is eligible to transmit U.S. citizenship to a child born overseas only if the American parent spent five years in the U.S. prior to the birth of the child, with two of the five years being spent after the American parent reached age 14.

The effect of this requirement in all too many cases is that it renders American children who are raised outside of the U.S. (because they lived with their parents abroad) ineligible to transmit U.S. citizenship to their children born abroad later in life. This provision penalizes Americans for living abroad and for choosing spouses who are not U.S. citizens. Basically, it requires those of us who live abroad to find the emotional and financial resources to send our children to the U.S. (while we are still living abroad) so that they will have spent a total of five years in the U.S. (with two of those five years after age 14) during their own growing up period. In that way, we could ensure that they fulfill the requirement of Section 301(g) for transmitting U.S. citizenship to their children (our grandchildren) in the event that they at some later point in their lives decide to marry non-Americans and have their children born abroad. Surely Congress did not intend to force parents and children apart in this way. Yet, currently this is the only sure method to safeguard our children's right to transmit U.S. citizenship to our grandchildren.

Most Americans do not even know about this requirement in the law. They learn about it only if they fail to qualify -- that is, when they have their first child abroad, go to the U.S. Consulate to report the birth of a U.S. citizen, and are informed by a U.S. Consular officer that they have not spent enough time in the United States prior to the birth of the child to transmit citizenship to that child. At that point, it is too late.

The Case of Lt. Col. Harris Cassell

Lt. Col. Harris Cassell served 20 years with the U.S. Army in World War II, was stationed in Korea, and represented the U.S. in the Berlin Command during the crisis of 1961. Upon retiring from the Army in Heidelberg, Germany, in 1963, he took up employment with Founders Mutual Depositor Corporation, an international investment company with headquarters in Denver, Colorado.

Lt. Col. Cassell's son, Bruce, a U.S. citizen, lived with the family and grew up abroad in "a truly American atmosphere." Financial constraints required him to continue his higher education in Europe instead of returning to the U.S. to attend college there. He obtained his doctorate in geophysics at the University of Cambridge in England, and later joined the London research department of Western Geophysical Company of America.

In 1982, Bruce Cassell married a German national. Their twin daughters were born in Germany in 1983. As Lt. Col. Cassell puts it: "I was certainly a proud grandfather. However, we learned that the children would not be U.S. citizens by birth at the Embassy when we attempted to register them. I was outraged that my cherished heritage as an American citizen, my ability, privilege and right to transfer my valued American citizenship to my grandchildren, through my son, had been legislated away. My son, in fact, had eleven years of physical presence in the U.S. but was unable to meet the requirement of 5 years in the U.S. after age 14. And this was so even though I was employed abroad by an American corporation." Lt. Col. Cassell feels very strongly that "U.S. laws should support our families rather than taking away their inherited rights as American citizens!"

Even when one is aware of this requirement, complying with it is a heavy burden.

The Case of Amy Webster Herrera

Amy Webster Herrera, a U.S. citizen whose American parents were born, raised, and educated in the U.S., has ancestral ties that go back to before the Declaration of Independence. Amy's father, an attorney with a U.S. law firm, has spent all but four of his 39 years of practice in the firm's overseas offices, serving U.S. corporate interests abroad. As a result, Amy and her three American sisters grew up overseas.

The Webster girls, despite the fact that they married non-Americans, have maintained strong ties to the U.S. Although Amy's parents made tremendous efforts to send the girls to the U.S. throughout their respective childhoods, the four have been unable to amass sufficient time in the United States to transmit U.S. citizenship to their children under Section 301(g).

Amy, married to a Swiss citizen and living in Lausanne, has one child and another on the way. Despite returning fifteen times to the U.S. for vacations, summer school, and college, she has not acquired the full five years' (60 complete months') presence that the law requires. Amy states, "Why are my sisters and I so preoccupied with this problem? It is primarily because, despite being brought up largely overseas and continuing to make our lives there, we feel American and are proud of being American and want our children to have the same feelings and reactions. We also believe that [by being abroad] we are contributing to the worldwide image and interests of our country. We want our children to be educated in the United States, and that is a lot more possible and probable if they are citizens of the U.S."

The Case of Isabelle de Sibert Dusastre

Isabelle de Sibert Dusastre's father, Frederic C. de Sibert, is a U.S. citizen whose ancestors settled in the U.S. two centuries ago. As an aeronautical engineer who spoke fluent French, he was sent to France in 1969 by the United Aircraft Corporation as the "ideal" individual to head their Paris office for European helicopter sales. He later worked for Simmonds Precision, another U.S. firm operating in France. Isabelle, who is also a U.S. citizen, was almost 12 years old when she went abroad with her father.

Although she spent every summer in the United States from the time she was 13 until she married a Frenchman at age 22, Isabelle did not qualify under Section 301(g) to transmit U.S. citizenship to her three sons born in France in 1980, 1982, and 1987. Two months of summer vacations, multiplied by 10 years, equals 20 months after age 14 -- still not enough to meet the 24-month minimum specified by Section 301(g).

Despite the rebuff by the U.S., Isabelle's three sons have close ties with America. They spend two months every summer visiting their grandparents in California, they have received a bilingual education, and they are exposed to American culture in their everyday lives. Isabelle hopes that they will attend college in the U.S. when the time comes.

Sometimes the effects of this law can be particularly pernicious and harsh.

The Case of Master Sergeant Leroy Barnes

Master Sergeant Leroy Barnes died in combat in Vietnam in 1966. He was awarded two Purple Hearts, several army Commendation Medals, a Presidential Citation, and the Air Medal. He was also awarded the Vietnamese Military Merit Medal for outstanding service. Yet, the country for which he died refuses to recognize the citizenship of his grandchildren.

Leroy Barnes was born in 1921 and orphaned as a child. He joined the Army in his twenties and began a career as a professional soldier. During an overseas assignment, he met Anne Mary Ravessoud. After they married, she was naturalized as a U.S. citizen in 1956. In 1966, when her husband was killed in combat, she found herself alone with three children. Having no relatives in the United States, she took her children to live with her family in Switzerland.

Anne Larvaine Barnes, the oldest of Sergeant Barnes' three children, is a U.S. citizen. She lived as a U.S. Army dependent until the age of seventeen-and-a-half, when her father died and the family moved to Switzerland. For purposes of transmitting citizenship, dependents of U.S. military personnel satisfy the "physical presence" requirement, even though they may not actually be in the United States.

At age 25, she married Gilbert Borgeaud, a Swiss citizen. When her first child was born, she went to the U.S. Embassy to register the birth of the child as a U.S. citizen and was told that she had no right to do so. Had she been able to remain her father's U.S. Army dependent until age 19, she would have satisfied the requirements of law (ten years in the U.S., five of these after the age of 14).

If Sergeant Barnes had not been killed before his daughter reached age 19, his grandchildren would be American citizens. He died in the service of his country, but his progeny will never enjoy the benefits of being American.

Suggested Remedy: The current five year U.S. presence requirement of Section 301(g) of the INA should be reduced to one year in the aggregate, as proposed by Congressman Alexander in H.R.4561. This change would be reasonable, and it would ease considerably the hardship experienced under the law as it stands today.

(3) **Applicability of Amendments to Section 301(g) to Children 18 Years Old or Younger at the Time of Enactment**

The Need: An amendment, passed on November 14, 1986, reduced the U.S. presence requirement from ten years (with five years of the ten after the age of 14) to five years (with two years of the five after the age of 14). This action was a welcome step in the right direction, but it was not retroactive and did not apply to children born before the date of the amendment's enactment. Thus, ironically, it failed to help the very parents and children who had petitioned for redress at the time. It also split siblings in some families into two groups: those children who were born after November 14, 1986 who are U.S. citizens, and their older brothers and sisters born before that date who are not.

The Case of Elizabeth Partridge Conquer

Elizabeth Partridge Conquer was 16 years old when her father, John Van Buren Partridge, was transferred to Amsterdam by his employer, National Cash Register Company. She accompanied her parents to Holland, was educated there, spent a year in Vermont at Trinity College, and then went to Paris to continue her French and art studies. In 1982, she married a Frenchman, and in 1986 her first son, Nicholas, was born -- just two months before the 1986 amendment to Section 301(g) was enacted. While she fulfilled the "new" physical presence requirement, Nicholas was born under the "old" rules and was therefore not a U.S. citizen.

Nicholas is now five years old and has two younger brothers and a sister, all of whom are U.S. citizens because they were born after the rules changed. Elizabeth notes, "It will be difficult explaining to him in a few years why this is so. I frankly do not understand it myself and neither does my father, who remains enraged that U.S. law would prohibit his first grandson and a direct descendent of President Martin Van Buren from being a U.S. citizen." Elizabeth adds, "It is very difficult for me to accept the fact that anyone passing through the U.S.A. who gives birth to a child is allowed to give that child American citizenship, while I, an American born and raised, am refused this basic right. Does marrying a foreigner and residing abroad make me a second-class citizen?"

The Case of Caroline van Herpen

Caroline van Herpen, an American citizen, grew up in Europe and the U.S. She graduated from the American College in Paris, and in 1974, she left her family in Europe to come to Washington to work for the U.S. Congress. She served nine months as an intern in the House Republican Conference, obtained a Masters Degree from the Johns Hopkins School of Advanced International Studies, and was hired by the Johns Manville Corporation as the

"perfect" person to audit their overseas offices. Caroline spoke several languages and had extensive experience traveling and living abroad.

From 1978 to 1983, Caroline worked for the Manville Corporation all over the world, traveling for the better part of each year, ensuring that American corporate assets were safe and well managed. In 1985, she married a fellow Manville employee, a Dutch citizen, who had been transferred on an overseas assignment for the company in Paris. Their daughter Julia was born in Paris in May, 1986. Unfortunately, when Caroline counted up her time on U.S. soil, it added up to only eight years and a few months -- not enough time to fulfill the residency requirements of 301(g) as they existed in May, 1986. Had she been at a desk job in the Denver headquarters of Johns Manville, instead of traveling at a grueling pace for them overseas, her daughter would have been a U.S. citizen.

Five months after Julia was born, Congress reduced the time required for transmitting citizenship under 301(g). Thus, when Caroline's son Max was born in 1989, she was able to transmit U.S. citizenship to him. The fact that Max is a U.S. citizen and his sister, three years his senior, is not, is distressing for all concerned. Caroline states, "When we go to America to see our family, Julia travels on an indefinite visa. The immigration officer asks me why Julia does not have an American passport. It is not easy to explain nor to accept . . . Julia sometimes asks whether she is American or not. I assure her that she is, every bit as much as her brother, because that is what I believe, the current law notwithstanding."

Suggested Remedy: Provide that any reduction in the prior U.S. physical presence requirements of Section 301(g) of the INA be made to apply to children age 18 years or younger at the time of enactment, as proposed in Congressman Alexander's bill, H.R.4561.

(4) Ensuring That No Child of a U.S. Citizen is Born Stateless

The Need: When a U.S. parent is prevented under Section 301(g) from transmitting U.S. citizenship to his or her child born abroad, the child may become stateless. This situation arises in the following way: When the U.S. parent is ineligible to transmit U.S. citizenship, the child's citizenship must then derive either from the non-U.S. parent or the country in which the child was born. If the non-U.S. parent is precluded from transmitting his or her own nationality to the child by the laws of that parent's country, and if the country in which the child is born does not grant automatic citizenship to persons born on its soil, the child will be a citizen of no country. Surely Congress did not intend to have this happen to the child of a U.S. citizen!

Suggested Remedy: Section 301(g) should contain a provision waiving the American parent's U.S. physical presence requirement if not doing so would result in his or her child being stateless. Such a proviso is proposed by Congressman Alexander in H.R.4561.

(5) Reinstating U.S. Citizenship to Former Americans

The Need: During the 1950s, '60s, and '70s, an estimated 2,000 American teenagers and young adults living abroad were stripped of their U.S. citizenship, against their will, because they did not leave their families abroad to go reside in the U.S. as required under "old" Section 301(b) -- which has since been repealed. Because they were born outside the United States and only one of their respective parents was a U.S. citizen, these individuals were required to reside in the U.S. for certain periods of years in order to keep the U.S. citizenship they were born with. In 1978, Congress, recognizing this section of the law as unfair and unnecessary, repealed it. But for those who had already lost their citizenship, Congressional action came too late.

In all likelihood, only a relatively small number of those 2,000 persons would come forward now to be reinstated were they to be given the chance. Yet, for that group, regaining their U.S. citizenship is and has always been a matter of paramount importance.

The Case of George Colombier

George Colombier was born a U.S. citizen in Neuilly sur Seine, France on May 30, 1934 of an American mother and a French father. On September 30, 1939, at the age of five, George sailed to New York with his maternal grandmother, also a U.S. citizen. There he stayed for the duration of the war.

In October of 1946, at the age of 12, George returned to France and lived there with his parents for the rest of his childhood (except for a two-month visit to New York in the fall of 1949 when the entire family convened for his great grandmother's 80th birthday). While in New York, he was issued a U.S. passport (valid for two years). He was 15 years old.

At the time in question, "old" Section 301(b) required that, for George to keep the U.S. citizenship he was born with, he had to be physically present in the United States for the five years between the ages of 13 and 18. As a minor child (and an only child) still attending high school and living with his parents, he had no choice but to stay with his family in France.

The requirement thus went unmet. In 1951, when he was 17, a U.S. Consular Officer in Paris revoked his passport and documented him as no longer being a U.S. citizen, thereby intending to sever him from his American roots.

Today, George Colombier is 57 years old. He is a medical doctor who has been successfully practicing eye surgery in Cannes, France since 1965. Despite the forty years which have elapsed since his U.S. citizenship was taken from him, he has always felt and continues to feel American. As he states, "Having my U.S. citizenship back would make the most tremendous difference in my life. I am aware that, if my citizenship were to be restored, I

would be undertaking to pay U.S. taxes and that such restoration would not make my children American citizens. Nonetheless, I still intend to keep trying to get my citizenship back. It is a part of me. It means more to me than I can say."

The Case of Perrine de Brinon

Perrine de Brinon was born a U.S. citizen in France of an American mother and a French father. She spent part of her childhood in the United States before and during World War II. After the war, her family returned to France, since her father's business was there. Perrine had no choice but to return to Europe with her parents.

In Perrine's case, "old" Section 301(b) required her to go to the U.S. prior to age 23 and to remain there for five years. She had, instead, gotten married and was not in a position to demand that her new French husband pull up roots and go to the U.S. Her 23rd birthday "came and went," as she says. The residency requirement went unfulfilled, and her U.S. citizenship was revoked.

Perrine states, "When I divorced and was at last able to make my own decisions, America was closed to me. No longer a citizen, I had become a foreigner in the eyes of my country." Through the years, Perrine has been actively trying to regain her American citizenship. She says, "Since residency requirements [for retaining U.S. citizenship] were abolished for individuals such as myself in 1978, I cannot understand why there should be a second-rate category of American-born persons who are unable to regain their lost citizenship, although they possessed such a status for a period of twenty-three years."

The Case of Robert Michaux

Robert Michaux was born a U.S. citizen in Paris on June 16, 1950 of a French father and an American mother. He made frequent trips to the United States throughout his childhood and, at age 18, he lived for six months in Washington, D.C. He registered for the U.S. Selective Service there, but was not called up.

Robert had intended to enter the MBA program at San Francisco State College, but just before he was to enroll, his father suffered a heart attack, and he was obliged to take over the family business in France. As a result, he was unable to complete the five years of U.S. residence required under the law at the time. At age 26, his passport was not renewed -- his citizenship was revoked, a painful loss about which he continues to feel strongly. Despite the fact that he is no longer a U.S. citizen, he travels frequently with his wife and children to the United States. According to Robert: "Getting my U.S. citizenship back would be the fulfillment of a dream."

Suggested Remedies:

(a) Amend Section 324 of the INA to enable individuals in this group to be reinstated, should they so desire. To that end, the W.F.A.A. proposes the following language:

In Subsection (c)(1), after the word "nationality," insert "or (2) a person who was a citizen of the United States at birth and lost such citizenship for failure to meet the U.S. presence requirements under Subsection 301(b) of this Act as it existed prior to October 10, 1978,".

Change Subsection (c)(2) to (c)(3) and Subsection (c)(3) to (c)(4).

In [new] Subsection (c)(3) insert after the sentence ending in "naturalization court." the following: "For persons under Subsection (c)(2) who take an oath of allegiance, the subsequent filing for a U.S. passport shall be evidence of the U.S. citizenship of the person and shall mark the date on which such U.S. citizenship was reacquired."

Providing these individuals with the opportunity to be reinstated is the fair, right, and proper thing to do. The proposed procedure would reinstate only those individuals who would come forward and ask to be reinstated. It would not grant blanket citizenship to the group as a whole, nor would it grant retroactive citizenship. Finally, the procedure proposed is simple, clear, and already provided for in current immigration law. It would rectify a long-standing wrong perpetrated in the past against individuals whose U.S. citizenship was taken from them through no fault of their own.

Or, in the alternative:

(b) Include this group of persons along with those addressed in Congressman Mineta's bill, H.R.4007, which we support as an important step in redressing an unfair citizenship provision pertaining to persons born before 1934. Since the W.F.A.A. proposal picks up where H.R. 4007 leaves off, it is reasonable to suggest that the same waiver of the requirement to have resided in the U.S. be granted also to persons born after 1934. This could be accomplished by adding a reference to Section 301(g) just before the reference to Section 301(h) in Section 2(b) of the bill. Such a waiver would be an alternative way to restore U.S. citizenship to the individuals in question who were citizens once, but who lost their citizenship as teenagers and young adults under the same archaic law that the Mineta bill seeks to rectify.

. . .

Mr. Chairman, this concludes my prepared testimony. I stand ready to answer questions and help develop remedies for the problems facing Americans abroad as outlined above. Again, on behalf of the World Federation of Americans Abroad, I thank you and the subcommittee for the opportunity to testify today.

Mr. MAZZOLI. Mr. Alegi.

STATEMENT OF PETER C. ALEGI, CO-PRESIDENT, FEDERATED LEAGUE OF AMERICANS AROUND THE GLOBE

Mr. ALEGI. Thank you, Mr. Chairman. What I'd like to put before us under this marvelous guillotine is that 3.5 million civilians who are overseas now are to be contrasted, in making the value judgments we need on this proposed legislation, with the tens of thousands of Americans who were overseas when restrictive legislation was first introduced. It's a different world.

As others have mentioned, businessmen, professionals, and people who have gone over on educational programs have created an American community overseas which is the equivalent of the 25th or 26th largest State in the Union. It is a different set of circumstances, and I respectfully submit Congress should reexamine the fundamental policies.

The issue that I would like to focus on is 202(a)(4), the time restrictions on citizenship transmission. Why should there be time restrictions? Two Government agencies have stated that the Congress has indicated that, to acquire U.S. citizenship at birth, we should be exposed to American political and social values by being raised by a parent who had spent sufficient time in the United States to have absorbed some of these attributes. Maybe that made sense in the 1920's, when Mr. Hemingway was waiting for the boat to arrive with his copy of the New York Times. It makes no sense now. I wake up in the morning; I turn on CNN. I see last night's Dan Rather. We have U.S. newspapers that are printed now in Europe that are no longer printed and that you don't get to see here in the United States. We have magazines that are for the American community. We have two political parties. The group I represent today, FLAAG, is founded by Democrats Abroad and Republicans Abroad.

I've lived overseas 26 years and I've seen these changes. When I moved over in 1965, I thought that my Democratic politics were left behind in New Haven, CT. That's not the case today. I am active, thousands are active in both parties. We know what's going on. We have C-SPAN transmitted. We're able to see the good and the bad.

We suggest that these are factors that make it a bit old-fashioned at the very least, to limit the ability of our children to transmit citizenship. That's one point.

I'm sure my time is up and the red light is about to go on. A second point, in any changes that may be made, I ask you to consider taking care of people who, had they been born 2 or 3 years later, would have been entitled to those benefits. We hear again from Government agencies the difficulties in retroactive application.

I look at my own family. I've given an example in the written testimony, the difference between two sons born in the United States who went with me to Italy when the older of them was only 2 years old, and my third son who graduated 2 days ago from a U.S. university.

There are various provisions of law that would hit these sons differently unless we come up with a rule that includes "a reopener." There should be a limited time in any ameliorative provision, per-

haps 2 or 3 years, when those Americans who want to be recognized as Americans, who are willing to bear the tax burdens, can step forward and affirmatively say, "I want to claim my citizenship." Then we can close it.

But to legislate any amendment, no matter how well-intentioned, that will set up new distinctions within the same family as to whom we can marry and still be sure of remaining American in the family, it seems to me is counterproductive, and we'll be destroying the whole purpose here.

We are pleased to see the increased attention paid to our various causes, citizenship, voting rights, and others. But we do ask that the Congress, through the medium of this subcommittee, among others, recognize that the game has changed. It is an American community overseas.

We do have many sad individual cases which, of course, we put before you as a way of showing that there is a claim for justice and sometimes for mercy as well. But the fact that needs to be appreciated, is, I submit, that there is such a large group doing the work of the United States overseas. We are taking care of handling American business. We are your export agents. We are exponents of American culture. In Rome alone, there are two American universities with 4-year courses; there are 48 branches of American universities which are teaching. Now each of those institutions has educators who will eventually remain there and will, of course, marry locals. The legal provisions that are based on the assumption that only if you have been physically present in the United States for a certain period of time can you be developing an understanding or attachment to the United States, I submit, Mr. Chairman, just do not comport with the realities of life today.

Thank you.

Mr. MAZZOLI. Thank you very much.

[The prepared statement of Mr. Alegi follows:]



**TESTIMONY OF
PETER C. ALEGI
CO-PRESIDENT
FEDERATED LEAGUE OF AMERICANS AROUND THE GLOBE (FLAAG)
BEFORE THE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 20, 1992**

Mr. Chairman, I appear today on behalf of FLAAG, the Federated League of Americans Around the Globe, the largest organization dedicated solely to enhancing the interests of overseas Americans. We thank you for your invitation, which demonstrates the growing concern you and your colleagues have for the special problems of the estimated 3,500,000 civilian United States citizens who reside abroad. The interests we represent are 100% American, without need for qualification by adjective or hyphenated expressions, and we especially avoid the word "expatriate."

The original sponsors of FLAAG were Democrats Abroad (of which I am the current chairman) and Republicans Abroad. We hope that this joint effort by the two major parties will emphasize to Congress and to all Americans that the demands of overseas Americans are not for political preference, power, personal prestige, or special interest, but for our basic rights, especially citizenship. During our short lifetime, FLAAG has attracted tens of thousands of members, principally through the participation of over twenty overseas organizations as group members. Our pledge to our membership is to seek a full and informed hearing in Washington on each issue and to pursue legislative and administrative reforms that can better their lives. We thank the subcommittee and its staff for their response to these efforts and would like to express our general support for the amendments under consideration.

There is an historical background which we should consider before dealing with the specific legislative proposals. First, until relatively recent times, two separate principles of international law provided the only rules the world knew governing citizenship. The more common of which followed bloodline while the other was based upon the geography of birth. Not until after World War I did Congress address in detail the setting of standards for

determining who would be considered citizens of the United States in other than a naturalization context.

While I am unaware of any statistics going back to the twenties, one may state that relatively few Americans were scattered around the globe before Colonel Lindbergh made his flight. While the original Adams family comes to mind along with Ernest Hemingway and his friend Gertrude Stein from the field of literature, American businessmen were few and far between, and the flow of professionals and their families drawn overseas by those businesses had not yet begun to build to a flood. The issues which Congress faced were those of immigration and naturalization rather than the rights of Americans living abroad. Now, however, the estimated 3.5 million civilians overseas amount to 1.4% of the population counted by the 1990 census (a census which did not attempt to count us). I suspect that this is at least ten times the percentage of Americans living abroad than at the time citizenship legislation first became a concern.

The causes of this growth are many: the explosion of international business; the development of international institutions -- beginning with the United Nations and its agencies -- recruiting U.S. citizens; the emergence of educational exchange programs; military marriages immediately following the Second World War; and retirements to what used to be considered less expensive overseas environments.

Looking at the question from a different perspective, with the relative ease of modern travel, both tourism and business have produced what is sometimes termed an interdependent world. Communications are instantaneous. We awake in Rome to view the morning news on CNN or to watch Dan Rather's CBS news taped a few hours earlier by our local station. The International Herald Tribune, long the only publication available to Americans overseas, is now published via satellite in many cities throughout the world besides Paris, including Rome, and even New York, where its parent newspaper has long since disappeared. Alongside the International Herald Tribune, we read USA Today, which is completing ten years of serving the American community overseas. Specialized magazines and local newspapers for overseas Americans have sprung up throughout the world. In addition, MCI and ATT compete vigorously for the vast quantity of telephone traffic back to the United States.

The upshot of this communications explosion is that those of us who live overseas have growing opportunities to inform ourselves on life in the United States, often on a real time basis. This enables us to follow cultural, economic, social and political developments and to be in a position to cast an informed ballot. As you know, a series of overseas voting acts have simplified requirements for our voting in U.S. federal elections, and proposed amendments, which FLAAG is vigorously pressing, will improve our exercise of these rights.

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The sum of these changes is that an American community has been created outside the boundaries of our nation which is both able to and interested in enjoying the rights and bearing the obligations of United States citizenship. We are greater in number than the population of nearly half of the states of the Union! It is against this background that we ask this committee to consider the amendments before you, which offer so many of our people who are strongly connected to the United States by ties of both blood and culture the opportunity to enjoy rights which in most other modern industrial societies would be theirs as a matter of course.

Recent actions by member states of the European Economic Community -- a common market composed of twelve nations which share much in terms of history and heritage with the United States -- are especially helpful in examining this question. Many of us trace our origins to those countries, including numerous people who are in this room today. The great changes which are taking place in the EEC with respect to recognition of citizenship may be instructive. For instance, two countries with which a large number of us are familiar, Ireland and Italy, have recently made substantial amendments to their citizenship laws, which now operate basically on a grandfathering principle, that is, any person who had at least one citizen grandparent is entitled to citizenship. We here find ourselves tied to residence requirements, and not at the level of the grandparent but at the level of the parent. In our view, this wrongfully denies citizenship to dedicated, patriotic individuals and ignores the realities of American life today, which contains a substantial overseas component. The student going abroad to study and the professor going abroad to teach often stay on and marry and produce offspring who consider themselves Americans and are considered American by the society in which they find themselves. They are frequently our best ambassadors, and their desire to be recognized as citizens means more to them than to many born within the boundaries of the 50 states.

Turning to the specific provisions:

First, we welcome the recognition of the eligibility of U.S. citizens born abroad for the Office of the President, which should result from the adoption of Section 202 (a) (1). The issue which was discussed several decades ago when Governor Romney sought our highest office impacts many overseas Americans, sometimes in curious ways. At the risk of over-personalizing, let me note that I have three sons. Their mother is not a U.S. citizen. Two of my sons were born in the U.S. but moved with me to Italy before they were 2 years old when my professional activity led me to transfer there "temporarily" in July of 1965. Their brother was born in Rome, educated there through high school, and graduated two days ago from a U.S. college. He is very involved politically and socially in U.S. life and will soon be joining an American group which provides teachers to the Third World, in this case, a Township in South Africa. The gap in present law creates the possibility that his career will be more limited than that of his brothers. Congress should exercise its constitutionally granted discretion to determine eligibility for the highest office in the land by defining "natural born" citizen so as to eliminate this pointless potential discrimination.

We support amendment of section 301(g) of the Immigration and Nationality Act. That paragraph presently covers the citizenship of a person with one citizen parent and one alien parent who is born outside the U.S. and its possessions. Presently, the statutory rule would require the citizen parent to have been "physically present in the United States" or its outlying possessions for a period or periods totalling not less than five years, at least two of which after attaining the age of fourteen years. It is proposed to replace those burdensome requirements by instead requiring that the citizen parent shall have been physically present "one year in the aggregate". The amendment is in keeping with the changed facts of American life overseas described earlier. There are literally thousands of persons residing abroad who, in order not to avoid interruption of their educational career or because of financial circumstances, have been unable to come to the United States for the time period currently required. These individuals are functional and valuable Americans, and the interests of the United States are amply protected by the suggested amendment. Existing law presumably reflects congressional policy intending to assure that essential connections with our homeland exist so as to promote a meaningful exercise of the right to vote. Extensive U.S. educational systems overseas (which are in need of greater support) make a substantial contribution towards the realization of these civic goals, together with improved communications.

We view the one year aggregate requirement as sufficient under today's circumstances. We believe it should be passed and adequately tested over the next few years. It may well be that at some future time we will return to recommend its application at the level of grandparent rather than the parent level. It is difficult, we realize, to formulate any standard for avoiding perpetual, unlimited transmission of citizenship which will not create some unfairness. We are confident that as experience develops with these less stringent rules, the Congress will have an adequate response.

We would, however, urge reconsideration of the effective date provided for by paragraphs (3) through (5) of subsection (a) of the proposed amendment. As now drafted, it would prevent our children of more than 18 years of age from enjoying the benefits of these provisions. It is difficult to discern an appropriate rationale for discriminating among our children. There will be many families with children born one year apart whose citizenship status and ability to transmit citizenship will be different. This distinction serves no purpose but to highlight the unfair treatment presently existing. Indeed, it would create an invidious discrimination which would in many other areas of law not withstand constitutional scrutiny, although that certainly is not my principal reason for urging reconsideration. Our fundamental concern is promotion of citizenship rights. Nevertheless if a need is felt to limit the applicability of these amendments, we suggest that it would be much more appropriate to introduce a transitional provision giving affected individuals who have already reached the age of 18 a period of, say, one year in which to opt for citizenship. Wholesale disqualification is simply not justified, especially in the context of a bill intended to right existing wrongs.

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We would also ask that the amendments be expanded to include a plan for naturalization of children adopted abroad. A dozen members of this House were with us in Paris two years ago when Ben Davis, a U.S. lawyer working with an international institution in Paris, described the difficulties facing him and his American-born wife in obtaining U.S. citizenship for their adopted children. As Ben Davis wept, several congressmen wept too.

The law as it reads today would require Ben Davis to abandon his work in the field of international arbitration and to take up residence in the United States to provide his children with American citizenship. No valid United States government interest is involved. Rather, a traditional reluctance even to appear to grant "easy" citizenship seems to linger on. Once more, we invite you to consider the changed world in which these issues now are raised. Is it in the interest of the United States' overseas business and broader concerns that dedicated young citizens like Ben Davis and his wife work abroad for international organizations, or should they be forced to abandon their overseas work in order to protect their rights? We strongly urge that simplified, expedited procedures for the naturalization of the minor children of U.S. citizens residing abroad be adopted.

FLAAG also recommends that the bill before us be expanded to include a provision which would enable individuals who lost their right to citizenship under the now repealed provisions of Section 301(b) to be reinstated in their citizenship in accordance with the provisions of Section 324(c). The number of persons eligible under a reopener provision is uncertain. But again we oppose the concept that citizenship should be an entitlement the right to which depends upon a few days or weeks, more or less, especially when the legislation has subsequently changed in a manner favorable to retaining citizenship. In today's world, such punishment is self-defeating. Again, FLAAG proposes a "reopener" which would provide a period of time in which eligible individuals may opt to regain their citizenship.

In conclusion, the membership of FLAAG salutes this committee, and in particular Congressman Mazzoli and Congressman Berman for their sensitivity in recognizing the need to avoid the pointless denial of citizenship to tens of thousands of your fellow Americans. We pledge to use our citizenship not as a mere personal asset, but as a means of contributing, each in our own way, to the ongoing well-being of the United States of America.

Thank you.

Mr. MAZZOLI. Mr. Myers.

Mr. MYERS. Thank you, Mr. Chairman.

Mr. MAZZOLI. Excuse me, I'm sorry, Ms. Davis is actually listed next. We'll go to Ms. Davis and then Mr. Myers.

STATEMENT OF MARTHA F. DAVIS, STAFF ATTORNEY, NOW LEGAL DEFENSE AND EDUCATION FUND, ACCOMPANIED BY LESLYE ORLOFF, DIRECTOR OF DOMESTIC VIOLENCE, AYUDA

Ms. DAVIS. Thank you. I'm testifying about section 108.

The battered spouse waiver was intended to enable conditional residents subjected to domestic violence to leave abusive marriages. These women may be physically or psychologically abused. For those experiencing extreme cruelty, their husbands may have confined, demeaned, neglected—particularly in cases of children—they or otherwise abused them. The batterer may be using the petitioning process itself as a vehicle for abuse by threatening to withdraw the petition. And the batterer may threaten to escalate abuse if they seek a divorce or seek help. These are the women and children that the battered spouse waiver is intended to assist.

At the outset, I want to make clear that the relationship between extreme cruelty and physical battering is one of degree, but they are all part of the same continuum. The INS requirement that battered spouses or children submit to a mental examination in order to prove extreme cruelty and qualify for the waiver undermines this purpose of the legislation. Conditional resident women who are in these types of abusive situations should certainly be at least in the same position as conditional resident women who are physically abused. Yet, the INS regulation requires that women experiencing extreme cruelty present the affidavit of a licensed mental health professional in order to even get in the doorway and make the application.

The INS has testified that they have received no complaints from applicants about this requirement. First of all, I want to say that certainly advocacy groups that are concerned about this have complained a great deal on behalf of their clients, and I wanted to introduce Leslye Orloff who is here today from Ayuda, a domestic violence project in D.C. that represents hundreds of battered immigrant women each year. She's available to answer questions specifically about their situations.

Second, the reason the INS hasn't received any complaints is that this requirement actually deters women from applying, so those who would complain can't even mount an application because licensed mental health professionals are simply not available to battered immigrant women. There are language difficulties. There are financial difficulties that confront women who try to obtain these sort of professional affidavits. Relatively few immigrant women actually seek help in battered women shelters because they are more apt to go to family, friends, or churches, as we heard this morning. And even if they do, very few clinics have licensed professionals on staff that could provide these kinds of affidavits. In addition, there are cultural barriers.

More fundamentally, this requirement follows a familiar pattern. Battered women—or, for that matter, any woman—charging abusive behavior, such as rape or sexual harassment—find their own

mental state at issue, rather than the facts of the abuse and the behavior of the abuser.

Other Federal institutions that have to face this issue and make determinations about domestic violence have taken steps to address this question, notably the Federal courts and the U.S. Justice Department, of which the INS is a part. The INS should take advantage of the training models that have been employed by these other institutions on domestic violence rather than denying women access to even apply for the waiver and perpetuating the gender bias in their adjudication of this issue.

There is, in fact, no sound reason for requiring this kind of proof as a prerequisite of establishing extreme cruelty. I'm saying "requiring it." Obviously, you know, in a perfect world, we would submit every piece of evidence we could find, but the problem is actually requiring this in order to even make the application.

The INS doesn't require specific affidavits on political asylum or deportation cases, where it recognizes its responsibility to assess relevant evidence and credibility based on the evidence submitted. That's the nature of an adjudicatory proceeding: That the agency is required to assess credible evidence.

The INS assertion that fraud will increase as a result of this amendment defies credulity. The Married Fraud Act's purpose is not undermined by eliminating the requirement of a mental health affidavit. Applicants must still prove the existence of a bona fide marriage. That's the crux of the Marriage Fraud Act. It's untouched by this change. In addition, I guess the figures that we got this morning indicating that only 84 or 85 applications under the battered spouse waiver have been received since 1991 indicate that this is not a fertile area of fraud. This is an area where women who are desperately in need are using the waiver in exactly the way that it was intended to be used, in order to escape abusive relationships.

Finally, I wanted to make a couple of factual clarifications about the history of this provision, since it's come up earlier in the proceeding. The battered spouse waiver was enacted in 1990. Prior to that time, there was no formal mechanism for the INS to receive applications by battered spouses to try to get a waiver of the application. So what the INS indicated this morning about its procedures for assessing evidence on physical battering prior to 1990 I'm afraid is misrecollection, because there simply was not a formal mechanism prior to 1990 for making those kinds of applications. In 1990, the physical battering and the extreme cruelty provisions were enacted as part of law, and the regulations that we're considering relate to applications that have been made since 1990.

Prior to that time, the only two waivers available were the good faith, good cause termination of marriage waiver and then the waiver available for extreme hardship upon deportation. I, like the other speakers before me, will get back to the committee on what the requirements were for proving those two waivers.

Mr. MAZZOLI. I'd like that very much.

[As of the time of publication, this document had not been received.]

Ms. DAVIS. Thank you.

Mr. MAZZOLI. Thank you, Ms. Davis. That really gets to a point I'm going to talk about in just 1 minute.
[The prepared statement of Ms. Davis follows:]

**PREPARED STATEMENT OF MARTHA F. DAVIS, STAFF ATTORNEY, NOW
 LEGAL DEFENSE AND EDUCATION FUND**

SUMMARY OF TESTIMONY

(1) Section 108 clarifies Congressional intent that the battered spouse waiver be available to individuals subjected to either physical battering or extreme cruelty. Unless this clarification is made, INS regulations will continue to effectively deny waivers to immigrant women who are subjected to extreme cruelty by imposing an impossibly high standard of proof, i.e., the requirement of an affidavit of a licensed mental health professional. Not only is such an affidavit beyond the means of most immigrant women, it is often impossible to find mental health professionals with appropriate language skills to examine clients. Further, in many instances mental health counselling violates cultural taboos that women cannot overcome. These barriers are particularly insuperable for women who have not left the abusive relationship or who have fled to friends or relatives rather than to a professionally-staffed shelter.

(2) The claim that affidavits of licensed mental health professionals are necessary to enable INS officers to make a determination of extreme cruelty is flawed. INS officers routinely apply standards such as "extreme hardship," and "well-founded fear of persecution." No requirement of affidavits is used to deter applications in those instances. Instead, the INS recognizes that it must assess the evidence that is presented to it, based on its own determination of credibility.

(3) The INS assertion that a mental health professional's affidavit is necessary to detect fraud is also a red herring. The potential "fraud" addressed in the Marriage Fraud Act is in the underlying marriage, not in any claim of abuse. Permitting immigrant women to apply for a battered spouse or child waiver based on credible evidence of extreme cruelty will in no way undermine the INS determination of the marriage's bona fides.

(4) The INS rule mandating a licensed mental health professional's affidavit in order to prove "extreme cruelty" is part of a pattern of decisionmakers according women diminished credibility based on gender stereotypes. The findings of the California Judges Survey of all 1500 judges in that state dramatically demonstrate that gender influences the way adjudicators accord credibility to victims of domestic violence. Responding to the question, "In a proceeding involving allegations of domestic violence, supporting declarations and testimony are often exaggerated," fifty-three percent of the male judges agreed or strongly agreed with this statement. Only twenty-five percent of the female judges took this position while seventy-five percent of them disagreed or strongly disagreed. The solution to this "gender-gap" in credibility determinations is not to impose additional proof requirements to deter applicants, but to train adjudicators to understand domestic violence and to overcome their own biases in making determinations.

INTRODUCTION

Mr. Chairman and Members of the Subcommittee:

On behalf of the NOW Legal Defense and Education Fund ("NOW LDEF"), we would like to thank the Subcommittee for the opportunity to testify today. Founded in 1970 by the leaders of the National Organization for Women, NOW LDEF is a nonprofit civil rights organization that performs a broad range of legal and educational services nationally in support of women's efforts to secure equal rights. We are particularly concerned about the intersection of violence against women and the rights of immigrant women, and we are active members of the New York-based Network for the Rights of Immigrant Women, a group of service providers, women's organizations and individuals working for the rights of immigrant women.

On May 17, 1991, the Immigration & Naturalization Service ("INS") issued an interim rule implementing the "battered spouse and child waiver" to the Marriage Fraud Act,¹ enacted as part of

¹ 56 Fed. Reg. 22635-38 (1991) (codified at 8 CFR § 216.5)

the Immigration Act of 1990. Among other things, this rule defines the terms "battered" and "extreme cruelty" for purposes of the waiver, and sets out guidelines and requirements for proof of these elements.²

This interim rule has had and will have an enormous impact on the safety and well-being of immigrant women and children. In particular, as discussed below, the rule thwarts Congressional intent in enacting the waiver by imposing an impossibly high standard of proof for establishing extreme cruelty such as confinement, neglect, kidnapping and threats of violence. The INS rule effectively denies the benefits of the waiver to women subjected to extreme cruelty, solely because they lack access to a licensed mental health professional.

Background Of Waiver And Description Of Regulations

The battered spouse waiver was enacted in recognition of the serious problem posed by domestic violence against immigrant women and children, and the role of spousal sponsorship requirements in facilitating that violence. Following the passage of the Immigration Marriage Fraud Act of 1986, it became apparent that, because the Act gave the citizen or resident spouse enormous control over the conditional resident's immigration status and thus the ability to live and work in the

² Additional issues raised by the interim rule are discussed in Davis & Calvo, "INS Interim Rule Diminishes Protection for Abused Spouses and Children," 68 Interpreter Releases 665 (June 3, 1991). See also Calvo, "Spouse Based Immigration Laws: The Legacies of Coverture," San Diego L. Rev. (forthcoming, 1992).

United States, some citizens and residents used the requirements of the Act as a means to perpetuate domestic violence and abuse.³

Congress reacted by passing, as part of the Immigration Act of 1990, an additional waiver available in instances of abuse of the conditional resident or a child by the citizen or resident spouse.⁴ The conditional resident qualifies for the abuse waiver by showing that she entered into the marriage in good faith and that she or a child was subject to battering or extreme cruelty by the citizen or resident spouse.⁵

The INS regulations implementing the abused spouse or child waiver defines the statutory terms "battered" and "extreme cruelty" together as including (but not be limited to) "any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury." It further states that "psychological or sexual abuse or exploitation, including rape, molestation, incest or forced

³ 36 Cong. Rec. H8642 (daily ed. Oct. 2, 1990 (statement of Rep. Louise Slaughter (D-N.Y.)). It is worth noting that a large number of abused immigrants whose spouses refuse to file an initial petition on their behalf cannot obtain conditional resident status and are unaffected by the availability of the battered spouse waiver. Instead, they will be able to leave these abusive relationships only if Congress enacts new legislation permitting a waiver of the initial sponsorship requirement upon proof of abuse.

⁴ In addition, under the 1990 Act, a waiver applicant can show that she entered into the marriage in good faith but that the marriage has been terminated. She no longer need demonstrate that the marriage was terminated for good cause. INA § 216(c)(4)(B).

⁵ INA § 216(c)(4).

prostitution" will be considered "acts of violence."⁶

Despite this joint definition, the regulation provides different criteria for evidence demonstrating "physical abuse" and evidence demonstrating "extreme mental cruelty," imposing burdensome requirements only in the latter instance.⁷ A waiver application based on extreme cruelty must be supported by the affidavit of a licensed clinical social worker, psychologist or psychiatrist.⁸ In contrast, to prove physical abuse, a waiver applicant may submit evidence including, but not limited to, reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel.⁹

The requirement of a mental health affidavit to prove extreme cruelty undermines the Congressional intent that the battered spouse waiver should "ensure" that neither a spouse nor a child would be "entrapped in the abusive relationship by threat of losing their legal status."¹⁰

⁶ 8 CFR § 216.5(e)(3)(i).

⁷ "Extreme mental cruelty" is not a term from the statute, which refers to "extreme cruelty."

⁸ 8 CFR § 216.5(e)(iv)-(vii).

⁹ 8 CFR § 216.5(e)(3)(iii). The open-ended wording of these regulations indicates that an applicant might also rely on her own affidavit or testimony of other witnesses.

