IMMIGRATION AND NATURALIZATION SERVICE
IMMIGRATION SERVICES DIVISION

INS Use of H-1B Nonimmigrant Petitioner Fees

INS requirements for system improvements, data collection and reporting, expeditious adjudication, backlog reduction...$ 81,750,000
INS requirements for anti-fraud initiatives...$ 12,340,000
Total INS requirements ....$ 94,090,000

Costs associated with ACWIA fee and reporting requirements

Fee Administration (Check Handling and Data Entry)	$1.62 million
System Initiatives for Cap Count and Fee Tracking ▪ Contract Support -- $977,000 ▪ Initiatives, modifications and improvements-- $1,900,000	$2.88 million
Data Collection and Reporting ▪ Claims 3 modifications -- $1,600,000 ▪ Statistical analysis and validation of data reporting -- $40,000	$1.64 million
Total ACWIA reporting costs	**$6.14 million**

H-1B adjudications resources

Staffing needed to ensure H-1B processing times of 30 days ▪ Center Adjudications Officers (91) -- $8,736,000 ▪ Contract Support (100) -- $2,950,000 ▪ Adjudications Clerks/Assistants (50) -- $2,350,000 ▪ Equipment -- $164,000	**$14.200 million**

Resource for backlog reduction efforts

Backlog Reduction Initiatives ▪ Reduce I-140 immigrant visa processing to 60 days -- $5.0 million ▪ Establish concurrent filing of I-140s and I-485 adjustment of status applications for those with current priority dates – $2.0 million ▪ Increase number of adjustment of status completions by 100,000 -- $8.0 million	**$ 15.0 million**

Resources for infrastructure improvements

Infrastructure Initiatives ▪ Replace the older CLAIMS 3 system with a new system capable of supporting electronic filing --- $23 million ▪ Purchase 100 additional DBI live-scan fingerprint machines to replace older Identix machines used for electronic background checks -- $ 3 million ▪ Fund improvements in automation, including hardware needed for high speed scanning, printing, mailing, case tracking via telephones and via internet, and expand services --- $ 5.8 million ▪ Complete the deployment of the CLAIMS 4 adjudications system -- $10 million ▪ Resources needed to support service center computer hardware life-cycle replacement schedule -- $4.61 million	**$ 46.410 mil.**
Total requirements	**$81.75 mil.**

Resources to enhance anti-fraud efforts and ensure the integrity of the adjudicative process

Fraud Initiatives ▪ Special Agents (44) -- $7,040,000 ▪ Intelligence Research Specialists (12) -- $1,152,000 ▪ Intelligence Support -- $1,360,000 ▪ Investigation Case Funding -- $1,088,000 ▪ INS/DOS/DOL Electronic Data Share -- $1,700,000	$12.34 million
Total	**$12.34million**

INS Use of H-1B Nonimmigrant Petitioner Fees

For what purposes may INS use its portion of the H-1B Nonimmigrant petitioner fee?

The INS may use its portion of the H-1B fee to carry out duties necessary for the admission of H-1B nonimmigrants. The funds will be used to expedite processing time of H-1B petitions, maintain an accurate count of H-1B nonimmigrants subject to the numerical cap, and collect data and periodically provide information to Congress on the status of the H-1B program.

Should INS' portion of this H-1B fee be increased?

Yes, INS needs to receive a significantly larger portion of the H-1B Nonimmigrant Petitioner fee in order to ensure quality processing of H-1B petitions. The $110 filing fee for H-1B petitions covers only the cost of receiving applications, entering application data into INS' case management system, adjudication of H-1B petitions, correspondence, records and management fees, and other costs specific to processing the petitions. The INS currently applies its portion of the H-1B Nonimmigrant Petitioner fee against the costs of administering this $500 fee. Under current law, INS receives a quarterly reimbursement from Treasury equal to 1.5% of the amount which is deposited into the H-1B Nonimmigrant Petitioner Account. A larger portion of this fee would allow INS to make the improvements described herein.

What improvements can be anticipated if INS receives these additional funds?