¹⁰ H.R. Rep. No. 723 at 78. In approving the new waiver, the House Judiciary Committee acknowledged that in many cases there are obstacles preventing a victim of domestic violence from initiating a divorce, such as fear of further physical violence or lack of resources to pay a lawyer. H.R. Rep. No. 723 at 51. See also 136 Cong. Rec. 8642 (daily ed. Oct. 2, 1990) (statement of Rep. Louise Slaughter). The House report also made it clear that a wide variety of evidence should be accepted to support the

The Pervasiveness Of Domestic Violence

The Attorney General of the United States as well as others have recognized that domestic violence, particularly wife abuse, is a serious problem in the United States.¹¹ An estimated 3 to 4 million American women are battered each year by their husbands or partners.¹² Ninety-five percent of the victims of domestic violence are women.¹³

Not surprisingly, abuse is also a fact of life in many immigrant families. A recent survey conducted by the San Francisco-based Immigrant Women's Task Force of the Coalition for Immigrant and Refugee Rights found that 20% of the Filipina and 34% of the Latina women surveyed had been subjected to either physical, emotional or sexual abuse by their domestic partner.¹⁴ Domestic violence and spousal abuse is also a serious problem in Asian communities. According to one survey of 150 Korean immigrant women, 60% had been abused by spouses.¹⁵ Some experts

waiver application and that the Attorney General's discretion to decide to deny the waiver would be limited to rare and exceptional circumstances. Id. at 78-79.

¹¹ Attorney General's Task Force on Family Violence, U.S. Department of Justice, Final Report 2 (1984).

¹² E. Stark, "Wife Abuse in the Medical Setting" (1981).

¹³ Bureau of Justice Statistics, Report to the Nation on Crime and Justice (1983).

¹⁴ Hogeland & Rosen, Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity 15-16 (1990).

¹⁵ Ramirez, "Violence at Home Grips Alien Women," San Francisco Examiner, March 10, 1991, A20, col.1. See also Lin, "Is INS Hindering Abused Wives?," New York Newsday, July 8, 1991, p.21, col.1.

speculate that the experience of immigration, as well as different gender roles and expectations in a new country, aggravate spousal abuse.¹⁶

While each situation is different, spousal abuse often begins gradually. Seemingly innocent tensions or disagreements are followed by threats and mental cruelty, finally culminating in physical violence.¹⁷ Thus, in those instances where psychological, rather than physical, abuse is present, victims may be at risk of serious harm, either because of the real possibility of physical violence in the future or because of the harmful effects of psychological abuse itself.

The Realities Facing Immigrant Women

Women who must depend upon a sponsoring spouse for their immigration status are particularly vulnerable to exploitation and abuse within their marriage.¹⁸ Battering spouses may use their control over their victim's immigration status to coerce

¹⁶ Jang, "Triple Jeopardy: The Plight of Battered Immigrant and Refugee Women," 19(2) Immigration Newsletter 6 (1990); Banales, "Abuse Among Immigrants," The Washington Post, Sept. 16, 1990, E5.

¹⁷ Congressional Caucus for Women's Issues, "Violence Against Women," Jan. 1992, p. 5. See also Family Violence Prevention Fund, Coalition for Immigrant & Refugee Rights and Services, Immigrant Women's Task Force, and National Immigration Project of the National Lawyers Guild, Inc., Domestic Violence in Immigrant and Refugee Communities: Asserting the Rights of Battered Women, at II-5.

¹⁸ Since 1930, the majority of immigrants to the United States have been women, with female immigrants most predominant in categories of spouse-based immigration. Houstoun, Kramer & Barrett, "Female Predominance of Immigration to the United States Since 1930: A First Look," 18 Int'l Migration Rev. 908, 909, 922 (1984).

women to stay in an abusive relationship. Further, because of the battering spouse's control over his victim's legal status -- encompassing the right to work, the right to social services and the right to reside in the United States -- immigrant women may feel that they have little real choice but to submit to continued abuse of themselves or their children.

The legal control that battering spouses exert over their victims' immigration status is often compounded by immigrant women's isolation in a strange new country. Many immigrant women are poor. A survey of immigrant women in the San Francisco area found that incomes were well below the national poverty level.¹⁹ An abused immigrant woman's poverty may be heightened by the fact that her husband controls the family finances, and she cannot draw on this money to pay for legal assistance, filing fees, psychological counseling or other services, without incurring more spousal abuse.

Many immigrant women are also isolated by language and cultural barriers, which deter them from seeking services if they are abused. For example, 75 different languages are spoken in Northern Virginia, yet the Domestic Violence Program in Alexandria, Virginia provides regular counselors in only four of those languages.²⁰ Even when immigrant women seek help, many shelters turn them away because of concerns that funding streams

¹⁹ Hogeland & Rosen, Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity 10-11 (1990).

²⁰ Banales, "Abuse Among Immigrants," The Washington Post, Sept. 16, 1990, at E5.

will not cover services provided to immigrant women and because of language barriers to providing services.

There are myriad examples of the types of extreme cruelty to which this vulnerable population is subjected by battering spouses. Battered immigrant women served by Main Street Legal Services, Inc., a legal services office located at the City University of New York Law School in Flushing, Queens, have been

locked up in their apartments or in one room of their apartments, have been deprived of necessary medical care and medication, of food for herself and/or her children, and of money to purchase food and other necessities. Batterers will frequently abuse or threaten to abuse a woman's pet, as well as destroy her or her children's property, particularly things that are very dear to her and will be difficult to replace.²¹

The Hostos Women's Center, located at Hostos Community College, City University, in Bronx, New York, has also counseled women who have been confined by their battering husbands, and who have been stalked by abusers seeking to psychologically intimidate them.²²

We know about these stories because the battered women were able to contact service providers for help. Unfortunately, many more women are unable to contact the police or seek help from other "institutional" sources. The San Francisco area survey cited above found that only 6 women -- out of 136 who acknowledged abuse -- had ever called the police for help. The

²¹ Letter to INS from Maria Arias and Pamela Goldberg of Main Street Legal Services, dated June 14, 1991, re. INS no. 1423-91, Interim Rule, Section 701 of the Immigration Act of 1990.

²² Personal communication, Marta Rivera, Director, Hostos Women's Center, Bronx, New York, March 10, 1992.

factors identified as contributing to their isolation and failure to seek services included: (1) fear that abuse would escalate; (2) fear that husbands would withdraw sponsorship petitions; (3) lack of fluency in English; (4) lack of support from family and friends; (5) lack of access to culturally sensitive services."²³

Issues Raised By The Standard Of Proof For Extreme Cruelty

The proof requirement that the interim rule imposes on spouses and children who have been subjected to "extreme cruelty" raises a number of serious problems.

First, the ambiguity of the INS definition of battering and extreme cruelty is problematic. Because battering and extreme cruelty are given a single definition, it is impossible to ascertain what abuse is considered "physical abuse" for purposes of the waiver application and what abuse falls into the category of "extreme cruelty." Yet because of the different types of proof that must be submitted for each category of abuse, this distinction is critical for a waiver applicant. For example, should an applicant who has been subjected to "forceful detention" rely on police records, or must she obtain the affidavit of a licensed clinical social worker? What type of abuse -- physical abuse or extreme cruelty -- is neglect of a child? The INS regulations give no guidance. However, if the

²³ Family Violence Prevention Fund, Coalition for Immigrant & Refugee Rights and Services, Immigrant Women's Task Force, and National Immigration Project of the National Lawyers Guild, Inc., Domestic Violence in Immigrant and Refugee Communities: Asserting the Rights of Battered Women, at II-2 (citing Hogeland & Rosen survey).

applicant makes the wrong choice, in the absence of any mechanism for appeal, the consequence may be an immediate loss of legal status.

Second, as a practical matter, immigrant women and children are unlikely to have access to professionals of the type required by the INS. Few domestic violence shelters have licensed clinical social workers on staff, much less psychologists or psychiatrists. Those licensed clinical social workers who are employed by shelters are typically in management positions, and do not have responsibility for direct client contact.²⁴

Most abused immigrant women will not even have contact with shelters, but will instead flee to family or friends. For these women, the lack of access to mental health professionals is compounded by their lack of resources. Very few women fleeing an abusive relationship will be able to first locate, then pay for a mental evaluation by a psychologist or other professional.²⁵

Third, cultural factors prevent many immigrant women from obtaining a mental health affidavit. Patricia Eng, Director of the New York City Asian Women's Center, reports that even when

²⁴ Personal communication, Patricia Eng, Director, New York Asian Women's Center, May 13, 1992; personal communication, Debbie Lee, Family Violence Prevention Fund, San Francisco, May 7, 1992.

²⁵ Hogeland & Rosen, *supra* note 2, at 10-11 (monthly incomes of immigrant women typically below national poverty line); Letter to INS from Maria Arias and Pamela Goldberg of Main Street Legal Services, dated June 14, 1991, re. INS no. 1423-91, Interim Rule, Section 701 of the Immigration Act of 1990 (describing financial difficulties faced by poor immigrant women seeking to apply for battered spouse waiver).

Asian women seek help at the Center's shelter -- already overcoming cultural taboos against acknowledging abusive relationships -- it is "culturally inconceivable" for them to submit to counselling by mental health professionals.²⁶ Most dramatically, the Center's clients adamantly refuse treatment even when they are suicidal. The cultural taboos and shame associated with mental health counselling and therapy are simply too strong to overcome.

Blaming The Victim And Gender Stereotyping

The INS's stringent proof requirement, focusing exclusively on the applicant's mental state rather than the abuser's activity, is based on a misconception about what "abuse" is and how it may be proved. In the preface to the regulations, the INS claims that professional affidavits are necessary because most Service officers "are not qualified to make reliable evaluations of an abused applicant's emotional or mental condition."²⁷ However, as with claims of sexual harassment, rape and other acts of aggression and violence primarily directed against women, a waiver applicant's mental condition is not and should not be at issue. The question before the INS -- whether extreme cruelty occurred -- is not a subjective determination based on the applicant's mental state, but requires an inquiry into the facts of the abuser's behavior.

²⁶ Personal communication, Patricia Eng, Director, New York Asian Women's Center, May 13, 1992.

²⁷ 56 Fed. Reg. 22636 (May 16, 1991).

Further, a mental examination may not be probative of whether abuse occurred. An emotionally resilient woman who has been deprived of medical care or deprived of economic support may legitimately claim the protection of the waiver, even if she has been able to mentally cope with her predicament. In her case, a professional's affidavit may reveal nothing about the abuse, while her own factual affidavit and affidavits of witnesses, clergy or others may clearly establish that she was subjected to extreme cruelty within the scope of the waiver. Not will the professionals designated by the INS even necessarily be the best judges of whether abuse has occurred, in contrast to shelter workers, clergy and others with more extensive experience working with abuse victims. In one study, nearly half of the psychotherapists surveyed failed to identify obvious evidence of domestic violence -- despite their professional training (and licenses).²⁸

The INS rule mandating a licensed mental health professional's affidavit in order to prove "extreme cruelty" is part of a pattern of institutional decisionmakers according women diminished credibility based on gender stereotypes. Ironically, the INS has exhibited few qualms about the decisionmaking entrusted to it in areas where women are not the overwhelming majority of applicants, such as determinations of a "well-founded fear of persecution" in asylum cases or "extreme hardship" in

²⁸ See Harway & Hanson, "Therapists' Recognition of Wife Battering: Some Empirical Evidence," 6 Family Violence Bulletin 16 (Fall 1990).

deportation cases.

Gender bias such as that demonstrated in the INS regulation implementing the battered spouse waiver is pervasive in domestic violence cases, where "[i]nstead of focusing on why men batter and what can be done to stop them, many judges and court personnel ask battered women what they did to provoke the violence, subject them to demeaning and sexist comments, shuttle them from court to court, and issue mutual orders of protection when the respondent has not filed a cross-petition and there is no evidence that the petitioner was violent."²⁹ In one court proceeding in Maryland, for example, a judge dismissed a woman's testimony concerning her husband's violent threats, stating that,

I don't believe anything you are saying. The reason I don't believe it is because I don't believe that anything like that could happen to me. If I was you and someone threatened me with a gun, there is no way that I would continue to stay with them. There is no way I would take that kind of abuse from them. Therefore, since I would not let it happen to me, I can't believe that it happened to you.³⁰

The findings of the California Judges Survey of all 1500 judges in that state dramatically demonstrate gender influences the way adjudicators accord credibility to victims of domestic violence.³¹ Responding to the question, "In a proceeding

²⁹ L.H. Shafran, "Overwhelming Evidence: Reports on Gender Bias in the Courts," Trial 30 (Feb. 1990).

³⁰ Testimony from a public hearing witness (Roslyn Smith, Mont. City, TR. MD. pp. 97-102) in Gender Bias in the Courts (1989), Report of the Maryland Special Joint Committee on Gender Bias in the Courts.

³¹ California Judges' Survey, 1989, Appendix D., p.3, in Achieving Equal Justice for Women and Men in the Courts.

involving allegations of domestic violence, supporting declarations and testimony are often exaggerated," fifty-three percent of the male judges agreed or strongly agreed with this statement. Only twenty-five percent of the female judges took this position while seventy-five percent of them disagreed or strongly disagreed. Id.

The solution to this "gender-gap" in credibility determinations is not to impose additional proof requirements to deter applicants and undermine access to the adjudicatory system, but to train INS decisionmakers to understand domestic violence, focus on factual determinations and overcome their own biases in making determinations.

Numerous specialized training models have already been employed by judges, police and other decisionmakers working with abuse victims. These training models can be readily adapted for INS officers, to assist them in making fair and accurate decisions.

The INS Responsibility To Assess Credibility

Contrary to INS statements defending these regulations, the question of whether abusive activity occurred and the credibility of affidavits concerning that activity are precisely the types of judgments that INS officers are regularly and appropriately called upon to make. As discussed above, INS officers routinely make such judgments when considering political asylum applications and orders of deportation.

Though the INS has suggested that stringent proof

requirements are necessary to deter fraud, there is simply no basis for the INS assumption that individuals will fake a history of abuse and extreme cruelty, particularly when other waiver options are more readily available. Further, it is important to remember that the Marriage Fraud Act is designed to deter fraudulent marriages. This primary purpose will be unaffected if a more reasonable standard of proof for extreme cruelty is adopted. The INS will still be in the same position vis-a-vis its determinations of the underlying bona fides of the marriages, a requirement for every waiver.

Finally, the INS's assertions of pervasive fraud in waiver applications must be taken with a grain of salt, in light its prior use of spurious figures to support such assertions. At the July 1985 hearings before the Senate Subcommittee on Immigration and Refugee Policy that preceded enactment of the Marriage Fraud Act, the then-Commissioner of the INS testified that "based on a preliminary survey . . . on marriage fraud, and this is in three cities during fiscal year 1984, we believe that as much as 30 percent, which is an extremely high figure, of the spousal relationships may be fraudulent."³² Yet in sworn deposition testimony, the designer and project director of the "fraud survey" acknowledged that the survey was intended to measure INS workload and "it would not be justified for [recommending

³² See Fraudulent Marriage and Fiance Arrangements to Obtain Permanent Resident Immigration Status: Hearing Before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 99th Cong., 1st Sess. at 35 (1985).

legislative reform] or any other purpose than measuring workload."³³ The deposition also revealed that high-ranking INS officials were aware of and discussed the deficiency of the survey before it was relied on by the INS at the Senate hearings.³⁴ Nevertheless, the INS did not reveal this deficiency to Congress prior to the enactment of the Marriage Fraud Act.

CONCLUSION

The INS approach to the battered spouse waiver thwarts Congressional intent to extend this waiver to the most vulnerable population of conditional residents -- women and children unable to leave an abusive relationship because of fear or lack of resources -- and instead turns the statute on its head by creating more restrictive proof requirements than those necessary to qualify for a good faith/termination waiver. By imposing unfair and impossible requirements on applicants, the INS abrogates its responsibility to weigh the evidence submitted by victims of extreme cruelty and to make a judgment concerning their applications.

The federal government, particularly the Department of Justice in its 1984 report on family violence, has come a long way in recognizing the extent of wife abuse in the United States and in insisting that measures to protect victims of domestic

³³ Deposition testimony of David Nachtsheim in Manwani v. INS, Civ. No. C-C-88-41-M (W.D.N.C.) at pages 96:4 to 97:3.

³⁴ See id. at pages 95:12-96:3.

violence are not thwarted by decisionmakers with little understanding of abuse. It is ironic that the INS, a component of the Justice Department, seems to harbor the same suspicious attitudes about abuse victims rejected by the Attorney General almost ten years ago.

Mr. MAZZOLI. Mr. Myers.

**STATEMENT OF HOWARD S. (SAM) MYERS III, PRESIDENT,
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

Mr. MYERS. Thank you, Mr. Chairman. I'll go pretty rapidly through this.

We endorse the comments of Ms. Davis from the Legal Defense Fund with respect to the provisions that she testified to. Our testimony is fairly extensive in written form. We've gone each section by section, but I'm going to hit a couple of highlights.

We think that section 104 is a good idea, creating a special non-immigrant status for alien spouses of citizens. We think it should be expanded, some sort of status for spouses and children of permanent residents who face a long period of time before being reunited with their families. We think it would be in line; with perhaps, an amendment to 214(b). Allowing those people to come in as tourists or something of that nature would be useful.

We endorse the foreign adopted children provisions. We're a little concerned that we be very careful about defining what the term "purchases" means in terms of creating a felony. There are a lot of expenses, having adopted a foreign child myself with my wife, there are a lot of expenses one goes through in connection with adopting foreign children, and we must be careful that we're only making felonious the expenses that truly are for criminal activities.

We oppose the repeal of the Cuban Adjustment Act provisions. Primarily, we think it sets off one refugee group against another. I don't see any reason why we should just pick out one group of people and repeal that act, whereas there are a lot of other groups of people in the United States. There needs to be, I think, some vision and some kind of perspective, and some empirical information brought to the table before we start repealing provisions related to specific ethnic groups.

We're concerned over the moratorium on fees. As you know, we've been before you previously, expressing our concern about the way the INS handles fees. I don't know if a moratorium is really what we need. We certainly do continue to require justification by the INS as to how they come up with their fees and what they're doing with their fees. A blanket moratorium, may be somewhat too strong.

A couple of things that aren't in the bill that we think might be good ideas: I'm told that the INS doesn't feel it has the authority to approve investor cases, absent the existence of a specific foreign investor. We don't think they have the right to do that either because the statute doesn't authorize them. We think there should be some authorization language in the statute that allows them to approve structures of investments in which unidentified foreign investors can subsequently fit. That would help a lot of people who are trying to rejuvenate the capitalization of properties which only need capital in order to provide some employment in the country.

We also think that there should be some provisions of law adopted to allow waivers in certain cases of document fraud. There are waivers in just about every other kind of excludability classifications under this act. But there is a provision concerning document fraud creating civil and criminal penalties which was not accom-

panied by any type of a waiver provision. We think that an immigration law that has no waiver provisions at all with respect to any ground of inadmissibility is just not good policy.

As you see from our testimony, we pretty much agree with just about everything in the bill. We commend the leadership, your leadership and the leadership of the committee, in connection with these efficiency measures. The immigration law is certainly something which we, as immigration attorneys, are in favor of efficiency in the administration of them.

Thank you very much for your time.

Mr. MAZZOLI. Thank you very much, Mr. Myers. You stayed within that 5 minutes. We appreciate it.

[The prepared statement of Mr. Myers follows:]

PREPARED STATEMENT OF HOWARD S. (SAM) MYERS III, PRESIDENT,
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

INTRODUCTION

Chairman Mazzoli and distinguished members of the Subcommittee:

I am pleased to have this opportunity to testify on behalf of the American Immigration Lawyers Association (AILA) concerning the Subcommittee's proposed legislation to make particular improvements to our immigration laws.

The American Immigration Lawyers Association is a national bar association of over 3,300 attorneys who practice immigration and nationality law, representing U.S. individuals, families, employers, and the new Americans they sponsor. Founded in 1946, AILA has thirty-three chapters across the country and is an Affiliated Organization of the American Bar Association.

AILA commends Chairman Mazzoli for his interest in the continuing improvement of our immigration laws. Few would disagree that immigration is a complicated and diverse area of law that requires periodic maintenance and fine tuning if it is to work properly. As the major group of professionals representing both U.S. petitioners and alien beneficiaries, we see the daily impact of our immigration laws and are well placed to observe and comment upon where these laws might be made more efficient and equitable.

It is our hope and expectation, Mr. Chairman, that this legislation will contain a number of welcome improvements. However, we observe that, as currently drafted, the bill is fairly limited in the number and scope of changes contemplated. Naturally, as day-to-day practitioners, we perceive many other ways in which our immigration laws can be improved and would encourage the Subcommittee to expand the coverage of this legislation beyond its current reach to promote efficiency and improve adjudications and enforcement.

STATEMENT

Mr. Chairman, in this testimony, I hope to focus the Subcommittee's attention on areas which I feel fall well within the rubric of housekeeping but that may or may not be covered by this draft of the legislation. I would like to discuss particular items individually.

SUGGESTIONS FOR EXPANSION OF THE BILL

Special Status for Spouses and Citizens of Lawful Permanent Residents. The draft bill contains a commendable provision that would provide special nonimmigrant status to spouses of U.S. citizens, pending immigrant processing. We must point out that the need for a special status lies not only with the spouses and children of U.S. citizens, but also with those of lawful permanent residents (LPRs).

As this Subcommittee knows, delays in processing petitions for spouses and children of LPRs and the demand for such visas seriously impairs their availability. Families are being separated for years despite the fact that ultimately they will be reunited in the United States. While an interim nonimmigrant status for spouses of citizens makes sense, such a status for spouses and children of permanent residents makes even more.

First, a special interim status would remove the unnecessary hardship of prolonged separation -- a hardship that is completely unnecessary and yet in human terms is quite severe. The separation is not the consequence of anything the permanent resident does or can do. In fact, the reasons why the family can not be rejoined in the United States are want of visa numbers and because consular officers will not issue nonimmigrant visas to family members who wish to visit. Nothing else. The inability of the government to process these petitions efficiently, a high demand for immediate relative visas, and the unavailability of nonimmigrants visas are the only legitimate obstacles that bar their entry. An interim status would overcome this bar and permit families to be rejoined while an immigrant visa is pending.

Second, a special interim status would remove the impetus for illegal immigration that prolonged separation creates. It is unfair and unrealistic to expect spouses and children to be separated for months or more than a year while visa numbers creep forward. Devoted family members are sorely and understandably tempted to immigrate illegally when the wait for a visa is inhumanly long. Tragically, if they do so, these family members risk severe and lasting immigration consequences and, for wanting to be reunited with family, may forfeit the opportunity to do so legally. The separation is unnecessary, and the consequences avoidable.

Given our commitment to family unification and the hardships involved in prolonged separations due to visa backlogs, we therefore urge the Subcommittee to expand this special status so as to include immediate relatives of LPRs.

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Of course, there are other alternatives of a housekeeping nature that could have the same effect. For example, an exemption could be made from the immigrant intent presumption of INA section 214(b) for B-2 visitors (as was done for H-1Bs and Ls) for persons who are spouses or children of LPRs. However, we suspect that a specially-designated nonimmigrant status may be the least confusing and most manageable solution.

On a related note, with regard to employment authorization and special nonimmigrant status for spouses, we observe that the current provision provides work authorization for persons granted special status. We are aware that there has been legislation introduced that would provide similar status to spouses and children of LPRs but without work authorization. We strongly believe that employment authorization should be available in either instance, whether family of a citizen or of a permanent resident. We are not convinced that there is a legitimate reason to deny employment authorization to these spouses in a special nonimmigrant status, since they ultimately will be entering the job market anyway. If, however, Congress should feel there is a valid reason, then it should at very least provide for employment authorization upon a showing of need, as is currently done for J-2 nonimmigrant spouses. In this way, where the income of the sponsoring spouse is alone insufficient to support his or her family, the alien spouse is permitted to supplement it.

Unnecessary Adjustment Interviews. One "housekeeping" matter not addressed by this legislation which we would like to bring to the Subcommittee's attention is the conduct of unnecessary adjustment of status interviews by the INS. Our proposal would cost the government nothing, yet would speed up case completion and save valuable agency resources.

Adjustment of status is the procedure by which eligible individuals acquire permanent residence without having to leave the United States if they have maintained a lawful nonimmigrant status since entry and have not engaged in unauthorized employment. Under current policy, INS interprets INA section 245 to require a personal interview in each and every adjustment of status case. However, these interviews are not always necessary. In many instances, the determination of whether an individual is eligible for adjustment can be made by review of the papers submitted. Whether or not an applicant qualifies is almost always visible on the face of the application, and many interviews therefore become *pro forma* compliance with INS operating procedure.

The INS' insistence on conducting these interviews is not, however, harmless. Adjustment interviews draw personnel and resources that could be better allocated elsewhere. One has to ask why INS is conducting perfunctory adjustment interviews when serious backlogs in asylum and naturalization adjudications exist. In addition, in many parts

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of the United States, applicants must wait for several months to nearly a year for these interviews to take place. Valuable agency resources are wasted on a practice that does not legitimately enhance adjudications, but instead delays them. The delay in adjustment caused by requiring a personal interview does not serve the interests of the agency, nor does it serve the interests of the applicant whose adjustment and qualification for citizenship is delayed without good cause.

INS should only interview those cases that cannot be adjudicated on the basis of the application alone. For this reason, we recommend that this legislation modify INA section 245 to explicitly authorize INS to waive adjustment interviews where appropriate, thereby freeing up personnel and resources for other more pressing work and streamlining the adjustment process.

Pre-Approved Investor Transactions. Another housekeeping recommendation is to provide for pre-investment rulings by INS that a proposed investment would qualify under the investor immigrant program. Thus far, relatively few investor petitions have been approved and, though our economy could certainly benefit from the creation of more U.S. jobs, potential investors are being discouraged by the complicated nature of the program. Our members report that, if a mechanism were in place that would provide some authoritative clarity to the investment process, foreign investors would be more inclined to participate in the program. A ready solution would be to revise INA section 203(a)(5) to permit INS to issue preliminary rulings of whether a particular investment qualifies, clearing the way for certain structures of prospective transactions, employment arrangements, investment sites, etc. so that individual investors would have greater certainty that their contemplated transaction would satisfy statutory and regulatory requirements.

Consolidation of Annual Allocation of H-1 Visas. We also recommend that the Subcommittee consider pooling H-1B and H-2B nonimmigrant visa numbers to create a single ceiling for all H-1 visas. As the Subcommittee knows, H-1B highly-skilled nonimmigrant workers are critically important to business, industry, and academia. At the present time, there is substantial confusion over the INS counting process and whether the 65,000 visa cap on H-1B visas will prove to be enough to satisfy the demand for highly skilled professionals, while the allotment for H-2B category appears to be adequate. Immediate and uncomplicated solutions are to create a single H-1 cap or to provide a spillover of unused H-2B numbers into the H-1B category. This would not raise nonimmigrant limits beyond the numbers already set by Congress.

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Waivers in Cases of Document Fraud. We would also like to point out an existing inequity in the statute in regard to the treatment of fines for document fraud. As the law is now written, the imposition of any fine for document fraud automatically renders an alien excludable and deportable, without any opportunity to seek a waiver. Document fraud stands alone as one of the few infractions of our immigration laws for which there is no forgiveness, and its absolute bar compromises the ability of an alien to immigrate and obtain the relief necessary to remain with family, communities, and employers in the United States. A single instance of wrongdoing of this type should not merit utter disregard of other, potentially overriding considerations; nor should so stark a penalty be imposed without carefully outlined procedural protections currently not articulated in statute. Given the severity and longevity of automatic excludability/deportability, the INA should be revised to create a discretionary waiver in document fraud cases.

Expedited Entry of Soviet Scientists. Since the draft bill does not contain any comparable provision, we recommend the Subcommittee incorporate a provision pertaining to Soviet Scientists similar to that being considered in the Senate. We share the concern expressed by others about the very real risk of proliferation of expertise in nuclear, chemical, biological, or other high technology fields represented by the availability of scientists and engineers of the former Soviet Union. We urge this Subcommittee to examine that legislation carefully and consider whether it might be included in the legislation now being considered, since we understand it to be uncontroversial.

The Draft Legislation. To respond to the particular provisions included in the draft of the bill, following is a section-by-section review of each individual proposal. We would be happy to discuss or elaborate upon any of the opinions we express here.

RESPONSE TO INDIVIDUAL PROVISIONS OF THE DRAFT BILL

Section 101: Nonimmigrant Entry of Spouses and Children of Alien Members of the Armed Forces. This provision would permit spouses and children of aliens serving in the U.S. armed forces to enter the United States as nonimmigrants if accompanying or following to join the alien.

As a general matter, our Association supports measures that permit families to come or remain together in the United States. One of the most basic underpinnings of our immigration policy is recognition and respect for the family. Regardless of whether the family involved is immigrant or nonimmigrant, family members should not be needlessly

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separated. This provision acknowledges this by permitting families to be joined in the United States, which is especially appropriate where the alien is providing his or her services to the defense of our country.

We would also, however, encourage the Subcommittee to explore remedying other situations where families are unnecessarily separated by our immigration laws. The Subcommittee should consider provide designated nonimmigrant status to these families as well.

Section 102: Elimination of Sunset for Certain G-4 Special Immigrant Provisions. This provision would remove the sunset on the program that permits unmarried sons and daughters of qualifying employees of certain international organizations to immigrate.

For the reason discussed above, this proposal sounds fair and appropriate, and we recommend it be retained in formal housekeeping legislation.

Section 103: Special Immigrant and Nonimmigrant Status for USIA Employees. This draft legislation would add a new special immigrant and nonimmigrant classification for employees of the USIA. Due to the unique language needs of the USIA and the foreign policy interests involved, we are not opposed to this provision.

Section 104: Special Nonimmigrant Status for Alien Spouses of Citizens. This provision would permit spouses of U.S. citizens (and their children if accompanying or following to join) to enter in special nonimmigrant status.

This proposal makes sense. Since immediate relatives of U.S. citizens are not subject to numerical limitation or visa processing as other family categories are, there is no legitimate reason to require spouses and their children to wait for an immediate relative petition to be processed and adjudicated before entering the United States. Moreover, we see this provision as remedying a chronic problem which is familiar to immigration practitioners and congressional caseworkers alike -- the situation where a U.S. citizens falls in love overseas, marries, then rudely discovers that he or she cannot bring the alien spouse home without first working through the lengthy 3-6 month petitioning and consular process. We believe this provision would remedy that situation.

As discussed above, we strongly urge that this provision be expanded to cover immediate relatives of lawful permanent residents.

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Section 105: Foreign Adopted Children. This provision clarifies and amends the definition of orphan and makes a number of substantive changes in the requirements regarding the adoption of foreign children.

The modifications appear to be practical on the whole. We observe, in particular, that the raising of the maximum age for adoption from 16 to 18 is a positive change since parent-child relationships can quite clearly be formed in those later years. We do, however, find the criminal provision somewhat troubling. While we agree with the deterrence of child brokering, we fear that the language here used could be wrongfully applied to persons seeking to adopt a child honestly. We are especially uncomfortable with the use of the word "purchases." Given the byzantine adoption practices of some foreign states, legitimate expenditures abroad used to navigate the adoption process might be unfairly construed as "purchasing" and thus expose bona fide adopting parents to criminal liability. The other changes contemplated in this section strike us as reasonable efforts to clarify a complicated topic, but the criminal provision seems out of place and better suited for other legislation.

Section 106: Automatic Permanent Resident Status for Refugees. This provision appears to grant permanent residence to refugees immediately upon arrival to the United States.

We strongly endorse this provision. Persons granted refugee status have effectively cleared the routine qualifying hurdles for permanent residence and do not require the one year "probationary" period currently imposed. By providing for immediate adjustment, this provision is administratively economical and expedites refugees' pursuit of citizenship. This change is efficient and appropriate.

We are somewhat puzzled by the Subcommittee's limitation of this provision to refugees. The equities and arguments for asylees are equal, and yet they are omitted. We recommend that this provision be broadened to include both classifications.

Section 107: Prompt Parole of Aliens Attending Funerals. This provision permits the expedited entry of aliens coming to attend the funeral of an immediate blood relative.

This provision is humane and long overdue. However, we recommend a couple of minor, but significant modifications. First, parole is here limited to immediate blood relatives, defined as the spouse, parent, child, or sibling of the deceased. This limitation should be qualified to include other relationships that are recognized at the discretion of the Attorney General. Given the different concepts of family that exist among the varied

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cultures of the world, there may be instances in which certain relationships should be recognized as equally genuine and compelling as those listed here. Moreover, discretion would permit certain relationships that are recognized in this culture as equally proximate as blood relationship (e.g. fosterparents, fiances) to be treated similarly. It would be a shame to recognize so humanitarian a need as to attend a funeral, and then be overly restrictive about who qualifies to attend. Second, we observe that the alien must present a certified copy of the death certificate to the Attorney General. There is no guarantee, however, that such certificates are readily or quickly available, and we therefore recommend that the provision recognize other equally reliable evidence, such as a letter from a physician, as acceptable.

On the topic of parole generally, we must observe that the concepts of parole and advance parole are utterly invaluable to the humanity of our immigration laws. They provide a flexibility that is necessary to respond to the great diversity of situations that arise whenever people are involved. The concept could be applied to any number of circumstances -- a honeymoon, a vacation, travel to school, the wedding of a close relative, among many others. Current INS policy restricts parole and advance parole to situations of emergency and business. For example, if an alien wants to attend his brother's wedding overseas but has an adjustment application pending, he or she must endure the long wait for adjustment processing before being able to leave the country and successfully return to complete his adjustment application. It hardly seems necessary or fair to bar the alien from making such travel. Therefore, since INS feels constrained to restrict parole to emergent and business situations, Congress should compel INS through legislation or authoritative communication to administer parole and advance parole as a much broader concept than the agency currently recognizes and should direct INS to liberally apply parole/advance parole to situations outside the scope of business and emergency.

Section 108: Evidence in Spousal Waiver Applications. This provision directs the Attorney General to consider "any credible evidence" (of abuse by U.S. spouse) submitted in support of a spousal waiver application for the removal of the conditional basis for permanent residence, whether or not the evidence is supported by the evaluation of a licensed mental health professional.

We support the passage of this provision. Whereas INS practice in the past had been to respect abused spouses' own affidavits and other documentation such as letters from women's shelters, clergy, friends, and others to evidence battering or abuse, recent regulations require corroborating evidence from "licensed professionals" before the alien may seek the waiver. This requirement renders the waiver largely ineffectual. First, it assumes that a battered spouse (or abused child) will have the resources, both emotional and financial, to seek out, engage, and counsel with those professionals recognized by the

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INS. Second, it ignores the fact that language and cultural barriers will prevent many victims of domestic violence from seeking licensed professional help. As this provision will require INS to recognize other legitimate forms of evidence, it is a necessary improvement over existing law.

Section 109: Visa Waiver Program. This provision makes permanent the visa waiver pilot program allowing tourists from designated countries to enter the United States for up to 90 days without first obtaining a visa.

We believe that the visa waiver pilot program has been successful. It has made processing more efficient, conserved agency resources, and promotes tourism. We endorse its being made permanent.

Section 110: Expediting Airport Immigration Processing. This section makes several changes to expedite airport processing. Among the most significant changes are that it would clarify that personal interviews in the course of examinations or inspections are not necessary, shorten the standard inspections time from 45 to 30 minutes, and expand pre-inspection abroad.

These changes strike us as sensible. Many international travelers can attest to the delays at major U.S. airports. We believe that much of these delays are due to unnecessarily involved inspection procedures that could readily be abbreviated. We welcome the clarification on personal interviews, because such interviews are hardly necessary in each and every case. We also welcome such processing efficiency measures as the electronic manifests, citizen by-pass, and pre-inspection stations abroad. These devices represent needed improvements and time-savings to current inspection procedures.

Section 111: Maintaining Public Assistance to Legalized Aliens During National Emergencies. This provision makes an exception to the five year ban on public assistance to legalized aliens during emergencies declared by the President. Persons who seek or receive public assistance during such emergencies are not to be deemed potential public charges for purposes of exclusion and deportation.

This modification in existing law is appropriate. Legalized aliens who have the misfortune of being located at the site of a national disaster should not suffer immigration consequences if they seek or receive federal assistance to deal with that disaster. This proposal recognizes that circumstances far beyond the control of the legalized person should not bear on his or her immigration status, and is therefore a equitable modification to

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existing law.

Section 112: Refugee Appropriations. This provision extends refugee assistance appropriations for the next three fiscal years.

While we defer to the judgment of service providers on the precise amounts necessary, as a general matter we endorse adequate funding to refugee resettlement. Refugee programs provide invaluable services to some of the newest members of our society -- social services, employment assistance, English language training, preventative healthcare, etc. -- that are necessary to ensure the prompt assimilation of refugees into the U.S. mainstream. We therefore advocate that the funding necessary to maintain those services be provided without interruption.

Section 113: Diversity Program Waivers. This provision waives the exclusion for aliens previously removed under specific provisions of the INA for immigrants entering under the transition diversity program.

Since Congress intended eligibility for this program to be more open and flexible than for other categories, the waiver of this exclusion seems consistent and is therefore unobjectionable.

Section 114: Repeal of Cuban Adjustment Act. This provision repeals the Cuban Adjustment Act, except for certain persons who enter the United States before its enactment.

Under that act, Cubans are specifically permitted to adjust to permanent residence within a year of their entry, and this provision would terminate such preferential treatment. We are, however, compelled to inquire why the Subcommittee would make such a change at this time. If this proposal is being made in response to criticism of the Administration's handling of the Haitian situation, then we must on principle protest its inclusion. If the purpose of this repeal is to "even the playing field" among refugee groups, then the solution is not to penalize Cuban refugees -- or any other groups that at present receive favorable treatment under the law -- but to treat Haitian refugees more fairly.

This provision plays one refugee group off another. We must object to it.

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Section 115: Moratorium on Fees. This provision prohibits fee increases for any immigration-related benefit after May 1, 1992 and bars new fees where none were charged as of that date. This restriction would not apply to benefits not available on May 1, 1992, and sunsets 24 months after enactment of this legislation.

Our Association has already appeared before this Subcommittee to advocate that measures be taken to ensure INS fiscal accountability in the area of adjudications, especially in regard to the setting and using of fees. Unfortunately, INS has not adequately disclosed or permitted congressional or public scrutiny of its management of the Examinations Fee Account. We are especially concerned about the apparent cycle of INS raising fees to improve adjudications, then failing to improve those services but instead reprogramming or reallocating Examinations Fee Account funds to non-adjudications activities, and finally seeking new increases once again. There is no disinterested audit or examination of the Examinations Fee Account receipts, expenditures, or procedures, and thus the public is deeply suspicious that these monies are not being properly handled.

Congress and the public face a dilemma: Without independent oversight, INS can continue its raise fees-reprogram-raise fees cycle without ever improving services. Absent independent oversight, a moratorium on fee increases be used by the agency as an excuse for drastic deterioration of adjudications services. Because of the uncontrolled nature of INS management of the Examinations Fee Account, we support this provision but urge that it include a means to oversee how fees are handled during and after the moratorium. Fee increases should only be permitted where a genuine, direct adjudications improvement will be achieved and subsequently verified by a disinterested oversight body.

Section 201: Transferral of Citizenship from Mother. This provision confers U.S. citizenship to persons born outside the United States to an alien father and U.S. citizen mother before May 24, 1934 (residence requirements not applying).

Our Association has advocated this change in the past. The restriction to fathers is an anachronism, the removal of which is long overdue. Clearly, U.S. citizenship should descend from either parent. We support this provision.

Section 202: Citizenship of U.S. Citizens' Children Born Abroad. This provision makes several changes, including a relaxation of the physical presence requirement for persons with one U.S. citizen parent and one alien parent, requiring only that the citizen have been present in the United States for one year in the aggregate before the birth of that person (rather than five years aggregate, with two of those coming before the age of 14).

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We believe the relaxation of the physical presence requirement is practical and fitting. The five year requirement is an anachronism from a time when there was a concern with too many "war brides" and children. The perseverance of that provision only creates hardships in those cases now affected by it. The suggested language is preferable to existing law.

Section 203: Expanding Waiver of Civics and English Language Knowledge. This provision revises the "age and residence" waivers of civics and English language knowledge to include a waiver for persons who are physically, developmentally, or mentally unable to satisfy the requirements.

This is a commendable provision. There is no reason to deny, and plenty of humanitarian reasons to grant, citizenship to persons who are unable to satisfy the more "academic" requirements of citizenship. We therefore encourage the Subcommittee to retain this provision in the final bill.

CONCLUSION

On behalf of the American Immigration Lawyers Association, I thank the honorable Chairman and the Subcommittee for this opportunity to express our views.

Mr. MAZZOLI. Mr. Pierce.

STATEMENT OF WILLIAM L. PIERCE, PRESIDENT, NATIONAL COUNCIL FOR ADOPTION

Mr. PIERCE. Thank you, Mr. Chairman.

We are very enthusiastic about your bill. In a nutshell, we think that it should go forward. We think that it has sound professional content to recommend it. We think it also will meet the needs of many, many individuals, especially little individuals abroad who have no one at this table who can speak for them.

You've heard a great deal this morning from both INS and State with which we would respectfully disagree. Our friends from INS and State we think are more conservative than they need to be about what the future is in terms of these children.

When INS and State talk about what is likely to happen with the Hague Convention, frankly, that's a long way in the future. The earliest that you and the other Members of Congress are likely to take up anything is 1995 or 1996. The Congress may not even approve anything by the year 2000. We do not think that the children and families need to wait another decade while a "maybe convention" will be approved. It's a highly political, highly controversial issue, and it may never come to you in a form that you can approve. So we say that the things that you are proposing, things which should be supported in a bipartisan fashion as far as we're concerned, are a wonderful, intermediate step between where we are now and where we should be in 1995 or 1996 or 2000 or 2010. We need to do it now.

They've also suggested to you that we should wait because there's a GAO study out there. Well, there are all kinds of GAO studies; we know that. We also know what the GAO is going to say because it's asking the field what the situation is. What the field has said, Mr. Chairman, is that the provisions in your bill are a very badly needed group of changes needed right now. That is not to say that there is not some fine-tuning that we would agree here and there needs to be done. I would expect that as this legislation moves forward that would happen. We just don't see the same kinds of problems.

We've studied your legislation very carefully. We had a group of experts in from all across the country. They believe that the legislation works.

In terms of broadening the definition of orphan, I was particularly concerned at some of the statements because they would have us retreat to a definition of orphan that you'd likely find in Dickens. That's not the way adoption works. For INS or anyone else to say that is just unfair and inappropriate.

We've moved in the last 60 years from international adoptions that were 14 a year to 9,008 last year. There's been a tremendous evolution, and your bill, Mr. Chairman, simply reflects the evolution that should be taking place.

In terms of two-parent families, we have two-parent families who place their children for adoption all the time in the United States, and it doesn't end up in kids being bought and sold for prostitution or any of the other kinds of weird things that are in one of these

statements. So please disregard it. They may know a lot about immigration; they don't know zip about adoption.

In terms of the criminal provision, we heard 1 year ago, when we had all this fuss about Romania, that we couldn't do anything because there needed to be a Federal law about criminalization of baby buying. We do need to do something; I agree with one of the other witnesses here that we need to make sure that we don't overreach, but we do need to do something so that we can give the right kind of signal to other countries. If we want them to prevent their citizens from buying and selling kids, we should do the same thing in our legislation.

Now I want to conclude by simply saying that across the country there are tens of thousands of people who are very anxious to adopt. Adoption has nothing to do with wishing to adopt a child from another country rather than a waiting child here. The big reason why people adopt, Mr. Chairman, is a humanitarian desire to help children.

Thirty years ago when there were plenty of kids to adopt in the United States and there were adoptions from Korea, there were all kinds of people who were standing in line to adopt kids from Korea for humanitarian reasons because they just didn't want kids growing up in orphanages. And the same thing is true today.

We represent the best hope in the world for an awful lot of kids, kids who are going to come over here and grow up to be wonderful citizens. We ask you, Mr. Chairman, to really proceed with it.

I'd like to say one final thing, and that is that in terms of the statements by the two organizations representing the organizations of people living abroad, we strongly endorse what they say about the changes to enable people to handle that problem.

Thank you.

Mr. MAZZOLI. Thank you very much.

[The prepared statement of Mr. Pierce follows:]



TESTIMONY OF THE NATIONAL COMMITTEE FOR ADOPTION
 WILLIAM L. PIERCE, PRESIDENT
 ON THE IMMIGRATION AND NATURALIZATION HOUSEKEEPING
 AMENDMENTS ACT OF 1992, HOUSE JUDICIARY COMMITTEE, SUBCOMMITTEE
 ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES
 MAY 20, 1992

On behalf of the Board and membership of the National Committee For Adoption (NCFA), I wish to thank the Committee for its invitation to testify here today.

Background information on NCFA

NCFA is a national, not-for-profit nongovernmental organization organized to work on a broad range of adoption-related issues. NCFA was founded in 1980. It has 109 local adoption or maternity services agency locations throughout the U.S. in its membership. We also have international members, including some agencies which are involved in arranging adoptions, but we are unable to provide the same range of services to our international members as we are to U.S. members, a fact which is reflected in substantially reduced membership fees.

Although a cross-section of member agencies with particular expertise in international adoption provided detailed suggestions concerning the legislation which is before us, I would like to stress that this statement does not necessarily reflect the views of all our board, member agencies or individual members.

NCFA is involved in many activities in pursuit of its mission. I will mention a few before addressing others that directly relate to the concerns before us so that you will have a better idea about our specific interests.

NCFA's corporate, voting members are all not-for-profit, voluntary organizations guided by volunteer board members and staffed predominantly by professional social workers.

NCFA is supported by member agency dues, grants from foundations, corporations or philanthropists, individual member dues, contributions from many other sources, including donors to the Combined Federal Campaign, fees for consultation and the sale of materials. NCFA currently receives no direct government funds.

NCFA and International Adoption

First, NCFA has always been concerned about international adoptions. When NCFA was created, one of the key issues that was of interest was the belief, by some in the U.S., that children adopted from other countries by U.S. citizens could somehow be provided fewer protections than U.S. children. We are interested

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in high professional standards for all adoptions, and the best possible services for all those touched by adoption services -- the children, the parents who gave birth to the children, the parents who adopt the children, and both the country of the child's origin as well as the U.S. NCFA has also vigorously protested what I can only term a "protectionist view" of child welfare and family services and was successful in eliminating it from the federal Model State Adoption Act, as it was finally published by the Department of Health and Human Services.

Second, NCFA's activities on behalf of international adoption have increased each year. Some of this has been related to our location here in Washington, since we are convenient to not only the Congressional staffers and those in the Administration but others who may from time to time seek information or request technical assistance about international adoption. Some of it has related to attacks on international adoption, sometimes by those who oppose all adoption but more frequently by those who see adoption across national boundaries only as an option of last resort. Some of the growth in interest has been particular problems which have arisen, problems which required NCFA to become involved. I speak here not just of the well-known problems relating to adoptions from Romania prior to the time that Romania was able to put into place its new adoption law. Those problems were addressed last year in a hearing before this Subcommittee. I speak also of problems which arose in respect to other countries, the first of which involved U.S. nationals who were improperly involved in adoptions between Mexico and the U.S.

Finally, NCFA's involvement with international adoptions increased as the U.S. and other countries began preparatory work aimed at drafting a Convention on the subject. On behalf of NCFA and the very broad adoption interests NCFA represents, I was named to be part of the U.S. delegation to The Hague discussions and have participated not only in the work of a Study Group of the U.S. Department of State but also the 1990, 1991 and 1992 work sessions at The Hague. During this same time period, intense interest developed regarding Romanian child welfare and family service programs and I was named a member of the Technical Advisory Group to a grant from the U.S. Agency for International Development designed to assist the Romanians.

NCFA's Views Are Independent

I want to underline in the clearest way possible that my comments today, in the prepared statement, the summary and any responses to questions that may be posed by the Subcommittee, in no way are to be construed as having any connection, directly or indirectly, with either of these governmental efforts. NCFA, as a private, independent NGO, frequently takes positions and testifies on matters about which there is honest but wide differences of opinion. NCFA has neither sought nor seeks approval of any

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government agency or employee of its statements on public policy matters. There should be no connection made by anyone with other, separate activities NCFA or I am involved with: the "hat" I wear today is solely that of NCFA's President.

Comments on Immigration Bill

Mr. Chairman, we are very pleased to endorse your proposal. As with every proposal that has such important and far-reaching implications, we recognize that there will be questions raised. We know, because as we have circulated the materials among our members and issues have been identified which we believe need to be addressed further down the legislative trail. Let me summarize here by quoting what appeared in the last issue of our main newsletter, MEMO, which went into the mail last Friday:

"NCFA will enthusiastically endorse the bill, noting that some fine-tuning will be required, as a good intermediate step between the current situation and where we hope the U.S. will be, in 1995 or 1996, once The Hague Convention on Intercountry Adoption is fully in place." (1)

Before I discuss some of the specific points in your proposal, I would like to offer a historical overview which will help put this discussion in context. As a footnote, I am citing an article on "international adoption" from The Encyclopedia of Adoption, which I had the pleasure of co-authoring, for Facts on File, with Christine Adamec. Our article highlights the fact that intercountry adoption will soon have its 60th birthday in the U.S. We also note the growth of intercountry adoption so that the numbers have been in the 7,000 - 10,000 range for the last decade. We also note that this growth has been gradual and that "From 1935 to 1948, only about 14 immigrants per year in the category of "under 16 years of age, unaccompanied by parent" entered the United States." (2) We also include, for the record, some pertinent pages from the latest issue of one of our other newsletters, National Adoption Reports, which contains the latest data on adoptions of children from other countries by U.S. citizens. The pages are provided as an attachment. (3)

The history of intercountry adoption, as a review of our article demonstrates, is one of evolving concern for the interests of children in other countries, marked by increased desire by U.S. citizens to respond to those needs by offering them adoptive homes and a loving, secure family life, combined with response from the U.S. Congress to ease immigration rules to allow for these humanitarian impulses to be turned into action, resulting in ever-increasing numbers of children finding loving families in the U.S.

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The media and some of those who have perhaps not had the time to devote themselves to a study of this history often misread what happened. They oversimplify and see intercountry adoption solely as a response to what they dramatically label "the orphan problem" or what they denigrate as "U.S. citizens unable to adopt at home who are forced to go abroad."

The truth is quite different, as we learned from our literature review. Intercountry adoption is primarily a humanitarian response to a child welfare and family services crisis. It is spurred by the realization that a number of other good interventions have been undertaken. These range from the sending of money and goods through U.S. and other relief agencies to the actual building of facilities and programs abroad. This includes providing care for children by first trying to help them function in the families of birth, then with relatives, then with others who might adopt, and only finally with people in other countries who might adopt.

Throughout the past decades, and especially since the 1948 Congressional authorization allowing 3,000 children to enter the U.S., the history has been one of evolving responsibility to the needs of children for permanence. It is not a matter of orphans. Were that so, how could the U.S. sustain its own wonderful child welfare programs that feature adoption for tens of thousands of children each year, only a fraction of whom are "orphans" by dictionary definition?

So let us lay aside the idea that adoption has something to do with "orphans." It does not. It has to do with children who need permanent loving families, whether they have lost both parents to death, whether they have been abandoned, whether one parent has decided she is unable or unwilling to care for the child or whether a couple -- yes, even a married couple -- has decided they are unable or unwilling to care for a child.

Married couples placing children for adoption seems strange, even somehow inhumane to many people until they think about the alternatives. Consider this. In the U.S. as elsewhere, there are married couples who are failing as parents. Sometimes they are on the verge of physical abuse, sometimes they have crossed the line. They may come to their senses, either on their own or as a result of voluntary counseling or interaction with law enforcement officials, and decide to give the child a chance for a life with parents who are willing and able to function appropriately. They decide on adoption. That happens here in the U.S. and it happens abroad. Some of the causes are the same everywhere: alcoholism; drug abuse; family disintegration; poverty. Are we somehow to say that children of married couples who need adoptive homes can get them if they have the good fortune to be born in the U.S. but that they are to be denied homes if they are born in other countries? Until this

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legislation was introduced, that was essentially what the U.S. policy was, because there was too much timidity, too little understanding of the family dynamics that lead people, including married couples, to decide on adoption.

We applaud you, Chairman Mazzoli, for taking that final step to humanitarian treatment for all children who could benefit from intercountry adoption by expanding the classification of children. We hope that, as your proposal moves forward, this essential piece remains intact and unencumbered by any language which would undercut its broad, humanitarian impact.

I next move to the crises that last brought this Subcommittee to discuss this issue in a hearing, the delicate matter of trying to determine whether the laws of another country are sufficiently protective of the rights of families and children so that children who are available for adoption may come to the U.S. We clearly understand the rationale for the conservative and limited approach that has existed within official government circles. Sadly, there was a time when a certain country in South America, in a few instances, appeared to have misused adoption and linked it to horrible abuses of human rights. Some unknown number of parents who were political prisoners were deprived of their children without due process of law and those children were illegally and inappropriately placed for adoption, sometimes in other countries. The U.S., thankfully, was seemingly not involved in this sordid chapter, but we never want to be in the future either.

So we do have a desire that certain basic human rights are protected in any adoption between countries. That is why the U.S. is working so hard on the draft convention on adoption which is being discussed at The Hague. As I said earlier, I have the honor of being a member of the U.S. delegation which has been discussing that draft for three years. I can tell you that we have great hopes for what may eventually come out of that process. At some point, still with my NCFA "hat" on, I am sure I will be back before you asking you to enact certain legislation needed to implement that convention in the U.S. When that will be is uncertain, but since we do not expect to finish our work at The Hague until next year, it is likely that a reasoned, prudent process will take us at least until 1995 or 1996 before we can expect any final touches to be legally effective.

I discuss all this in some detail because I want to underscore my enthusiasm for the principles that are contained in the proposed amendment to Sec. 204, "Adoption of children from certified foreign states."

Last year we heard witnesses claiming that the U.S. officials charged with carrying out laws and regulations pertaining to intercountry adoptions -- and in particular, those from Romania

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-- were unduly bureaucratic and slow to respond. We heard other witnesses from the Administration testify that they were only carrying out the intent of Congress -- an intention, as I mentioned above, to protect children, to protect U.S. citizens and to protect relations between countries by guarding against any improper activities.

Now the Subcommittee is suggesting that the solution is to change the law so that Administration officials can appropriately move in a more expeditious manner, especially with countries that have been "certified" as meeting certain standards. The intention is laudable and anticipates a process which has been discussed in much more detail at The Hague. NCFA certainly endorses it in principle but would have some suggestions for fine-tuning the standards, at a later date. In endorsing this idea, we are fully aware of the delicacy of the matter. After all, the U.S. delegation has been very clear to state at The Hague that we do not wish to impose, in any way, the U.S. view of appropriate professional standards as the model worldwide. We do not wish to impose our views in relationships with other countries, any more than we would wish to have citizens of other countries suggest to us that our particular practices, for instance in the areas of a person's right to travel or termination of the legal rights of unwed fathers, are unwise.

In my own personal view, one could put forward a set of simple standards, based on existing standards that have broad support from the U.S. professional community, that many of the major countries which allow their children to be adopted by U.S. citizens already meet. It seems perfectly reasonable to me to allow some of these countries, and I only mention five here for the sake of brevity -- Colombia, India, The Philippines, The Republic of Korea and Romania -- which have such good controls already in place, to be certified as capable of expediting the humanitarian placement of children who are in need of intercountry adoption with U.S. citizens.

Many people have asked me why I am enthusiastic about the provision in your bill that raises the maximum age for adoption from 16 to 18. They state, quite accurately, that the numbers of children who are older are few. What I tell them is what I thank you, Chairman Mazzoli, for recognizing. There are good reasons for raising this age. Even if only one child gets a home, what a wonderful thing you have done! Even if only one child, tucked away in an orphanage and written off as "too old" finds a home, what a life-changing event for that youngster! I know that many, as I did, saw the pictures of children in orphanages from the Communist era in Romania. Would any of us deny an orphan who has had the misfortune to have her 16th birthday the chance of a good home in the United States?

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There is another, more tragic situation that this helps avoid. The provision helps keep brothers and sisters together. Consider, if you will, a sibling group of three children in an orphanage in the Russian Federation. Suppose that one is 8, one is 10 and one is 17. There is no appropriate family for them in the country of their birth, but there is a family in the U.S. that would like to adopt them. Are we to say that the eldest must be separated from her or his siblings so they will have a chance to grow up in the States? Are we to condemn the younger two to life in an orphanage and "graduation" into another institution because they have an elder sibling? This just doesn't make sense, and that is why we applaud so unreservedly this provision, Mr. Chairman.

As for the final major provision I wish to comment on, "Child Buying," I have but a few things to say. First, this provision is long-overdue as a statement of U.S. policy. More than once, during the recent years, we heard that U.S. officials could not prosecute people who seemed to be "buying" children because our law lacked specific language. There were also questions about some few agencies, groups or individuals acting as intermediaries who allegedly were "buying" and then "selling" children.

Second, this provision underscores our wish to be consistent. If we signal that we would hope other countries would prohibit child buying, as you do on page 13 of your bill, Mr. Chairman, it only seems logical that we have first enacted our own protections.

Finally, I would suggest that the penalties be more specific and strict: we are, after all, talking about one of the more heinous crimes that can be committed. In my view, the fine should be very substantial -- perhaps in six figures. And the prison term should also be much longer, so that plea-bargaining and parole will not allow a child buyer out too soon.

In making this recommendation, I realize that I will be criticized by some who say, "why punish innocent adoptive parents -- all they wanted to do was offer a nice home and they didn't know any better, did they?" I deeply admire and sympathize with prospective adoptive parents, but I cannot condone illicit or unethical means, no matter how noble the end. And as noble as adoption is, the means that we have seen utilized, sometimes as part of a regular pattern of activity, just must not be allowed to be used. We need real "teeth" in a law to send a signal that everyone will understand. I assure you that I continue to hear of reports of activities that sound like "child buying," and sometimes like "child selling," but there is no current enforcement tool. Your bill, Mr. Chairman, gives us that tool.

I have not gone into specifics of fine-tuning, Mr. Chairman, because this is not the time and I do not want anyone to suggest that we are lukewarm in our support of your bill. We believe

NCFA Statement - May 20, 1992 - page eight

these changes are long-overdue, that they are good for children who need homes as well as families whose hearts are waiting to receive them. We applaud your efforts in offering new hope to children who have often so little to look forward to. You are intervening in a way that will literally mean the difference not just between a decent opportunity in life and a life with little chance of achievement but, beyond that, life and death itself for thousands of children. Thousands of children around the world may know someday what a United States Representative from Kentucky has done for them. On their behalf, I thank you.

(1) Page 2, MEMO, (Washington: National Committee For Adoption, Vol. XIII, Nos. 9/10, May 15, 1992).

(2) "International adoption," pp. 168-176, The Encyclopedia of Adoption, (New York: Facts on File, Inc., 1991).

(3) "Update on International Adoption," pp. 2-7, National Adoption Reports, (Washington: National Committee For Adoption, Vol. XIII, No. 1, Spring 1992).

WP/ms

Attachment: Pages 2-7, National Adoption Reports, Spring 1992.

mz051592



NATIONAL Adoption Reports

A newsletter from National Committee For Adoption headquarters in Washington, D. C.

President Bush Signs Adoption Proclamation

A strong supporter of the adoption option, President George Bush signed the Proclamation declaring November 24 to November 30, 1991 last year as National Adoption Week. Here are a few key excerpts from the Presidential Proclamation.

"Adoption is a wonderful act of love, generosity and lifelong commitment—virtues that have always gone hand in hand with building a family...

"More than 50,000 American children are adopted each year. These youngsters are as eager to give love as they are to gain permanent homes and families of their own. Indeed, any adult who has been blessed with an adopted child or grandchild knows what tremendous affection and joy that youngster brings to the lives of others.

"Tragically, however, despite the many benefits of adoption, thousands of children continue to wait. Approximately 36,000 children in the United States who are legally available for adoption are living in foster care or in institutions. Many of these children are characterized as special needs children: older children and children with disabilities, children with siblings who need to be adopted by the same family, or members of a minority group. Regardless of the individual needs they may have, all of these children long for the kind of permanent homes and loving families that most of us have always been able to take for granted.

"As a Nation, we have begun to dismantle legal, financial, and attitudinal barriers to adoption. This progress has been made possible, in large part, by the vigorous efforts of concerned public officials, parents, social workers, attorneys, counselors, members of the clergy, and others. However, because every child deserves the special love and support that only a family can provide, we still have



Danny Curtis, (adopted through NCA member agency, The Barker Foundation), HHS Secretary Sullivan, President Bush, and Rep. Chris Smith (R-NJ) (L to R) at the White House Proclamation signing.

much work to do. We must continue to promote public awareness of adoption and to find ways of bringing prospective parents together with the thousands of children who continue to wait."

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Update on International Adoption

It's now possible, based on new preliminary data, to look at 1991 and the changes which have occurred in international adoption.

First, we expect that adoptions will increase from 7,093 to about 9,000, a 14% increase. This figure does not include adoptions by U.S. citizens residing overseas, (mostly military members). At least 200 children were adopted from Romania by U.S. citizens abroad, according to what Dr. Zugravescu has told us. We estimate there are at least 300 other such adoptions, which brings the total estimate of international adoptions by U.S. citizens to 9,500.

We believe about 53% of the children adopted are boys and 47% are girls. We are seeing a decreasing number of infants, (children who were adopted at less than one year of age). Only about 60% of the children adopted overseas were adopted as infants. About 28% are ages 1-4 years, and about 7.5% are ages 5-9. Children over age 9 represent about 4% of the total.

All 55 U.S. jurisdictions (including the District of Columbia, Guam, Northern Marianas Islands, Puerto Rico and the Virgin Islands) were represented among adopting families. New York continues to be the leading state, with nearly 12% of the total children adopted. Other major states where children went to adoptive families are, (in alphabetical order): California, Connecticut, Illinois; Maryland; Massachusetts; Michigan; Minnesota; New Jersey; Ohio; Oregon, Pennsylvania; Texas; Virginia; Washington; Wisconsin.

As expected despite the substantial increases in numbers of children adopted from Romania, Europe still does not rank as the leading Region sending children to the U.S. Instead, Asia ranks first, with about 36% of the total. Within Asia, Korea ranks first, with 1,817; India is second with 448; and the Philippines is third with 447. China, taken together, accounted for 157. Europe, with Romanian numbers estimated at 2,552, ranks second, with 31% of the total.

Taken together, countries of the Americas would rank second, with 33% of the total, given 22% from South America, 9% from Central America and 2% from Mexico and the Caribbean.

Significant countries in the Americas include: Peru, 722; Colombia, 527; Guatemala, 324; Chile, 263; Honduras, 244; Brazil, 178; Paraguay, 177; El Salvador, 122; Mexico, 106. (See tables on pages 3-7 for statistical breakdowns.)

Intercountry Adoptions 1981-1991

Region and Country of Birth	Year										
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
All Countries	4868	5749	7127	8327	9286	9945	10097	9120	7948	7093	9008
Europe	96	71	96	79	91	103	122	99	120	262	2761
Poland	21	12	31	26	29	32	54	51	68	66	95
Portugal	9	13	17	16	19	19	24	17	16	20	10
Other Europe	66	46	48	37	43	52	44	21	36	176*	2656***
Asia	3216	4189	5334	6251	6991	7679	7614	6484	5112	3815	3194
China, total	**	84	91	92	139	140	137	157	142	66	157
Hong Kong	**	18	29	30	51	40	56	49	47	29	40
China-Mainland	19	31	7	6	16	10	15	52	81	36	62
China-Taiwan	75	35	55	56	72	90	66	56	14	131	55
India	314	409	409	468	496	588	807	698	677	348	448
Japan	38	30	36	45	57	46	64	69	74	57	83
Korea	2444	3254	4412	5157	5694	6188	5910	4942	3552	2620	1817
Lebanon	15	6	14	15	20	19	21	23	21	16	17
Pakistan	6	5	9	14	8	12	9	10	14	14	9
Philippines	278	345	302	408	515	634	593	476	481	421	417
Thailand	11	19	12	19	28	27	31	75	99	100	127
Other Asia	91	37	49	33	34	25	42	34	52	108	119
Africa	11	7	12	8	11	22	22	28	36	52	41
Oceania	9	7	9	9	9	21	3	15	13	10	16
North America	635	678	761	1026	1012	885	973	844	910	959	1047
Canada	48	14	8	9	11	13	17	12	5	8	12
Mexico	116	98	110	168	137	143	178	123	107	112	106
Caribbean	82	103	86	93	118	102	124	140	202	156	159
Dominican Rep.	21	45	42	44	47	31	52	54	69	58	50
Haiti	8	14	10	13	12	19	25	41	80	64	52
Jamaica	42	33	18	16	47	38	37	38	43	28	39
Other Caribbean	11	11	16	20	12	14	10	7	10	6	18
Central America	389	463	557	756	746	626	654	568	595	683	770
Belize	3	12	13	5	4	5	12	6	7	10	4
Costa Rica	48	108	90	99	59	72	72	73	78	105	55
El Salvador	224	199	240	364	310	147	135	88	92	103	122
Guatemala	82	98	105	110	175	228	291	209	208	257	324
Honduras	13	22	97	148	181	135	114	161	191	197	244
Nicaragua	6	4	2	10	0	14	5	8	9	7	11
Panama	13	20	10	20	17	25	25	23	10	4	10
Other N. America	0	0	0	0	0	1	0	1	1	0	0
South America	901	797	915	954	1172	1235	1363	1650	1757	1995	1949
Bolivia	12	9	27	24	14	25	25	21	28	30	51
Brazil	62	72	55	117	242	193	148	164	180	228	178
Chile	106	113	172	153	206	317	238	252	254	302	263
Columbia	628	534	608	595	622	550	724	699	735	631	527
Ecuador	20	11	10	12	25	25	31	41	19	59	11
Paraguay	1	8	11	8	15	32	90	300	254	282	177
Peru	54	35	19	31	34	71	84	142	269	440	722
Other S. America	18	15	13	14	14	22	23	31	18	23	20

**Of these adoptions, 121 were children adopted from Romania

**Prior to FY 1982 data from mainland China and Taiwan were consolidated.

***Of these adoptions, 2552 were children adopted from Romania

Source: U.S. Immigration and Naturalization Service

Table II

IMMIGRANT-ORPHANS ADOPTED BY U.S. CITIZENS BY SEX, AGE, AND REGION
AND COUNTRY OF BIRTH
FISCAL YEAR 1991

Region and Country of Birth	Total	Sex		Age			
		Male	Female	Under 1 yr	1-4 yrs	5-9 yrs	Over 9 yrs
All Countries	9,008	4,228	4,780	5,409	2,528	691	380
Europe	2,761	1,266	1,495	1,495	1,076	162	28
Albania	19	8	11	12	7	-	-
Bulgaria	8	3	5	4	3	1	-
Estonia	1	1	-	-	1	-	-
Greece	5	4	1	1	3	1	-
Hungary	25	6	19	2	16	6	1
Ireland	1	-	1	1	-	-	-
Latvia	4	3	1	1	2	1	-
Lithuania	5	2	3	4	1	-	-
Poland	95	43	52	33	35	18	9
Portugal	10	4	6	3	2	5	-
Romania	2,552	1,169	1,383	1,427	986	122	17
Soviet Union	12	6	6	3	6	3	-
United Kingdom	12	10	2	-	6	5	1
Yugoslavia	12	7	5	4	8	-	-
Asia	3,194	1,519	1,675	1,942	803	235	214
Afghanistan	1	1	-	-	-	-	1
Bangladesh	9	-	9	2	4	2	1
Cambodia	59	33	26	17	18	18	6
China, Mainland	62	13	49	41	15	3	3
Hong Kong	40	24	16	3	30	2	5
India	448	154	294	134	240	50	24
Indonesia	1	1	-	1	-	-	-
Iran	4	1	3	-	-	-	-
Israel	1	1	-	-	1	-	4
Japan	83	52	31	49	31	2	1

Table II (continued from page 4)

Region and Country of Birth	Total	Sex		Age			
		Male	Female	Under 1 yr	1-4 yrs	5-9 yrs	Over 9 yrs
Jordan	1	-	1	1	-	-	-
Korea	1,817	888	929	1,573	175	54	15
Lebanon	17	11	6	12	1	-	4
Macau	3	2	1	-	1	2	-
Malaysia	2	-	2	-	2	-	-
Nepal	6	1	5	2	3	-	1
Pakistan	9	6	3	5	3	-	1
Philippines	417	213	204	57	3	-	1
Saudi Arabia	1	-	1	-	183	49	128
Singapore	3	2	1	1	-	1	-
Sri Lanka	5	3	2	2	2	-	-
Taiwan	55	25	30	2	-	1	2
Thailand	127	75	52	33	16	4	2
Turkey	6	4	2	3	71	41	12
Vietnam	17	9	8	3	2	1	-
					5	5	4
Africa	41	20	21	6	10	12	13
Cape Verde	3	1	2	-	1	2	-
Egypt	1	-	1	-	-	-	-
Ethiopia	18	8	10	3	1	-	-
Ghana	1	-	1	-	3	4	8
Kenya	1	-	1	-	-	1	-
Lesotho	1	-	1	-	-	-	1
Mali	1	1	-	1	-	-	-
Morocco	7	5	2	-	-	-	1
Nigeria	4	3	1	-	5	2	-
Rwanda	2	1	1	1	-	3	-
Sierra Leone	1	-	1	1	-	-	2
Uganda	1	1	-	-	-	-	-
							1
Oceania	16	5	11	13	2	-	1
Australia	1	-	1	-	1	-	-
Fiji	2	1	1	1	1	-	-
Kiribati	10	4	6	10	-	-	-
Papua New Guinea	1	-	1	-	-	-	1
Western Samoa	2	-	2	2	-	-	-
North America	1,047	474	573	522	319	125	81
Canada	12	7	5	6	2	1	3
Mexico	106	44	62	35	47	16	8

Table II (continued from page 5)

Region and Country of Birth	Total	Sex		Age			
		Male	Female	Under 1 yr	1-4 yrs	5-9 yrs	Over 9 yrs
Caribbean	159	66	93	46	48	31	34
Bahamas, The	2	1	1	-	-	1	1
Dominica	1	1	-	-	-	-	-
Dominican Rep.	50	21	29	34	11	3	1
Grenada	1	-	1	-	1	-	2
Haiti	52	24	28	7	24	14	7
Jamaica	39	15	24	4	12	10	13
St. Kitts & Nevis	1	1	-	-	-	1	-
St. Vincent & Grenadines	1	1	-	-	-	1	-
Trinidad & Tobago	12	2	10	1	-	1	10
Central America	770	357	413	435	222	77	36
Belize	4	2	2	2	-	-	2
Costa Rica	55	29	26	17	12	20	6
El Salvador	122	59	63	36	67	9	10
Guatemala	324	157	167	225	62	25	12
Honduras	244	101	143	149	72	18	5
Nicaragua	11	4	7	2	5	3	1
Panama	10	5	5	4	4	2	-
South America	1,949	944	1,005	1,431	318	157	43
Argentina	11	3	8	4	1	4	2
Bolivia	51	23	28	32	16	3	-
Brazil	178	105	73	72	39	53	14
Chile	263	136	127	208	38	13	4
Colombia	527	257	270	369	87	56	15
Ecuador	11	4	7	-	4	4	3
Guyana	3	-	3	-	-	1	2
Paraguay	177	83	94	147	29	1	-
Peru	722	331	391	596	101	22	3
Uruguay	1	1	-	-	1	-	-
Venezuela	5	1	4	3	2	-	-

- Represents zero.

Source: Statistics Division, U.S. Immigration and Naturalization Service.

Table III

IMMIGRANT-ORPHANS ADOPTED BY U.S. CITIZENS BY SEX, AGE, AND STATE OF INTENDED RESIDENCE
FISCAL YEAR 1991

Region and Country of Birth	Total	Sex		Age			
		Male	Female	Under 1 yr	1-4 yrs	5-9 yrs	Over 9 yrs
Total	9,000	4,220	4,780	5,409	2,520	691	380
State of intended residence:							
Alabama	53	29	24	38	11	3	1
Alaska	75	30	37	28	29	17	1
Arizona	70	26	44	44	13	7	6
Arkansas	11	7	4	5	4	2	-
California	662	326	336	364	198	46	54
Colorado	86	36	50	39	38	7	2
Connecticut	202	139	143	214	50	11	7
Delaware	33	15	18	17	12	3	1
District of Columbia	47	21	26	37	6	2	2
Florida	196	84	112	89	66	27	14
Georgia	153	58	95	86	57	8	2
Hawaii	116	59	57	51	18	15	32
Idaho	41	19	22	25	13	3	-
Illinois	374	167	207	217	122	18	17
Indiana	102	58	44	53	32	13	4
Iowa	124	65	59	63	35	21	5
Kansas	39	15	24	22	7	8	2
Kentucky	37	23	14	15	12	7	3
Louisiana	36	17	19	17	13	-	6
Maine	50	25	25	25	17	6	2
Maryland	270	134	136	164	83	18	5
Massachusetts	323	150	173	224	62	20	9
Michigan	455	231	224	307	105	29	14
Minnesota	543	232	321	369	143	25	6
Mississippi	18	7	3	2	4	1	3
Missouri	132	57	75	91	34	5	2
Montana	60	24	36	37	17	5	1
Nebraska	92	40	52	63	19	7	3
Nevada	12	6	6	5	3	4	-
New Hampshire	50	33	25	19	29	9	1
New Jersey	600	282	318	412	139	33	16
New Mexico	45	25	20	22	16	7	-
New York	1,059	515	544	719	224	66	50
North Carolina	100	47	53	59	32	8	1
North Dakota	15	7	8	6	5	3	1
Ohio	277	137	140	141	84	38	14
Oklahoma	46	24	22	19	16	6	5
Oregon	225	81	144	137	65	14	9
Pennsylvania	442	219	223	239	155	39	9
Rhode Island	29	12	17	21	7	1	-
South Carolina	49	25	24	20	18	3	-
South Dakota	35	16	19	23	11	-	1
Tennessee	51	23	28	25	16	3	7
Texas	355	161	194	186	123	32	14
Utah	116	46	70	68	37	8	3
Vermont	60	21	27	24	18	5	1
Virginia	330	165	175	220	95	20	3
Washington	305	125	180	160	103	20	22
West Virginia	22	11	11	14	5	2	1
Wisconsin	278	140	138	141	97	23	9
Wyoming	18	5	5	5	5	-	-
Guam	14	4	10	1	1	5	7
N. Mariana Islands	1	1	-	-	-	-	1
Puerto Rico	10	4	6	5	4	-	1
Virgin Islands	4	1	3	4	-	-	-

- Represents zero.

Source: Statistics Division, U.S. Immigration and Naturalization Service.

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STATE LEGISLATIVE UPDATE

Many state legislatures have recently considered bills to increase access to confidential adoption records. In three states, the bills have died in committee:

* **Assemblyman Chuck Quackenbush's bill in California, A.B. 1444**, to allow adopted adults access to records without birthparent consent, was withdrawn by the sponsor after a committee adopted amendments to notify birthparents and to allow the birthmother to block the release of records.

* **In Idaho**, a bill to allow access was withdrawn after the Justices of the State Supreme Court said it would be contrary to the Rule of the Court.

* **In Maryland, HB 583**, a bill pushed by CUB which would have completely opened up adoption records, died in the Judiciary Committee after NCFAs and several agencies voiced their concerns.

In other states:

* **Hearings are being held on two bills in Arizona--SB 1513 and SB 1543**, to establish a "search and confront" system, and to allow for contact between biological and adoptive parents after an adoption is finalized.

* **Minnesota is considering a bill, H.B. 1702**, to allow access to original birth certificates unless the birthparent comes forward and requests confidentiality. Access would be given automatically if one of the birthparents is deceased.

* **A. 885 and S. 279 were introduced in New Jersey** to provide access to original birth records.

* **Hearings and committee votes are occurring in Ohio on HB. 628**, a search group-supported bill to allow adopted people or birthparents access to records, regardless of the other party's wishes.

* **Word from Pennsylvania is that the bill to allow access to original birth certificates passed the House unanimously** after an amendment gutted the open records provision and reinforced and strengthened the existing system.

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Mr. MAZZOLI. Ms. Davis, let me start with you because we talked about this information, trying to figure out this data sent to us and, again, for the record, the question that we sent to the INS was: "Please provide a historical comparison of how many applications for spousal waivers are received each year." And so they provided that information starting in 1988 and concluding in 1992, starting from 486 working their way through as many as 7,900, and then down this year to 1,758, but that's a partial year.

And what do you make of these figures? That 84, which they say is the number of applications which have been filed I couldn't figure out whether that is under the abused part of the law rather than the battered part of the law, whether the two are easily separated, the battered spouses and the abused spouses. I think you used the term "extreme cruelty."

Ms. DAVIS. Right, that's a term from—

Mr. MAZZOLI. I don't know whether that's a word of art. Is that from—

Ms. DAVIS. From the statute.

Mr. MAZZOLI [continuing]. The statute? Can you tell me what you understand from that data?

Ms. DAVIS. Sure. Well, just looking at that data right there, there was no battered spouse waiver prior to 1990. So the figures up to 1990 must reflect applications based on divorce.

Mr. MAZZOLI. There was no battered spouse waiver prior to 1990 because—

Ms. DAVIS. It was not part of the—

Mr. MAZZOLI. Why wasn't there? There wasn't a waiver or no battered spouse?

Ms. DAVIS. There were no battered spouse waivers. There was a waiver if you could prove that you divorced within the 2-year time period. There was a waiver if you could prove that—in the event that you might suffer extreme hardship—

Mr. MAZZOLI. Something fraudulent about the marriage or something?

Ms. DAVIS. Right.

Mr. MAZZOLI. Was that—

Ms. DAVIS. There was an examination of whether or not the marriage was fraudulent and then whether or not you'd gotten divorced.

Mr. MAZZOLI. If, perchance, you were a spouse who was abused or battered prior to 1990, you had no opportunity to get a waiver for that purpose?

Ms. DAVIS. There was no formal mechanism.

Mr. MAZZOLI. Could you come in and say, "Look, I want out from under all this stuff and I want to stay here because this was a fraudulent marriage, or this was something?" Is that correct?

Ms. DAVIS. Well, no, you couldn't stay here if you could prove that it was—I think, in fact, it was designed to deter fraudulent marriages. So that's exactly the thing that wouldn't happen, that people would come in and say that they had been part of a fraudulent marriage. They could come in and say, "I've been part of a fraudulent marriage, but if I'm deported, there will be extreme hardship because I've got kids in the country," or some reason like that, that being deported would cause extreme hardship.

So those were the—either a divorce initiated by the petitioner or this extreme hardship waiver were the two provisions that were part of the act prior to 1990.

Mr. MAZZOLI. For example, this 7,000—they have a figure here of 1989, 7,951. But you say that those were 7,951 applications for spousal waivers?

Ms. DAVIS. It must have been under these other provisions because the battered spouse waiver didn't exist in 1989.

Mr. MAZZOLI. So there was no waiver prior to 1990?

Ms. DAVIS. There was no battered spouse waiver. There was just a spousal waiver based on these other two provisions. So if your reason for not being able to make the second petition was that your spouse refused to do it because he was using it as a way of abusing you, you didn't have a formal mechanism for making that petition. People may have tried to use that mechanism or make that kind of petition anyway, in hopes that the INS would allow them to waive, but there wasn't a statutory mechanism for doing that.

Mr. MAZZOLI. I'm not sure, I'm going to have to do a lot more studying of this thing to figure out what is going on. But Ms. Slaughter's point this morning was somewhat along the lines that the INS didn't ask for all these affidavits until after 1990, and set it up as if there were some kind of an effort to make this thing tougher since 1990.

Ms. DAVIS. Right. I think the point is that when the INS was considering issues that didn't relate to battering, that it wasn't requiring these kinds of expert affidavits. Now the underlying issue of whether or not the marriage is fraudulent or not—

Mr. MAZZOLI. So prior to 1990, there was no waiver for battery. It was a waiver because of one thing or another. Maybe you didn't need a document as sacred as an affidavit, and maybe since 1990, because of the way we changed the law and because of the new incumbency on the Immigration Service, they have to go to something. Is there any logic in what they say or do you think that this is—

Ms. DAVIS. I think it's a mistake to think that the sort of inquiry that you would have to determine whether or not somebody is going to be subjected to extreme hardship if deported should be substantially different and have different proof requirements than an inquiry as to whether or not someone is subjected to extreme cruelty.

Mr. MAZZOLI. If a spouse came into the INS now and wasn't claiming to be battered, but for all the other thousands of cases they would still not have to provide affidavits.

Ms. DAVIS. Right.

Mr. MAZZOLI. They would still be able to use the forms. So it's only in that fairly narrow category of mental or psychological abuse, not even physical abuse but mental and psychological, that they ask for an affidavit?

Ms. DAVIS. Right.

Mr. MAZZOLI. But you still feel like that is not the way it ought to be?

Ms. DAVIS. Well, I think there are two things to say about that. One is, as I indicated, I think that you have to look at it in the context of the sort of gender bias in the courts, to put it in the

broadest context. Here you've got a situation where the primary complainants are women who are coming in and saying, "I'm being abused." The issue should be did the abuse occur; what did the abuser do, not is the woman loony, not what does a mental health professional say about this.

I think the second piece of this is that we see that the numbers that the INS testified to this morning are quite low, 84 or 85. I think it's clear that what's happening is that people are being deterred by these onerous proof requirements.

And, in addition, just to mention a couple of other issues that are going to come before the Congress—

Mr. MAZZOLI. Let me—the gentleman from—

Ms. DAVIS [continuing]. Soon, one is the confidentiality issue, which was mentioned by Representative Slaughter this morning.

Mr. MAZZOLI. Right. Thank you very much.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I want to turn to Mr. Alegi and Ms. Adler about some of the born-abroad children questions here that we are troubled by, and I think your concerns are troubling us. As far as the application to your own children, as I understand it, the problem there is we changed the law and we didn't make it retroactive? That would cover your particular case; isn't that true?

Mr. ALEGI. I'm sorry, the reference to my children may be misleading unless you have an opportunity to look at the statement I submitted. That relates only to the somewhat more exotic question of who is a natural born citizen for purposes of the Constitution and eligibility for the highest office in the land.

Mr. MCCOLLUM. Oh, OK.

Mr. ALEGI. That same distinction, applied to the children of many overseas Americans when you get one generation farther down the line, applies to the basic citizenship issue. The cutoff dates that are set every time this legislation is revisited usually take 18 years of age or the date of passage of the legislation as the date on which rights of citizenship disappear.

Some of the proposals that in all other respects we support wholeheartedly would not apply to those who had already reached 18. It's very hard to take a young person who may be in an American university and be 19 and say you're not eligible for citizenship, but your brother is because he was born 1 year later.

Mr. MCCOLLUM. I see your point, and I think that it's perhaps as meritorious a concern as any that are before us today.

Let me move into the one other area that has me more troubled, though, than that. That I tend to be very sympathetic to. When we talk about the amount of time that somebody has to have been in the United States as a citizen, or residing here I guess really, and then be eligible to have their child automatically be a citizen when they are born abroad, I'm wondering how many people under present law that really affects. In other words, I'm thinking in terms of the 5-year, 2-year—the way it now reads.

How many people who go abroad working for companies, and so forth, have not resided in the United States continuously for 5 years? I mean, it seems to me that probably most people who go

abroad have gone to college here, probably residing more than 5 years continuously here, even if they were not native born.

Mr. ALEGI. That's true, Mr. McCollum. The problem arises, people have families while they're abroad.

Mr. MCCOLLUM. Right.

Mr. ALEGI. The chap going overseas for IBM may stay on for a 10- or 15-year period. He may marry while he's abroad. He may marry a non-American. The children of that marriage, born outside of the United States, later face the problem.

We don't mean to suggest that each American businessman going abroad faces, in terms of his own citizenship, this sort of threat, but certainly one of the things that many Americans offered overseas assignments are aware of is that they are asking for a series of difficulties, personal status problems. In some cases, it may relate to foreign spouses that they already have. Many of those who go abroad are people who have a particular connection with foreign countries. It may relate to their tax status. There's a panoply of concerns that—

Mr. MCCOLLUM. Let me ask you something just to clarify, because I may not understand the law. I had the impression that, let's say, I'm a U.S. citizen and I go abroad and I get married while I'm abroad. I'm abroad for 20 years, but I'm a U.S. citizen. I've been here fully more than 5 years before I ever went abroad continuously. And I have six children that are born abroad.

My impression is, because I have had the 5 years' continuous residency in this country, that there is no problem with my children being citizens who are born abroad.

Mr. ALEGI. That's correct.

Mr. MCCOLLUM. Now there may be a problem with adoptions.

Mr. ALEGI. Yes, that's absolutely correct.

Ms. ADLER. Can I interrupt here?

Mr. MCCOLLUM. Yes, go ahead. Sure.

Ms. ADLER. Let me just read you a case history, and I think it may clarify the problem.

Amy Webster Herrera, a citizen who is the daughter of an American attorney and his American wife—the American attorney has practiced law for 39 years abroad. It's an American firm working for U.S. corporate interests. Amy has three sisters. The Webster family has been abroad for 39 years. To get those four girls back to the United States, even for college, for 60 full months when the parents are abroad is a huge burden. It's almost insurmountable. In Amy's case—

Mr. MCCOLLUM. Do the children have to come back here for the months? Is it the children you're concerned about?

Ms. ADLER. It's about the children transmitting—let me read the whole thing—

Mr. MCCOLLUM. Sure.

Ms. ADLER [continuing]. And it will become clear. As a result of her father's affiliation with the firm overseas, Amy and her three American sisters grew up there. Amy married a Swiss citizen and is living in Lausanne and has one child and another on the way. Her marrying a Swiss citizen is a part of the issue.

Despite returning 15 times to the United States for vacations, summer school, and college, she has not acquired the full 5 years,

60 complete months, that the law requires for her to transmit to the child—

Mr. MCCOLLUM. It's the grandchildren we're really talking about now?

Ms. ADLER. In fact, American businessmen all over the world are being penalized—it's the grandchildren's U.S. citizenship that's the question.

Mr. MCCOLLUM. Well, I have a real problem, you see, with that because, while I'm very sympathetic to the business person there, I am not sympathetic to generations living abroad. And I really have a problem with that, you see.

Mr. MAZZOLI. The time of the gentleman has expired—

Mr. MCCOLLUM. Thank you.

Mr. MAZZOLI [continuing]. But I yield him 5 additional minutes to continue that, and then I'll pick up.

Ms. ADLER. We are not advocating generation upon generation of transmission, either. In fact, we are searching, as Americans abroad, for a way to do justice to the question, because surely we don't want this family to suffer in the way they're being hurt. At the same time, we don't want to go on with no limits either.

A number of alternative propositions have been raised, and perhaps we can talk about them after this hearing.

Mr. MCCOLLUM. Sure.

Ms. ADLER. But one way would be to limit it to one generation; to find a mechanism so that this child could be American, but after that, if he hasn't shown the correct requisite—

Mr. MCCOLLUM. I would be open to suggestions. I understand the problem better now.

Ms. ADLER. If you would like to cut it off at one generation—

Mr. MCCOLLUM. The gentleman has yielded me more time, but I don't want to take a lot of it because I don't think that's fair. But I want to ask Mr. Myers, because he represents the trial lawyers involved in this for immigration. Do you get involved with this kind of an issue? Do you see the kind of issue we're talking about with the foreign-born?

Mr. MYERS. The most frequent time that we get involved in this issue is with people who have gone abroad thinking that they lost their American citizenship only to find out that really they haven't, because the statute granted them citizenship on birth, and they were assuming that they could lose it by some act abroad.

We are finding, however, at least those of us who practice heavily in the corporate sector, that it is true that there are executives from the United States who are going abroad for long periods of time, citizens and permanent residents. And it's not at all unsurprising for them to face with their children problems like this.

Mr. MCCOLLUM. Right.