These funds will be used to reach specific backlog reduction and performance targets; to ensure that integrity exists in the adjudicative process by focusing more effort on fraud detection and deterrence; and by improving the infrastructure of INS' adjudicative systems to electronic filing and case tracking for INS customers, data integrity, and enhanced efficiency through the use of technology. Specific performance standards and completion goals for benefit applications are:

- 30 day processing on all H-1B petitions and a reduction of the backlog to achieve this processing time. (Current processing time is 60 days).
- 60 day processing for all I-140 employment-based immigrant visa petitions and a reduction of the backlog to achieve this processing time. (Current processing time is 9 months).
- Concurrent filing of I-140 petitions and I-485 adjustment of status applications
- Electronic filing introduced by FY 2002 for certain types of I-129 applications.
- Status checks for pending cases available via phones or internet (7days per week, 24 hours per day) in FY 2001
- Reductions in pending I-485s by 100,000 cases above current FY 2001 targets, which would reduce processing times two more months below current 2001 targets, which stands at 12 months.

FACT SHEET

Background

INS will significantly improve the processing of nonimmigrant business visa petitions. The INS system is currently a fee-based system, but the current $110 filing fee covers only the cost of receiving applications, entry into case management systems, and adjudication of the application. Most employers now also pay a $500 additional fee for an H-1B petition. Presently, INS receives only 1.5% of this $500 fee to cover the cost of administering the fee.

Currently, INS is not meeting the timeliness needs of the American business community. Achievement and maintenance of timely processing requires investments in personnel and systems to ensure that production improvements do not degrade the quality of adjudications. This proposal ensures that quality standards will remain high.

What is INS' proposal for the H-1B fee?

INS will decrease the processing time for H-1B and other business visas, maintain an accurate count of H-1B visas subject to the numerical cap, and collect data to more fully provide Congress with accurate information on the H-1B program.

For FY 01, with a cap increase to 200,000 assumed, INS estimates there will be 275,000 H-1B applications filed subject to this fee. INS requests the following (these totals are outlined in more detail in the proposals):

- 1.62 million for fee administration
- 2.88 million for system changes to improve the cap count
- 1.64 million for improved data collection and fee receipting
- 14.2 million for Service Center H1-B resource requirements
- 15.0 million for personnel enhancements related to backlog reduction
- 46.41 million for infrastructure improvements to enhance productivity
- 12.34 million for enhanced anti-fraud initiatives

The Service proposes that $32 million of the fees collected would be placed in the Service's fee account and $62 million would be placed in the Immigration Services Capital Investment Fund (ISCIA).

What effect will these additional funds have on INS processing?

These funds will be used to meet specific backlog reduction and performance targets. Additionally, funds will be used to ensure integrity within the system by focusing more effort on fraud detection and deterrence.

INS anticipates this infusion of funds will have the following effects:

- Allow for the adjudication in FY 01 of a sufficient number of H-1B nonimmigrant visa petitions to reduce the average processing time from 60 days to 30 days within a 6-month time period.

- Allow for the adjudication in FY 01 of a sufficient number of I-140 business immigrant visa petitions to reduce the average processing time from 12 months to 2 months within a 12 month time period.

- Allow for the adjudication of 100,000 additional applications for adjustment of status over previous projections during FY 01, raising the total adjudicated from 600,000 to 700,000, and further reducing the INS processing goal from 12 months to 10 months.

- Enable the Service to allow the concurrent filing, when applicable, of I-140 visa petitions and I-485 adjustment applications within 6 months of this fee implementation.

- Improve the reporting of H-1B cap cases to Congress.

- Improve INS systems to enhance the fee receipting, case tracking, and status inquiry ability relating to all INS applications, both business and family based.

Characteristics of Specialty Occupation Workers (H-1B)

U.S. Immigration and Naturalization Service

February, 2000

This report presents preliminary information on the characteristics of specialty occupation workers approved for H-1B nonimmigrant status during a 15-month period. The number of workers approved for H-1B status from May 11, 1998 through July 31, 1999 is approximately 134,400; all were for new employment, and all were potentially subject to the annual cap on H-1B approvals.

The estimates are based on a sample of 4,217 approved H-1B workers and contain information comparable to that required by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA).[1] The results are subject to sampling and non-sampling error. See the appendix for a summary of the sampling procedures, data sources, and estimates of error.

Country of Birth

INS estimates that nearly half of the H-1B petitions were granted to persons born in India, which far exceeded China, the next leading country.