Mr. MYERS. So I would say that this is one of those instances where Congress is a little ahead of this issue, because we're now seeing transfers abroad for very substantial periods of time as a result of mergers and acquisitions, international—

Mr. MCCOLLUM. I know that's true. I know we've got to address it. I don't want to minimize that with any of you. I recognize the seriousness of it, but I question the way that Mr. Alexander has

proposed it, that if we haven't really opened the door wider than we have to under what he is proposing. I worry about that, getting into that broad-based area.

Mr. Alegi.

Mr. ALEGI. Well, I share your concern about unlimited generations. However, other nations, including those nations making up the European Community, from which many of us draw our historic connection, have faced this in the last 4 or 5 years, and you see a coming together, the way sometimes in the United States you have uniform laws adopted among our States. We notice that two generations is coming out as their rule.

Within the last 2 years, two nations which in the past sent out many immigrants, Italy, where my dad was born, and Ireland, have completely revamped the basis of citizenship and have said, if your grandparents were citizens, you have a right to claim your citizenship. Now I'm not sure that we can move or ask you to move from one day to the next to that sort of rule. What I did try to suggest earlier was that the reasons for the temporal limitations, other than cutting out endless generations, have largely disappeared. We know what's going on. While the east coast was asleep during Los Angeles, I was watching it live in Rome.

Mr. MCCOLLUM. No, your point is well made; I understand that perfectly. I just still think that the flavor for that grandchild or that child in that generation-skipping situation of this country cannot be obtained from television, even though they know what's going on. I don't have a problem with the foreign-born—

Mr. MAZZOLI. Would the gentleman yield?

Mr. MCCOLLUM. I'd be glad to yield. I think my time is really up.

Mr. MAZZOLI. I'd like to piggyback on that point. I think the gentleman is exactly correct. I had written in a little margin here about our voting cards. I think, Mr. Alegi, you were talking about this being old-fashioned. Well, I think it's obviously old-fashioned for us to have to go to the floor and vote. Why should we interrupt meetings and hearings and rush around the Hill? We've got plastic cards and we have electricity, and we could vote from wherever we are, maybe vote from Kentucky or Florida, not even be in the Chamber. But they require it, and I think they do for a very good reason, because when you go over there, you see your colleagues and you hear about what's happening. You get a flavor of what the House is doing.

With all respect to watching CNN, which we do, and C-SPAN, which I do and all of us do, I don't think there would be any substitute for coming into the United States and being here, listening to the language and watching firsthand what's going on. Now you may have a perspective because you've lived most of your life in the United States. So you can watch CNN and say, "Well, I know that because I've been there." You've got the perspective. But if you get one generation or, God forbid, two generations down the line, and they've never set foot for any appreciable time in the country, except as maybe a visitor, then they will not have the perspective of knowing what's going on.

So I really want to do the right thing, and I listened carefully to what Bill Alexander said earlier today when he talked about world competition. It's an important aspect, but, you know the peo-

ple living abroad are not necessarily in a completely hardship post or doing totally hardship duty. So in a sense, some of them are going abroad altruistically, but some of them are going abroad for very personal, remunerative reasons. I don't deny that that helps them or helps the country, but I think we have to be very careful in putting them into a category as being somehow sacrificial or something of that nature. I don't think it always works that way.

Let me yield myself a little bit of time here to talk. Mr. Pierce, I appreciate your nice comments about our bill. I think you were unnecessarily dismissive of the Immigration Service. I don't think that they need that kind of the back of your hand. I think that they work very hard and try their best to understand what we do. You know, they're not doing it themselves; they're only carrying out our law as they think we want it carried out, which is to say they don't want babies bought and sold and to have international trafficking in human beings.

So I think that we want to help them react to the current situation. You heard me today say that we may have in Yugoslavia another kind of thing like we had in Romania. You may have in Russia something akin to what we've had in other parts of Europe. But, I mean, to put them in that kind of a position was really not necessarily productive and didn't really advance us down the road of trying to get a package of legislation that will work.

A specific question about raising to age 18. Why do you think we should raise to age 18? You've seen the comments that this is just another way of getting indentured house servants and that sort of thing.

Mr. PIERCE. Mr. Chairman, my comment about they don't know zip about adoption certainly did not mean to apply to INS. It was really occasioned by the comment that, if we raised it from 16 to 18, it could provide the opportunity to reinstitute indenturing children as workers in brothels.

Mr. MAZZOLI. Well, I think that your remark was broader than that, but I'll accept the narrowness of it.

Mr. PIERCE. The reason that we'd like to see it raised from 16 to 18 is that there are, particularly in some of the Eastern European countries and in some of the other countries around the world, people who are considered children in those societies who are in orphanages who are in need of homes and people here who would like to adopt them.

Mr. MAZZOLI. Children who are age 18 are in orphanages?

Mr. PIERCE. Yes, there are.

Mr. MAZZOLI. And you can document that?

Mr. PIERCE. Yes, sir.

Mr. MAZZOLI. I mean like full-time in an orphanage?

Mr. PIERCE. Yes, they are.

Mr. MAZZOLI. OK.

Mr. PIERCE. The other big—

Mr. MAZZOLI. The Congress has been extremely deferential to these kinds of cases in the sense of private bills, as you very well remember. We almost never not grant it as a private relief measure.

Mr. PIERCE. I think a bigger problem—

Mr. MAZZOLI. The question is: Should we raise it generically and open it up—I think the INS said that there is maybe 1 percent of all these cases that are between 14 and 16.

Mr. PIERCE. And it may only be a few children, but particularly when we're talking about sibling groups—if we're talking in the Russian Federation where there are at this point an estimated 160,000 children in orphanages, we know there are a lot of sibling groups. We don't want to split up a family, three kids, one 7, one 10, and one 17. It would be a horrible thing to have to do.

Mr. MAZZOLI. OK. Thank you very much.

Mr. Myers, just a couple of quick things. You said about the Cuban Adjustment Act, you said it's like we're picking out a group of people in a negative way. It seems to me we've picked out the Cuban people in a very positive way. It hardly seems to me that this is picking them out for some kind of harm by saying that the Cuban Adjustment Act ought to be repealed after all these years. It seems to me that its continuation is sort of a picking out of a group of people to prefer them to people in the very same condition, but who are not from the nation of Cuba.

And then, as far as your suggestion about unidentified foreign investors, it was tough enough, as you know, to get that investor thing on the book at all, much less not to identify the person that's going to benefit by having citizenship. I mean, I would think that that is really pretty much of a nonstarter, but—

Mr. MYERS. Let me just explain what I meant.

Mr. MAZZOLI. Yes, what do you mean? I mean, why would you grant that kind of a privilege to somebody who doesn't identify himself until after the package is approved, after the financial package or the investment package is approved?

Mr. MYERS. Doing this is really as much of an advantage to American property owners and people trying to raise capital for their ventures as it is to foreign nationals. Under current procedure, you have to have a foreign national, and then the structure of the investment has to be essentially made, the commitment of funds has to be made, and then the petition filed before the INS.

What we're suggesting is, that there are some situations where you just don't know if a particular legal structure is going to be permissible to the INS, once you have the foreign investor. Somebody who owns property who doesn't know whether a partnership structure or a syndication is going to work can't really get from the INS any sort of indication as to whether it's going to work until they've actually gone out and found investors willing to sort of be the test case.

Mr. MAZZOLI. There may be some tinkering around that can be done with at what stage approval is given and how much detail has to be there, but I think when you get away from the identification, you're going to find a lot of members having some problem.

Mr. MYERS. Well, I think clearly there should be identification at the time of the filing of the petition. There's no effort to try to have secretive investment arrangements. In fact, it's really more an effort to make clear to the potential investors what the deals are.

Mr. MAZZOLI. I'm told that people around the world aren't applying for it anyway.

Mr. MYERS. Right.

Mr. MAZZOLI. So the whole thing is apparently some kind of a waste of effort.

Mr. MYERS. Well, there aren't that many applications. One of the reasons there hasn't been is because I think there are questions from the investors around the world as to exactly what kind of transactions will be approved. If they had some greater clarification, then the investment money might flow more freely.

Mr. MAZZOLI. Well, I'd like to think we would get people with a little more on the ball than that as potential citizens.

Does the gentleman from Florida have any further questions?

Mr. MCCOLLUM. Just a quick followup with Mr. Myers on a couple of things. One, I don't think you mentioned your desire to see the adjustment hearings eliminated, the immigrant adjustment hearings. I think you've said they're unnecessary. I'm just wondering if you know what the INS's rationale is for it. Just because they think we require it or do they think they get something out of it?

Mr. MYERS. We may have actually resolved that here before the hearing began. I've tried to get from the INS their reasons for having these adjustment interviews in every single case, even simple cases. Many of them tell me it's because they think the law requires it.

But I've been talking with Larry Weinig and the others for months now, and I think finally we've gotten to the point where they're actually going to eliminate those interviews. We may not have to have any kind of legislative activity at all. It may have been just by putting this in here it got their attention.

Mr. MCCOLLUM. I'm glad to know that having a hearing does serve a purpose.

Mr. MYERS. We got something done.

Mr. MCCOLLUM. Yes, it's a real significant hearing here today, Mr. Chairman, and we didn't know it.

Mr. MYERS. I think that the issue really is to try to put their efforts into something that's productive as opposed to something that's really not that productive. So I'm told that the regulation may even be on someone's desk to be signed off pretty soon. That makes us real happy.

Mr. MCCOLLUM. Well, let me bring up—

Mr. MAZZOLI. Mr. Myers, you could have faxed your testimony in here and we could have put it up on a screen, and I could have read it. See, by your coming in this room and physically making contact with the INS, you get something done. I mean, we talked about the foreign residence, of coming back home once in a while.

Mr. MYERS. Well, I thought about faxing it in.

[Laughter.]

Mr. MCCOLLUM. One other thing, Sam, we're going to be curious about is whether or not you see in this Cuban Adjustment Act the thing that the chairman and I have bantered with different folks about today, the distinction that I do. I tend to see the Cubans as quite distinct from the Haitians, and I know that's driven it with a lot of folks here lately in this place. Your testimony, your written testimony again, as opposed to your verbal, seems to say that your folks do, indeed, see a distinction and do not see why we should be talking about repealing the Cuban Adjustment Act. I gather the thrust of what you're saying in the written testimony is that if

we're worried about the Haitian situation, then treat them more closely like the Cubans, but don't do away with the Cuban Adjustment Act, because you see a purpose of the Cuban Adjustment Act?

Mr. MYERS. I think that the concern is that—our concern, and we had the same problem with the lottery. The lottery to us was so patently oriented toward one particular ethnic group that we just didn't think that was really quite appropriate.

I guess our concern is that we feel that when you get into dealing with specific ethnic groups, you begin to set them off against each other. What we should really be doing is setting forth general principles to apply across the ethnic groups.

Mr. MCCOLLUM. What I saw earlier from the Immigration Service was, it seemed to me, a very simple statement. They're basically saying we like the Cuban Adjustment Act because we know all those folks are going to be granted asylum anyway, and we don't have to go through all these hearings. I suspect if they go through more hearings, then they're going to pay more lawyers' fees. So we should be happy that you're taking this position from a public policy consumer standpoint; right? I know that's a roundabout way of endorsing the Cuban Adjustment Act, but that seems to be the bottom line of what they see in it as the most beneficial part of it, is that they don't have to go through that asylum process, which may be true of any other group that we would keep here, if we really believe that they are all in that category. I don't personally think they all are. I do certainly think the Cubans are.

Well, you've been very good today, Mr. Chairman, to let me have that time. Thank you.

Mr. MAZZOLI. A very good panel. Ladies and gentlemen, we may have questions and further followup, but we thank you very much for your time and trouble.

The next panel: Mr. Richard La Dieu, president of the American Federation of Government Employees; Richard E. Norton, director, facilitation, Air Transport Association of America; Lester Nurick, Esq., and Lloyd Cutler, Esq., Wilmer, Cutler & Pickering, Washington, DC; Dan Stein, executive director, Federation for American Immigration Reform.

We are in the same posture we were before with the other panel of just having to move ahead. So let me just ask you to try to summarize as best you can, but in no case over 5 minutes, and then we'll see where we are.

Starting in the order in which we called you: Mr. Richard La Dieu. If I'm pronouncing it—"Dieu" or "Doo"—

Mr. LA DIEU. You pronounced it correctly, sir.

Mr. MAZZOLI. Thank you very much.

STATEMENT OF RICHARD A. LA DIEU, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1812, ACCOMPANIED BY STELLA SI, REPORTER AND BROADCASTER, VOICE OF AMERICA, CHINESE BRANCH

Mr. LA DIEU. With me today is Stella Si, VOA, China Branch. I am president of local 1812, the American Federation of Government Employees, so I don't run into competition with my national president who is the president of the overall union. I represent 3,300 civil service and foreign service employees at the U.S. Infor-

mation Agency, including 130 international radio broadcasters currently employed by the Voice of America and Radio Marti on J-1 visas. On behalf of the employees I represent, I thank you for the opportunity to testify today.

Mr. Chairman, AFGE 1812 appreciates your committee's efforts to change the law to address the problems faced by non-U.S. citizen employees working on J-1 visas. These changes are reflected in section 103 of the Immigration and Naturalization Housekeeping Act Amendment of 1992. AFGE supports these changes, although we believe that in some areas they do not go far enough.

The legislation which the committee is considering today will address many of the continuing problems faced by J-1 employees. The proposed amendments allow USIA to sponsor noncitizen broadcasters for permanent residency after 1 year of employment and substantially accelerate the sponsorship process by providing for a one-time waiver of the foreign residence requirement and by allowing the employees to convert directly from a J-1 visa to permanent resident status upon certification by the Director of USIA. These changes will reduce employees' travel problems and minimize their fear of unprotected exposure to abuses of personal practices.

The proposed amendments also allow spousal employment and restore J-1 employees' eligibility to participate in the Federal employees' retirement system. In all of these respects, the amendments improve the current situation and the committee is to be applauded for the initiative in supporting them.

However, there are still several areas where J-1 visa holders continue to suffer discrimination that is not addressed in the proposed legislation. Under the current law, dependents of J-1 employees cannot legally remain in the United States past the age of 21. If they are unable to obtain a visa to remain in the United States, they will be forced to return to their family's countries of origin and potentially be exposed to retaliation from hostile governments, as well as creating an unnecessary hardship for the parents.

In addition, currently J-1 employees who send their children to State universities in Virginia or Maryland and the District of Columbia must pay out-of-State tuition even though they are residents and taxpayers of these States.

Finally, the proposed amendments will not improve J-1 employees' restricted access to banking services. In the past, AFGE 1812 has argued that noncitizen employees at Voice of America and Radio Marti should be granted immigrant visas. In principle, this remains our position. Nevertheless, the Immigration and Naturalization Housekeeping Amendments of 1992 represent a substantial effort to improve the lives and working conditions of a dedicated group of Federal employees, and we pledge to work with you to achieve passage of this legislation.

One final comment, I must add that the union, working with management at the Bureau of Broadcasting, was able to come across with agreement for accelerating the process of the permanent job status, long-term job appointments. So that's one step. This is the second step.

[The prepared statement of Mr. La Dieu follows:]



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SUMMARY

**Statement of Richard A. La Dieu
President, American Federation of Government Employees Local 1812
before the
Subcommittee on International Law, Immigration, and Refugees,
Committee on the Judiciary,
U.S. House of Representatives.
May 20, 1992**

Local 1812, American Federation of Government Employees, supports the establishment of a new non-immigrant visa category for non-citizen employees of the U.S. Information Agency.

Section 103 of the Immigration and Naturalization Housekeeping Amendments of 1992 addresses many of the continuing problems faced by J-1 employees. The proposed amendments allow USIA to sponsor non-citizen broadcasters for permanent residency after one year of employment and substantially accelerate the sponsorship process by providing for a one-time waiver of the foreign residence requirement and by allowing employees to convert directly from a J-1 visa to permanent resident status upon certification by the Director of USIA.

The proposed amendments also allow spousal employment and restore J-1 employees' eligibility to participate in the Federal Employees' Retirement System. In all of these respects, the amendments improve on the current situation and the Committee is to be applauded for its initiative in proposing them.



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President, American Federation of Government Employees Local 1812
before the
Subcommittee on International Law, Immigration, and Refugees,
Committee on the Judiciary,
U.S. House of Representatives.
May 20, 1992

Mr. Chairman and members of the Committee, my name is Richard A. La Dieu. I am president of Local 1812 of the American Federation of Government Employees, which represents 3,300 civil service and foreign service employees of the United States Information Agency, including 135 international radio broadcasters currently employed by the Voice of America and Radio Marti on "J-1" visas. On behalf of the employees I represent, I thank you for the opportunity to testify today.

Mr. Chairman, AFGE 1812 appreciates your Committee's effort to change the law to address the problems faced by non-U.S. citizen employees working on "J-1" visas. These changes are reflected in Section 103 of the Immigration and Naturalization Housekeeping Acts Amendment of 1992. AFGE 1812 supports these changes, although we believe that in some areas they do not go far enough. Before I address the bill specifically, let me describe for you the problems that non-citizen broadcasters encounter.

The international radio broadcasters who work for the Voice

of America and Radio Marti are dedicated and highly talented professionals. They have come from nations around the globe, often risking persecution of themselves and their families, to "tell America's story to the world." Yet unfortunately, their treatment in this country has too often been demeaning.

First, the current visa statutorily excludes J-1 employees from certain benefits enjoyed by all other Federal employees. Since 1990, J-1 employees have been excluded from both the Civil Service Retirement System and the Federal Employees Retirement System. They are forced to pay out-of-state tuition for their children even in the states in which they reside. Their access to banking services is restricted (for example, the State Department Federal Credit Union will not accept loan applications or open checking accounts for many of our members simply because of their visas). Their dependents must obtain a non-J visa or leave the U.S. when they turn 21. Mr. Chairman, international radio broadcasters at the Voice of America and Radio Marti both work for and pay taxes to the United States, yet they are denied the benefits enjoyed by their co-workers.

Second, the J-1 visa negatively affects the efficiency of the Federal service. VOA employees frequently encounter problems with immigration authorities abroad when they travel on official business. Employees whose J visas expire after they have been sponsored for permanent residency but before they have received

their green cards are prohibited from travelling overseas for months or even years, adversely affecting their careers.

Finally, the current visa system has a "chilling effect" on employees who may suffer discrimination, prohibited personnel practices, or violations of the Union contract at the hands of individual managers. If J-1 employees lose their employment, they risk immediate deportation. Because of their visa status, J-1 employees often will not file a grievance because they fear retaliation and loss of their U.S. residency.

In the past, non-U.S. citizen employees have been denied sponsorship for permanent residency and left in this condition of vulnerability for up to ten years. However, I am pleased to tell you that AFGE 1812 and USIA's Bureau of Broadcasting recently negotiated an agreement to accelerate the review of non-citizen employees for offers of long-term employment and sponsorship for permanent residency. Under this agreement, more than 210 employees have recently been offered long-term employment with the Agency.

The legislation which the Committee is considering today will address many of the continuing problems faced by J-1 employees. The proposed amendments allow USIA to sponsor non-citizen broadcasters for permanent residency after one year of employment and substantially accelerate the sponsorship process by providing for a one-time waiver of the foreign residence

requirement and by allowing employees to convert directly from a J-1 visa to permanent resident status upon certification by the Director of USIA. These changes will reduce employees' travel problems and minimize their fear of unprotected exposure to abuses of personnel practices.

The proposed amendments also allow spousal employment and restore J-1 employees' eligibility to participate in the Federal Employees' Retirement System. In all of these respects, the amendments improve on the current situation and the Committee is to be applauded for its initiative in proposing them.

However, there are still several areas where J-1 visa holders continue to suffer discrimination that is not addressed by the proposed legislation. Under the current law, dependents of J-1 employees cannot legally remain in the U.S. past the age of 21. If they are unable to obtain a visa to remain in the U.S., they will be forced to return to their families' countries of origin and potentially be exposed to retaliation from hostile governments, as well as creating an unnecessary hardship for their parents. In addition, currently J-1 employees who send their children to state universities in Virginia, Maryland, and the District of Columbia must pay out-of-state tuition even though they are residents and taxpayers in these states. Finally, the proposed amendments will not improve J-1 employees' restricted access to banking services.

In the past, AFGE 1812 has argued that non-citizen employees of the Voice of America and Radio Marti should be granted immigrant visas. In principle, this remains our position. Nevertheless, the "Immigration and Naturalization Housekeeping Amendments of 1992" represent a substantial effort to improve the lives and working conditions of a dedicated group of Federal employees, and we pledge to work with you to achieve passage of this legislation.

Mr. MAZZOLI. I'm going to ask you the same question that I asked—you may have been in the room earlier—about whether or not USIA or our Federal Government is making a concerted effort to recruit Americans who might be able to speak those languages or who could be taught to speak the languages and interpret and write and become facile in those languages, or whether we're using the international programs and bringing people in under J visas or even converting them to permanent residences as just a crutch that we've depended on for so long.

Mr. LA DIEU. To answer that, I don't believe that it's a crutch that we're dependent on. I just believe that visa is the wrong type because of the many problems that come about on it.

Mr. MAZZOLI. Because, you know, for each one of them that comes in there's one of you who may not get a job in the first place.

Mr. LA DIEU. That is correct, and I am very aware of that. I'm just very aware of that. The problem we have here with the Voice of America and Radio Marti, particularly the Voice of America and its languages, is that many of the people who know the language from the U.S. perspective do not know the language from the country they are coming from on the special visa. They are journalists over there. They not only speak the language very fluently, they know the slang that goes over there, the current slang, the way it goes, the ethnic situation that is there. This is most important. And it's unfortunate that we cannot, the agency cannot do the recruiting for these specialized languages here in the United States and, thus, give the job to an American, but when push comes to shove, to get the word out over there, to preach democracy and equality around the world in a tongue, in order to knock down Berlin Walls and Iron Curtains—we've still got the Bamboo Curtain to go—this is needed.

Mr. MAZZOLI. Good.

Mr. LA DIEU. And we must treat the employees with equity.

Mr. MAZZOLI. Mr. Norton.

STATEMENT OF RICHARD E. NORTON, SENIOR DIRECTOR, FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA, ALSO REPRESENTING THE AIRPORTS ASSOCIATION COUNCIL INTERNATIONAL, THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES, AND THE TRAVEL AND TOURISM GOVERNMENT AFFAIRS COUNCIL

Mr. NORTON. Good afternoon, Mr. Chairman. In addition to the hat I normally wear in representing the Air Transport Association, I'm appearing here today on behalf of a coalition of travel industry groups that include the Airports Association Council International, the American Association of Airport Executives, and the Travel and Tourism Government Affairs Council.

We commend the committee for its willingness to address these issues and strongly endorse all of the provisions of sections 109 and 110 of the act, changes that we believe will modernize procedures that will allow continued growth in a \$53 billion industry that provides \$5 billion in positive balance of payments to the United States.

Some of the changes are relatively simple and straightforward. Certainly, the change to the visa waiver is one of these, but it can

provide an enormous stimulant to travel here if we can send out the message that this program is permanent.

Second, from a processing standpoint, we believe that the form absolutely must be removed. Congress has broad authority to exercise their discretion in this area, and it is complicating the process. INS points the finger at poor facilities, such as in Honolulu, as delaying the inspection of many passengers. In many respects, it's the cumbersome forms and other requirements of the visa waiver program that are the true culprits here.

We're glad to see that the administration supports the change to the electronic manifest. We think that this is the precursor of a system that can operate very smoothly and effectively in processing passengers in electronically rather than using these cumbersome forms. And it's an initiative that the industry is prepared to take. We've already invested significantly in this technology and will have a thousand machine-reader devices in place in Europe this summer to help process this traffic. So the industry is well ahead of the game here and believes that this is an absolutely essential step.

Furthermore, it will facilitate the sort of technology that INS mentioned may be on the horizon, and that's the inspection of passengers through the use of biometric technology. So we see this change that would move toward an electronic system to be absolutely critical to moving passengers through the system promptly.

INS indicated that they had flexibility in defining inspection, but we find it ironic that most positions they've taken on this issue have said that the law locks them into a certain mode of inspection. We think that this sort of change recommended in 110(b) is another essential element of a smooth process, where decisions can be made, techniques can be invented, technologies can be taken advantage of, if the definition of inspection is broader than INS currently says it is.

On the 45-minute standard, we're glad to see that Congress is willing to say definitively that the United States must comply with the treaty that it endorsed, with the law changed to require a 45-minute process for all Federal inspections. This, along with the definitional change for inspection, is the centerpiece of this legislative package as far as we're concerned—to send the right message that there are performance standards as well as new means of inspecting passengers.

Preinspection, very briefly, we have long supported—we are glad to see London coming around, but believe that Congress does have to show guidance in this area; instruct the administration how to proceed on this program in order to see it advance in a timely fashion. We view it as really as the essential third ingredient, along with the electronic information and the performance requirements we described above.

The only misgiving we have, Mr. Chairman, is that it be directed to places other than the biggest sites overseas. If you start going into places that are having enforcement problems, we believe the administration is right; the system can easily be circumvented. So we hope to see the program directed at those large sites overseas that do require facilitation.

Finally, the expedited process for inspection of citizens. We disagree with the administration that they've acted firmly, quickly, and institutionally enough to continue to move citizens through the system as quickly as they can, and believe that the requirement that they do come up with a formal program for this is quite important.

There are a couple of other areas that we feel need improvement. It was interesting to note AILA made comments about accountability of INS in the area of the exams fee account. You may notice in our testimony, Mr. Chairman, that we've asked for Congress to act in terms of earmarking revenues in that fee account that we deal with, the inspections fee account, to be dedicated more to inspections resources.

INS doubled its income in the fee area in 1991, and we saw a 35-percent increase in inspectors. That money is not going to hiring inspectors and putting them in the field. We think that some earmarking is absolutely essential.

And, finally, Mr. Chairman, an underlying theme of these suggestions that are in the bill is that there is a problem with immigration enforcement that's being addressed here. We're not going to stop, as we noted, problems with inadmissible passengers through preinspection. We believe that the carriers are an absolute essential element to that sort of interdiction effort.

So far, the administration has been reluctant to address this, to use the carriers in an effective fashion, and we have proposals that we have included in our testimony that we feel will enlist the carriers in this effort.

Mr. MAZZOLI. Good. Thank you very much, Mr. Norton.

[The prepared statement of Mr. Norton follows.]

**Statement of Richard E. Norton
Senior Director, Facilitation
Air Transport Association of America
Before the Committee on the Judiciary
Subcommittee on Immigration, Refugees and International Law
U.S. House of Representatives
Concerning
May 20, 1992**

Introduction

My name is Richard E. Norton, and I am appearing here today in behalf of a coalition that represents the interests of the United States travel industry. This coalition, which includes the Air Transport Association, the Airports Association Council International, the American Association of Airport Executives and the Travel and Tourism Government Affairs Council, appreciates this opportunity to express its support for proposed revisions to the Immigration and Nationality Act (INA), and commends the subcommittee for its willingness to address this important issue as we move into the peak summer tourist season. As we stated in testimony here two months ago, we strongly endorse changes that would modernize procedures that apply to the inspection of passengers arriving at our international gateways.

The key provisions we advocate address a question that has become a growing source of frustration for the industry and our consumers in the past few years. The United States stands alone among major nations for having failed to make sense of its border policies in the places where it has the most to gain and the least

to lose: specifically, at our international airports, through which 40 million visitors pass each year. The resultant delays portray an image of a country that is indifferent about protecting and expanding its biggest "export" -- the \$53 billion tourism industry -- during times of economic crisis. This stands in stark contrast to aggressive steps by other nations that have evaluated the consequences of an antiquated inspection system and made adjustments that still achieve the dual goals of this process: first, the prompt admission of this largely problem-free group of visitors; and second, an intelligent implementation of the government's enforcement mission.

This is no small matter to the affected industries, for growth in international tourism will have an exponential effect on the economy and widen the positive trade balance that this sector generates. Experts predict that international air traffic to this country could double by the end of this decade; however, the momentum can be squandered if we remain mired in procedures that present a negative impression of travel to the U.S., as opposed to destinations that have a more hospitable image. For these reasons we are convinced that the time is ripe; the INA must be updated now, incorporating provisions that give INS the tools it needs to unsnarl the obsolete border inspection procedures.

Expediting Airport Immigration Processing

I. Passenger Manifests

The coalition proposes that the Act be modified to allow manifests containing name, personal data and flight information to be submitted to INS in electronic form, and to make the form consistent with international treaty. This seemingly innocuous alteration is extremely important, however, to ensure that new techniques can be blended with traditional ones to arrive at a more effective admissions processing regime.

We seek changes to Section 231(a) of the Act, in which the word "electronic" would be inserted prior to the word "typewritten." Furthermore, the same section should be changed by adding language that would ensure that regulations concerning the information contained in the manifest would not exceed the international standards of the International Civil Aviation Organization.

With such a change, INS and the industry can move quickly toward a system that takes advantage of the Advance Passenger Information program, or API. Currently, API captures data from a traveler's passport at time of check-in. This allows government record checks to take place while the passenger is en route, which eliminates a step during arrivals processing and speeds up the

inspection. By supplementing this program with an electronic manifest provision, other routine operations can be automated (such as the Arrival/Departure Record, Form I-94). Furthermore, the system will be able to accommodate future systems that combine API with a passenger's biometric data (such as hand geometry, fingerprint, voice image, retinal scan, etc.) to verify identity.

II. Inspection by Immigration Officers

The coalition strongly urges the subcommittee to adopt a change to Section 235(a) that would allow INS to broaden its definition of how an inspection is to be performed on arriving passengers. Current agency interpretations of the existing statute impose a requirement that each passenger be inspected by an officer; our change would, in conjunction with the electronic manifest provision noted above, allow INS to define an inspection as being able to be accomplished by means other than a personal interview (e.g., by the biometric verification process described above). This straightforward change can be made by inserting the following sentence after the existing second sentence of Section 235(a):

Nothing in this section shall be construed as requiring a personal interview in the conduct of an examination or inspection.

This very progressive step will revolutionize the way in which passenger inspection systems will evolve over the next decade. By permitting the admission of citizens and visitors to be supported by technology, Congress will provide an alternative to bigger staffs and larger terminals, which are now viewed as the only means of satisfying the demand for more or improved INS services.

III. Provision of Immigration Inspection and Preinspection Services

In 1988 the United States sought modifications to Annex 9 of the International Convention on Civil Aviation which called for all inspections processes to be completed within 45 minutes of a passenger's presentation for inspection. This effort was successful; the change was approved by the plenary session and is now incorporated in the treaty. Implementation by the U.S. has not gone so smoothly, however; INS interprets the current statute as granting it the entire 45 minute window, leaving no time to accommodate the role of U.S. Customs and the Animal and Plant Health Inspection Service. We propose a clarifying modification that would accomplish that goal by specifying that immigration formalities are to be accomplished within a time period that enables all federal processes to be completed in 45 minutes. The coalition views this clarification as the centerpiece of the legislative package.

IV. Increase in Preinspection at Foreign Airports

Airports, airlines and the other elements of the tourism industry have worked diligently to expand preinspection services by INS. Preinspection is a process currently used in Aruba and Shannon, Ireland (and soon to be implemented in London) to inspect returning international passengers for immigration purposes before their departure, thus enabling them to proceed directly to Customs upon arrival in the U.S. We are convinced that this program -- an INS-only hybrid of the full service preclearance process that is well known to travelers departing Canada, Bermuda and the Bahamas -- must be spread to other high-volume overseas sites in order to speed up the inspection of low risk passengers.

Preinspection is effective in that it handles all INS processes at the point of embarkation, thus allowing the beneficiaries of the system to bypass immigration lines at the U.S. port of entry. We believe the program operates most effectively when viewed as a facilitation measure for travelers; furthermore, it has peripheral benefits in the form of enhanced security for airlines and airports, plus it improves interdiction capabilities for INS. We firmly believe that the expansion of the preinspection program is the essential third ingredient of a modern inspection system that is supplemented by better use of electronic information and clear performance requirements. To complete this picture of a well integrated inspection structure we recommend the addition of

a new section that would require that the Attorney General, in consultation with the Secretary of State, promptly establish and maintain preinspection stations in at least 5 of the largest foreign airports in terms of the number of passengers who embark by air en route to the United States. Such preinspection stations should be in addition to any preinspection stations that are already authorized to be established.

V. Expedited Process for the Inspection of Citizens

The coalition is convinced that it is time for Congress to mandate an expedited inspection process for returning United States citizens. When INS fully abandoned the 15-year-old "citizen bypass" program in January 1991, it did not institutionalize an alternative. A stopgap measure put into place last summer to avoid a repeat of the 1990 tourist season debacle, the Accelerated Citizen Examination (ACE) system, is not in place full time; in fact, instructions call for its use only to avert delays of 45 minutes or longer. We are convinced that Congress must supplement existing report language with clear statutory guidance in order to assure that INS places sufficient priority on our own travelling public. Absent this move INS will continue to view U.S. citizens as a suspicious assortment of potential inadmissible aliens, rather than as a welcome group whose inspection should be judged by its promptness and efficiency. To this end, we recommend an amendment

to Section 286, which would set up a permanent system that operates in behalf of returning American citizens.

Visa Waiver Pilot Program

Following its enactment in late 1986 and implementation in 1988, the Visa Waiver Pilot Program has proven to be a success. The program has reduced the need to devote government resources to the largely pro forma exercise of granting nonimmigrant visas to low risk passengers, it has stimulated travel from Japan and Western Europe, and it has improved immigration control through the adoption of the summary exclusion provisions. Nearly four years into its operation, the new system has operated well -- with one important exception.

When the Pilot Program was conceived it required entrants to be given a form on which they would acknowledge the unique exclusion laws that applied to them. The form was to be turned in to the immigration officer at the time of arrival. This added paperwork burden has made admissions processing a nightmare; visa waiver passengers take at least twice as long to be inspected as travelers with visas. The program initially may have boosted tourism, but it has needlessly aggravated the scope of the delays being encountered at affected airports. The coalition endorses a solution which would obligate carriers to distribute information

about the program's requirements to the passenger but would not require the collection of a form by INS.

We also agree that the program should be made permanent. Since it is highly unlikely that it will be rescinded -- both for the operational reasons noted above and in view of the diplomatic repercussions that would ensue -- Congress should act decisively to make the waiver a permanent fixture of immigration policy. This step will make it easier for airlines and travel agents to properly inform tourists of visa requirements.

This goal can be met by altering Section 217 of the Immigration and Nationality Act (INA), first by removing the "sunset" provision by deleting the word "pilot" from Sec. 217, and then by deleting the parenthetical phrase, "(as defined in subsection (e))" from Sec. 217(a)(1). Sec. 217(e) would be removed.

The cumbersome waiver form can be eliminated by deleting Sec. 217(a)(3) and Sec. 217(b)(3), and by replacing the first phrase of Sec. 217(b)(4) with the following phrase (i.e., retaining the present language of subsections (A) and (B)):

Waiver of Rights. - An alien who applies for admission to the United States under the Visa Waiver Program waives any right -

The following paragraph D could be added to the carrier agreements criteria of Section 217(e), to ensure that visa waiver participants are fully apprised of the conditions of the program:

To provide passengers applying for admission to the United States under the visa waiver program with written notification of the waiver under subsection (b).

Re-marking of User Fee Expenditures, Sec. 286

When Congress enacted the Immigration User Fee in 1986, it noted a potential problem with a system that allowed direct spending of fee revenues rather than a more conventional system that used fees to offset an appropriation. This concern was prophetic; by eradicating the checks and balances of the appropriations process, the government has left INS free to spend fee revenues without fear of oversight.

The spending patterns clearly make this point. In the first few years of the user fee, INS used it to hire more officers. Before the changes were made to the fee structure in 1990 (when the exemption was lifted for traffic from Canada, Mexico and the Caribbean), INS was spending almost 70 percent of its \$110 million in revenues on the inspections program; most of the remainder was allocated to communications and automation support and to detention services. Since then INS has doubled its working capital (nearly \$240 million is available this year), but the emphasis on the core

inspections program has sagged: it now draws only 61 percent of the budget, and about 55 percent of the money on hand. Rather than having the 1990 revisions building on economies of scale that were instituted during the first four years of the fee, it has provoked an unjustified use of resources by the ancillary programs. In just two years, data and communications has had its budget increased by 74 percent; detention has gone up by 169 percent (by next year, user fee funding for detention alone will nearly equal the entire program's budget -- air and land -- for the year prior to the enactment of the Immigration User Fee).

We raise this issue to the subcommittee because there has been no response to requests that these expenditures be explained. This is not a case of finding a place for "leftover" money; by INS's own standards, airports are by no means fully staffed to a level that ensures passengers are inspected promptly (the agency has hired approximately 490 inspectors since concluding that a minimum of 750 would be needed to address 1990 traffic levels). The group charged with reviewing related INS budget decisions, the Immigration User Fee Advisory Committee, has not been given the data it asked for that would show why these programs were given enormous increases. We believe the user fee system can be an effective one; however, this oversight vacuum must be addressed by Congress.

We believe that this problem can be corrected by modifying Section 286 of the INA to require INS to spend a higher proportion

of user fee funds on directly related inspections activities. This can be accomplished by redesignating Sec. 286(h)(2)(B) as (C), and add a new paragraph (B) to read as follows:

No less than 80 percent of the funds expended under the authority of this subsection are to be spent on salaries and directly related personnel costs for immigration inspectors, related overtime for commercial aircraft and vessels, and inspections automation equipment.

Mitigation of fines and screening of improperly documented passengers, Section 273

Efforts to quickly and efficiently inspect the vast majority of bona fide visitors are being eroded by the large influx in improperly documented passengers who are exploiting the international commercial airline system. There are no clear statutory provisions for INS to enlist carriers in efforts to reduce the frequency with which these unscrupulous passengers evade the system of lawful immigration, in the process needlessly tying up INS resources that could be better directed toward facilitative programs. This wildly accelerating phenomenon has three undesirable effects: first, the U.S. Government is stuck with a person whose identity is unknown, and whose expenses for detention must be paid from user fee revenues; second, as mentioned above, INS resources are diverted to handling the labor-intensive chores of dealing with complicated exclusion cases; and third, carriers

are paying millions of dollars per year in immigration fines because these unscrupulous passengers are using sophisticated forged documents -- a situation over which carriers have little control. We recommend that this trend be counteracted by an aggressive program that penalizes the violators through civil fines and summary exclusion, and enlists the carriers in interdiction efforts.

Specifically, we advocate several additions and changes to Section 273 of the Act. The first would attach significant sanctions against the violator:

Sec. 273(c) If it appears to the satisfaction of the Attorney General that any alien has willfully failed to present a passport, visa or other document in lieu thereof to an immigration officer at the time of application for admission to the United States, the alien shall pay to the Commissioner a fine of not more than \$3000, and shall waive any right to review or appeal under this Act, or to contest, other than on the basis of a nonfrivolous application for asylum, an immigration officer's determination as to the admissibility of the alien at a port of entry into the United States.

The second change, adding new Section 273(f), would ameliorate the purely punitive nature of the existing carrier fines system and would encourage cooperative programs designed to deter abuse by inadmissible aliens. The law's current \$3000 unmitigatable fine against carriers that do not show "reasonable diligence" in checking for a passenger's visa would be replaced by a system of mitigation, and INS would be given a clear authorization to specify carrier procedures that would help to stop the flow of persons who

use fraudulent documentation to gain entry to the U.S. We recommend the following statutory addition:

Whenever any carrier or person has incurred, or is alleged to have incurred, a fine or penalty under this Section, the owner of such carrier or person may file a petition for remission or mitigation of such fine or penalty under such regulations as the Attorney General shall prescribe. The Attorney General may remit or mitigate any penalty if it is found that such penalty was incurred without willful negligence or without any intention on the part of the carrier to violate the law, or if there exist mitigating circumstances that would justify the remission or mitigation of such penalty. The imposition of any such penalty or class of penalties against any carrier may be waived at the discretion of the Attorney General if the carrier demonstrates that it has screened passengers for travel documents in accordance with procedures specified by the Attorney General.

To further codify these mitigation provisions, we recommend that the phrase, "the sum of \$3000" in Sec. 273(b) and (d) be replaced by the phrase, "a fine of not more than \$3000", and that any reference to "sum" or "sums" be replaced by the word "fines."

Summary

We must move quickly to ensure that an important sector of the American economy is not eroded by competition from other nations. Failure to adjust to the norms in place elsewhere for welcoming tourists and business travelers cannot be compensated for in other ways; entry formalities must be efficient, or the market will simply go elsewhere. The airline, airport and tourism industries believe this deterioration can be avoided undertaking a careful

reassessment of U.S. border control policy, and by passing long overdue, revenue-neutral legislation to optimize the use of new technology and techniques. We have seen ample proof that a full supply of immigration officers at our airports is not the only answer; such a strategy is a Maginot Line to the abusers and is an enduring impediment to a prospective visitor.

For the reasons justified above, we strongly urge the subcommittee to take an aggressive role in ensuring that the U.S.'s immigration policies match its economic goals; other countries have successfully balanced these interests, and we can as well. With your help in adopting all of our proposals, we can preserve America's share of this lucrative resource and enhance national security.

Once again, Mr. Chairman, we would like to thank you for holding this timely hearing. Furthermore, we would like to extend our appreciation to Rep. Charles Schumer for being willing to introduce a bill that deals with several of the problems we have described. We are anxious to see the subcommittee address this topic as a whole, and would welcome any questions you may have.

Mr. MAZZOLI. Mr. Nurick.

STATEMENT OF LESTER NURICK, COUNSEL TO THE G-4 FAMILY COALITION, INC.

Mr. NURICK. Thank you, sir. I'm appearing today as counsel to the G-4 Family Coalition, which my law firm, Wilmer, Cutler & Pickering, represents. I'm sorry that my colleague, Lloyd Cutler, who has worked very closely on this matter, had to leave.

The G-4 Family Coalition is a successor to a similar coalition that I think you're familiar with, the G-4 Children's Coalition. The coalition consists of non-American employees and their families of the major international governmental institutions in the United States, which are the World Bank, the International Monetary Fund, United Nations, the Inter-American Development Bank, and Intelsat.

I am here to ask your support for section 102 of the bill. The section is designed to continue to allow retirees of those institutions with longstanding ties to the United States to remain here as permanent residents after retirement. I would like briefly to outline the background to the bill and the legislative relief being sought.

Some 10 years ago, it became apparent that the then existing immigration laws were creating serious problems for these institutions and their non-U.S. staff. The problems arose because retirees and their spouses and children on G-4 visas were obliged to leave the United States after the employee retired, even though the retiree had a long period of service and residence in the United States, unless particular exceptions could be found in the immigration laws. This was particularly difficult for children who spent their formative years in the United States and who, for all practical purposes, had become Americans. It was also difficult for retirees and their spouses whose ties with their home countries had weakened after many years here.

This situation caused consternation, not only to the individuals involved, but also to the institutions, because they were inevitably drawn into the human aspects of the family crises and transactions. Legislation to relieve these problems was supported not only by successive administrations of both parties, but by every living ex-Secretary of State and Treasury and by the heads of all the major international organizations.

Incidentally, may I say here that I just was told that the president of the World Bank, Lewis Preston, and the managing director of the International Monetary Fund have jointly signed a letter supporting the bill, addressed to Secretary Brady and asking his support.

The 1986 Immigration Act and the 1988 Technical Correction Act took care of the major problems that then arose. They provided that retirees from these institutions could become permanent residents provided they had 15 years' physical presence in the United States and applied for permanent residence by January 1, 1993, the so-called sunset date. However, one unfortunate effect of this sunset date is that a retiree who has joined the international organization after January 1, 1978, will not be able to apply by the January 1, 1993, deadline because the employee will not be able to meet the 15-year residence requirement. Furthermore, even an em-

ployee who joined the international organization before January 1, 1978, and has the requisite period of residence, but does not retire by January 1, 1993, will also not be able to apply because the employee will not be able to comply with the January 1, 1993, sunset date.

Therefore, these retirees will face the same problems as did the retirees for whom relief was granted in the 1986 and 1988 acts. And as time goes on, this sunset date will, of course, preclude more and more retirees, and their spouses, from remaining in the United States regardless of their long periods of residence here.

Section 102 of the bill would simply eliminate the January 1, 1993, sunset date. Nothing else would be changed. The 15-year residence requirement would remain in the act. Based on information we have obtained from the INS about G-4 experience under existing law and from the institutions themselves, we estimate that the elimination of this sunset date is not likely to affect more than 100 persons, more likely somewhere between 50 and 100, inclusive of retirees and spouses, per year at the present staffing and recruitment levels.

We believe the bill is noncontroversial and, as you see, the numbers involved are modest, indeed. The elimination of the sunset provision would be viewed very positively by the international organizations and their staffs. It will be seen as a caring and humanitarian act by the host government at a time when these institutions are playing, with the support of the Congress and the administration, an increasing role in helping to promote peaceful and democratic development of the developing and newly emerging countries of the world.

We would be grateful for your support.

Mr. MAZZOLI. Thank you very much.

[The prepared statement of Mr. Nurick follows:]

Statement of Lester Nurick,
Counsel to the G-4 Family Coalition, Inc.
Before the Subcommittee on International Law,
Immigration and Refugees of the
House Judiciary Committee
May 20, 1992

Mr. Chairman, members of the Subcommittee, my name is Lester Nurick. I am appearing today as counsel to the G-4 Family Coalition, which my law firm, Wilmer, Cutler & Pickering, represents. My colleague, Lloyd Cutler, is here with me and together we hope we can answer any questions you may have.

The G-4 Family Coalition is a successor to a similar coalition, the G-4 Children's Coalition. The Coalition consists of non-American employees (and their families) of the major international governmental institutions in the United States, i.e., the World Bank, International Monetary Fund, United Nations, Inter-American Development Bank, IntelSAT.

I am here to ask your support for Section 102 of the bill before you. That section is designed to continue to allow retirees of those institutions with long-standing ties to the United States to remain here as permanent residents after retirement. I would like briefly to outline the background to the bill and the legislative relief being sought.

Some ten years ago, it became apparent that the then existing immigration laws were creating serious problems for these institutions and their non-United States staff. These problems arose because retirees and their spouses and children, on G-4 visas, were obliged to leave the United States after the employee retired, even though the retiree had a long period of service and residence in the United States, unless particular exceptions could be found in the immigration laws. This was particularly difficult for children who spent their formative years in the United States and who, for all practical purposes, had become Americans. It was also difficult for retirees and their spouses whose ties with their home countries had weakened after many years here. I think it is fair to say that this

situation caused consternation, not only to the individuals involved, but also to the institutions because they were inevitably drawn into the human aspects of the family crises and transactions. Legislation to relieve these problems was supported, not only by successive Administrations of both parties, but by every living ex-Secretary of State and Treasury and by the heads of all the major international organizations.

The 1986 Immigration Act and the 1988 Technical Correction Act took care of the major problems that then arose. They provided that retirees from these institutions could become permanent residents provided they had 15 years physical presence in the United States and applied for permanent residence by January 1, 1993, the so-called "sunset" date. (8 U.S.C. 1101(a)(27)I). However, one unfortunate effect of this "sunset" date is that a retiree who has joined the international organization after January 1, 1978 will not be able to apply by the January 1, 1993 deadline because the employee will not be able to meet the 15-year residence requirement. Furthermore, even an employee who joined the international organization before January 1, 1978 and has the requisite period of residence, but does not retire by January 1, 1993, will also not be able to apply because the employee will not be able to comply with the January 1, 1993 "sunset" date.

Consequently, these retirees will face the same problems as did the retirees for whom relief was granted in the

1986 and 1988 Acts. And as time goes on, this "sunset" date will, of course, preclude more and more retirees (and their spouses) from remaining in the United States regardless of their long periods of residence here.

Section 102 of the bill before you would simply eliminate the January 1, 1993, "sunset" date. Nothing else would be changed. The 15-year residence requirement would remain in the Act. Based on information we have obtained from the I.N.S. about G-4 experience under existing law and from the institutions themselves, we estimate that the elimination of this "sunset" date is not likely to affect more than 100 persons (inclusive of retirees and spouses) per year at present staffing and recruitment levels.

We believe that the bill is non-controversial and, as you see, the numbers involved are modest indeed. The elimination of the sunset provision would be viewed very positively by the international organizations and their staffs. It will be seen as a caring and humanitarian act by the host government at a time when these institutions are playing, with the support of the Congress and the Administration, an increasing role in helping to promote peaceful and democratic development of the developing and newly emerging countries of the world.

We would be grateful for your support. [Questions?]

Mr. MAZZOLI. Mr. Stein.

STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. STEIN. Mr. Chairman, members of the committee, thank you very much for the opportunity to testify. My name is Dan Stein. I'm the director of FAIR, a national organization working to restore the overarching consensus and need for comprehensive annual numerical limits on immigration. Although our testimony covers the whole bill, I'm going to confine my remarks to just one provision; that is, the repeal of the Cuban Adjustment Act. I apologize in advance to Mr. McCollum on this one, but I hope the committee will weigh my words with the care and consideration that have gone into them.

The proposed housekeeping legislation contains a series of substantive, if secondary, amendments designed by particular constituencies for their respective needs. While a few are useful, and many others are ill-advised or unneeded, there is one critical provision that is urgently required to rectify an outstanding national default. It's importance far outshines all the rest. That provision is section 114, and it would repeal the Cuban Adjustment Act.

Mr. Chairman, we commend your strength of conviction on this vital matter. For nearly 30 years, the Cuban Adjustment Act has stood as a monument to the degree to which this Nation will tolerate gross deviations in basic legislative and judicial fairness when overarching foreign policy interests are perceived to be at stake. The offending exceptional amendment, added in the mid-1960's at a peak of cold war obsession, provides for a more expansive treatment of Cuban nationals who lawfully enter the United States than has been provided to any other class of person anywhere in the world before or since.

This law has been a magnet for nearly 10 percent of the Cuban population to move to Florida and New York. It has allowed hundreds of thousands of Cuban nationals to enter the United States as tourists, business visitors, flotilla entrance, or defectors, and render normal departure and entry controls a nullity. Each achieved permanent residence or citizenship without regard to the terms of entry or general numerical limits.

Despite the cost of these compromises and the appearance, in fact, of fairness, the law has failed in its major objectives. Long after pieces of the destroyed Berlin Wall have been sold off as souvenirs in New York, Castro remains. Rather than forcing Castro out, this act has allowed him to stay in. The act has had the unintended effect of allowing Castro to dispatch most political opposition; the well educated, the moneyed, and industrious individuals have all departed. Given the option, how could they choose otherwise?

Correspondingly, the act has allowed Castro to export his most hardened criminals and to generate hard currency by selling exit visas, in violation of the law of nations, our own trade laws, and all basic standards of decency and human rights. In toto, the act has allowed a tyrannical, petty dictator to remain in power longer than the most entrenched despot in the former Soviet Union, Ro-

mania, or even Albania. No matter how bad it gets in Cuba, there's always Miami.

Such a double standard might be tolerable if there were but two nations, ours and his, but what of Haiti, El Salvador, China, Peru, and even Mexico? But, more importantly, the issue here is basic justice. It is justice in the form of fundamental fairness and the equity that each of us as Americans have come to expect and demand in the administration of America's refugee protections. All persons who arrive at our shores or who make claims for our humanitarian protection are part of the family of man and should be adjudged by the same neutral standards.

Mr. Chairman, the Cuban Adjustment Act is a cold war relic. It places in moral and political crisis the integrity of America's immigration and refugee law, particularly in the shadow of the Haitian interdiction program. Although Congress has the power to again capitulate to the powerful constituencies that will oppose this much needed change, reason, justice, and equity require that this glaring omission in our otherwise principled refugee program finally be rectified.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. Stein. I appreciate that statement.

[The prepared statement of Mr. Stein follows:]

TESTIMONY OF
DAN STEIN, EXECUTIVE DIRECTOR
FEDERATION FOR AMERICAN IMMIGRATION REFORM
HEARINGS ON HOUSEKEEPING BILL
BEFORE THE
HOUSE JUDICIARY SUBCOMMITTEE ON
INTERNATIONAL LAW, IMMIGRATION AND REFUGEES
MAY 20, 1992

My name is Dan Stein. I am the Executive Director of FAIR, the Federation for American Immigration Reform. I want to thank you for inviting me to testify on behalf of FAIR on the subject of the immigration "Housekeeping Bill."

FAIR is a national membership-based educational organization committed to securing the borders of United States and promoting reasonable limits to legal immigration. It is in keeping with our purpose and mandate that I present the following testimony.

We live in a land of 250 million people. Every law on the books will inconvenience someone. Presumably, a number of the features of this bill are intended to resolve aspects that have caused inconvenience to a few. Unfortunately, what relieves inconvenience for a few often inconveniences many. This may well be the case if this "housekeeping" bill passes.

Eliminating the sunset for the G-4 (Section 102) special immigrant provisions appears to be reasonable and worthwhile^{1/}. We strongly urge you to repeal the Cuban

^{1/} 1990 Statistical Yearbook of the Immigration and Naturalisation Service, p. 56. The numbers of immigrants benefiting from this category is minimal during the life of this
(continued...)

Adjustment Act (Section 114), something we have long advocated. All the rest of the bill, we believe, will cause many more problems to many more people than it will resolve, and we strongly urge you to reject those sections.

Section 101 -- Authorization of Nonimmigrant Entry of Spouses and Children of Alien Members of the Armed Forces

For years the INS has taken care of this matter in a most satisfactory manner. There is no indication that the manner in which it has been handled for years has caused any kind of wide-spread problems. However, in analyzing the potential effects of your amendment, it is easy to see it creating much mischief for the intended beneficiaries.

Today, the administrative policy is to issue B-1 nonimmigrant visas to non-resident alien spouses and children of alien members of our armed forces. It is INS policy to admit them as B-1 nonimmigrants for six months. At the end of the six months period, voluntary departure until the end of the enlistment period for the armed forces member spouse/parent is granted along with work authorization.

The vehicle for work authorization is the voluntary departure. Under present policy, work authorization is not given to most nonimmigrant categories; and when it is, it is severely limited. What is the purpose of making this change? What will

1/ (...continued)
provision. It is unlikely that there will be opportunity for serious abuse or heavy subscription.

it resolve? It has more potential for complicating lives that are not now complicated than it has for resolving problems.

However, since you are opening this subject for discussion, perhaps it should be examined in a wider context. Virtually every alien member of the armed forces is enlisted to serve as a servant to officers in our Navy. How appropriate is it to promote and perpetuate our having a servant class, a lesser class of member of our armed services? In an earlier time in our not too distant past, the Navy messes were manned by African-Americans who were segregated from the mainstream of the military and whose careers were limited to working as servants mainly to white officers. In the late 1940s and early 1950s, when the military was integrated, all but the Navy pretty much did away with their servant classes of military personnel. The Navy, on the other hand, chose to perpetuate this old, despicable tradition by enlisting Philippine citizens as mess servants. Is it not time we eliminated this last vestige of our Jim Crow military?

Section 103 -- Special Immigrant Status and Nonimmigrant Status for Certain USIA Employees

The USIA is an important government organization whose purpose is conveying information about our society to the rest of the world, especially developing countries of the world. Of course, we must communicate with these peoples in their myriad native languages. In principle, FAIR agrees that we should open our society's windows to these peoples, and our immigration laws should contribute to the facilitation of this. However, we are

troubled by the lack of a future commitment in the proposed language. If the purpose is to insure a cadre of competent foreign language broadcasters for the USIA, there should be a provision for at least a two or three year future commitment, supported by provisional permanent residence for that period of time.

We suggest that language be constructed to require a contractual commitment of no less than two years beyond the date of acquiring lawful permanent residence status. For that period of time conditional permanent residence status would be granted with conversion to full permanent residence upon satisfactory completion of the contract. Exceptions would be granted in the event of death or disability of principals.

FAIR would have no objection to this measure as long as the numerical restrictions articulated in your proposal are maintained and a provision for future commitment is included.

Section 104 -- Limited Nonimmigrant Status for Alien Spouses of Citizens

This is a smoke and mirrors proposal. The State Department would still have to issue nonimmigrant visas to the beneficiaries of this provision. Since all would be obviously intending immigrants, a virtually identical visa interview process would have to be administered for every visa applicant. Today's delays are all due to the involved interview process. Since it would have to be the same, where would be the gain? Of course, additional burden would fall on the INS because all who entered under this provision would have to adjust status to

permanent residence. We see no provision for expanding resources for INS to compensate for this new burden.^{2/}

Section 105 -- Foreign Adopted Children

This is a highly complex and emotionally charged issue. It is fraught with danger and potential for abuse. Particularly alarming is the "quick fix" proposed. Merely making the buying and selling of children a crime provides little, if any protection for innocent children and families at risk. Although the criminalizing of child marketing is, perhaps, well intended, it is little more than a window-dressing. It will not provide significant protection from unscrupulous black marketers of children where the children, the natural parents, and the adoptive parents become victims of some of the vilest acts one human can perpetrate against another.

No matter how well you craft this legislation, Congress cannot confer the necessary investigative powers and prosecutorial jurisdictions outside our borders. The probabilities of successful investigations and prosecutions would be so remote that it would be totally ineffective as a deterrent. Almost all the criminal acts would occur in foreign countries where powers of subpoena of our grand juries and other authorities do not reach. Most or all witnesses and evidence

^{2/} Ibid. p. 55. Since 1984 the numbers of spouses immigrating have averaged at or above 150,000 per year. It is conceivable that a large proportion of those numbers who now enter the United States with immigrant visas would enter as nonimmigrants, causing a massive processing burden to accrue to the INS. In addition, there would be little or no relief in processing burden to the State Department.

would lie in foreign countries, out of reach of our grand juries and power of summons and subpoena. Investigators would be expected to conduct investigations in foreign countries in which they have no authority at very great expense. As a matter of practicality, while it may look good on paper, this provision would merely be virtually meaningless.

Aside from the impotency of any kind of criminal sanctions, there are other flaws in this proposal which have the potential of inviting extensive abuse. Allowing two-parent, functioning families to surrender their children for adoption is such an invitation. It raises the specter of children being sold into bondage or into potentially abusive households with minimal projections to prevent it. Raising the age from sixteen to eighteen could very well provide the opportunity to reinstitute the long-abandoned practice in our civilization of indenturing children as workers in brothels and sweat shops or as personal servants.

Before making any changes to Section 101(b)(1)(F), we urge you to move with great caution and do so only after careful study of every aspect. Then, you must include foolproof projections that can be truly enforced.

Section 106 -- Permanent Resident Status for Refugees Admitted to the United States

Now that the Cold War is over, it is time we reassessed and re-evaluated our refugee policy. Refugee status should be a measure which grants temporary refuge to those who are truly fleeing persecution in their homelands. FAIR strongly advocates

that the United States pursue a policy of providing effective temporary refuge for persons truly having a well-founded fear of persecution if they remain in their home countries. We urge that our policy be international in scope, working with all nations of the world to participate in providing haven to persecuted peoples. We also urge that the policy emphasize that such haven be temporary, stressing that those given safe haven return when it is safe for them to do so.

We recognize that at times, it may be impossible for some who have received refuge to return home. Over years, equities will accrue that would cause severe hardships to refugees and immediate family members if they were required to return even if it were safe for them to return. Only after the passage of a significant period of time should refugee status be converted to a permanent status.

Section 107 -- Prompt Parole of Aliens in Order to Attend the Funeral of an Immediate Blood Relative in the United States

There are some things that inevitably take time. Presumably, this provision would affect only otherwise inadmissible aliens and aliens from countries where nonimmigrant visas are required and who are not in possession of valid nonimmigrant visas. Transportation carriers would refuse to board aliens who do not have such visas or other documentation that would relieve the carriers from liability for delivering to the United States inadmissible aliens. This would require advance parole which is now expedited and speedily processed in these types of emergencies.

Most complaints arise from the requirement for presentation of proof of death of family member and proof that the alien is truly an immediate blood relative of the deceased. It takes additional time for the notice of such verification to be transmitted by the reviewing INS office to the State Department in the country of the relative. Such variables as time differences around the world and consular availability play a significant role in getting documentation to the alien relative. No amount of legislation, no matter how cleverly formulated can overcome the vagaries and vicissitudes of time and nature. Furthermore, there exists no satisfactory remedy if timetables are missed. This is a legislative act somewhat akin to legislating against bad weather or the changing of the tides.

Section 108 -- Use of Credible Evidence in Spousal Waiver Applications

Reducing the standard of proof to the level proposed in this section would virtually nullify the statute against marriage fraud. Actually, it would set back enforcement against marriage fraud to a condition far worse than it was before the marriage fraud amendments were passed. Reducing the standard of proof to "credible evidence" would open the door to self-serving affidavits and statements of the beneficiary aliens as sufficient will promote rampant fraud and cause an old problem to reemerge and leave the INS with few remedies against it.

Section 109 -- Visa Waiver Program

This is a program that is still under evaluation. The evaluation is scheduled to continue until September 30, 1994. It

should be allowed to proceed through the course of its evaluation period, rather than making it permanent prematurely.

Section 110 -- Expediting Airport Immigration Processing

FAIR has no objection to bring the inspection process into the 21st century, but caution must be taken against any kind of construction that excludes old-style manifests or personal inspection and examination of people. The only true safeguard against attempts at using fraudulent documents and fraudulent claims of admissibility is face-to-face personal inspection by a trained, experienced officer.

Section 112 -- Three-year Extension of Authorization of Appropriations for Refugee Assistance

The entire refugee program needs a comprehensive evaluation in light of changing world conditions. Refugee assistance being an integral, perhaps most important aspect of refugee policy, should be a part of that evaluation. If refugee assistance is authorized for three more years, it is likely that the whole subject will not be revisited for at least that period of time. FAIR recommends that the authorization extension be limited to one year with a mandate for a full report and comprehensive analysis of which would include a study of relevance of United States policy as it relates to the post Cold War era.

Section 113 -- Waiver of Ground of Exclusion under Diversity Transition Program

FAIR is long on record opposing the diversity transition program. This waiver makes it no better and a little worse.

Section 114 -- Repeal of the Cuban Adjustment Act

The repeal of this outdated, counter productive and discriminatory provision is long overdue. In its 26 years it has proven a failure in its foreign policy objectives -- bringing about political change in Cuba -- and a constant source of embarrassment for our government.

As we sit here in 1992, Fidel Castro is the last of the old Soviet bloc dictators still hanging on to power. Certainly one of the reasons for Castro's staying power is that the core of his political opposition -- those most likely to depose him -- are sitting in Miami rather than Havana. While there was a Lech Walesa in Poland, a Vaclav Havel in Czechoslovakia and a Boris Yeltsin in the USSR, to agitate and galvanize public discontent with a failed system, there is no one in Cuba to fill that role. In our zeal to embarrass Castro, we have inadvertently provided him with the means to export his domestic opposition, not to mention a good share of his common criminals.

Let's recognize reality -- the Cold War is over and we won, at least with regard to our competition with the Soviet Union. The Cuban Adjustment Act is a fossil of an era that no longer exists. While Cuba was once a potential security risk to the United States in a military sense, it is now, at best, a

minor annoyance. If Cuba poses a threat to us, it is in the potential stream of migrants that could come pouring out of the country. For more than 30 years we have been wary of missiles being launched from Cuba at the United States and the devastation they would wreak on their targets. Today, we ought to be equally concerned about a mass exodus of hundreds of thousands, perhaps millions of Cubans who could be heading to our shores and the devastation and calamity that would face the States and communities forced to absorb them.

It is not a remote possibility either. Two months ago, Governor Lawton Chiles of Florida, the state most likely to be affected by a new wave of Cuban migration, wrote a letter to President Bush asking for a contingency plan to cope with just such an occurrence.

Aside from being unnecessary and outdated, the Cuban Adjustment Act is also patently unfair in light of the recent events in Haiti. The United States government decided, correctly, that merely coming from that strife-torn country did not qualify the majority of Haitian boat people for asylum in this country. We recognized that consideration could be given only to those who could make a legitimate claim of being persecuted. It was only the steadfast adherence to this principle that prevented a large and perilous boat lift from Haiti on the scale of the 1980 Mariel boatlift.

How can we morally justify turning away Haitian migrants -- even those who are merely seeking economic

opportunity -- or the distressed of any other nation, for that matter, when we maintain a policy of carte blanche entry for any Cuban who arrives here, regardless of the circumstances? It not only presents the appearance of unfairness, it is in fact unfair. The vast majority of Cubans are arriving for the exact same reason the vast majority of Haitians were trying to get here a few months ago. They simply want to escape the poverty of their homeland. There are hundreds of millions, perhaps billions, of people all over the world who find themselves in circumstances very similar to or worse than the circumstances of today's Cuban migrants, yet none of them is treated with the same deference as the Cubans.

There is no place for this kind of favoritism in our immigration or asylum policy. The Cuban Adjustment Act must be repealed immediately. Cubans should be treated the same as people of any other nationality who seek asylum in our country -- fairly. Those Cubans who are victims of persecution should be given the chance to press their claims and, if there is merit to their cases, allowed to remain temporarily in the U.S. But this policy of automatic admission for one group, while we turn away people of other nationalities in similar circumstances is inconsistent and, indeed, morally indefensible.

As we have done for years, FAIR strongly urges Congress to approve this proposal and do away with a long standing provision in our law which has been an indisputable failure and an embarrassment.

Section 115 -- Moratorium on Increases in Fees

The United States suffers under the burden of a national debt of more than \$3 trillion. Budget cuts in medical care, school lunches, infrastructure repair, and many essential services are in effect or being proposed. And now it is being proposed that taxes, diverted from these crucial programs, be further diverted to subsidize the filing fees of aliens who are coming to the United States of their own free will, presumably with the full understanding that they must accept costs, obligations and responsibilities arising as a consequence of their choices. In better times we could understand such largess, but at this time with government funding being denied deserving causes at every turn, this just does not make sense. It is an outrage.

Section 201 Equal Treatment of Women in Conferring Citizenship for Children Born Abroad

The idea of trying to go back and correct wrongs that are a minimum of 58 years old is, on its face, an absurd proposition. No one in 1992 would argue in favor of a policy that denied women the same rights to confer citizenship on their children as men have. But we must be mature enough to acknowledge the mistakes of history as well as our powerlessness to rectify every mistake and every injustice. If we had to go back and correct every mistake that has been made over the past 216 years, we would never be able to move forward.

What this provision would do is issue an open invitation to rampant fraud. While the number of people who were

wrongfully denied citizenship because of the pre-1934 law is probably very small, it is almost certain that the number of people claiming citizenship on this basis will be very large. People all over the world will suddenly discover that their mothers or grandmothers were U.S. citizens.

The claims that will come pouring in as a result will be an administrative nightmare. We have only to look at a program that relies on personal affidavits and questionable documents to see the kind of fraud that is likely to ensue. It is commonly acknowledged that the majority of the 1.3 million people who received amnesty under the agricultural workers provision, did so as a result of fraud.

This provision would be a repeat of the SAW fiasco on a potentially grander scale, with much higher stakes -- immediate citizenship. Even though the statute would place the burden of proof on the petitioner, all practical experience indicates that precisely the opposite is the case. Absent clear evidence of a fraudulent claim, the government is likely to grant an immigration benefit to the petitioner.

The INS cannot keep up with the responsibilities it has now. This proposal can only make matters worse. It may be impossible to conduct a meaningful investigation into the petitions of those claiming citizenship on the basis of the pre-1934 law. What it will provide is a field day for lawyers.

Section 202 -- Citizenship at Birth for Certain Children Born Abroad of United States Citizens and Section 203 -- Expanding Waiver of the Government Knowledge, United States History, and English Language Requirements for Naturalization

United States citizenship is a privilege that we hold should be held in the highest regard, even with a certain amount of reverence. Citizenship imparts with it a number of responsibilities to protect for posterity the rights and privileges that make our nation unique and for which we are the envy of the rest of the world. Congress has recognized in times past that in order for citizens to appreciate and be willing to defend and protect those rights and privileges, there must be an attachment, a connection to this country. This is no less true today. If we are to have a strong nation, we must have a strong, informed citizenry. It seems that there are those in Congress who try at every turn to lessen the attachment of this nation's citizens to the nation.

While on the one hand, it might be worthwhile to clarify who is or is not a natural born citizen, it is inappropriate to turn citizenship into a remote concept with little or no meaning. These provisions are simply another step in the direction of turning citizenship into nothing more than a convenient device for passing immigration benefits to relatives. They should not be enacted.

Mr. MAZZOLI. Let me go around just a little bit. Mr. La Dieu, I appreciated the comment you made about needing speakers who have a command of the idiom of the language and the street talk and the slang, and as well the cultured talk of the land. Without that, it's pretty hard to do the job that the Voice of America needs.

But, again, are we now in a world in which there are very few countries we can't get into legally and our people can't visit? Does USIA have any kind of programs that encourage language studies either here in the United States or for U.S. people to travel abroad, to gain that kind of complete knowledge of the language that your agency needs?

Mr. LA DIEU. I can't answer the question as broadly as that. I'm unfamiliar with certain aspects of it. I do know they do have some training courses in the language.

But I'm going to have Stella answer part of the question about why it's best that we go abroad and get the people from the country to be the broadcasters in the particular language. She can cite a couple of examples for you that I think would answer that part of the question.

Mr. MAZZOLI. All right, thank you. Yes?

Ms. SI. Thank you, Mr. Chairman. I'll be——

Mr. MAZZOLI. Would you identify yourself for the reporter?

Ms. SI. My name is Stella Si of Voice of America, Chinese Branch. I'm an international broadcaster.

For the past 3 years, VOA's Chinese Branch has made efforts to recruit and also provide internships for Americans who study Chinese languages. We have had four of them. I remember that three of them have had overseas experience. They have studied Chinese for 2 years in China. One of them studied Chinese for 4 years in the United States, but has not gone overseas. They have had problems going on the air and also completing the task of translating and reporting in Chinese.

So what they did, after they came over here, is to write occasional pieces in Chinese and also most of the work they took up is production work. So we're using them as engineers.

Also, at the same time, the competition for international broadcasting, like BBC's, has been very tough, so VOA tried to maintain a high standard of professionalism. That's why the current staff of Chinese Branch, I would say 80 percent of them are from—we have about 35 broadcasters altogether.

Mr. MAZZOLI. Most of them, the 80 percent of that 35——

Ms. SI. Yes, and they basically received their college degree in China. Myself, for instance, I received my English degree in China. I came here and received my master's degree in communication at Penn State University, and I came over here, I was recruited as a broadcaster for VOA.

Mr. MAZZOLI. I would assume that when you're talking about broadcasters, that's the very top, the pinnacle, of your profession, is to be a broadcaster. There must be lower levels where people may not have to be recruited abroad because they may not have to go on the air or do simultaneous translations, and that's why I'm getting into this. I just want to be sure that USIA understands, just like I've told the colleges when they come here to this room, not to become dependent on using foreign students to fill out the

recruitment rolls for the Ph.D. programs because there are a lot of U.S. students that would maybe have that kind of raw talent. They may need remediation; they may need to be recruited; they may need cultural adaptation or whatever else, but it's a lot easier for the colleges to go abroad and get their kids, and then they fill out their Ph.D. program. I want to be sure that Voice of America and USIA don't forget that they, I think, have a responsibility to recruit first and foremost here in the United States and, second, to try to do what they can to encourage language studies here in the United States without just becoming too dependent on foreign-born talent. I'll just make that pitch.

Mr. LA DIEU. Mr. Chairman, as a union official and president of the local union, I'm with that statement, to make sure that they don't become dependent and do give Americans jobs first.

Mr. MAZZOLI. I'd like to see in writing where you all have done something like that because it's too easy not to. If you could send any kind of letters, if you could send me any kind of documentation where you—

Mr. LA DIEU. I think I can work with the personnel department to show one example where they're looking to sponsor for long-term residency some of the IRB's here, and one example is that they put an advertisement in the Washington Post for French speakers. They got several applications, and they have to go through each and every one of them before they can sponsor the J-1 person for long-term employment. That's an example of where they trying to find it and they do recruit. I do know that.

Mr. MAZZOLI. All right.

Mr. LA DIEU. We'll get you something somehow.

[As of the time of publication, this document had not been received.]

Mr. MAZZOLI. Mr. Norton, you were talking about earmarking user fees. You were saying something, that the fees have gone up in one category, but only 35 inspectors have been hired. I mean, is your idea of earmarking that every dollar of increase in the fees goes back into that kind of program, either in personnel or expanded machinery or something? Is that what you mean by earmarking? There should never be any use of any of these fees for anything other than the purpose from which they came?

Mr. NORTON. When Congress set up the fee, it did designate some fairly broad categories. It did say that the money had to go to inspectors or ADP, automation, detention, that sort of thing.

But what's happened is that the pull of the other programs has been enormous. You said 35 inspectors; I said 35 percent.

Mr. MAZZOLI. Thirty-five percent?

Mr. NORTON. The fees doubled, a 100-percent increase in fees virtually overnight between 1990 and 1991, but there's only been a 35-percent increase in inspectors. Because money became available, it started getting drained away from those programs that were core to the system; that is, putting the bodies on the line to solve the sort of problems that INS alluded to.

Mr. MAZZOLI. So you don't think that—

Mr. NORTON. We think the only way to do that is to say that a certain percentage of that fee account should go to inspectors, the

overtime to pay inspectors and the infrastructure that directly supports those bodies.

Mr. MAZZOLI. OK, my time has expired. The gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

Mr. Norton, I find it interesting that on page 13 of your testimony is the hidden little phrase that I kind of like to see there. It says, "We recommend," and then if I skip a few words, "summary exclusion." That's something I've been very supportive of over the years. You don't elaborate on it here. It's not a specific legislative proposal that you've got in this; that is, you don't have it in writing here.

What do you have in mind? Do you have any suggestions for us on how we might craft some summary exclusion proposals or do you endorse the administration's proposal?

Mr. NORTON. Well, we have not seen the administration's proposal. We just became aware of it today. They have not shared it with us yet.

We generally support a broad system that addresses this problem of inadmissible passengers. Summary exclusion has been shown to work in the case of visa waiver pilot program passengers, and we think it can work for others, especially the abusers. If it pertains to a British citizen coming here for a vacation at Disney World, why shouldn't it pertain to a person who has destroyed his documents en route and then makes a frivolous claim to political asylum?

So we think that summary exclusion is part of an enforcement package that may include fines against these passengers directly and a system of incentives for carriers to be the screeners. We don't think that, for example, preinspection can solve all the problems on the enforcement front, and the administration should direct its attention to the resources that the carriers have and give them incentives for screening passengers as well.

Mr. MCCOLLUM. Well, I see how it fits into the whole thing. I don't want to make more of it than you have or than you intend to make here. It just gave me a forum because, as the chairman knows, I've been for summary exclusion provisions for many years, and we actually passed one on the floor of the House back in 1984. I hope at some point we get to revisit the issue, though this bill's probably not the vehicle for that purpose.

Mr. Stein, you obviously know that I don't agree with you on the question that you raised. I'm not going to get into some big debate with you today on the Cuban Adjustment Act. I just make two comments.

One is that while I recognize your criticism in light of the Refugee Act, the Cuban Adjustment Act did come into being in 1966, and that was long before we had general policies on refugees. So its history is not one of always being out of step.

And, second, it seems to me that our evidence, at least currently, since the early Mariel boat lift of the last decade, has been one of very few Cubans coming here. Those who have come and been adjusted under the act have not presented the kind of problems that that group did.

One, unfortunately, has to conclude that, based on what's gone on in Cuba in the last few years, that the internal group that's there now is not of a mind at the present moment to revolt. Those of us who support getting rid of Castro—and I certainly do—would like to see every encouragement possible to those who are there to do something about it.

The last comment, I do see a great deal of interest in the Cuban American community who has come here in seeing him ousted. So I don't think the fact they're here in any way stills their ardor for getting rid of him.

But for me to ask you a series of questions and get involved in the details, you and I wouldn't agree on it, so there's no point in it.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, my friend from Florida.

Let me ask just a couple more questions. Mr. Nurick, I appreciated the way you characterized this group of people. I'm sure they're wonderful, wonderful people and I'd love each and every one of them, but I would hardly put them in a category of being suffering. It's almost like you characterize them as being a category that we have some great responsibility to try to help. After all, they're working for the World Bank and the International Monetary Fund, making very good money, not paying U.S. taxes, to the best of my knowledge, or many of them, and at the end of the day they get U.S. citizenship out of it, which isn't really a terribly bad deal.

Now can you tell me how wrong I am when I say that?

Mr. NURICK. I think that kind of issue was very closely examined in connection with the existing laws. It was resolved in—

Mr. MAZZOLI. Of course, we resolved that in favor of a 1993 sunset.

Mr. NURICK. Right.

Mr. MAZZOLI. And we're now saying, but, on second thought, let's take the sunset off, though that was the way the law was originally passed. Some Members might have voted for that and rationalized what we're doing for this bevy of very well-connected people when we don't do it for Haitians, we don't do it for a lot of other people, but we did that because we said, well, we're doing it once; we're clearing out the whole situation; and we're not going to do it any more. Than, all of a sudden we say, well, let's drop the sunset.

How do you justify that?

Mr. NURICK. The people involved have the same problems now as they did when the act was passed. The retirees, for example, who have been here for long periods of time after the sunset provision—

Mr. MAZZOLI. But it's hardly put—I mean, is that a bad thing, to live in the United States for a long time? I mean, it's not exactly—

Mr. NURICK. No, it's not a bad thing. The point is that they lose their ties.

Mr. MAZZOLI. They're not exactly living in some Third World country, after all.

Mr. NURICK. That's correct, and they get adequate pensions and that's no problem, but they lose their ties back to their home coun-

tries, as do their spouses. Their children very often are brought up here.

Mr. MAZZOLI. I have an answer for that. Whenever I start feeling sorry for myself, my mother says, "Look, nobody made you run for office. Nobody forces you to pay the filing fee for another term. If it's that tough, quit."

Mr. NURICK. The United States itself is a paramount mover in these institutions. They're the ones—the United States has invited these institutions to be here. The staff people who have come have managed to make these institutions very credible and viable, hard-working places. So just the matter of their coming here because they feel like coming here—

Mr. MAZZOLI. It's not fair to say they have been dragooned.

Mr. NURICK. Excuse me?

Mr. MAZZOLI. I say it's not fair to say that they have been dragooned.

Mr. NURICK. No, they have not been dragooned.

Mr. MAZZOLI. Shanghaied, or whatever other term you might want to use.

Mr. NURICK. That is correct; they have not been.

Mr. MAZZOLI. Well, I don't say we're not going to do that, but I like to put these things in perspective. There's a lot of other people in the world that I think really deserve our kindly attention a great deal more than G-4's do, but they do as well.

Mr. Norton, let me ask you about this. You said that two things were important. One was the definition of inspection. I think I heard you say that. And the other things was a 45-minute rule, something of that nature, changing that 45 minutes back to 30? Did I misunderstand what you said?

Mr. NORTON. Well, we wouldn't minimize the importance of any of 109 and 110 as they have been proposed.

Mr. MAZZOLI. All right, but you talked about those two as sort of—

Mr. NORTON. As central to the—

Mr. MAZZOLI. Yes, let me ask you this: The centrality of inspection, what does this proposed bill do that you like seeing done—expands the nature of the inspection, reduces the nature of it, changes it? What does it do?

Mr. NORTON. Allows greater flexibility. Right now one thing that is hurting us the most, in addition to slow processing times, which we think the 45-minute standard, one of the central things you mentioned, would help, is how INS sees itself in the inspection process. When we talked to them about using modern techniques, taking advantage of technology, looking into ways that they can admit the Huxtables and the Cleavers and find Carlos the Terrorist in another way, they say, no, the law requires us to look at one person, one at a time, always the same way.

Mr. MAZZOLI. So this bill would give them more flexibility in how they would do the inspection?

Mr. NORTON. That's right.

Mr. MAZZOLI. And then the other thing was the time limit. I guess the only question I have is: Is it right for us to mandate a time limit? I mean, I'm not on the line. I've never worked at JFK or anywhere else. What do I know about the responsibilities they

have? Whether you have a world convention or not, I'm not always persuaded that some world definition is right. I'm not sure what happens if I went to an airport in Europe. Would I wait longer than that? So we're signatory to the convention; if we think that you have to be inspected or that a longer inspection will protect our country—

Mr. NORTON. The United States has an opportunity to articulate reasons why it shouldn't comply with the international convention, but it has not only indicated their willingness to see to it that people are inspected within the bounds that are normally considered adequate time, but actually sponsored those changes. The administration broadly says everybody should get through the process in 45 minutes, the Department of Transportation and all other players in this arena. The Customs Service and APHIS feel cheated in that they are evaluated against this 45-minute standard by their peers internationally, by the passengers, and yet they get no slice of this time.

Mr. MAZZOLI. Just out of curiosity, you must travel a great deal in your job. Do we get through the positions over in Europe quickly? Are we through, as U.S. citizens, within that 45 minutes?

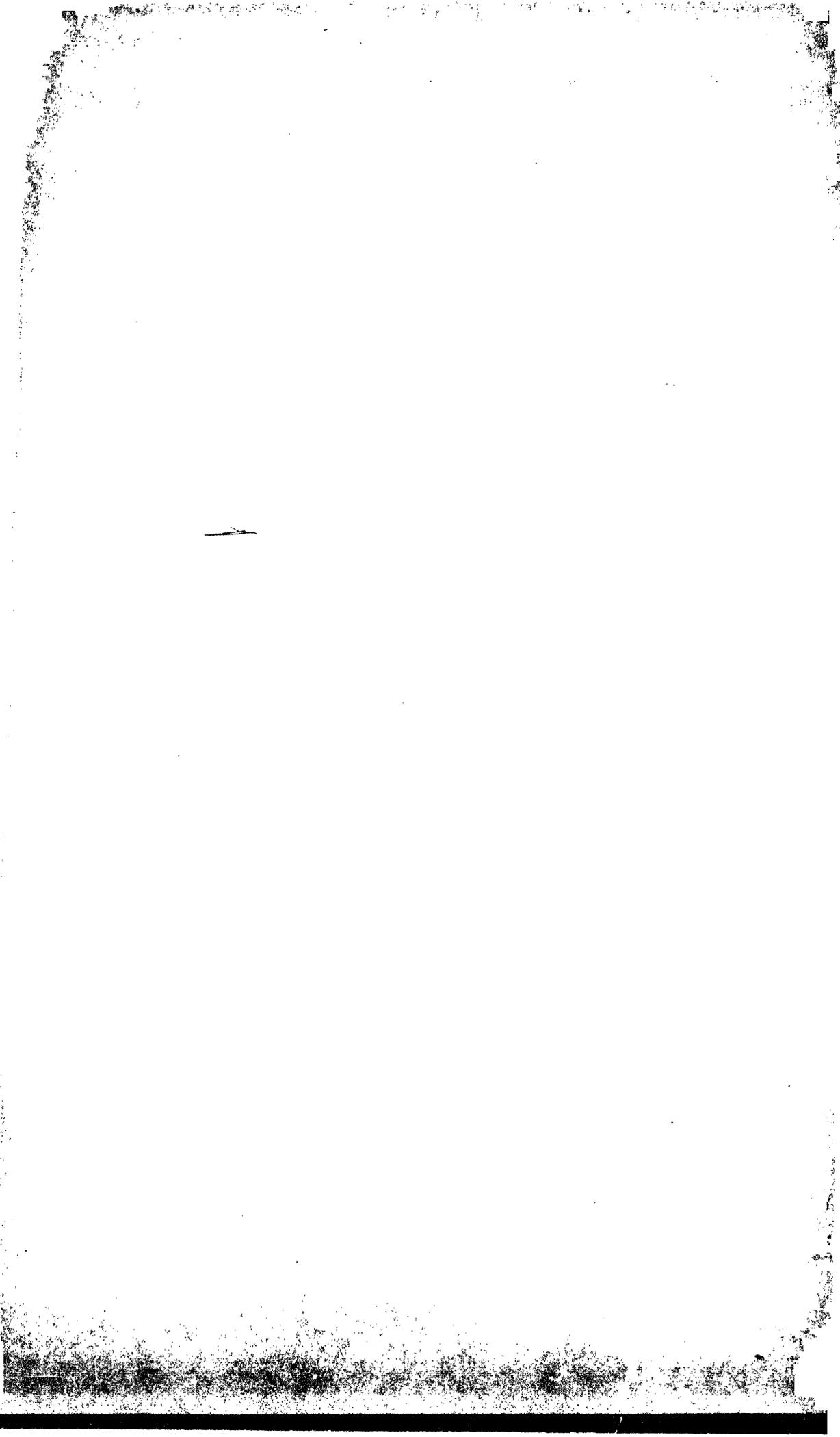
Mr. NORTON. With rare exception, the United States is the far most difficult when it comes to waiting times.

Mr. MAZZOLI. Is that right?

Well, ladies and gentlemen, thank you very much for your time and attention and your statements.

The subcommittee stands adjourned.

[Whereupon, at 2:30 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



APPENDIXES

APPENDIX 1.—DRAFT OF THE IMMIGRATION AND NATURALIZATION HOUSEKEEPING AMENDMENTS ACT OF 1992

102D CONGRESS
2D SESSION

H. R.

To amend the Immigration and Nationality Act to improve the administration of the immigration laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MAZZOLI introduced the following bill; which was referred to the Committee on

A BILL

To amend the Immigration and Nationality Act to improve the administration of the immigration laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Immigration and Naturalization Housekeeping Amend-
6 ments Act of 1992”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMMIGRATION AMENDMENTS

- Sec. 101. Authorization of nonimmigrant entry of spouses and children of alien members of the Armed Forces.
- Sec. 102. Elimination of sunset for certain G-4 special immigrant provisions.
- Sec. 103. Special immigrant status and nonimmigrant status for certain USIA employees.
- Sec. 104. Limited nonimmigrant status for alien spouses of citizens.
- Sec. 105. Foreign adopted children.
- Sec. 106. Permanent resident status for refugees admitted to the United States.
- Sec. 107. Prompt parole of aliens in order to attend the funeral of an immediate blood relative in the United States.
- Sec. 108. Use of credible evidence in spousal waiver applications.
- Sec. 109. Visa waiver program.
- Sec. 110. Expediting airport immigration processing.
- Sec. 111. Suspension of ban on public assistance for legalized aliens during Federally-declared national emergencies.
- Sec. 112. Three-year extension of authorization of appropriations for refugee assistance.
- Sec. 113. Waiver of ground of exclusion under diversity transition program.
- Sec. 114. Repeal of Cuban adjustment act.
- Sec. 115. Moratorium on increases in fees.

TITLE II—NATURALIZATION AMENDMENTS

- Sec. 201. Equal treatment of women in conferring citizenship for children born abroad.
- Sec. 202. Citizenship at birth for certain children born abroad of United States citizens.
- Sec. 203. Expanding waiver of the government knowledge, United States history, and English language requirements for naturalization.

TITLE I—IMMIGRATION AMENDMENTS

1 2 3 SEC. 101. AUTHORIZATION OF NONIMMIGRANT ENTRY OF 4 5 SPOUSES AND CHILDREN OF ALIEN MEM- 6 7 BERS OF THE ARMED FORCES.

8 Section 101(a)(15) of the Immigration and National-
9 ity Act (8 U.S.C. 1101(a)(15)) is amended—

- 10 (1) by striking “or” at the end of subparagraph
- 11 (Q);
- (2) by striking the period at the end of sub-
paragraph (R) and inserting “; or”; and

3

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(S) an alien who is the spouse or child of an
4 alien serving honorably, in the United States, on ac-
5 tive duty in the Armed Forces of the United States
6 and who is accompanying, or coming to join, such
7 alien service member for a period not to exceed 6
8 years, which period may be extended by the Attorney
9 General.”.