Country of Birth	Percent		Total
	Estimate	95% Confidence Limits[2]	
All countries	100.0		134,400
India	47.5	(45.9 - 49.2)	63,900
China	9.3	(8.3 - 10.2)	12,400
United Kingdom	3.2	(2.6 - 3.8)	4,400
Canada	3.0	(2.4 - 3.5)	4,000
Philippines	2.7	(2.2 - 3.3)	3,700
Korea	2.3	(1.8 - 2.8)	3,100
Taiwan	2.1	(1.6 - 2.5)	2,800
Japan	2.0	(1.6 - 2.5)	2,700
Other countries	27.8	(26.4 - 29.3)	37,400

Note: Numbers and percents may not add to totals due to rounding.

[1] Public Law 105-277, Division C, American Competitiveness and Workforce Improvement Act of 1998, Section 416(c)(2) requires the INS to submit an annual report with "information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act during the previous fiscal year." The first report under this requirement will be submitted to Congress for those approved for H-1B status in Fiscal Year 2000.

[2] 95th percent confidence interval: with repeated sampling, the true population proportion will fall within the interval 95% of the time.

Occupation

The occupation code is provided by the petitioning employer on the Labor Condition Application (LCA). Approximately 53% of the approved petitions were for aliens with occupations in systems analysis or programming. All computer-related and engineering occupations accounted for 70% of the total H-1B petitions. Nearly 74% of the systems analysts and programmers were born in India compared to about 18% in all other occupations.

Occupation (LCA Code[3])	Percent		Total
	Estimate	95% Confidence Limits	
Total	100.0		134,400
Occupations in systems analysis and programming (030)	53.3	(51.7 - 55.0)	71,700
Electrical/electronics engineering occupations (003)	4.9	(4.2 - 5.5)	6,500
Computer-related occupations (not elsewhere classified (N.E.C.)) (039)	3.4	(2.8 - 4.0)	4,600
Occupations in college and university education (090)	3.0	(2.5 - 3.5)	4,000
Accountants, auditors and related occupations (160)	2.8	(2.3 - 3.4)	3,800
Occupations in architecture, engineering, and surveying (N.E.C.) (019)	2.3	(1.8 - 2.7)	3,000
Other Physical therapist,	30.3	(28.8 - 31.9)	40,800

Note: Numbers and percents may not add to totals due to rounding.

Degree Earned

The reporting of a U.S. or foreign degree is not required in a standard format on any of the INS or DOL forms, but is almost always provided by the petitioning employer in supporting documentation. In cases where the degree was earned outside of the United States, the employer usually provides a credential evaluation stating that the foreign degree is "equivalent to" a particular U.S. degree. The degree cited by the employer was used in this analysis. Note that the degree may not necessarily be the highest degree attained.

Approximately 57% of the H-1B workers were reported to have earned the equivalent of a Bachelor's Degree; nearly 41% earned a Master's Degree or higher; 10% earned a Professional Degree (MD, DDS, LLB, JD) or Doctorate Degree (PhD, EdD). Approximately 34% of systems analysts and programmers reported earning a Master's Degree or higher, while nearly 90% of aliens with occupations in colleges and universities reported earning a Master's Degree or higher.

[3] The 3-digit occupational group codes provided by the petitioning company on the Labor Condition Application (LCA) (ETA 9035) to the U.S. Department of Labor.

Degree Earned	Percent Estimate	Percent 95% Confidence Limits	Total
Total	100.0		134,400
High school diploma	1.0	(0.6 - 1.3)	1,300
Associate's degree	.5	(0.3 - 0.7)	700
Bachelor's degree	56.8	(55.2 - 58.5)	76,400
Master's degree	30.7	(29.2 - 32.3)	41,300
Professional degree	2.5	(2.0 - 3.0)	3,400
Doctorate degree	7.6	(6.8 - 8.5)	10,300
Unknown or none	.8	(0.5 - 1.2)	1,100

Note: Numbers and percents may not add to totals due to rounding.

Annual Wage

The median prospective annual wage reported by employers for all H-1B workers was $45,000; half of the workers were expected to earn between $38,900 and $55,000. The highest median wage among the leading occupations was for electrical/electronics engineers ($54,000) and the lowest was for college and university educators ($35,000).