10 SEC. 102. ELIMINATION OF SUNSET FOR CERTAIN G-4 SPE-
11 CIAL IMMIGRANT PROVISIONS.

12 (a) IN GENERAL.—Section 101(a)(27)(I)(iii)(II) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1101(a)(27)(I)(iii)(II)) is amended by striking “before
15 January 1, 1993, and”.

16 (b) CONFORMING AMENDMENTS.—Section
17 101(a)(27)(I) of such Act is further amended by striking
18 “or six months after the date of the enactment of the Im-
19 migration Technical Corrections Act of 1988, whichever
20 is later” each place it appears.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act.

1 **SEC. 102. SPECIAL IMMIGRANT STATUS AND NON-**
2 **IMMIGRANT STATUS FOR CERTAIN USA EMP-**
3 **LOYEES.**

4 **(a) SPECIAL IMMIGRANT STATUS.—**

5 **(1) IN GENERAL.—**Section 101(a)(27) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1101(a)(27)) as amended by section 153(a) of the
8 Immigration Act of 1990 and as amended by section
9 2(a) of the Armed Forces Immigration Adjustment
10 Act of 1991, is amended—

11 (A) by striking “or” at the end of subpara-
12 graph (J),

13 (B) by striking the period at the end of
14 subparagraph (K) and inserting “; or”, and

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

17 “(L)(i) an immigrant who the Director of the
18 United States Information Agency certifies to the
19 Attorney General (I) possesses foreign language
20 skills essential to the Agency’s broadcasting activi-
21 ties, and (II) is employed, and has been employed
22 for 1 year, by the Agency in the United States in
23 a capacity requiring the utilization of such skills,
24 and (ii) the spouse or child of such an immigrant if
25 accompanying or following to join the immigrant.”.

5

1 (2) NUMERICAL LIMITATION FOR SPECIAL IM-
2 MIGRANT STATUS.—Section 203(b)(4) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1153(b)(4)),
4 as amended by section 121(a) of the Immigration
5 Act of 1990, is amended by inserting before the pe-
6 riod at the end the following: “and of which not
7 more than 150 shall be available in fiscal year 1993,
8 and not more than 50 shall be available in any sub-
9 sequent fiscal year, to special immigrants described
10 in section 101(a)(27)(L)(i)”.

11 (3) PETITIONING PROCESS FOR SPECIAL IMMI-
12 GRANT STATUS.—Section 204(a)(1)(E) of the Immi-
13 gration and Nationality Act, as amended by section
14 162(a)(1) of the Immigration Act of 1990, is
15 amended—

16 (A) in clause (i), by inserting “or
17 101(a)(27)(L)” after “101(a)(27)(D)”, and

18 (B) by adding at the end the following new
19 clause:

20 “(iii) In the case of an alien seeking classification as
21 a special immigrant described in section 101(a)(27)(L),
22 the Attorney General shall approve such a classification
23 upon receipt of a certification described in such section
24 issued by the Director of the United States Information
25 Agency if the alien is otherwise admissible.”.

6

1 **(4) ONE-TIME WAIVER OF FOREIGN RESIDENCE**
2 **REQUIREMENT FOR CURRENT EMPLOYERS SEEKING**
3 **ADJUSTMENT TO SPECIAL IMMIGRANT STATUS.—**

4 Section 212(e) of the Immigration and Nationality
5 Act shall not apply with respect to the adjustment
6 of status (under section 245 of such Act) of an alien
7 if—

8 (A) on or before the date of the enactment
9 of this Act and at the time of filing the applica-
10 tion for adjustment of status, the alien has the
11 status of a nonimmigrant described in section
12 101(a)(15)(J) of such Act, and

13 (B) the alien qualifies as a special immi-
14 grant under section 101(a)(27)(L)(i) of such
15 Act.

16 (5) **USIA BASIC AUTHORITIES.—**Section
17 804(a)(1) of the United States Information and
18 Educational Exchange Act of 1948 (22 U.S.C.
19 1474(1)) is amended by inserting “or as special im-
20 migrants under section 101(a)(27)(L) of that Act (8
21 U.S.C. 1101(a)(27)(L))” after “(8 U.S.C.
22 1101(a)(15))”.

23 **(b) NONIMMIGRANT STATUS.—**

24 (1) **IN GENERAL.—**Section 101(a)(15) of the
25 Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)), as amended by section 101 of this
2 Act, is amended—

3 (A) by striking "or" at the end of subpara-
4 graph (B);

5 (B) by striking the period at the end of
6 subparagraph (S) and inserting "; or"; and

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

9 "(T) an alien who—

10 "(i) is coming to the United States to be
11 employed by the United States Information
12 Agency if the Director of the Agency certifies to
13 the Attorney General that (I) the alien pos-
14 sesses foreign language skills essential to the
15 Agency's broadcasting activities, and (II) the
16 Agency is unable to find equally qualified work-
17 ers in the United States who are authorized to
18 engage in such employment, or

19 "(ii) is the spouse or child of an alien de-
20 scribed in clause (i) and is accompanying or fol-
21 lowing to join the alien."

22 (2) CONDITIONS AND LIMITATIONS.—Section
23 214 of such Act (8 U.S.C. 1184) is amended by add-
24 ing at the end the following new subsection:

8

1 “(j)(1) The number of aliens who may be admitted
2 as (or otherwise be provided the status of) a nonimmigrant
3 under section 101(a)(15)(T)(i) in any fiscal year may not
4 exceed 50. No alien who may be admitted as such a non-
5 immigrant under such section but for such numerical lim-
6 itation may be admitted (or otherwise provided the status
7 of) a nonimmigrant under section 101(a)(15)(J).

8 “(2) The period of authorized status as a non-
9 immigrant under section 101(a)(15)(T) shall not exceed
10 5 years.

11 “(3) Nonimmigrants described in section
12 101(a)(15)(T)(ii) shall be granted authorization to engage
13 in employment in the United States and be provided an
14 ‘employment authorized’ endorsement or other appro-
15 priate work permit.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on October 1, 1992.

18 **SEC. 104. LIMITED NONIMMIGRANT STATUS FOR ALIEN**
19 **SPOUSES OF CITIZENS.**

20 (a) IN GENERAL.—Section 101(a)(15) of the Immi-
21 gration and Nationality Act (8 U.S.C. 1101(a)(15)), as
22 amended by sections 101 and 103(b)(1) of this Act, is
23 amended—

24 (1) by striking “or” at the end of subparagraph

25 (S);

1 (2) by striking the period at the end of sub-
2 paragraph (T) and inserting “; or”; and

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

5 “(U) an alien, and the children of the alien if
6 accompanying or following to join the alien, who is
7 the spouse of a citizen of the United States.”.

8 (b) CONDITIONS AND LIMITATIONS.—Section 214 of
9 such Act (8 U.S.C. 1184), as amended by sections 101(b)
10 and 103(b)(2) of this Act, is amended by adding at the
11 end the following new subsection:

12 “(l)(1) The period of authorized status as a non-
13 immigrant under section 101(a)(15)(U) shall terminate---

14 “(A) 3 months after the date of obtaining such
15 status, unless the citizen spouse (or in the case of
16 a child, citizen parent) has filed a classification peti-
17 tion under section 204(a) for classification of the
18 nonimmigrant as an immediate relative, or

19 “(B) if such a petition is filed on a timely basis,
20 after the end of such period as the Attorney General
21 determines to be sufficient to permit the filing of an
22 application for an immigrant visa, or an application
23 for adjustment of status to that of an alien lawfully
24 admitted for permanent residence, on behalf of the

10

1 nonimmigrant and, if such an application is filed,
2 the final disposition of such an application.

3 The Attorney General may not extend the 3-month period
4 of authorized status under subparagraph (A).

5 "(2) Nonimmigrants described in section
6 101(a)(15)(U) shall be granted authorization to engage in
7 employment in the United States and be provided an 'em-
8 ployment authorized' endorsement or other appropriate
9 work permit."

10 (c) RESTRICTIONS ON ADJUSTMENT OF STATUS.—

11 (1) ADJUSTMENT TO PERMANENT RESIDENT
12 STATUS ONLY ON BASIS OF CITIZEN IMMEDIATE
13 RELATIVE PETITION.—Section 245(d) of such Act (8
14 U.S.C. 1255(d)) is amended by adding at the end
15 the following new sentence: "The Attorney General
16 may not adjust, under subsection (a), the status of
17 a nonimmigrant alien described in section
18 101(a)(15)(U) who is the spouse of a citizen (or
19 child of such a spouse) except on the basis of a peti-
20 tion filed by such citizen under section 204(a) to
21 classify the alien as an immediate relative of the citi-
22 zen."

23 (2) NO CHANGE OF NONIMMIGRANT STATUS
24 FROM U NONIMMIGRANT STATUS.—Section 248(1) of

11

1 such Act (8 U.S.C. 1258(1)) is amended by striking
2 "or (K)" and inserting "(K), or (U)".

3 **SEC. 105. FOREIGN ADOPTED CHILDREN.**

4 (a) **EXPANSION IN CLASSIFICATION OF CHILDREN.—**

5 (1) **IN GENERAL.—**Section 101(b)(1)(F) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1101(b)(1)(F)) is amended—

8 (A) by striking "who is an orphan" and all
9 that follows through "emigration and adoption"
10 and inserting "(i) who is an orphan because of
11 the death or disappearance of both parents, (ii)
12 who has been abandoned by both parents or by
13 the surviving parent, or (iii) for whom both par-
14 ents have (or the surviving parent has) in writ-
15 ing irrevocably released (whether to a public
16 agency or directly to a prospective adoptive par-
17 ent) the child for emigration and adoption",
18 and

19 (B) by striking "abroad".

20 (2) **ADOPTION OF CHILDREN FROM CERTIFIED**
21 **FOREIGN STATES.—**Section 204 of such Act (8
22 U.S.C. 1154) is amended by adding at the end the
23 following:

24 "(h)(1) In the case of an alien who has been made
25 eligible for emigration and adoption under the laws of a

1 foreign state certified under paragraph (2), the alien shall
2 be deemed to be described in clause (i), (ii), or (iii) of
3 section 101(b)(1)(F).

4 “(2)(A) A foreign state is considered to be certified
5 for purposes of paragraph (1) if the Secretary of State,
6 in consultation with the Attorney General, determines that
7 the foreign state meets the standards specified in para-
8 graph (3) with respect to the adoption of a child for place-
9 ment abroad.

10 “(B) The Secretary of State shall revoke the cer-
11 tification of a foreign state previously made under sub-
12 paragraph (A) if the Secretary determines that the state
13 no longer meets the standards specified in paragraph (3).

14 “(C) The Secretary of State, in consultation with the
15 Attorney General, shall review and determine, by not later
16 than 1 year after the date of the enactment of this sub-
17 section and at least every 2 years thereafter, whether each
18 of at least the 10 principal foreign states (from which chil-
19 dren described in section 101(b)(1)(F) are being adopted)
20 meets the standards specified in paragraph (3).

21 “(3) The standards specified in this paragraph for
22 a foreign state, with respect to the adoption of a child
23 for placement abroad, are that the foreign state provides
24 for the following:

1 “(A) The adoption of a child for placement
2 abroad is not permitted except under the cir-
3 cumstances described in any of clauses (i) through
4 (iii) of section 101(b)(1)(F) and the foreign state
5 makes it a crime to kidnap or sell a child.

6 “(B) The foreign state has reliable means of
7 ascertaining a child’s identity and the identity of the
8 child’s parents.

9 “(C) In the case of a child alleged to be an or-
10 phan because of the death or disappearance of both
11 parents or alleged to have been abandoned by both
12 parents or by the surviving parent, the foreign state
13 makes reasonable efforts to identify the child’s par-
14 ents and to determine whether such parents are alive
15 and their whereabouts.

16 “(D) If the child is not an orphan because of
17 the death or disappearance of both parents and has
18 not been abandoned by both parents or by the sur-
19 viving parent, biological (and any prior adoptive)
20 parents are provided (i) notice of the adoption pro-
21 ceedings, (ii) an opportunity to contest the adoption,
22 (iii) notice of the permanent and irrevocable nature
23 of the adoption, and (iv) notice that upon the adop-
24 tion any derivative immigration rights that the par-

1 ents may have had through the child will be extin-
2 guished.

3 “(4) The Secretary of State shall cause to be pub-
4 lished in the Federal Register—

5 “(A) periodically a list of foreign states certified
6 under paragraph (2), and

7 “(B) notice of any revocation effected under
8 paragraph (2)(B).”.

9 (3) INCREASE IN MAXIMUM AGE FOR ADOPT-
10 TION.—

11 (A) IN GENERAL.—Section 101(b)(1) of
12 such Act (8 U.S.C. 1101(b)(1)) is amended by
13 striking “sixteen years” in subparagraphs (E)
14 and (F) and inserting “18 years”.

15 (B) CONFORMING AMENDMENT.—Section
16 341(b)(2)(B) of such Act (8 U.S.C.
17 1452(b)(2)(B)) is amended by striking “16
18 years” and inserting “18 years”.

19 (b) CRIMINAL PENALTY FOR BUYING CHILDREN.—

20 (1) IN GENERAL.—Title 18 of the United
21 States Code is amended by inserting after chapter 7
22 the following new chapter:

23 **“CHAPTER 8—CHILD BUYING**

“Sec.

“131. Buying of children.

1 **"§181. Buying of children**

2 "Whoever is a citizen or national of the United States
3 and purchases for anything of value the custody or control
4 of a person who—

5 "(1) is under the age of 18 years; and

6 "(2) is an alien;

7 with the intent to establish lawful permanent residency for
8 such alien, or attempts to do so, shall be fined under this
9 title or imprisoned not more than 5 years, or both."

10 (2) CLERICAL AMENDMENT.—The table of
11 chapters at the beginning of such title is amended
12 by inserting after the item relating to chapter 7 the
13 following new item:

"8. Child buying 131".

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—

16 (A) The amendments made by subsection
17 (a) shall take effect on the first day of the first
18 month beginning more than 90 days after the
19 date of the enactment of this Act.

20 (B) The amendments made by subsection
21 (b) shall take effect on the date of the enact-
22 ment of this Act.

23 (2) PUBLICATION OF FOREIGN STATE LIST.—

24 The Secretary of State shall first provide for the
25 publication of a list of the foreign states certified

1 under section 204(h)(2) of the Immigration and Na-
2 tionality Act (as added by the amendment made by
3 subsection (a)(2)) by not later than 1 year after the
4 date of the enactment of this Act.

5 **SEC. 106. PERMANENT RESIDENT STATUS FOR REFUGEES**
6 **ADMITTED TO THE UNITED STATES.**

7 (a) **IN GENERAL.**—Section 209 of the Immigration
8 and Nationality Act (8 U.S.C. 1159) is amended—

9 (1) by amending the heading to read as follows:

10 “PERMANENT RESIDENT STATUS FOR REFUGEES;
11 ADJUSTMENT OF STATUS FOR ASYLEES”;

12 (2) by amending subsection (a) to read as fol-
13 lows:

14 “(a) Any alien admitted to the United States under
15 section 207 shall be regarded as lawfully admitted to the
16 United States for permanent residence as of the date of
17 arrival into the United States.”; and

18 (3) in subsection (c), by striking “this section”
19 and inserting “subsection (b)”.

20 (b) **CLERICAL AMENDMENT.**—The item in the table
21 of contents relating to section 209 of such Act is amended
22 to read as follows:

“Sec. 209. Permanent resident status for refugees; adjustment of status for
asylees.”.

23 (c) **EFFECTIVE DATE.**—The amendments made by
24 this section shall apply to aliens admitted to the United

17

1 States under section 207 of the Immigration and Nation-
2 ality Act before, on, or after the date of the enactment
3 of this Act.

4 **SEC. 107. PROMPT PAROLE OF ALIENS IN ORDER TO AT-**
5 **TEND THE FUNERAL OF AN IMMEDIATE**
6 **BLOOD RELATIVE IN THE UNITED STATES.**

7 (a) **IN GENERAL.**—Section 212(d)(5) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1182(d)(5)) is
9 amended by adding at the end the following NEW subpara-
10 graph:

11 “(C)(i) The Attorney General shall provide, on an ex-
12 pedited basis, for the parole of an alien under this para-
13 graph if—

14 “(I) an immediate blood relative of the alien
15 has died and the funeral for the relative is to be in
16 the United States, and

17 “(II) the alien provides the Attorney General
18 with a certified copy of the death certificate of the
19 relative.

20 “(ii) The period of parole under this subparagraph
21 shall be for the period required to attend the funeral and
22 shall not exceed 30 days (except as may be provided in
23 exceptional circumstances specified by the Attorney Gen-
24 eral).

1 “(iii) In clause (i), the term ‘immediate blood relative’
2 means, with respect to an alien, the spouse, mother, fa-
3 ther, son, daughter, brother, or sister of the alien.”.

4 (b) REPORT ON OPERATION OF AMENDMENT.—The
5 Attorney General shall report to the Congress, not later
6 than 2 years after the date of the enactment of this Act,
7 on the operation of section 212(d)(5)(C) of the Immigra-
8 tion and Nationality Act (as added by the amendment
9 made by subsection (a)) and on any violations or abuses
10 of the immigration laws resulting from the parole of aliens
11 into the United States under such section.

12 SEC. 108. USE OF CREDIBLE EVIDENCE IN SPOUSAL WAIV-
13 ER APPLICATIONS.

14 (a) IN GENERAL.—Section 216(c)(4) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1186a(c)(4)) is amend-
16 ed by inserting after the second sentence the following:
17 “In acting on applications under this paragraph, the At-
18 torney General shall consider any credible evidence sub-
19 mitted in support of the application (whether or not the
20 evidence is supported by an evaluation of a licensed mental
21 health professional).”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act and shall apply to applications made be-
25 fore, on, or after such date.

1 **SEC. 109. VISA WAIVER PROGRAM**

2 (a) **PERMANENCY OF PROGRAM.**—Section 217 of the
3 Immigration and Nationality Act (8 U.S.C. 1187) is
4 amended—

5 (1) by amending the section heading to read as
6 follows:

7 “VISA WAIVER PROGRAM FOR CERTAIN VISITORS”;

8 (2) in the heading of subsections (a), (a)(1),
9 and (c) by striking “PILOT” and “PILOT” each place
10 either appears and inserting “VISA WAIVER” and
11 “VISA WAIVER”, respectively;

12 (3) by striking “pilot” each place it appears
13 and inserting “visa waiver”;

14 (4) in subsection (a)(1) by striking “during the
15 pilot program period (as defined in subsection (e)),”;

16 (5) in subsection (c)(3) by striking“(within the
17 pilot program period) after the initial period”;

18 (6) in subsection (c) by striking paragraph (4);

19 (7) in subsection (e)(1)(A) by striking
20 “(a)(1)(A)” and inserting “(a)(1)”; and

21 (8) by striking subsection (f).

22 (b) **ELIMINATION OF REQUIREMENT FOR EXECU-**
23 **TION OF IMMIGRATION FORMS.**—Section 217 of such Act
24 is further amended—

25 (1) in subsection (a) by striking paragraph (3);

1 (2) in subsection (a) by redesignating para-
2 graph (4) as paragraph "(3)"; and

3 (3) in subsection (e)(1) by striking "subsection
4 (a)(4)" and inserting "subsection (a)(3)".

5 (c) **WAIVER OF RIGHTS.**—Section 217(b) of such Act
6 is amended by striking "may not be provided a waiver
7 under the pilot program unless the alien has waived any
8 right—" and inserting "who applies for admission to the
9 United States under the visa waiver program waives any
10 right—".

11 (d) **CARRIER AGREEMENTS.**—Section 217(e)(1) of
12 such Act is amended—

13 (1) in subparagraph (B) by striking "and";

14 (2) in subparagraph (C) by striking the period
15 at the end and inserting "; and"; and

16 (3) by inserting after subparagraph (C) the fol-
17 lowing new subparagraph:

18 “(D) to provide passengers applying for
19 admission to the United States under the visa
20 waiver program with written notification of the
21 waiver under subsection (b).”.

22 (e) **CLERICAL AMENDMENT.**—The item in the table
23 of contents of such Act relating to section 217 is amended
24 to read as follows:

“Sec. 217. Visa waiver program for certain visitors.”.

1 **SEC. 116. EXPEDITING AIRPORT IMMIGRATION PROCESS-**
2 **ING.**

3 (a) **PASSENGER MANIFESTS.—**

4 (1) **ELECTRONIC PASSENGER MANIFESTS.—**Sec-
5 tion 231(a) of the Immigration and Nationality Act
6 (8 U.S.C. 1221(a)) is amended in the first sentence
7 by striking "typewritten" and inserting "electronic,
8 typewritten,".

9 (2) **INFORMATION CONTAINED IN PASSENGER**
10 **MANIFEST.—**Section 231(a) of such Act (8 U.S.C.
11 1221(a)) is further amended by inserting imme-
12 diately before the period at the end of the second
13 sentence ", except that regulations concerning the
14 information contained in such lists may not exceed
15 the international standards of the International Civil
16 Aviation Organization".

17 (b) **INSPECTION BY IMMIGRATION OFFICERS.—**Sec-
18 tion 235(a) of the Immigration and Nationality Act (8
19 U.S.C. 1225(a)) is amended by adding after the second
20 sentence the following: "Nothing in this section shall be
21 construed as requiring a personal interview in the conduct
22 of an examination or inspection.".

23 (c) **PROVISION OF IMMIGRATION INSPECTION AND**
24 **PREINSPECTION SERVICES.—**

1 (1) **IN GENERAL.**—Section 286 of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1356) is
3 amended—

4 (A) in subsection (g) by striking “forty-
5 five” and inserting “thirty”; and

6 (B) in subsection (l)—

7 (i) by striking “forty-five” and insert-
8 ing “thirty”; and

9 (ii) by striking “March 31st” and in-
10 serting “January 31st”.

11 (2) **EFFECTIVE DATE.**—The amendments made
12 by paragraph (1) shall apply to passengers arriving
13 on or after 60 days after the date of the enactment
14 of this Act.

15 (d) **INCREASE IN PREINSPECTION AT FOREIGN AIR-**
16 **PORTS.**—

17 (1) **ESTABLISHMENT OF ADDITIONAL**
18 **PREINSPECTION STATIONS AT HIGH VOLUME AIR-**
19 **PORTS.**—Not later than 1 year after the date of the
20 enactment of this Act, the Attorney General, in con-
21 sultation with the Secretary of State, shall establish
22 and maintain preinspection stations in at least 5 of
23 the foreign airports that are among the 10 foreign
24 airports which the Attorney General identifies as
25 serving as last points of departure for the greatest

23
passengers
1 numbers of ~~aliens~~ who arrive from abroad by air at
2 ports of entry within the United States. Such
3 preinspection stations shall be in addition to any
4 preinspection stations established or authorized to be
5 established prior to the date of the enactment of this
6 Act.

7 (2) ESTABLISHMENT OF ADDITIONAL
8 PREINSPECTION STATIONS AT CERTAIN FOREIGN
9 AIRPORTS FROM WHICH UNDOCUMENTED ALIENS
10 DEPART FOR THE UNITED STATES.—

11 (A) REPORTS TO CONGRESS.—Not later
12 than November 1, 1993, and each subsequent
13 November 1, the Attorney General shall compile
14 and submit to the Committee on the Judiciary
15 of the House of Representatives and the Com-
16 mittee on the Judiciary of the Senate a report
17 identifying the foreign airports which served as
18 last points of departure for aliens who arrived
19 by air at United States ports of entry without
20 valid documentation during the preceding fiscal
21 year. Such report shall indicate the number and
22 nationality of such aliens arriving from each
23 such foreign airport.

24 (B) ESTABLISHMENT OF ADDITIONAL
25 PREINSPECTION STATIONS.—Not later Novem-

1 ber 1, 1994, the Attorney General, in con-
2 sultation with the Secretary of State, shall es-
3 tablish preinspection stations in at least 5 of
4 the foreign airports that are among the 10 for-
5 eign airports identified in the first report sub-
6 mitted under subparagraph (A) as serving as
7 the last points of departure for the greatest
8 number of aliens who arrive from abroad by air
9 at points of entry within the United States
10 without valid documentation. Such
11 preinspection stations shall be in addition to
12 any preinspection stations established or au-
13 thorized to be established either under para-
14 graph (1) or prior to the date of the enactment
15 of this Act.

16 (e) EXPEDITED PROCESS FOR THE INSPECTION OF
17 CITIZENS.—Not later than 90 days after the date of the
18 enactment of this Act, the Attorney General shall imple-
19 ment and maintain an expedited process (such as citizen
20 bypass) for the inspection of United States citizens upon
21 arrival from abroad by air at ports of entry within the
22 United States.

1 **SEC. 111. SUSPENSION OF BAN ON PUBLIC ASSISTANCE**
2 **FOR LEGALIZED ALIENS DURING FED-**
3 **ERALLY-DECLARED NATIONAL EMER-**
4 **GENCIES.**

5 (a) **IN GENERAL.**—Section 245A(h)(2) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1255a(h)(2)) is
7 amended—

8 (1) by striking “or” at the end of subparagraph

9 (A),

10 (2) by striking the period at the end of sub-
11 paragraph (B) and inserting “, or”, and

12 (3) by adding at the end the following new sub-
13 paragraph:

14 “(C) during the period of an emergency
15 declared by the President.”

16 (b) **TREATMENT FOR PUBLIC CHARGE PURPOSES.**—

17 An alien who seeks assistance under the exceptions pro-
18 vided by the amendment made by subsection (a)(3) shall
19 not be considered, for purposes of sections 212(a)(4) and
20 241(a)(5) of the Immigration and Nationality Act because
21 of the application for or receipt of such assistance, as like-
22 ly to become a public charge.

23 (c) **EFFECTIVE DATE.**—The amendments made by
24 subsection (a) shall apply to assistance furnished on or
25 after the date of the enactment of this Act.

26

1 **SEC. 112. THREE-YEAR EXTENSION OF AUTHORIZATION OF**
2 **APPROPRIATIONS FOR REFUGEE ASSIST-**
3 **ANCE.**

4 (a) **AUTHORIZATION OF APPROPRIATIONS.**—Section
5 414(a) of the Immigration and Nationality Act (8 U.S.C.
6 1524(a)) is amended by striking “for fiscal year 1992”
7 and all that follows through the period and inserting “to
8 carry out this chapter \$521,000,000 for fiscal year 1993,
9 \$546,000,000 for fiscal year 1994, and \$571,000,000 for
10 fiscal year 1995.”.

11 (b) **EFFECTIVE DATE.**—The amendment made by
12 subsection (a) shall take effect October 1, 1992.

13 **SEC. 113. WAIVER OF GROUND OF EXCLUSION UNDER DI-**
14 **VERSITY TRANSITION PROGRAM.**

15 (a) **IN GENERAL.**—Section 132(e) of Immigration
16 Act of 1990 is amended by striking “the ground of exclu-
17 sion specified in paragraph (6)(C)” and inserting “the
18 grounds of exclusion specified in paragraphs (6)(B) and
19 (6)(C)”.

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 subsection (a) shall apply as if included in the enactment
22 of the Immigration Act of 1990.

23 **SEC. 114. REPEAL OF CUBAN ADJUSTMENT ACT.**

24 (a) **IN GENERAL.**—Public Law 89-732 is repealed.

25 (b) **EFFECTIVE DATE; TRANSITION.**—

1 (1) **IN GENERAL.**—Subject to paragraph (2),
2 the repeal made by subsection (a) shall take effect
3 on the date of the enactment of this Act.

4 (2) **TRANSITION.**—The repeal made by sub-
5 section (a) shall not apply to any alien admitted or
6 paroled into the United States before the date of the
7 enactment of this Act and who applies for adjust-
8 ment of status under the first section of Public Law
9 89-732 not later than two years after such date.

10 **SEC. 118. MORATORIUM ON INCREASES IN FEES.**

11 (a) **IN GENERAL.**—The Attorney General and any
12 employee or officer of the Immigration and Naturalization
13 Service may not impose any fee in connection with any
14 benefit under the Immigration and Nationality Act (or in
15 connection with any application or petition for such bene-
16 fit)—

17 (1) for which such a fee was imposed as of May
18 1, 1992, in an amount in excess of the amount of
19 the fee imposed on such date, or

20 (2) for which such a fee was not imposed as of
21 such date, or with respect to any category of persons
22 with respect to which such a fee was not imposed on
23 such date.

24 (b) **EXCEPTION FOR NEW BENEFITS.**—Subsection
25 (a) shall not apply to a fee with respect to a benefit (or

1 in connection with an application or petition for such bene-
2 fit) which was not available as of May 1, 1992.

3 (c) SUNSET.—Subsection (a) shall not apply to fees
4 imposed on or after the first day of the first month that
5 begins more than 24 months after the date of the enact-
6 ment of this Act.

7 TITLE II—NATURALIZATION 8 AMENDMENTS

9 SEC. 201. EQUAL TREATMENT OF WOMEN IN CONFERRING 10 CITIZENSHIP FOR CHILDREN BORN ABROAD.

11 (a) IN GENERAL.—Section 301 of the Immigration
12 and Nationality Act (8 U.S.C. 1401) is amended—

13 (1) by striking the period at the end of para-
14 graph (g) and inserting “; and”, and

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

17 “(h) a person born before noon (Eastern Stand-
18 ard Time) May 24, 1934, outside the limits and ju-
19 risdiction of the United States of an alien father and
20 a mother who is a citizen of the United States who,
21 prior to the birth of such person, had resided in the
22 United States.”.

23 (b) WAIVER OF RETENTION REQUIREMENTS.—Any
24 provision of law (including section 301(b) of the Immigra-
25 tion and Nationality Act (as in effect before October 10,

1 1978), and the provisos of section 201(g) of the National-
2 ity Act of 1940) that provided for a person's loss of citi-
3 zenship or nationality if the person failed to come to, or
4 reside or be physically present in, the United States shall
5 not apply in the case of a person claiming United States
6 citizenship based on such person's descent from an indi-
7 vidual described in section 301(h) of the Immigration and
8 Nationality Act (as added by subsection (a)).

9 (c) RETROACTIVE APPLICATION.—The amendment
10 made by subsection (a) shall apply to persons born before
11 noon (Eastern Standard Time) May 24, 1934, and the
12 provisions of subsection (b) shall apply to persons born
13 at any time. The immigration and nationality laws of the
14 United States shall be applied (to persons born before, on,
15 or after the date of the enactment of this Act) as though
16 such amendment and such subsection had been in effect
17 as of the date of their birth. However, the retroactive ap-
18 plication of the amendment and provision shall not affect
19 the validity of citizenship of anyone who has obtained citi-
20 zenship under section 1993 of the Revised Statutes (as
21 in effect before the enactment of the Act of May 24, 1934,
22 48 Stat. 797).

30

1 **SEC. 302. CITIZENSHIP AT BIRTH FOR CERTAIN CHILDREN**
2 **BORN ABROAD OF UNITED STATES CITIZENS.**

3 (a) **IN GENERAL.**—Section 301 of the Immigration
4 and Nationality Act (8 U.S.C. 1401), as amended by sec-
5 tion 202(a) of this Act, is further amended—

6 (1) by inserting “natural born” after “The fol-
7 lowing shall be nationals and”;

8 (2) by striking paragraph (d);

9 (3) in paragraph (e), by striking “a continuous
10 period” and inserting “an aggregate period”;

11 (4) in paragraph (g), by striking “five years, at
12 least two of which were after attaining the age of
13 fourteen years” and inserting “one year in the ag-
14 gregate”;

15 (5) by striking the period at the end of para-
16 graph (h) and inserting a semicolon; and

17 (6) by adding at the end the following new
18 paragraph:

19 “(i) a person born, in or out of wedlock, outside
20 the United States and its outlying possessions of
21 parents one of whom is a citizen of the United
22 States, if such person would otherwise be stateless
23 at birth.”.

24 (b) **CONFORMING AMENDMENTS.**—(1) Section
25 309(a) of such Act (8 U.S.C. 1409(a)) is amended by
26 striking “(d),”.

1 (2) Section 341(a) of such Act (8 U.S.C. 1452) is
2 amended by striking "(d), (e), or (g) of section 301" and
3 inserting "(e), (g), or (i) of section 301".

4 (c) **EFFECTIVE DATES.**—(1) The amendment made
5 by subsection (a)(1) shall apply to persons born before,
6 on, or after the date of the enactment of this Act.

7 (2) The amendments made by paragraphs (3)
8 through (5) of subsection (a) shall apply to persons born
9 on or after the date of the enactment of this Act and to
10 persons who have not attained the age of 18 years as of
11 the date of the enactment of this Act.

12 (3) The amendments made by paragraphs (2) and (6)
13 of subsection (a) and by subsection (b) shall apply to per-
14 sons born on or after noon Eastern Standard Time on
15 May 14, 1934.

16 **SEC. 203. EXPANDING WAIVER OF THE GOVERNMENT**
17 **KNOWLEDGE, UNITED STATES HISTORY, AND**
18 **ENGLISH LANGUAGE REQUIREMENTS FOR**
19 **NATURALIZATION.**

20 (a) **IN GENERAL.**—Section 312 of the Immigration
21 and Nationality Act (8 U.S.C. 1423) is amended—

22 (1) by inserting "(a)" after "312.",

23 (2) by striking "this requirement" and all that
24 follows through "That" the second place it appears,

32

1 (3) by striking "this section" and inserting
2 "this paragraph", and

3 (4) by adding at the end the following new sub-
4 section:

5 "(b) The requirements of subsection (a) shall not
6 apply to any person—

7 "(1) who is unable because of physical or devel-
8 opmental disability or mental impairment to comply
9 therewith; or

10 "(2) who, on the date of the filing of the per-
11 son's application for naturalization as provided in
12 section 334, either—

13 "(A) is over 50 years of age and has been
14 living in the United States for periods totaling
15 at least 20 years subsequent to a lawful admis-
16 sion for permanent residence, or

17 "(B) is over 55 years of age and has been
18 living in the United States for periods totaling
19 at least 15 years subsequent to a lawful admis-
20 sion for permanent residence."

21 (b) CONFORMING AMENDMENTS.—Section
22 245A(b)(1)(D) of such Act (8 U.S.C. 1254a(b)(1)(D)) is
23 amended by striking "312" each place it appears and in-
24 serting "312(a)".

1 (c) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act and shall apply to applications for natu-
4 ralization filed on or after such date and to such applica-
5 tions pending on such date.

APPENDIX 2.—CORRESPONDENCE FROM THE WORLD BANK—INTERNATIONAL MONETARY FUND TO HON. NICHOLAS F. BRADY, SECRETARY OF THE TREASURY, MAY 11, 1992

MR. Bowyer,

**THE WORLD BANK
INTERNATIONAL MONETARY FUND**

Washington, D.C. 20431

May 11, 1992

Hon. Nicholas F. Brady
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington D.C. 20220

Dear Mr. Secretary:

We write to request your support for the enactment of the Immigration and Naturalization Housekeeping Amendments Act of 1992, a bill recently introduced by Congressman Mazzoli, Chairman, Subcommittee on International Law, Immigration and Refugees of the House Judiciary Committee. A hearing on the bill is to be held by the subcommittee on May 20, 1992. The bill involves a matter of concern to staff of the international governmental institutions based in the United States, including the World Bank and the International Monetary Fund.

Some ten years ago, it became apparent that the then existing immigration laws were creating serious problems for some non-United States staff and their families. These problems arose because, unless particular exceptions could be found in the immigration laws, international organization retirees and their spouses and children, on G-4 visas, were obliged to leave the United States after the employee retired, even though the retiree may have had a long period of service and residence in the United States. This was particularly difficult for children who spent their formative years in the United States and who, for all practical purposes, had become Americans. It was also difficult for retirees and their spouses whose ties with their home countries had weakened after many years here. Legislation to relieve these problems was supported by successive Administrations of both parties, by every living ex-Secretary of State and Treasury and by the heads of all the major international organizations.

The 1986 Immigration Act took care of the major problems that then arose. It provided a basis for surviving spouses and children on G-4 visas to apply for permanent resident status, subject to their meeting certain residency requirements. It also provided that retirees from international organizations could become permanent residents provided they had 15 years physical presence in the United States. These provisions have been much appreciated. However, the Act also contained the so-called "sunset" provision (8 U.S.C. 1101(a) (27)I) which required that retirees apply for permanent residence by January 1, 1993. The effect of this provision is that an employee who joined the international organization after January 1, 1978 will not be able to qualify. Furthermore, an employee who joined the international organization before January 1, 1978 and has the requisite period of residence, but does not retire by January 1, 1993, will also not be able to apply because the employee will not be able to comply with the January 1, 1993 cut-off date.

Hon. Nicholas F. Brady

- 2 -

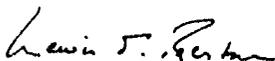
May 11, 1992

Consequently, these retirees will face the same problems as did the retirees for whom relief was granted in the 1986 Act. And as time goes on, this cutoff date will, of course, preclude more and more retirees (and their spouses) from remaining as permanent residents regardless of their long periods of service here.

The bill introduced by Congressman Mazzoli would eliminate this "sunset" provision. The 15-year residence requirement would remain in the Act. While we do not have precise figures, the elimination of this sunset provision is likely to involve a total of both retirees and their spouses of less than 100 per year for the foreseeable future.

We would be grateful for anything that you and those who work with you are able to do to promote prompt enactment of the legislation.

Sincerely,



Lewis T. Preston
President
World Bank



Michel Camdessus
Managing Director
International Monetary Fund

**APPENDIX 3.—CORRESPONDENCE FROM CHARLES D. DEWITT,
APRIL 21, 1992**

Charles D. DeWitt
P.O. Box 191
Redmond, WA 98073
April 21, 1992

The Honorable Romano L. Mazzoli
Chairman
Subcommittee on International Law,
Immigration and Refugees

Dear Representative Mazzoli and Committee Members:

I wish to give my support for the H.R. 4007 which would allow me and others like me to be secure in our citizenship and would restore to myself and my 90 year old mother rights which we had always been told were ours.

My mother Marie Dewey Dewitt was born in Portland, Oregon, on June 15, 1901. Both of her parents were native United States citizens. In 1924, she married Benjamin DeWitt, a Canadian citizen. On January 17, 1932, I was born in Ontario, Canada. My father was a lieutenant in the Royal Canadian Signal Corp. During the Depression, junior officers including my father were dismissed from the service. My parents' marriage broke up and, in 1936, my mother returned with my brother and myself to Seattle, Washington. I have lived all the rest of my life as an American. While my mother lived in Canada, she never did anything, such as vote, which would have compromised her U.S. citizenship.

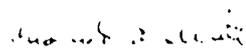
In the fall of 1937, my mother went to the Seattle Office of the Immigration and Naturalization Service, on Airport Way, to find out about her sons' status. She met with Mr. Grey, who appeared to be a senior official. Initially, there was confusion about our status. She met several times with Mr. Grey, and provided him copies of our birth certificates. Mr. Grey then informed her that her sons would automatically become American citizens at the age of 12. She wanted to make certain because of her problems with my father from whom she had been divorced. Mr. Grey told my mother she did not need to worry about it and that no further action was necessary on her part.

Now, 56 years later, there is a question about my citizenship. I am told by the Immigration and Naturalization Service that a mistake has been made. Because my mother was a woman she did not have the same right to pass on citizenship to her children as a man. Although the law was changed, it did not give equal rights to her or to me since I was born prior to 1934.

Rep. Romano Mazzoli
April 21, 1992
Page 2

This has been a shock to me. I have lived all my life as an American citizen. I served in the U.S. Marine Corps and have held secret security clearances. I have voted and paid taxes all my adult life and live an honorable life as an American. I am now told that I can not vote or travel on my U.S. passport. This is not fair. I will fight for my citizenship and hope that you resolve this injustice for those of us who are caught by a law which was wrong then and is wrong today. Please support passage of the provision to give equal rights to U.S. women citizens whose children were born prior to 1934.

Sincerely,


Charles D. Dewitt

cc: Congressman Tom Foley
Congressman Norman Mineta
Congressman Rod Chandler
Senator Slade Gorton

APPENDIX 4.—CORRESPONDENCE FROM HON. WILLIAM O. LIPINSKI,
MAY 21, 1992

WILLIAM O. LIPINSKI
5TH DISTRICT ILLINOIS

COMMITTEES
PUBLIC WORKS AND TRANSPORTATION
MERCHANT MARINE AND FISHERIES
CHAIRMAN
SUBCOMMITTEE ON
OVERTSIGHT AND INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-1305

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4304 SOUTH ARCHER AVENUE
CHICAGO, IL 60632
(312) 866-0379
7211 WEST 62ND STREET
CHICAGO, IL 60631
(708) 480-1110

May 21, 1992

Honorable Romano Mazzoli
Chairman
Subcommittee on International Law, Immigration and Refugees
8370B Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman: *Law*

I want to thank you again for the opportunity to testify on H.R. 3389 before your subcommittee yesterday. I appreciate the attention you are giving to the plight of the 832 Polish and Hungarian parolees.

Following my testimony, you expressed some concern about giving residency to parolees who had not qualified for refugee status. I want to point out that the parolees did in fact qualify for refugee status at the time they applied, but U.S. refugee policy for Poland and Hungary changed before the applications were approved. This was the very reason they received parole -- because they were on the verge of receiving refugee status when the rules changed on them.

In light of the circumstances of their entry and the fact that the INS only paroled applicants with family ties in the United States, H.R. 3389 does not provide the parolees a special benefit they were not intended to receive. The INS fully expected the parolees to become U.S. residents through normal channels. However, because many of the parolees do not have close enough family ties to apply through the family reunification process, H.R. 3389 is necessary to ensure them the opportunity to gain residency.

Again, thank you for considering H.R. 3389 as an addition to the INA revisions bill. Please call if you or your staff have any additional concerns about the bill.

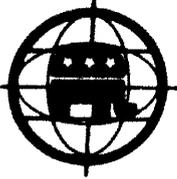
Sincerely,

Bill

WILLIAM O. LIPINSKI
Member of Congress

-IVCL
MAY 22 1992
IMMIGRATION

**APPENDIX 5.—CORRESPONDENCE FROM WILLIAM ALI MILLS,
REPUBLICANS ABROAD, TO HON. HOWARD L. BERMAN, MAY 18, 1992**



Republicans Abroad

May 18, 1992

Richard N. Bond
Honorary Chairman

John G. McCarthy, Jr.
Chairman

Barbara Hayward
Vice Chairman

William Ali Mills
Executive Director

ADVISORY COMMITTEE

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Hong Kong

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Belgium

The Honorable Howard L. Berman
137 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Berman,

As the international arm of the Republican National Committee representing over one million Americans in 70 countries around the world and a founding member of the Federated League of Americans Around the Globe (FLAAG), Republicans Abroad would like to express our support for House Bill 4561 (H.R. 4561).

We support this important legislation, which affects thousands of our citizens residing abroad and would like to extend any assistance we could offer to see it passed into law.

Sincerely,

William Ali Mills
Executive Director

APPENDIX 6.—STATEMENT OF STEVEN E. HUMERICKHOUSE, COORDINATOR OF LEGISLATIVE AFFAIRS, ADOPTIVE FAMILIES OF AMERICA

**TESTIMONY OF
STEVEN E. HUMERICKHOUSE
COORDINATOR OF LEGISLATIVE AFFAIRS
ADOPTIVE FAMILIES OF AMERICA**

**SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES
JUDICIARY COMMITTEE
U. S. HOUSE OF REPRESENTATIVES
MAY 20, 1992**

Adoptive Families of America is a national membership organization of over 15,000 adoptive and prospective adoptive families, and the umbrella organization for over 275 adoptive parent support groups across the country. Thank you for the opportunity to present a brief statement regarding the immigration legislation proposed by Representative Romano Mazzoli involving the visa process for children adopted internationally.

The law as currently written provides for the finding of "orphan" status for the child of a sole surviving parent who has irrevocably released the child for emigration and adoption, and for the child who is an orphan because of the death, disappearance, abandonment, or desertion of both parents. The law does not allow for the situation in which both parents are alive and both irrevocably release the child for emigration and adoption. The proposed legislation would allow current law to be superseded in certain certified countries.

Adoptive Families of America is in support of the proposed legislation. We very much like the streamlining of the process, all the while maintaining strong safeguards against abuse of children and families in the countries of origin. We are strongly in favor of the provision allowing children who are not "orphaned", yet whose parents are unable to care for them, to be eligible for adoption. We are very pleased that the United States government will no longer second-guess the process of adoption or child protection in the country of origin by exacting higher standards for adoption in those countries than we apply to children in the United States.

However, although we are in no way opposed to the idea of the certification of countries for eligibility for the streamlined process, we think the certification process does not go far enough in requiring the State Department to certify countries that fit the criteria. All countries that exhibit the four criteria outlined in the amended Section 204 should be certified for the streamlined visa process. There should be no limits such as "at least the 10 principal foreign states." Adoptive Families of America fears that,

the State Department will certify only the minimum number of countries required. We think that children in all countries meeting the criteria should have equal access to the new visa process.

Adoptive Families of America proposes that the State Department be required to certify that countries do not meet the criteria. In this way, there would be no question as to which countries have the highest standards in place, insuring that safeguards were in effect against family dissolution and adoption fraud in the country of origin.

In conclusion, Adoptive Families of America is pleased to see this legislation finally beginning the process towards becoming law. With the changes we have proposed, we believe this legislation will go a long way to helping prospective adoptive families provide permanent, nurturing homes for the children who wait around the world.

APPENDIX 7.—CORRESPONDENCE FROM ENRIQUE Y. IGLESIAS, PRESIDENT OF THE INTER-AMERICAN DEVELOPMENT BANK, TO HON. NICHOLAS F. BRADY, SECRETARY OF THE TREASURY, MAY 19, 1992



INTER-AMERICAN DEVELOPMENT BANK
WASHINGTON, D. C. 20577

PRESIDENT

CABLE ADDRESS
INTAMBANC

May 19, 1992

Hon. Nicholas F. Brady
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

I am writing to request your support for the enactment of the Immigration and Naturalization Housekeeping Amendments Act of 1992, a bill recently introduced by Congressman Mazzoli, Chairman of the Subcommittee on International Law, Immigration and Refugees, of the House Judiciary Committee. A hearing on the bill is to be held by the Subcommittee on May 20, 1992. The bill involves a matter of concern to staff of the international governmental institutions based in the United States, including the Inter-American Development Bank.

Some ten years ago, the then existing immigration laws were creating serious problems for some non-United States staff and their families. These problems arose because, unless particular exceptions could be found in the immigration laws, the retirees of international organizations and their spouses and children, who were on G-4 visas, were obliged to leave the United States after the employee retired, even though he or she may have had a long period of service and residence in the United States. This was a particularly difficult situation for children who had spent their formative years in the United States and who, for all practical purposes, had become Americans. It was also difficult for retirees and their spouses whose ties with their home countries had weakened after many years here.

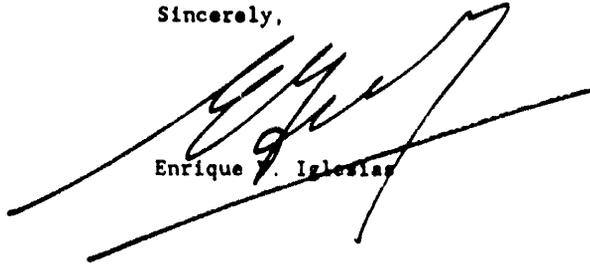
The 1986 Immigration Act provided a basis for surviving spouses and children on G-4 visas to apply for permanent resident status, subject to their meeting certain residency requirements. Furthermore, under the Act, retirees from international organizations could become permanent residents provided they had 15 years physical presence in the United States. These provisions have been much appreciated. However, the Act also contained the so-called "sunset" provision (8 U.S.C. 1101 (a) (27)I) which required that retirees apply for permanent residency by January 1, 1993. The effect of this provision is that an employee who joined the organization after January 1, 1978 cannot qualify for permanent residency. Furthermore, an employee who joined the organization before January 1, 1978 and has the requisite period of residence, but does not retire by January 1, 1993, will not be able to apply because he or she will not be able to comply with the January 1, 1992 cut-off date.

Consequently, new retirees will face the same problems as did the retirees for whom relief was granted in 1986 Act. As time goes on, this cutoff date will, of course, preclude more and more retirees (and their spouses) from remaining as permanent residents regardless of their long periods of service here.

The bill introduced by Congressman Mazzoli would eliminate this "sunset" provision. The 15-year residence requirement would remain in the Act. While I do not have precise figures, the elimination of this sunset provision is likely to involve less than 30 staff members per year for the foreseeable future.

I would be grateful for your support to promote enactment of the legislation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'E. Iglesias', is written over the typed name. The signature is fluid and somewhat abstract, with a long horizontal stroke extending to the right.

Enrique J. Iglesias

Congressman Romano L. Mazzoli
May 29, 1992
Page 2

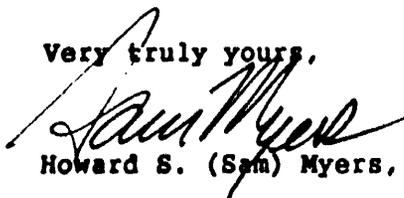
Please do not take this to mean that I am criticizing INS' regulations. Quite to the contrary, the INS expended considerable time and effort in a sincere attempt to capture the essence of congressional intent as far as this new classification is concerned. The INS is not, however, an agency with experience in the area of commercial business transactions and, I believe, ought to be given the statutory authority to review proposed transactions under the regulations, before specific investors are identified. This would serve the interests of U.S. interests who are eager to locate resources to capitalize employment-creating businesses. In fact, I am advised that the S.E.C. has a similar procedure in connection with its review of public stock offerings.

Our proposal would simply allow a party to submit, for INS approval, a petition or letter request which contains the structure of a proposed investment whether or not a particular investor has been identified. Once the transactional structure is approved by the INS, individual investors would still be required to petition for specific visa classification upon making their investment. Thus, it would be possible for an American entity seeking to capitalize a qualifying venture to receive an approval of its proposed legal structure and market this approved structure to interested investors, just as is done with public stock offerings.

What our proposal would not do is to shield the identity of investors from the INS or the public. Our proposal has the added advantage of encouraging businesses with specific investment transactions to file for qualification with the INS before promoting them abroad. This would avoid the unfortunate situation where a business incorrectly assumes that its investment structure would qualify under technical INS rules and interpretations when the transaction might be deemed to not qualify, thus frustrating the efforts of everyone to capitalize an employment-creating enterprise.

I hope that this letter has clarified my testimony on this issue. If I can be of any further assistance, do not hesitate to call.

Very truly yours,



Howard S. (Sam) Myers, III

HSM2332(2)/pkh

APPENDIX 9.—CORRESPONDENCE FROM CHASE UNTERMAYER, ASSOCIATE DIRECTOR FOR BROADCASTING, U.S. INFORMATION AGENCY, JUNE 8, 1992

**United States
Information
Agency**

Washington, D.C. 20547



June 8, 1992

RECEIVED

JUN 10 1992

IMMIGRATION

JUN 10 1992
The Honorable Romano Mazzoli
Chairman
Subcommittee on International Law,
Immigration, and Refugees
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

Thank you for the opportunity to address your Subcommittee on Section 103 of the Immigration and Naturalization Housekeeping Amendments Act of 1992 and your interest in the Voice of America's critical need for a new visa.

I would like to take this opportunity to expand on my response to your questions as to whether we are making a concerted effort to find U.S. citizens for our foreign language broadcaster positions and whether we have any option to bring foreign nationals into the United States for this purpose.

I assure you our ability to broadcast in most of the 46 foreign languages in which we are currently on the air depends on our ability to attract and retain foreign nationals from abroad.

Our foreign language broadcasters must have a unique combination of skills and knowledge. They must possess native fluency in the broadcast language, including idioms and contemporary nuances; an in-depth knowledge of the people, history and culture of the broadcast area to produce materials which make American policies, institutions and culture understandable and meaningful; and professional journalistic skills which meet VOA's high standards.

Despite extensive and continuing efforts to recruit within the United States, we have found that the American workforce simply does not contain a sufficient number of people with this rare combination of skills. Even in languages with large numbers of immigrants, individuals quickly lose their native-level fluency, especially contemporary idiomatic usage. Nor do American schools produce significant numbers of students fluent in languages such as Amharic, Hausa, Urdu and Uzbek.

We maintain an active, ongoing recruitment effort for all broadcaster positions. Our foreign language positions are widely advertised via open recruitment notices at regional Office of Personnel Management offices and Federal Job Information Centers nationwide. These positions are also continually carried in Federal Career Opportunities, the most popular nationwide listing of federal jobs.

In addition, VOA recruiters regularly visit universities and attend professional, academic and ethnic conferences and conventions throughout the country. Each year, recruiters attend the prestigious Russian language study programs at Middlebury college and Norwich University in Vermont. Just this spring VOA recruiters visited major universities across the country, and attended the National Association of Hispanic Journalists' 10th annual convention in Albuquerque, New Mexico.

We also advertise our broadcaster positions in major English as well as ethnic newspapers in this country.

Our nationwide recruiting efforts have enabled us to hire a number of U.S. citizens as foreign language broadcasters in languages such as Russian, Ukrainian, Greek and German. However, they simply have not yielded enough suitably qualified citizens to fill the majority of our vacancies.

Only when we have been able to find suitably qualified citizens have we hired and brought foreign nationals to the U.S. in accordance with the authorities expressly granted by Congress to USIA for these purposes (Section 1474 of Title 22 USC).

Since January of 1989, we have hired a total of 146 foreign language broadcasters for 40 of the 46 languages in which we currently broadcast. Of these new hires, 42 were U.S. citizens and 104 were non-U.S. citizens (71 of these non-U.S. citizens were employed using the J visa, while others were already in this country on permanent resident visas).

I have enclosed a detailed description of our domestic recruitment efforts for your information along with an analysis of our hiring of foreign language broadcasters since January 1989. We would be happy to supply any additional information you desire.

Once again, I want to thank you for your interest and support in this matter of great concern to the Voice of America and me.

Sincerely,



CHASE UNTERMEYER
Associate Director for Broadcasting

Enclosures

FOREIGN LANGUAGE IRBs HIRED 1/89 - 5/92

LANGUAGE	TOTAL	U.S. CIT	NON-CIT	J VISA	PERCENT OF NEW HIRES
AMHARIC	3		3		
HAUSA	4		4	4	100%
PORTUGUESE-AFRICA	6		6	6	100%
SWAHILI	4	3	1	1	25%
FRENCH TO AFRICA	4		4	3	75%
ALBANIAN	5	1	4	1	20%
BULGARIAN	3		3	2	67%
CZECH	1		1	1	100%
ESTONIAN	5	2	3	3	60%
GERMAN	7	2	5	4	57%
GREEK	3	2	1	1	33%
HUNGARIAN	4	1	3		
SPANISH TO EUROPE	2		2	1	50%
LATVIAN	1	1			
LITHUANIAN	1		1	1	100%
ROMANIAN	4	1	3	2	50%
TURKISH	1		1	1	100%
SERBIAN	5	2	3	3	60%
SLOVAK	1		1		
SLOVENE	2	1	1		
CROATIAN	1		1		
CHINESE	14	1	13	11	79%
BURMESE	3		3	2	67%
KOREAN	1		1	1	100%
LAO	1	1			
TIBETAN	6	5	1	1	17%
PORTUGUESE-LAT AM	2		2	1	50%
SPANISH TO LAT AM	6	1	5	4	67%
CREOLE	4	1	3	1	25%
ARABIC	8		8	7	88%
BANGLA	1		1	1	100%
HINDI	3	2	1	1	33%
PASHTO	1	1			
URDU	2		2	2	100%
RUSSIAN	11	9	2		
UKRAINIAN	5	3	2		
ARMENIAN	2	1	1		
AZERI	4		4	3	75%
GEORGIAN	3	1	2	1	33%
UZBEK	2		2	1	50%
TOTALS:	146	42	104	71	49%

NOTES:

NEW HIRES WERE MADE IN 40 OF OUR 46 FOREIGN LANGUAGES
 IN 37 LANGUAGES AT LEAST SOME NEW HIRES WERE NON-CITIZENS
 IN 29 LANGUAGES AT LEAST SOME NEW HIRES WERE ON J VISAS
 49 PERCENT OF ALL NEW HIRES WERE ON J VISAS
 FOREIGN LANGUAGE IRBs HIRED 1/89 - 5/92

CONFERENCES/CAREER FAIRSDATE

Career Day Fair-Towson State, MD	12/90
Job Fair-U of Maryland	4/91
Natl Assoc of Hispanic Journalists-NY	3/91
AAASS Conference-Miami, FL	6/91
Black Human Resources Conf-D.C.	8/91
Hood College-Frederick, MD	10/91
Hispanic Enterprise-Puerto Rico	11/91
Career Fair-Uof Maryland	11/91
NAACP Conference-Crystal City	1/92
Career Day-American Univ. D.C.	1/92
Nat'l Conf on Blacks in Higher Education-D.C.	3/92
Ft. Meade Career Fair-MD	4/92
Natl Assoc of Hispanic Journalists	4/92
Albuquerque, NM	4/92
Bowie State-MD	4/92
George Mason Univ-VA	4/92

VOA recruiters also visited the following COLLEGES/UNIVERSITIES during the past year:

Virginia Tech
 Howard University
 Norwich University, VT
 Middlebury College, VT
 University of Massachusetts
 MIT
 Harvard
 Boston College
 Princeton
 Columbia
 Ohio State
 University of Illinois
 University of Pittsburgh
 University of Texas, Austin
 Baylor University
 University of Houston
 University of Missouri
 University of Iowa
 University of Wisconsin
 UC Berkeley
 UC Santa Cruz
 Stanford
 USC
 UCLA

DOMESTIC RECRUITING EFFORTS

The Voice of America has advertised its International Radio Broadcaster positions in the following domestic publications during the past 18 months. In addition, VOA has sent out numerous mass mailings of letters and recruitment flyers to university language departments and placement offices seeking applicants for these positions.

<u>PUBLICATION</u>	<u>DATE</u>
New York Times	11/90
Washington Post	12/90
Los Angeles Times	12/90
Detroit News	12/90
SADA Alwatan (Dearborn MI)	12/90
Lao Samphanh (Santa Ana, CA)	2/3/4/91
Sangkhom Lao American Association for Advancement of Slavic Studies (AAASS)	2/3-4/91
Washington Journal	6/91
Miami Herald	8/91
Hispanic Link	9/91
Washington Post	9/91
Washington Post (Job Market Supp)	10/91
El Nuevo Dia	9/91
Brdcst Magazine	12/91
Larks Newspaper	1/92
Washington Post	4/92
Columbia Spectator	5/92

**APPENDIX 10.—STATEMENT OF LESLYE ORLOFF AND ELLEN LAWTON,
AYUDA, INC., CLINICA LEGAL LATINA, AND WILLIAM TAMAYO, THE
ASIAN LAW CAUCUS****INTRODUCTION**

On May 17, 1991, the Immigration & Naturalization Service ("INS") issued an interim rule which requires that battered spouses seeking a waiver of a joint petition on the basis of extreme cruelty submit an affidavit of a licensed mental health professional. Section 108 of the proposed Immigration & Naturalization Housekeeping Amendments Act of 1992 would remove that requirement. It is important that all are clear in considering this amendment that the existence of a bona fide marriage is and must remain the primary focus of any inquiry under the Marriage Fraud Act; once an alien spouse has established the bona fides of the marriage, whether actual spousal abuse is documented should be secondary. If the abused spouse presents witness statements, lease agreements, or wedding or other pictures to establish the bona fides of the marriage, INS need not dwell on the abuse issue as strongly. The focus of the inquiry must remain on the marriage, with presentation of proof of abuse relevant only to explain why the abused spouse could not safely remain with her abuser for two years while awaiting her permanent residence visa.

In response to concerns and questions expressed by the Committee regarding Section 108 of the Immigration & Naturalization Housekeeping Amendments Act of 1992, we submit the following testimony. First, we provide a brief overview of the legislative history of the Immigration Marriage Fraud Act and Amendments which traces the response of the INS to battered women in the past and reveals the need for adoption of the current amendment. Second, we

present national statistics to demonstrate that standards of evidence in spousal abuse cases in no jurisdiction are as stringent as those proposed for extreme cruelty cases by the INS, and we suggest possible evidentiary elements that would be more appropriate. Thirdly, we address the INS's misplaced reliance on affidavits by licensed mental health professionals which are required when a waiver for extreme cruelty is sought.

Finally, we discuss our additional concerns about INS confidentiality regulations that also reflect INS' narrow and unrealistic approach on spousal abuse issues. Section 108 could be amended to include these concerns.

I. The INS and the Battered Spouse Waiver

Historically, the immigration petition process has allowed a citizen or lawful permanent resident to extend citizenship to a spouse through marriage. In 1986, the Immigration Marriage Fraud Act (IMFA) was passed to deter fraudulent marriages entered into between an alien spouse and a U.S. citizen or lawful permanent resident solely to acquire legal status for the alien.¹ The Act imposed a two-year period of conditional residence on all aliens who acquired legal status through marriage.

In order to remove the conditional status, the couple would have to file a joint petition after two years had passed. Failure to file the joint petition would terminate the alien's conditional residence by operation of law, and subject the alien spouse to

¹ Pub.L. No. 99-639, 100 Stat. 3537.

deportation. Because the law required a joint petition, alien spouses and their children frequently were held hostage by abusive citizen or resident spouses with express or implied threats of deportation. Until the passage of the Immigration Act of 1990 (IMMACT),² an abused spouse had little recourse if she wanted to continue to reside lawfully in the United States but her husband refused to sign the requisite petition.

Although the joint petition could be waived prior to 1990, the alien spouse had to demonstrate that the marriage had been entered into in good faith and had been terminated for good cause, or that deportation would subject her to extreme hardship because of circumstances arising during the two-year conditional residence. Regardless of the waiver used, the alien spouse was required to demonstrate that the marriage was in fact bona fide.³ Interestingly, if the petitioner dies within the two year period, the alien spouse is excused from filing the joint petition, is not required to file the waiver, and the marriage is presumed to have been bona fide. Both the extreme hardship and good faith/good cause waivers were interpreted narrowly, making it very difficult for spouses who were victims of domestic abuse to take advantage of the waiver.

² Pub. L. 101-649.

³ Under § 2 of the IMFA, a couple was required to demonstrate that: (1) they did not marry for the purpose of procuring the alien's entry into the U.S. as an immigrant; (2) the marriage has not been judicially annulled or terminated; and (3) the alien did not pay her spouse a fee in return for his filing an immigrant visa petition on her behalf.

Congress recognized the shortcomings of the two waivers with respect to battered immigrant spouses, and sought to address them in IMFACT. Specifically, the legislative history of that Act stated:

The terms of the [Immigration Marriage Fraud Act] 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.⁴

In response to these concerns, Congress modified the IMFA's waiver provisions by significantly revising the good faith/good cause waiver to eliminate the requirement that the marriage be terminated by the alien spouse for "good cause," and adding a third waiver ground specifically to help battered spouses and children.

The battered spouse and child waiver⁵ specified that the marriage need not be terminated, a distinct benefit to the battered spouse who is fearful of the consequences of seeking a divorce. Like the other waivers, the battered spouse waiver requires that the alien show that the marriage was entered into in good faith and that he or she was not at fault in failing to meet the joint petition requirement. Once these requirements are met, there must be a showing that during the marriage the alien spouse or child "was battered by or was the subject of extreme cruelty perpetrated

⁴ H.R. Rep. No. 723 Part 1, 101st Cong., 2d Sess. 51 (1990).

⁵ IA90 §701 et. seq.

by his or her spouse or citizen or permanent resident parent."⁶ That section also added a confidentiality provision to ensure that the abuser would not become aware of the information in the waiver application.

While § 701 refers to "extreme cruelty" as a basis for the battered spouse waiver, the legislative history uses the term "extreme mental cruelty."⁷ The INS, in implementing the interim regulation pertaining to the battered spouse waiver for extreme cruelty, has confined the definition of extreme cruelty to include only that abuse which inflicts psychological or mental suffering.

By restricting the definition in this way, certain forms of abuse outside of battery, such as threats to take away the children, or derogatory statements meant to disempower or embarrass the woman, will not necessarily be seen as inflicting mental suffering, but which are nonetheless abusive. Other examples of abusive behavior which are frequently criminal in nature, yet not included in the definition of extreme cruelty include failure to properly provide for the child or spouse, deprivation of economic resources, and medical deprivation. In short, the requirement that a battered immigrant spouse provide an affidavit attesting to her psychological or mental suffering fails to protect women and children who are in fact victims of extreme cruelty which is not necessarily manifested through mental suffering, and points up the inadequacy of such a requirement for documenting abuse.

⁶ IA90 § 701(a)(5) (amending INA § 216(c)(4)).

⁷ H.R.Rep.No. 723 Part 1, 101st Cong., 2d Sess. 51 (1990).

Given the clear intent of IMMACT -- to protect battered women and children from being trapped in abusive situations -- the definition of extreme cruelty should be considerably broadened to include the situations like those referred to above. The following section describes the use of a significantly broader view of non-battery spousal abuse throughout the judicial system.

II. Appropriate Standards of Evidence in Domestic Violence Cases

The INS has suggested that stringent proof requirements, such as an affidavit from a mental health professional, are necessary to deter fraud in battered spouse waiver applications.⁶ This assertion ignores both the nature of spousal abuse, and the fact that the INS regularly assesses the credibility of applicants in order to determine whether or not applications are fraudulent in a broad variety of cases, including asylum cases, waivers based on extreme hardship and waivers based on termination of a marriage. In none of these cases does INS require the level of proof being asked of immigrant battered women who suffer extreme cruelty.⁷

In the preamble to the regulation, the INS explained the basis for the requirement of an affidavit from a licensed mental health professional in the following manner:

⁶ Testimony of Commissioner Gene McNary, Immigration & Naturalization Service, May 20, 1992 at 8.

⁷ Under the battered spouse waiver, the alien spouse must still demonstrate that the marriage was entered into in good faith and that he or she was not at fault in failing to meet the joint petition requirement, in addition to demonstrating either physical abuse or extreme cruelty. See *supra*.

The Service agrees with those commenters who have stated that most Service officers have not received training in this area and are not qualified to make reliable evaluations of an abused applicant's mental or emotional state. Therefore, it is necessary for the Service to rely upon the judgment of professionals trained in the area of evaluating an individual's emotional or mental condition.¹⁰

As Section III discusses, it is fallacious to assume that a professional "trained in the area of evaluating an individual's emotional or mental condition" is necessarily equipped to assess a situation involving spousal abuse or has even been trained in the dynamics of spousal abuse.

More importantly, stringent proof requirements misperceive the nature of standards of evidence in spousal abuse cases. An examination of what is typically required to document physical and/or emotional abuse in civil protection order proceedings reveals that the unique circumstances of domestic violence require an infinitely more flexible standard of evidence than the present INS rule offers.

Since much of domestic violence happens with no witnesses, or with only children as witnesses, courts see many cases where the victim testifies, the batterer testifies, and no other evidence is presented. When this occurs, the court carefully questions both parties, and evaluates the testimony in determining credibility. Contrary to INS statements defending the interim regulation at

¹⁰ 56 Fed. Reg. 22635-38 (May 16, 1991) (codified at 8 CFR § 216.5)

issue," evaluating the credibility of affidavits and witnesses is precisely the type of judgment that INS officers are called upon to make on a regular basis when considering political asylum applications and deportation proceedings.

In making a determination of whether or not to grant a battered spouse waiver, the only inquiry by the INS should be on the credibility of the reports of abuse, not on whether the alien spouse is suffering extreme cruelty. Unlike in the asylum context where the INS inquires as to whether the applicant has a well-founded fear of persecution, under the IMFA the INS need only see that there was some abuse to constitute sufficient and rational reason for the alien spouse to leave their husband within the two year period. By placing the INS in the position to measure the quality and quantity of the abuse one must suffer to seek a waiver, we give the INS authority and discretion beyond that contemplated by the statute. We do not believe it was ever the intent of Congress to empower the INS to determine how much abuse any individual seeking to avail themselves of this waiver must suffer.

When victims are able to garner other evidence of the violence, the evidence usually takes the form of medical records, photographs, police reports, and physical evidence, as well as supportive testimonial evidence from friends, family members,

" "...as most INS officers have not received training in this area and may not be qualified to make reliable evaluations of an abused applicant's mental or emotional state, we feel it is preferable to rely on the judgment of a professional." Testimony of Commissioner Gene McNary, Immigration & Naturalization Service, May 20, 1992.

children, co-workers, neighbors, school teachers, social workers, police officers, and health professionals.¹²

A survey of the standard of proof typically applied in domestic violence cases is equally instructive in determining the appropriate evidentiary requirements for a battered spouse waiver. The standard of proof used in the vast majority of jurisdictions for issuance, modification and extension of a civil protection order is, at the highest, a "preponderance of the evidence" standard (20 states), however a number of states employ a lesser standard of "good cause" (20 states), "reasonable grounds" (4

¹² The scope of evidence that is typically admissible at civil protection order hearings for issuance, modification, extension and enforcement of civil protection orders is summarized well in the New Jersey statute Nj.:2C:25-13 a.:

The court shall consider but not be limited to the following factors:

- (1) The previous history of domestic violence between the petitioner and the defendant including threats, harassment and physical abuse;
 - (2) The existence of immediate danger to person or property;
 - (3) The financial circumstances of the plaintiff and defendant;
 - (4) The best interests of the victim and any child;
 - (5) In determining custody and visitation the protection of the victim's safety; and
 - (6) The existence of a verifiable order of protection from another jurisdiction.
- (emphasis added)

states) or "probable cause"(4 states).¹³

The above-referenced standards of evidence are representative of that which is required in civil litigation. The INS, as an administrative agency, is subject to an equal, and occasionally lower, standard of proof.¹⁴ It is only fitting that a victim of spousal abuse should be able to seek and obtain relief from both the courts and the INS based on the same evidence.

III. Spousal Abuse and Mental Health Professionals

Under the new rule, a waiver application based on extreme cruelty must be supported by the affidavit of a licensed clinical social worker, psychologist or psychiatrist.¹⁵ By contrast, in order to prove physical abuse, a waiver applicant may submit a broad variety of evidence including, but not limited to, personal statements, reports, records and/or affidavits from police, judges, medical personnel, school officials, friends, neighbors, family

¹³ In the New Jersey case of Roa v. Roa, 253 N.J. Super. 418, 601 A.2d 1201 (1992), the court explained the "preponderance of the evidence" standard is lower than the criminal reasonable doubt standard, since a domestic violence complaint is typically pursued as a civil action and civil remedies are obtained. The court stated, "[a]llegations of domestic violence will frequently be difficult to prove due to the private nature of the offense. There are usually few, if any, eyewitnesses to marital discord or domestic violence, thus enhancing credibility disputes." *Id.* at 1206.

¹⁴ In seeking asylum, for example, the applicant's burden is to establish the likelihood of persecution by a preponderance of the evidence. Matter of Acosta, 19 I & N Dec. --(I.D. 2986, BIA 1985).

¹⁵ 56 Fed. Reg. 22635-38 (May 16, 1991) (codified at 8 CFR § 216.5).

members, or social service agency personnel. Thus, the INS interim rule imposes significantly more burdensome evidentiary requirements only in the case of extreme cruelty.

The requirement of an affidavit by a mental health professional to prove extreme cruelty manifests a fundamental misunderstanding of the obstacles faced by battered immigrant women in obtaining access to any social or legal services, and severely undermines the Congressional intent that the waiver should "ensure" that neither a spouse nor a child would be "entrapped in the abusive relationship by threat of losing their legal status."¹⁶ The requirement also presumes that all mental health professionals possess an understanding of spousal abuse issues. This presumption is belied by recent statistics which reveal that mental health professionals are often not trained in or knowledgeable about the dynamics of spousal abuse, nor are they generally trained to work with immigrant and refugee populations.

For example, in one study, nearly half of the psychotherapists surveyed failed to identify obvious evidence of spousal abuse, despite their professional training (and licenses).¹⁷ The reasons for such a statistic are manifold. Frequently, mental health

¹⁶ H.R. Rep. No. 723 Part 1, 101st Cong., 2d Sess. 78 (1990). See also 136 Cong. Rec. 8642 (daily ed. Oct. 2, 1990) (statement of Rep. Louise Slaughter (D-N.Y.) (noting that the waiver would be granted to an abused conditional resident spouse, an abused conditional resident child or a conditional resident spouse seeking to protect an alien or citizen child from abuse by the citizen or resident spouse).

¹⁷ See Harway & Hanson, "Therapists' Recognition of Wife Battering: Some Empirical Evidence," 6 Family Violence Bulletin 16 (Fall 1990).

professionals are simply not trained to identify or treat spousal abuse.¹⁸ Even with training, many licensed mental health professionals lack the same experience working directly with victims of spousal abuse, that shelter workers, clergy and others in the social services who work frequently with victims of such abuse possess.¹⁹ The result is that mental health professionals are frequently unable to provide accurate assessments in spousal abuse cases.

The inability of mental health professionals to even recognize indicia of spousal abuse is more plausible when compared with the failure of physicians to recognize physical evidence of spousal abuse. In a study of emergency room records conducted by Mascia (1984), 11% of the female injury cases were detected as spousal abuse. After training, the number of cases detected as spousal abuse rose significantly.²⁰

Using current diagnostic and identification procedures, physicians identify approximately 1 abuse victim in 25, while mental health practitioners identify as few as 1 in 30.²¹ In view of such statistics, it is clear that reliance on affidavits of

¹⁸ Id.

¹⁹ Id. Most battered women and particularly immigrant and refugee women lack the financial resources to seek and obtain mental health services from licensed professionals.

²⁰ Saunders & Rose, "Attitudes of Psychiatric and Nonpsychiatric Medical Practitioners Toward Battered Women: An Exploratory Study," p. 4 (1984).

²¹ Stark and Flitcraft, "Spouse Abuse," Surgeon General's Workshop on Violence and Public Health Source Book, p. 17.

mental health professionals as evidence of extreme cruelty is dramatically misplaced.

The inaccessibility of mental health professionals for immigrant women magnifies the inappropriateness of reliance on an affidavit. Acquiring such an affidavit is not only beyond the means of most immigrant women,²² but it is often impossible to find mental health professionals with relevant language and cultural skills to examine clients. While the INS regulation requires only that the mental health professional be licensed, it is logical that for an evaluation to be probative or useful, the practitioner must be fluent in the waiver applicant's language and familiar with specific cultural issues which may relate to the problem of spousal abuse in the pertinent culture.

The language and cultural barriers faced by immigrant women are enormous. Most mental health agencies, shelters and other service groups are not equipped to deal with the special needs of women who do not speak English. This problem exists nationwide. Where shelters do begin to address language barriers, there are also problems. For example, 75 different languages are spoken in Northern Virginia, yet the Domestic Violence Program in Alexandria, Virginia provides regular counselors in only four of those

²² Hogeland & Rosen, Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity 10-11 (1990) (survey of immigrant women in San Francisco area found that incomes were well below the national poverty level).

languages."²² A 1988 survey of human services agencies by the Northern Virginia Planning District Commission found that there was "insufficient" bilingual assistance to meet the demand, and according to mental health officials, there are few Cambodian social workers in the Washington area, and no Cambodian psychiatrists.²³

In California's Orange County, which has a large Spanish-speaking population, the two most well-known medical facilities in the county lack Spanish-speaking therapists in their outpatient psychiatric services.²⁴ Ellen Mercer, director of the Office of International Affairs for the American Psychiatric Association has stated that "[i]t's difficult to find mental health services in many areas for people who don't speak English."²⁵

The cultural barriers preventing abused immigrant women from seeking the services of mental health professionals are equally insurmountable. Effective services necessitate someone familiar with the languages and customs of the client's culture. According to Angus Morrison, executive director of Furthermore Foundation,

²² Banales, "Abuse Among Immigrants," The Washington Post, Sept. 16, 1990, at E5. In Washington, D.C., where the Spanish-speaking population is approximately 300,000, there is one Spanish-speaking licensed mental health practitioner.

²⁴ DeNeen L. Brown, "Old Burdens in a New Land; Horrors from Past can Wreak Havoc in Lives of Immigrants, Mental Health Experts Say," Wash. Post, Sept. 20, 1990.

²⁵ Mary Anne Perez, "Social Work Group Forms to Aid Latinos," Los Angeles Times, May 30, 1991.

²⁶ See Brown at VI.

"[i]t is difficult for non-Asians to counsel Southeast Asians, because they lack the linguistic skills or cannot recognize subtle cultural differences -- such as the Vietnamese habit of smiling to avoid answering a potentially embarrassing question."⁷ For many immigrant women, the cultural taboos and shame associated with mental health counselling and therapy are simply too strong to overcome.

A third barrier to battered immigrant women's access to the requisite mental health professional is economic. Since many immigrant women are poor, and their husbands frequently control the family finances, a waiver applicant will not be able to afford the costs of psychological counseling on her own. Immigrant women must therefore rely on the scant services provided through shelters and other service providers. As discussed above, however, even where free or affordable services exist, they remain inaccessible due to the language and cultural difficulties which prevail. Moreover, few spousal abuse shelters have licensed clinical social workers on staff, much less psychologists or psychiatrists.

Each of these barriers -- linguistic, cultural and economic -- reduces the chance that an immigrant woman will have access to the type of practitioner presently required to support her waiver application. The result of INS' present policies will be to hold immigrant spouses and children captive in abusive relationships in direct contradiction to the intent of Congress when it passed the

⁷ Aaron Curtiss, "To Heal the Lingering Wounds of War," Los Angeles Times, Oct. 4, 1991.

1990 amendments to the Immigration Marriage Fraud Act of 1986 (IMFA).

IV. Confidentiality Provisions

The regulation proposed by INS in 8 CFR 3.27(c) implementing Section 701 is totally inadequate to protect victims of domestic violence. While the statute clearly intended that any information provided to the INS regarding the location of the victim of abuse would be confidential and would not be disclosed in any fashion by the INS, the interim regulation only provides for closed hearings before the immigration judge. Congress should consider amending Section 108 of the present Act to require INS to adopt confidentiality provisions similar to those used under the legalization program.

It is well known that batterers consistently use all available means to continue perpetrating attacks on their victims. It is also true that violence escalates after separation. Given these facts the Immigration Act of 1990 sought to allow the INS to collect information that it needed to process waivers for battered women while assuring that the disclosure of this information would not further endanger the victim. This goal can only be achieved if there is an absolute enforceable ban on the distribution of locational information presented to the INS by abused persons. If all distribution of locational information about the victim and her children is not precluded by the INS, the INS will become a tool that batterers can easily use to locate their victims and continue

abuse. All information provided by battered women and children to the INS must remain confidential if battered women and children are to be fully protected.

If the purpose of Section 701 is to be furthered, regulations must be implemented that would prevent all public disclosure of all information provided by victims of domestic violence. This would include all information contained on the form I-752 and any other documents submitted by the victim to support the I-752. Information obtained during interviews must also be protected. We would propose that the provisions that already exist in subsection (c)(5) of section 201(a) of Pub. L. No. 99-603 be extended to cover information provided in connection with petitioner or waivers filed by battered women and children. It is particularly important that the regulations adopted include both a prohibition against disclosure and criminal sanctions for disclosure.

Research into domestic violence makes it clear that violence escalates over time and that separation does not end the violence but rather increases the risk of future violence. As a result, courts throughout the country have taken steps to ensure that locational information of domestic violence victims and their children remain absolutely confidential and not be disclosed. Experts on domestic violence agree that one of the most difficult obstacles battered women must overcome in leaving a violent relationship is locating a safe and secure place to live with her

children apart from her batterer."²⁹ Many women feel safest choosing to live in a location that is not known to the batterer. The address may be a safe home, a shelter of the home of a friend, co-worker or relative. If the INS allows or assists a batterer in locating the victim's address, not only the battered woman and her children but the families who offer shelter may be endangered. Specifically, the National Institute of Justice urges that the address of battered women not be disclosed in any way to her batterer.

[T]o be effective, temporary and permanent protection orders must include all the statutorily authorized protection against further abuse that the victim needs given the particular circumstances of the case... [I]n intimate relationships the victim needs a high level of protection because the batterer typically has ready access to the victim."³⁰

... (T)he court does not need specific statutory authority to impound the victim's address (that is, to keep it secret) if this measure is considered necessary to protect her safety."³⁰

In addition to courts regularly impounding the address of the victim in any family violence case based on their equitable powers and the need to protect the victim and her children, statutes in many states specifically require impounding of the petitioner's

²⁹ Finn and Colson, Civil Protection Orders: Legislation, Current Court Practice and Enforcement (National Institute of Justice, March, 1990) at 33, 42. See also, National Council of Juvenile and Family Court Judges, Family Violence: Improving Court Practice, (Reno, Nevada, 1990) and Attorney General's Task Force on Family Violence, Final Report, September 1984.

²⁹ Id. at 33.

³⁰ Id. at 33.

address.²¹

The safety of battered women and their children must become the prominent concern of the INS as it crafts regulations under Section 701. The interim regulation does not even begin to offer victims of violence the protection to which they are entitled. The INS must not become a tool used by batterers to track down their victims. The judiciary and state laws have recognized how batterers have used them in the past and have taken strong measures to preclude assisting batterers in the future. The INS must do the same. The INS should follow the lead of the judiciary and craft regulations that will ensure the confidentiality of all information provided to the INS by victims of domestic violence.

The provisions of 8 CFR 3.27(c) do not accomplish this important goal. Regulations must preclude disclosure of all information to any person by any INS employee from the moment an

²¹ Examples include: Mt.:40-4-121 (battered woman's address can only be disclosed by application to the court on good cause shown); Ms.:93-21-9(7)(court may not disclose the address of a shelter or petitioner's address if unsafe for petitioner, petitioner's children, family or household members, orally in-camera to the judge permitted if necessary); Ca.:Sec. 545 (no disclosure of the address of petitioner's home, job, school, children's child care provider, or children's school); Pa.:23-6112 (no disclosure when petitioner's family would be endangered); Nh.:173-B:3I (address impounded, when defendant must serve papers on the petitioner, he must serve them on the court who will forward the papers to the victim's address); Mo.:455.030.3 (petitioner can be required to provide the defendant with an alternative mailing address if the court determines that this will not endanger the petitioner, orally in-camera to the judge permitted); Tx.: 71.111 (clerk to strike petitioner's address from court papers, petitioner's address, phone number, her employer's address and phone number and the address of her child's day care are impounded); Il.:2312-3 Sec. 203 (b)(if disclosure is relevant for jurisdiction or venue the address is to be provided to the judge orally, in-camera).

I-752 application is filed with the INS. In domestic violence cases, the INS should adopt confidentiality provisions that are already in place under section 245 (A)(c)(5) of the INA in order to best protect victims from further abuse.

V. Conclusion

The federal government, particularly the Justice Department's 1984 report on family violence, has come a long way in recognizing the extent of wife abuse in the U.S. and in insisting that measures to protect victims of domestic violence are not thwarted by government entities with little understanding of abuse. Nevertheless, the INS, through the interim regulation requiring an affidavit for an extreme cruelty waiver, blocks such efforts to protect victims of abuse. We urge that Section 108 of the Immigration and Naturalization Housekeeping Amendments Act of 1992 be adopted to invalidate the INS regulation in order to fully implement Congress' intent to prevent the entrapment of children and spouses in abusive relationships. We further urge that Section 108 be amended to ensure the all information presented by abused spouses and children to the INS in conjunction with waiver requests be held confidential under the same type of confidentiality provisions that apply under the legalization program.

Fleeing a violent home is an important step in promoting the health and welfare of many women and children in the United States. We must not allow the INS to implement narrow policies that further

endanger the women and children that this Congress intended to protect. Their protection requires the passage of Section 108 of this Act and expanding that Section to protect the confidentiality of these needy victims of abuse in their homes.

**APPENDIX 11.—CORRESPONDENCE FROM JOHN WAIHEE, GOVERNOR,
STATE OF HAWAII, JUNE 10, 1992**

**STATEMENT OF
JOHN WAIHEE
GOVERNOR
STATE OF HAWAII
CONCERNING THE IMMIGRATION AND NATURALIZATION
HOUSEKEEPING AMENDMENTS ACT OF 1992 BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION AND
REFUGEES OF THE HOUSE COMMITTEE ON THE JUDICIARY**

Mr. Chairman, Members of the House Subcommittee on International Law, Immigration and Refugees, on behalf of the State of Hawaii and its more than one million residents, I wish to express my concerns and views on our nation's Federal Inspection Service laws and regulations as they apply to our arriving international aviation passengers. I appreciate the opportunity to present this written testimony to the Subcommittee and request that it be included in the record.

As Governor of the only island state in the United States, I am acutely aware of the critical importance of the aviation industry in supporting our way of life. No other state in the nation relies as heavily as Hawaii on the air transportation system. In order to conduct business and commerce, Hawaii depends upon its air service for the transportation of people and goods. Quality air service is essential to the economy and development of the state.

Efficient, economical air service is the single most important factor in the development of tourism as a major world wide industry. Tourism is recognized and acknowledged as a major contributor to the national economy.

In Hawaii, tourism represents the largest segment of our economy. It is the single largest industry and the single largest employer.

In order to maintain the United States as the world's predominant visitor destination, we must remain competitive in the air service market. In the Pacific region, Australia, Thailand, Malaysia and Indonesia are mounting credible challenges to the United States as visitor destinations. For the United States to retain its position as a most favored destination, every effort must be made to ensure that the full array of services that the traveling public demands and deserves is provided. This service must start upon the arrival at the visitor's first U.S. destination. First impressions are lasting impressions.

Inviting more visitors requires that we welcome them properly. In 1990, many of our visitors to Hawaii waited to be admitted to the immigration hall at Honolulu International Airport (HIA) for more than two and a half hours. Once gaining access to the hall, they stood in the immigration inspection

line for up to one and a half hours before clearing Immigration and Naturalization Service (INS) inspections. This is not the way America should welcome her visitors. It certainly does not reflect Hawaii's Aloha spirit.

We have seen improvements with the hiring of over 40 new INS inspectors since October, 1990, and the State's construction of 15 additional primary inspection booths. Improvements in clearance time are also due to the implementation of the Advance Passenger Information System (APIS) and INS' Accelerated Citizen Examination (ACE) Program.

Today we see federal inspection times in Honolulu ranging from 60 to 90 minutes. Fortunately, the number of gate holds are reduced, but still occur with undesirable frequency. Given that most Hawaii visitors could easily choose to vacation in another country, we cannot be content with this, albeit improved situation. The issue becomes more critical when we note that other countries in Europe and Asia admit visitors without delay. The United States simply must do better.

I understand that at your hearing on May 20, 1992, INS Commissioner Gene McNary touched on our situation here in Honolulu. Let me take this opportunity to respond to the Commissioner's comments.

Inadequate Facilities and Arrival of Flights at Peak Hours

The Commissioner's suggestion that Honolulu has inadequate facilities belies the vast improvements the State has made. By the end of 1992 a total of 15 new primary and five secondary inspection booths will have been constructed. Obtaining sufficient staffing for these new booths continues to be a primary issue. INS has currently authorized 125 inspectors for Honolulu. Based on a staffing model of three staff for every primary booth, the current INS complement falls short by 20 inspection staff.

The current international arrivals building is designed to handle 1,600 passengers per hour. Currently, as many as 4,000 passengers arrive in a one hour period. It is true that the majority of the arrivals occur during five hours in the early morning. This is the normal arrival pattern in Honolulu which must be dealt with.

Peaking

Peaking is a geographic, diplomatic and market driven situation. It is driven by the geographic location of Hawaii relative to Japan and the many time zones involved. Peaking is due partially to take-off curfews at Tokyo's Narita Airport and other regional airports in Japan. Many of these curfews are

due to noise mitigation efforts; thus it is difficult to suggest that another country should modify its domestic regulations to accommodate our own needs. The Japanese reaction would be similar to ours if they requested expanded operational hours at Washington National Airport.

Peaking is also market driven. The fact of the matter is that market demand for flights to Honolulu from Japan is in the evening. There is practical reason for this evening schedule of flights. By departing in the evening, Japanese guests can work a full business day, fly through the evening and arrive in the morning in Honolulu for a full day of business or vacation. With this type of service available it is impractical for travelers to depart earlier in the day which would result in travelers "losing" a day, not to mention having to reserve an additional night's hotel room as they would arrive in the 2-3:00 a.m. time period.

With this explanation as background, we find it particularly difficult to understand Commissioner McNary's remarks when the balance of the Administration supports responding to market demand in order to maximize economic opportunities. I cannot conclude this point, however, without noting the concerted efforts of INS and all Federal Inspection Service officials in Honolulu. These professionals have worked very hard to creatively seek methods to meet our needs. Within the boundaries established by headquarters, our local officials have met with us to coordinate expected problems. They have been recognized locally by the State Department of Transportation and I add my personal congratulations for their efforts. However, we are approaching a point where we will be unable to afford additional manpower and facilities to meet the demand. Procedural changes are the only real alternatives to improve visitor facilitation.

Before turning to our recommendations to modify the Immigration and Naturalization Act, I do want to inform you of our own efforts to streamline passenger processing at HIA. We are about to begin the construction of a new \$500 million International Arrivals Terminal at HIA. This facility will be funded with airport revenues, and will have 80 primary INS inspection booths. We anticipate that an INS complement of 240 inspectors will be required when the building is completed in 1996. We should note, however, as tourism continues to grow, future staffing requirements can be reduced from estimated inspector requirements if the INS adopts (and the Congress allows it to do so) a controlled selective inspection program which integrates technological advances in information processing with personality-behavior profiling techniques adopted by the U.S. Customs Service and other federal inspection agencies.

One of the steps taken by Congress in 1990, a Congressional mandate to have visitors clear Immigration in 45 minutes, is an admirable first step. We support a proposed clarification that this 45 minute standard to include all federal processing, not just immigration. We encourage Congress to provide the tools and implement the procedures to live up to this goal.

Proposed Changes in INS Processing

The entry inspection system must be revamped. The cost of doing business under the present structure is dangerously close to being out of control. In 1990 the Immigration Service identified the need for 725 additional positions at our nation's gateways, yet funding for only 248 new inspectors is available FY '92. The Immigration Service has authorized 1,915 positions for FY '93, but even that number is insufficient and does not reflect the anticipated growth in international visitors. This continuing demand for more inspectors clearly defines the issue of affordability.

We must look closely at the requirements and procedures levied on our inspection agencies. In particular we must review the regulations governing the operation of the Immigration Service.

We ask Congress to seriously review the need to examine 100% of our arriving visitors. The U.S. Customs Service has successfully implemented selective inspection. We suggest the Immigration Service could do the same. The approach to revising the inspection procedures should be multi-faceted involving both technological advances and practical procedural changes and closely coordinated with U. S. Customs to ensure there is no compromise in required enforcement.

Immigration's new Accelerated Citizen Examination (ACE) program is a good example of how inspection procedures can be changed to expedite passenger processing. We wholeheartedly support the ACE program as a step toward relieving the congestion in Immigration. It has helped our situation in Honolulu, but with only 20% of our arriving international passengers being U.S. citizens, its impact is less than that which other U.S. airports have experienced. However, we recommend that the ACE program be implemented as standard procedure, rather than on an "as required" basis.

Utilization of Advance Passenger Information System

The Advance Passenger Information System (APIS) provides an opportunity to reduce 100% screening upon arrival in the

United States. The use of API allows record checks to occur while an international flight is in transit. API will allow those few passengers which may require a personal interview to be identified while other passengers can be expedited without any interview. We urge the Subcommittee to allow the use of API as the primary screen in lieu of a personal interview. Implementation of this policy change alone will greatly expedite passenger clearance.

Preinspection and Preclearance Prior to Arrival in the U.S.

We were very pleased that the Heathrow Preinspection demonstration program was so successful. With this program to be installed permanently, we urge the Federal Inspection Services, the Department of State, and the Department of Transportation to diligently work with other countries, particularly Japan, in expanding the implementation of this program in other countries. We recognize that there are many diplomatic, procedural, and legal hurdles which must be overcome, but we would hope that the State Department and the FIS Services will work together in a genuine effort to persuade our major trading partners to initiate this program while improving our own welcome. The major beneficiaries of preinspection will be the residents of those countries who choose to begin such a program.

VISA Waiver Pilot Program

We would urge the committee to make the Visa Waiver Pilot Program permanent. The program can be improved by eliminating the required form (I-94). The predicate for the Visa Waiver Program was to reduce consular workload demands in those countries where non-immigrant visas were granted to low risk Visa Waiver passengers. The I-791 form merely transferred the workload burden to INS inspectors. The introduction of the I-94w, combining the I-94 and I-791 is a welcome step in the right direction. However, this paperwork contributes to processing delays that are encountered with INS inspectors.

If the predicate for instituting the visa waiver form was that non-immigrant visas were being issued to low risk passengers, then the low risk associated with these passengers surely justifies not having to examine or collect the I-94w form.

I have reported to you the commitment we have made at the State level to remain competitive in the international visitor market. We must now ask the federal government to support and assist us in making these facilities serve the public effectively and efficiently. The problems of entry into the United States are critical and well known. Innovative action

must be initiated now to resolve these issues or our visitors will choose new destinations. The United States cannot afford that choice.

In closing, Mr. Chairman, I urge you and your Subcommittee to carefully consider our recommendations. As the Governor of a State with a tourism industry which serves as the single largest employer, I cannot overemphasize the importance of these changes to our State and our nation.

Thank you again, Mr. Chairman, for the opportunity to express our concerns and views on behalf of the State of Hawaii.



John Waihee
Governor

JUN 12 1992
Date

APPENDIX 12.—RESPONSES TO ADDITIONAL QUESTIONS



JUL 13 1992

United States Department of State

Washington, D.C. 20520

July 10, 1992

Dear Mr. Chairman:

Following the May 20, 1992 hearing at which Mr. John H. Adams testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet G. Mullins".

Janet G. Mullins
Assistant Secretary
Legislative Affairs

Enclosures:
As stated.

The Honorable
Romano L. Mazzoli, Chairman,
Subcommittee on International Law, Immigration and
Refugees,
Committee on the Judiciary,
House of Representatives

Q. What would be the likely response of foreign governments to allowing private adoptions, which apparently could be done without involving an agency of the foreign government? What problems, if any, do you foresee developing if private adoptions are allowed internationally? How is this situation different from private adoptions in the United States?

A. Many foreign governments, like various states in the United States, already permit private adoptions to take place in their countries without necessarily requiring that the adoption itself be processed through a government agency. In such instances, the adoption is handled through the local court system and approved by the proper tribunal having responsibility for granting adoption decrees. However, there is always some involvement on the part of the foreign government. The child is a citizen of the particular country and is documented as such with a foreign passport (adoption by U.S. citizen parents does not confer U.S. nationality on the child). The foreign adoption decree, guardianship order (or similar document) and the foreign passport are required to permit the United States to issue a visa to the child (the visa petition having been approved by the U.S. Immigration and Naturalization Service). Many countries also require formal permission by the foreign government entity responsible for children before anyone other than a natural parent can travel with a child.

In this manner, adoptions which have been accomplished by private means in the state of the child's origin have been possible for many years. Some countries, responding to abuses and/or fraudulent adoption practices on the part of private attorneys or private adoption agencies, have placed limitations on private adoption practices or subjected them to review by a designated agency of the foreign government. It is likely that this trend toward increased foreign government control over the adoption of foreign national children will continue. Many foreign countries are currently considering legislation to impose such requirements. We do not believe private adoptions are detrimental to a child's welfare provided there exists a truly independent monitoring agent (court, social welfare department, attorney general's office, etc.)

which exercises oversight to prevent abuses. However, the opinions of most foreign countries with children available for adoption seem to be progressively negative about private adoptions.

Q. What kinds of problems have developed in international adoptions in the past that make them different from adoptions within the United States?

A. This question is difficult to answer. First of all, each country which permits adoption by foreigners has different laws from the next. Even when specific foreign laws do exist, they are not always applied uniformly. Just as each state in the United States has separate adoption laws, there is no one system or set of laws which always "works". Often the difficulty stems not from the absence of laws but rather the lack of their enforcement.

Generally, however, there are identifiable problems which plague international adoptions. Problems range from the outright buying and selling of children, stealing of children from their natural parents, and unscrupulous adoption practitioners (agencies, attorneys, facilitators, etc.) who misrepresent their clients or provide their clients with inaccurate information regarding local adoption procedures with the intent to defraud them or to extract larger fees from their clients. Practitioners have misrepresented the medical condition and even the very existence of such children. We have seen cases where some adoption practitioners offer one child to several prospective parents.

We are aware of the same types of questionable activities by U.S. based adoption practitioners in connection with international adoptions. We have seen unscrupulous practitioners bring children into the United States, supposedly for adoption by a specific family, and then effectively "auction" the child off to the highest bidder. The majority of the States have no separate licensing requirements for agencies or individuals involved in providing international adoption services. This is particularly true in connection with adoption facilitators who can open for operation in most states with no prior experience, no license, and no professional standards of conduct. These "instant" experts are a major source of problems. Corruption can be a considerable problem on the part of both foreigners and persons in the United States.

Q. What is your view of the effectiveness of the provision criminalizing child buying and selling, and how would enforcement work?

A. We believe that, while the desire to criminalize child buying and selling is commendable, in actual effect the criminalization language contained in the bill, as currently drafted, would render it unenforceable. As Mr. Adams stated in his May 20 testimony, our concerns in this regard are several. First, the bill, if it is to have extraterritorial scope, should explicitly so state to ensure that it is not construed as only criminalizing illicit activities that occur within the United States. Similar legislation, such as narcotics interdiction laws, is explicitly extraterritorial.

Second, we believe that any such law should reach not only U.S. citizens, but also legal permanent residents, foreign entities, and aliens over whom the United States may properly assert jurisdiction (for example, if they are doing business in the United States). Also, the proposed legislation, as drafted, is extremely vague in its definition of what constitutes buying and selling of children. Failure to define these terms more clearly will open them to myriad legal interpretations and consequently will make enforcement difficult.

Of specific concern is what would constitute "excessive charges" in connection with foreign adoptions. Wide interpretation is possible based on the varying costs for services from country to country, varying laws from one foreign country to another, and on variable international exchange rates, particularly since many fees paid for adoptions in foreign countries are remitted in the local currency.

Q. What is the current status of the London preinspection program? When will the program be up and running on a permanent basis? What has been involved in establishing this program, that is, what kinds of negotiation have been conducted with the host government and with the airports? What actions and dynamics have been involved in developing this program and getting it operational?

A. INS Commissioner McNary requested Chief of Mission approval on January 9, 1992, for 124 INS personnel to conduct London preinspection. Embassy London and INS officials discussed support services INS would require, and the Embassy calculated the additional resources necessary to provide this support and so informed the Department of State.

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Under Secretary John F. W. Rogers met with Associate Deputy Attorney General Geoffrey Greiveldinger to discuss the parameters of the program. Mr. Rogers presented to Mr. Greiveldinger a draft State-Justice Memorandum of Understanding outlining services Embassy London would provide and costs INS would reimburse to State. A final agreement on the services was signed on June 15.

The first round of negotiations with Her Majesty's Government (HMG) took place on June 19. Chief Financial Officer Jill E. Kent chaired the U.S. delegation, which included representatives from INS and from the Air Transport Association. Ms. Kent pressed for Administrative and Technical (A & T) status for INS personnel, granting them certain tax exemption and other privileges, and immunity from law suit in the performance of their official acts. Ms. Kent also requested certain extraterritorial powers making preinspection mandatory, and permitting INS officials, via the airlines, to deny passage to those travellers deemed inadmissible to the U.S. Finally, Ms. Kent detailed facilities INS required at Heathrow and Gatwick airports.

Ministry of Transport Under Secretary for Aviation, Anthony Goldman, chaired the British delegation, which included representatives from the U.K. Foreign and Commonwealth Office, the Office of Protocol, U.K. Immigration Service, British Airways, and the British Airport Authority (a private organization which manages Heathrow and Gatwick Airports). HMG stated that no basis existed for granting any type of privileges and immunities to INS since they performed no diplomatic function as outlined by the Vienna Convention. HMG did state, however, that the U.K. State Immunity Act appeared to cover U.S. personnel in the performance of official acts. HMG is now investigating this further and will provide a brief to the U.S. government on how this would work.

HMG also expressed concern regarding the mandatory nature of the program, and stated outright that facilities at Heathrow and Gatwick airports could represent a difficult obstacle to agreement. HMG cited the already overcrowded conditions and cost, since major reconstruction may be necessary at both airports for INS to achieve a successful preinspection program. Although a representative from the Air Transport Association committed the airlines to paying for this, no reconstruction diagrams are done, and no cost estimates have been made.

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HMG promised a draft counterproposal in late July. In addition, a facilities working group comprised of U.S. and British participants has been formed to investigate viable space and facilities options acceptable to INS, BAA, and the airlines who will pay for the facilities. A second round of negotiations will convene after the facilities working group has reported their findings and the U.S. has received and considered the British counterproposal to our draft agreement.

British Under Secretary Goldman noted that the delegations faced "some really knotty issues" and a September deadline for implementation would take a "minor miracle," especially because of the space constraints at Heathrow and Gatwick airports. The U.S. head of the delegation pressed to make every effort to comply with the September deadline, but at a minimum, to aim for an agreement by September which would open the way for preinspection to be implemented.

Q. How often are visas or parole denied to aliens seeking to enter the U.S. to attend a funeral? What is the general policy for admittance of aliens who wish to visit immediate relatives who are seriously ill and to attend funerals or memorial services? What kinds of problems, if any, do you see with the current procedures?

A. Consular officers are encouraged to extend sympathetic consideration in all cases involving applicants who wish to visit immediate relatives who are seriously ill or who want to attend funerals or memorial services in the United States. While the Department of State does not maintain statistics on the number of visas refused to applicants who are seeking to attend funerals in the United States, I would draw your attention to paragraph 3 of the attached telegram which states the Department's policy in this regard.

Q. How much of the current 3 to 6 month delay in processing petitions is attributable to backlogs and administrative delays? How much to actual investigation and adjudication? Please indicate how much time is required for the INS part of the processing. How much, realistically, could this delay be reduced without resorting to a new nonimmigrant visa category?

A. The Department of State's Transitional Immigrant Visa Processing Center (TIVPC) in Arlington, Virginia, currently has less than a three-day backlog of petitions for forwarding to posts abroad. The Department suggests that the Immigration and Naturalization Service be consulted directly by the subcommittee with respect to delays associated with the approval of I-130 petitions at INS Regional Service Centers.

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	OIG-01	PCH-12	SSO-00	SS-01	USIE-03	/057R	

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CA/PC:JCOGDEN; H/LMO:BALTER

CA/VO:MAKEKICH

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E.O. 12356: N/A

TAGS: CVIS

SUBJECT: NONIMMIGRANT VISA APPLICATIONS BY ALIENS
REGISTERED AS F-2A IMMIGRANTS

1. IN EARLY APRIL THE DEPARTMENT RECEIVED A LETTER FROM SIX MEMBERS OF THE HOUSE JUDICIARY COMMITTEE CONCERNING SPOUSES AND CHILDREN OF PERMANENT RESIDENTS WHO ARE REGISTERED ON THE SECOND PREFERENCE (F2A) WAITING LIST. RECENTLY, THE DEPARTMENT RESPONDED TO THAT LETTER. THE TEXT OF THE APRIL LETTER IS QUOTED IN PARAGRAPH 2 BELOW. THE TEXT OF THE DEPARTMENT'S RECENT REPLY (OMITTING THE FIRST PARAGRAPH ACKNOWLEDGING RECEIPT AND THE COMPLIMENTARY CLOSING PARAGRAPH) IS QUOTED IN PARAGRAPH 3 BELOW. THE ATTENTION OF CONSULAR OFFICERS IS DIRECTED TO THE LAST TWO QUOTED PARAGRAPHS OF THE DEPARTMENT'S RESPONSE.

2. TEXT OF APRIL LETTER --

QTE. AS MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, WE ARE DEEPLY CONCERNED ABOUT THE SHORT-TERM IMPACT OF RECENT SECOND-PREFERENCE IMMIGRATION CHANGES ON PERMANENT RESIDENTS WHO SEEK TO BE REUNITED IN THE UNITED STATES

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WITH THEIR SPOUSES AND CHILDREN.

AS YOU ARE AWARE, ONE OF THE PURPOSES OF THE IMMIGRATION ACT OF 1990 WAS TO REDUCE THE WAITING PERIOD FOR SECOND PREFERENCE VISAS, WHICH SOMETIMES EXCEEDS TEN YEARS. WE ARE PLEASED TO SEE HOW QUICKLY THE BACKLOG HAS BEEN

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REDUCED. HOWEVER, EVEN WITH THESE CHANGES MANY FAMILIES WILL CONTINUE TO BE SEPARATED FOR SEVERAL YEARS. MOREOVER, IN THE CASES OF SOME COUNTRIES WHICH HAD HITHERTO NOT EXPERIENCED LARGE SECOND PREFERENCE BACKLOGS, THE NEW LAW HAS TEMPORARILY EXTENDED THE WAITING PERIODS. TO REMEDY THIS SITUATION, WE STRONGLY URGE YOU TO CONSIDER ISSUING A DIRECTIVE INSTRUCTING CONSULAR OFFICERS TO TAKE SPECIAL COGNIZANCE OF THE FACT THAT THE EXISTENCE OF AN APPROVED IMMIGRANT VISA PETITION ON FILE NEED NOT EXCLUDE FAVORABLE CONSIDERATION OF AN APPLICATION FOR A VISITOR'S VISA COMING FROM THE SPOUSE OR CHILD OF A PERMANENT RESIDENT.

WE UNDERSTAND AND APPRECIATE CONCERNS ABOUT GRANTING SUCH VISAS TO INTENDING IMMIGRANTS, BUT WE SEE NO CONFLICT BETWEEN A LONG-TERM DESIRE TO RESIDE IN THE UNITED STATES AND A SHORT-TERM DESIRE TO VISIT -- AND THEN RETURN -- PRIOR TO THE IMMIGRANT VISA PRIORITY DATE BECOMING CURRENT. MOREOVER, WE BELIEVE THAT THE PENDING NATURE OF THE IMMIGRANT VISA WILL PROVIDE A STRONG INCENTIVE AGAINST ABUSING A VISITOR'S VISA, AS SUCH ABUSE MUST THREATEN THE APPLICANT'S ELIGIBILITY FOR IMMIGRATION.

THANK YOU FOR YOUR ATTENTION TO THIS MATTER. WE APPRECIATE YOUR ASSISTANCE AND LOOK FORWARD TO RECEIVING ANY INFORMATION YOU MIGHT PROVIDE. UNQTE.

3. THE TEXT OF THE SUBSTANTIVE PORTION OF THE DEPARTMENT'S RECENT REPLY IS AS FOLLOWS --

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QTE. YOU INDICATE IN YOUR LETTER THAT THE NEW LAW HAS TEMPORARILY EXTENDED WAITING PERIODS FOR SPOUSES AND CHILDREN OF PERMANENT RESIDENTS FROM COUNTRIES WHICH DID NOT EXPERIENCE EXTENDED WAITING PERIODS UNDER THE FORMER SYSTEM. THE DEPARTMENT ALSO ANTICIPATED A MEANINGFUL LENGTHENING OF THAT WAITING PERIOD AS A RESULT OF THE CHANGES MADE BY THE IMMIGRATION ACT OF 1990. OUR EXPECTATION WAS LARGELY BASED UPON AN ASSUMPTION THAT THE LARGE NUMBER OF MEXICAN-BORN SPOUSES AND CHILDREN OF PERMANENT RESIDENTS ON THE IMMIGRANT VISA WAITING LIST WOULD ACT QUICKLY TO ACTIVATE THEIR IMMIGRANT VISA APPLICATIONS ONCE IT BECAME POSSIBLE TO DO SO. THE INFORMATION AVAILABLE AT THIS TIME INDICATES THAT THIS IS, IN FACT, TRUE ONLY TO A VERY SLIGHT, EVEN MARGINAL DEGREE.

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THE NUMBER OF APPLICANTS WHO HAVE SO FAR ACTIVATED THEIR CASES IS FAR SHORT OF THE DEPARTMENT'S INITIAL EXPECTATION. AS AN EXAMPLE, THE DEPARTMENT'S MONTHLY VISA BULLETIN FOR MAY 1991 SHOWED THAT THE SECOND PREFERENCE VISA ISSUANCE CUTOFF DATE FOR ALL CHARGEABILITY AREAS OTHER THAN THE DOMINICAN REPUBLIC, MEXICO, AND THE PHILIPPINES WAS MAY 15, 1989. THE FAMILY-BASED SECOND PREFERENCE VISA ISSUANCE CUTOFF DATE FOR SPOUSES AND CHILDREN OF PERMANENT RESIDENTS FOR MAY 1992 WAS APRIL 8, 1990, AN INCREASE OF ONLY FIVE WEEKS IN THE LENGTH OF THE WAITING PERIOD.

WITH RESPECT TO THE QUESTION OF ISSUING A NONIMMIGRANT VISA TO AN ALIEN REGISTERED ON AN IMMIGRANT VISA WAITING LIST, WHETHER AS THE SPOUSE OR CHILD OF AS PERMANENT

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RESIDENT OR ON ANY OTHER BASIS, THE DEPARTMENT HAS LONG RECOGNIZED THE CONCEPT OF "DUAL INTENT." THE DEPARTMENT'S POSITION IN THIS RESPECT HAS FOR MANY YEARS BEEN THAT AN ALIEN WHO IS REGISTERED FOR IMMIGRATION OR WHO OTHERWISE SHOWS AN INTENT TO IMMIGRATE TO THE UNITED STATES MAY NONETHELESS BE ISSUED A NONIMMIGRANT VISA IF THE ALIEN CAN ESTABLISH TO THE SATISFACTION OF THE CONSULAR OFFICER THAT HE OR SHE INTENDS IN GOOD FAITH TO MAKE A TEMPORARY TRIP TO THE UNITED STATES AND DEPART UPON COMPLETION OF HIS OR HER TEMPORARY TRIP.

WE BELIEVE THAT THIS POSITION IS WELL KNOWN BOTH TO CONSULAR OFFICERS ABROAD AND TO THE INTERESTED PUBLIC, BUT WE WILL REMIND ALL CONSULAR OFFICERS OF IT, IN ORDER TO ENSURE THAT THERE MAY BE NO MISUNDERSTANDING IN THIS RESPECT. UNQTE.

4. THIS TELEGRAM CONSTITUTES THE REMINDER REFERRED TO IN THE FINAL PARAGRAPH OF THE TEXT QUOTED IN PARA 3 ABOVE.

SAKER

NOTE: POUCH ADDRESSEES PROTECTED BY IM/SO

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IMMIGRATION AND NATURALIZATION SERVICE RESPONSES TO ADDITIONAL QUESTIONS

SECTION 104 - NONIMMIGRANT VISA FOR SPOUSES OF U.S. CITIZENSQuestion:

How much of the current 3 to 6 month delay in processing petitions is attributable to backlogs and administrative delays? How much to actual investigation and adjudication? Please indicate how much time is required for the INS part of the processing. How much, realistically, could this delay be reduced without resorting to a new nonimmigrant visa category?

ANSWER:

Normal INS processing time for properly filed immediate relative petitions is not "3 to 6 months", but rather 1 to 4 months. Some cases may take longer due to the need for an individual interview or investigation of suspected marriage fraud, and other cases which are not properly presented must be returned for additional documentation. Once INS has completed adjudication on a relative petition, it is sent to the Department of State's Transitional Immigrant Visa Processing Center (TIVPC) in Rosslyn, Virginia for processing. From there it is sent to the consular post abroad for visa issuance. While consular processing may take up to 60 days or longer, much of that time is spent in standard criminal background checks, obtaining medical reports, and other procedures to ensure that the alien is not inadmissible under the laws of the United States. If the proposed nonimmigrant procedure was to eliminate steps to prevent the admission of criminal aliens, medically-excludable aliens and aliens seeking to obtain entry through fraud marriages, the processing time could be significantly reduced. On the other hand, if Congress intends that these protections be retained, the proposed nonimmigrant classification would not reduce processing time in the least. On the contrary, it would probably increase the amount of red tape faced by bona fide immigrants, since following admission as a nonimmigrant they would then have to go through a separate adjustment of status process.

Because of increasing workloads, the Service has identified various efficiency measures to ensure that I-130 petitions are adjudicated in a timely fashion. Among those initiatives is the revision of the Form I-130, relative petition, which is used by a U.S. citizen to petition for a spouse. The revised form will include information vital to the adjudicative process which will reduce the need for field review in most cases and consequently reduce the overall processing time for I-130 petitions.

The Service is also developing an automated processing system which will track all petitions and applications through the adjudicative process. This system will enhance the fee receipt system currently used by the Service to track petitions and applications by providing adjudicating officers with administrative support necessary for a 30 to 45-day processing

time. The inventory management capability of this system will sort all petitions by classification to permit processing control. The Service will be able to allocate available resources to process priority cases such as relative petitions.

The Service firmly believes that the creation of a new nonimmigrant visa category for spouses of U.S. Citizens will not result in a reduction in backlogs. Instead, the proposal promotes additional backlogs by adding another layer to the process. This nonimmigrant category would require preliminary processing abroad which is equated to current I-130 processing followed by re-processing in the U.S.

Additionally, the workload burden which has been reduced by Service Center support would revert to field offices since I-130 petitions filed concurrently with I-485 adjustment of status to lawful permanent resident applications fall under the jurisdiction of field offices. Increased backlogs would then be found at field offices causing delays in the adjustment process.

SECTION 105 - FOREIGN ADOPTIONS**Question:**

What would be the likely response of foreign governments to allowing private adoptions, which apparently could be done without involving an agency of the foreign government? What problems, if any, do you foresee developing if private adoptions are allowed internationally? How is this situation different than private adoptions within the United States?

Answer:

It is difficult to imagine how U.S. law could empower a U.S. citizen to adopt from a foreign country without some agency or agencies of the foreign government being involved. The foreign government would have to be involved in the foreign adoption or guardianship order, in passport issuance and any exit visa issuance for the child. In countries like Romania which require all adopters to work through adoption agencies and a government agency, anyone attempting a private adoption faces penalties. It follows that a foreign country might consider any circumvention of its agencies as a violation of its laws, an affront to its sovereignty, a case of kidnapping and a reason to severely limit or eliminate adoptions to the United States. It should be noted that there appears to be a trend in foreign countries away from allowing private adoptions.

Private adoptions are allowed under the Immigration and Nationality Act. Assuming the foreign country allows private adoptions, INS has no objection to U.S. citizens adopting privately, if it is done in accordance with law. It should be kept in mind, however, that while many private adoptions are easily and legally completed, experience has shown that U.S. citizens often are the victims of unscrupulous practices which prey on their emotional vulnerability when they pursue private adoptions. However, if a particular foreign government requires that individuals adopting its children go through an adoption agency and/or one of its government agencies, then any U.S. citizen adopting in that country must comply with such requirements, or be prepared to face the foreign government's penalties for their non-complying actions.

Stateside adoptions would usually involve the law of one, or perhaps two states. Theoretically, at least, a domestic adoption would be easier to monitor and therefore be less open to abuses. International adoptions involve state, federal and foreign law and are more open to abuse. Additionally, there are the dynamics of national pride, sovereignty and international relations which could cause a foreign country to curtail international adoptions if abuses arise.

SECTION 105 - FOREIGN ADOPTIONSQuestion:

What kinds of problems have developed in international adoptions in the past that makes them different from adoptions within the United States?

Answer:

Orphan cases are highly emotional. As a class they are the most emotionally-intense type of case INS adjudicates. Problems that make them different from domestic adoptions can be divided into two classes: problems created by U.S. citizens abroad and problems encountered by U.S. citizens.

It is not uncommon for respectable, solid, law-abiding individuals to behave differently while engaged in an international adoption. In the worst scenarios some individuals forget they are guests in the foreign countries and act as if they believe they are entitled to any child, notwithstanding foreign and U.S. law, simply because they can provide more material benefits. To secure a child, some are literally willing to pay any price. When the situation gets too embarrassing for the foreign country, the pressure mounts for a curtailment of foreign adoptions, as happened in Romania. The results are detrimental to individuals attempting to properly adopt. Some U.S. citizens also create problems when they remove children from a foreign country without the foreign government's knowledge and approval, as happens in Mexico.

On the other hand, U.S. citizens adopting abroad are sometimes the victims of unscrupulous practices which prey on their emotional vulnerability, especially when they pursue independent adoptions. One of the most common scams is for an arranger to provide a child to a U.S. citizen. After the citizen has had an opportunity to care for and bond with the child, the arranger takes the child and tells the citizen that additional money will be needed before the child can be released. Although the citizen is being emotionally blackmailed, he/she often feels there is no recourse but to pay more, because his/her actions to date may have been illegal. Each step makes the citizen more vulnerable to the arranger.

Section 107 - Parole to Attend Funerals**Question:**

How often are visas or parole denied to aliens seeking to enter the U.S. to attend a funeral? What is the general policy for admittance of aliens to visit immediate relatives who are seriously ill and to attend funerals or memorial services? What kinds of problems, if any, do you see with the current procedures?

Answer:

The Immigration and Naturalization Service has no access to information on how often consular officers deny visas to aliens to attend funerals. Although the Department of State keeps statistics on the number of aliens denied visas under section 214 (b) [presumption of immigrant intention], they do not break these down into sub-categories such as "coming to a funeral/memorial service." Conventional wisdom would state that most aliens, who are denied non-immigrant visitors visas to attend funerals in the U.S., are denied on the basis of being intending immigrants. Thus, when parole is granted to an alien to attend a funeral, the Service is disregarding the finding of the consular officer who denied the visa and is permitting the alien to bypass the usual questions about intent asked by an immigration officer during the inspection at the port of entry.

The Service grants parole to aliens to attend the funeral of immediate relatives based on the individual merits of each case. Most of the time we do not grant parole to spouses or children to accompany the principal applicant. In many cases parole is denied to other family members who wish to accompany the principal, in order to maintain ties for the family to the country of claimed residence. In the case of unmarried applicants, we may require the demonstration of other close family ties and/or employment in the home country as evidence of such ties. There are exceptions, but it should be kept in mind that the applicants for parole have already been found ineligible for nonimmigrant visas. Other criteria considered are how many close relatives are already in the U.S. and whether the applicant has an approved visa petition on file.

In the case of aliens seeking to visit immediate relatives who are seriously ill, the same criteria apply plus a statement from a physician as to the severity of the illness and prognosis for the patient.

A major problem is the lack of follow-up by the INS Parole Unit or local offices to determine what percentage of parolees complete the stated purpose of the parole and then depart the U.S. As a result, there is heightened skepticism about parole applicants who come from nationalities with a substantial record of overstaying or otherwise violating the terms of their admission.

SECTION 104 - CREDIBLE EVIDENCE IN SPOUSAL CLAIMS**Question:**

Is there a middle ground between the interim regulations' requirement for licensed professionals in the medical health field and "credible" evidence?

Answer:

The Service believes that an appropriate compromise would be the expansion of the group of recognized experts in the mental health field to ensure that inaccessibility or cost do not deter potentially eligible applicants from seeking the benefit. Such a compromise can be accomplished through regulation.

Professionals in the mental health field are in the best position to provide both an objective and informed assessment of the circumstances surrounding the conditional resident's claim.

Substantial weight cannot be given to affidavits and statements of the applicant, friends, and relatives, as they are not disinterested parties in the proceedings. Evidence provided by these individuals, even if not "incredible," would naturally tend to be biased on the applicant's behalf. It is also unlikely that they have had training in the field of identifying and evaluating the claims of individuals who have suffered extreme mental cruelty.

Nonprofessionals and professionals in fields other than mental health care may be able to provide more objective opinions than friends or relatives. However, it is also unlikely that these persons would have had extensive training in identifying and evaluating cases of extreme mental cruelty. Although some individuals may indeed have such training, the Service would need to evaluate the credentials of such persons on a case-by-case basis, and an applicant would find it difficult to judge in advance the weight such testimony might carry.

Section 110

Question: What is the current status of the London pre-inspection program? When will the program be up and running on a permanent basis? What has been involved in establishing this program, that is, what kinds of negotiations have been conducted with the host government and with the airports? What actions and dynamics have been involved in developing this program and getting it operational?

Answer: Negotiations with the Government of the United Kingdom concerning implementation of pre-inspection in London began the week of June 15, 1992.

During the negotiations, discussions were held concerning the form that the final agreement will take, privileges and immunities issues, facilities, and extraterritorial authority. A working group has been established to specifically address the facilities issues.

The dynamics involved with developing pre-inspection are very extensive. Negotiations must be conducted with the Department of State concerning the number of employees to be stationed abroad, and the level and cost of support services to be provided by the embassy. Clearance must be obtained via the National Security Decision Directive 38 (NSDD-38) process. This process involves obtaining comments from all interested bureaus within DOS and approval by the American Ambassador in London.

In addition to the extensive negotiations with interested parties, arrangements must be made for procuring equipment, supplies and computer systems. Personnel actions must be undertaken to staff positions, including writing job descriptions, posting vacancies and the selection of qualified applicants. Facilities issues must be coordinated between the host government, the Office of Inspections and the engineering branch to ensure that facilities meet the needs of the INS.

Section 110

Question: How many inspectors does INS now have assigned to airports? How does this compare to the past? What staffing shortages are we still facing in this area, and when will they be addressed?

Answer: Augmentation of user fee revenue generated by provisions in the FY 1991 appropriation act resulted in INS generating an additional 439 field positions for FY 1991. A further staffing augmentation of 248 positions has been provided for FY 1992. INS currently has 2,169 positions authorized at the airports. As of 8/20/92, 1788 of these authorized positions were on duty and 381 vacant, with 104 committed to be filled. The existing authorized force is projected to continue at the 2,169 level throughout FY 1993.

Section 110

Question: What future does biometrics technology have for immigration processing? How would an inspection process using such technology operate? How would it expedite processing?

Answer: INS is evaluating the feasibility of selected use of automated inspections technology. The process combines inspectional interviews with the use of biometrics technology. A similar system, involving the issuance of a computerized "smart card" is in use in the Netherlands.

INS is designing a system called INSPASS to be used by frequent business travelers to facilitate their entry into the United States at designated air ports of entry. INS expects to conduct a six month test of this innovative system upon completion of the required System Design Life Cycle.

Applications for the INSPASS will be accepted at a designated INS site, where the applicant will be interviewed and biometrics technology used to capture identification data. The INSPASS will be issued at the conclusion of the application procedure.

At the time of arrival at one of the designated air ports of entry, the INSPASS holder will proceed to an automated inspections booth for accelerated inspection processing. The captured biometrics data will be the basis for establishing identity and participation in the program. Although INSPASS presents a viable alternative to current airport inspections procedures, it is important to note that it is not intended to entirely replace those procedures. For the test, INS has targeted a low risk group of passengers which have been defined as frequent business travellers who are nationals of the United States or certain other countries, for whom the government has waived, in most instances, the nonimmigrant visa requirement for short-term business visits.

INSPASS will expedite the processing of arriving INSPASS passengers by totally automating the inspections process, including the query against the lookout database, thus eliminating the interaction with the inspector, as well as by providing additional unmanned dedicated lanes for their inspection. In addition, this will allow INS to process more passengers, in a given time, without increasing on-duty staff.

Should the test prove successful, the INS will explore increasing the enrollment population base of INSPASS travellers by expanding the present definition of low-risk travellers.

Section 110

Question: Why are inspections at airports more thorough than at land border ports of entry?

Answer: At airports, all non-immigrant aliens receive form I-94 permits authorizing the length and conditions of their stays in the United States. These aliens come from throughout the world and have a variety of documents. At land border ports, a majority of the nonimmigrant aliens are visiting the border cities for less than one day and don't require an I-94. Many of these aliens are commuters who enter the United States daily. Canadians are exempt passports and visas when entering from Canada, so few of them require an I-94. Mexican nationals, with border crossing cards, are exempt passports and also do not require I-94 forms.

At land border ports, anyone who requires additional documentation, like an I-94, or additional checking is sent to the INS secondary office and receives a thorough inspection. This cannot be done on the traffic lane because it holds up the rest of the applicants.

Section 110

Question: Section 110(a)(2) provides that regulations concerning information required to be included in passenger lists or manifests "may not exceed the international standards of the International Civil Aviation Organisation." What are those standards and are they consistent with U.S. federal immigration laws and security interests?

Answer: The International Civil Aviation Organization (ICAO) has no current standard concerning passenger manifest information. However, ICAO has published a recommended practice regarding passenger lists and manifests in the Facilitation Annex (Annex 9) to the Convention on International Civil Aviation. ICAO recommends against requiring passenger manifests at all, based on their exclusive interest in passenger facilitation. Individual government requirements or security interests are not issues which are considered in formulating the airline industry's recommendations.

However, if a manifest is required, the ICAO recommends that only the following information may be included: Name of carrier, marks or nationality and registration of the aircraft, the flight number and flight date, point of embarkation and disembarkation, and each passenger's surname and initials.

Enactment of a law incorporating this recommended practice, which has not yet been adopted as an international standard, would remove any flexibility the INS currently has in the collection of arriving passenger information in advance of the flight's arrival and would impede the INS in its ability to collect information required for its departure and control system concerning nonimmigrant aliens. The Nonimmigrant Information System (NIIS) contains all the information currently collected on the Arrival/Departure Form I-94 which, by current regulation, satisfies the statutory requirement of a passenger manifest. Form I-94 contains the full name, nationality, date of birth, U.S. destination, sex and visa issuance post and U.S. address.

The NIIS system provides the INS with ability to track those who have illegally overstayed their period of authorized admission as well as provide information to other law enforcement and intelligence agencies on entries and departures of individuals whose interest and activities may be criminal and/or prejudicial to the security and welfare of the United States. Flexibility in the collection of data is required to ensure that the INS can provide needed information, not only to its enforcement decision units, but also to other law enforcement agencies as well. As enforcement needs change, it is easier to provide for these changes through regulation than through

statutory changes. Thus, adoption of this ICAO recommended practice by statute would not be in the best interest of the government.

The ATA has suggested that passenger manifest requirements be limited to the information contained in the machine readable zone of travel documents: full name, date of birth, nationality and passport number. While this would provide more information than provided under the ICAO passenger manifest recommended practice, a statutory limitation on what information INS may collect would constrain INS in the same way as mentioned above.

Section 110

Question: Would you review the current situation regarding document fraud at U.S. international airports? How serious is the problem and is it growing? How does this effort to circumvent U.S. immigration controls impact the concept of reinstating citizen by-pass? What controls are necessary to address this problem?

Answer: U.S. airports of entry have been experiencing a major influx of applicants for admission presenting fraudulent or no documents at time of entry. Applicants arriving with no documents typically present fraudulent documents at the foreign port of embarkation but destroy the documents or hand them over to syndicate representatives before arriving in the U.S. During FY 1991, 35,654 aliens were encountered with some type of fraudulent document. At some major airports, INS intercepts 500 to 1,000 mala fide applicants for entry per month, most of whom are in possession of fraudulent documents. Smuggling syndicates typically are paid to assist these aliens, including fees for the purchase or "rent" of documents.

A number of the mala fide individuals make asylum claims immediately after arrival. Most of those claims are frivolous and merely a device to gain access into the U.S. The time-consuming appeal (usually including a withholding of deportation request) and removal process, combined with the government's limited detention space, affords the alien an opportunity to abscond at any time.

Consequently, the threat of formal exclusion and/or criminal prosecution is not an effective deterrent to aliens attempting entry with fraudulent documents, since there is little likelihood that such action will be carried out. At the same time these frivolous asylum claims contribute to workload backlogs in the asylum hearing process thus delaying consideration and approval of credible claims.

In an effort to address the problems associated with aliens presenting fraudulent documents, the Department of Justice submitted draft legislation to the Congress. The proposed legislation, the "Port of Entry Inspections Improvement Act of 1992," was introduced in the Senate by Senator Simpson as S. 3214 and in the House by Representative Bill McCollum as H.R. 5780. The legislation would provide summary exclusion authority to remove aliens presenting fraudulent or no documents and, at the same time, provide protection for aliens with "credible" asylum claims.

The high rate of document fraud is only one factor when considering decisions about citizen by-pass. On January 17, 1991, the U.S. citizen by-pass was totally discontinued in response to security concerns during Operation Desert Storm. In response to industry and operational pressures, the INS

instituted the Accelerated Citizen Examination (ACE) program in June 1991. ACE permits faster inspections of United States Citizens at airports of entry. When implemented, ACE results in selective queries of the IBIS database; however, all documents continue to be examined. ACE was introduced in an attempt to balance the often conflicting goals of facilitation and security. Unlike the citizen by-pass, ACE was never intended to be a regular inspectional procedure. It was, and continues to be, implemented during peak periods in order to meet the goal of inspecting U.S. citizens within congressionally established standards.

Section 115

Question: What is the Service doing to address concerns that it is unable to explain its fee increases? Are there breakdowns that specifically show how various fee amounts have been determined? What is the specific process for determining costs that should be allocated to particular fees?

Answer: The most recent fee increase, effective April 11, 1991, (published in the Federal Register on March 27, 1991), explained the method and procedures used to set the fees. To determine the amount of a fee, direct and indirect officer and clerical costs per application are calculated. Projected overhead costs are then spread over the total volume of cases. Also included are the costs of non-revenue work such as the costs of processing all benefit applications in the Virgin Islands and Guam, as well as the total cost of the Asylum and Overseas programs.

Section 115 - Moratorium on Fee Increases

Question: How would a freeze on fees impact the Service's ability to address areas of concern, such as moving forward with preinspection stations, expediting immediate relative petitions for alien spouses of U.S. citizens, hiring additional inspectors, etc.?

Answer: Congress recently approved an Examination Fee Account reprogramming that covered both FY 1992 and FY 1993. In this reprogramming, the FY 1993 budget was based upon a proposed fee increase of approximately 8 percent and this was stated in the reprogramming document.

A freeze on examinations fees would cause the following negative effects on the adjudications function:

- o A delay in improvements to make the adjudication of applications more efficient and timely. Specifically, a freeze on fees would delay the implementation of the Direct Mail Program, including the expansion of the adjudications automation initiatives (CLAIMS) into district offices.
- o A hiring freeze in district offices and service centers, reducing the number of personnel available to implement programs under the Immigration Act of 1990 and new regulations (e.g., those implementing the "temporary protected status," "family unity" and "employment authorization" programs).

Ultimately, the freeze on the adjudications function proposed in section 115 of this bill would lead to longer lines and delays in servicing inquiries, thus adversely impacting alien applicants.

Furthermore, freezing the Immigration User Fee at \$5.00 will probably have no immediate impact on our ability to process passengers effectively through air and sea ports of entry or establishing additional pre-inspection sites. However, a statutory change that requires INS to process aliens through airports in 30 minutes or less, rather than the current 45-minute standard, would require an increase in staff and other resources.

SECTION 115

Question: How much revenue would be lost as a result of a moratorium?

Answer: The one year (FY 93) impact of a moratorium is estimated as follows:

Adjudications

Loss of 8+ percent fee increase in FY 93	\$25,477,000
*Loss of revenue from fees charged to Asylum applicants for employment authorization	19,200,000
Total All of Above	<u>44,677,000</u>

*It is unclear whether the INS will be able to collect these fees under the moratorium.