Occupation (LCA Code)	Annual Wage: Median 50th Percentile	Annual Wage: 25th Percentile	Annual Wage: 75th Percentile
Total	$45,000	$38,900	$55,000
Electrical/electronics engineering occupations (003)	54,000	47,875	63,420
Occupations in architecture, engineering, and surveying (N.E.C.) (019)	51,000	44,777	62,000
Computer-related occupations (not elsewhere classified (N.E.C.)) (039)	49,400	45,000	57,000
Occupations in systems analysis and programming (030)	47,000	42,000	54,500
Accountants, auditors and related occupations (160)	36,000	28,000	45,000
Occupations in college and university education (090)	35,000	27,000	45,000
Other and unknown	40,000	30,000	59,000

Note: Numbers and percents may not add to totals due to rounding.

Employers did not report prospective wages on an annual basis for approximately 9% of workers. These workers were excluded from the analysis due to possible problems in comparing compensation rates over different employment periods. Information on whether the employment was on other than a full-time basis was not collected. Forms of compensation other than wages, such as bonuses or benefits, were not included.

Age

More than 83% of the workers granted H-1B status were between the ages of 20-34. The median age of all workers at the time their petition was received at the INS was 28 years.

Age at time of Application	Percent		Total
	Estimate	95% Confidence Limits	
Total	100.0		134,400
Under 20 years	0.1	(0.0 – 0.3)	200
20-24 years	18.6	(17.3 – 19.9)	25,000
25-29 years	42.4	(40.7 – 44.0)	56,900
30-34 years	22.1	(20.8 – 23.5)	29,800
35-39 years	9.2	(8.3 – 10.2)	12,400
40 years and over	6.6	(5.8 – 7.3)	8,800
Unknown age	1.0	(0.6 – 1.3)	1,300

Note: Numbers and percents may not add to totals due to rounding.

Previous Status

An estimated 60% percent of the approved H-1B petitions for new employment were for aliens who were outside the United States at the time their petition was submitted to the INS. Of the estimated 53,300 aliens already in the United States in a nonimmigrant status, approximately 58% were here as F-1 academic students. Note that aliens outside of the United States may have been in the U.S. as a nonimmigrant at some earlier date.

Previous Status (Nonimmigrant code classification)	Percent		Total
	Estimate	95% Confidence Limits	
Total	**100.0**		**134,400**
Outside the United States	**60.3**	**(58.7 – 62.0)**	**81,100**
Adjusting from a Nonimmigrant Status	**39.7**	**(38.0 – 41.3)**	**53,300**
Academic students (F-1)	22.9	(21.5 – 24.3)	30,800
Spouses and children of temporary workers (H-4)	3.2	(2.6 – 3.8)	4,400
Exchange visitors (J-1)	3.1	(2.6 – 3.7)	4,200
Visitors for pleasure (B-2)	3.0	(2.4 – 3.6)	4,100

Previous Status (Nonimmigrant code classification)	Percent Estimate	95% Confidence Limits	Total
Professional workers, North American Free Trade Agreement (TN)	1.9	(1.5 – 2.3)	2,500
Visitors for business (B-1)	1.7	(1.2 – 2.1)	2,200
Other and unknown	3.8	(3.1 – 4.4)	5,100

Note: Numbers and percents may not add to totals due to rounding.

Appendix: Sampling Description and Procedures

H-1B Procedures

Petitions for obtaining H-1B nonimmigrant status for alien workers are submitted by their prospective employers on INS form I-129 (Petition for a Nonimmigrant Worker). The petitions are mailed to one of four INS Service Centers depending on the location of the employer. The centers are located in St Albans, VT; Lincoln, NE; Dallas, TX; and Laguna Nigel, CA.

Approved petitions submitted by the employer (petitioner) allow the employee (beneficiary) to work in the United States up to 3 years initially. Employment can be extended for another 3 years for an overall total of 6 years. Only one worker is named on each petition; however, a particular worker may be petitioned for by more than one company.

Selected information from the I-129 is entered into the Computer Linked Application Information Management Systems (CLAIMS3) case tracking system. Adjudicators in the Service Centers decide whether to approve or deny the petition and enter the decision into CLAIMS3. Each Service Center operates its own Local Area Network (LAN) and uploads information to a national mainframe version of CLAIMS3 daily.

The I-129 petition and other supporting documentation such as the Labor Condition Application (LCA) (ETA Form 9035) are placed in a file identified by receipt number. The physical files are forwarded for storage to the INS records center in Harrisonburg, VA, approximately 90 days after adjudication.

Description of the Population and Sample

Population: The population consists of 134,411 H-1B petitions approved during the period from May 11, 1998 through July 31, 1999. All of the applications were for new employment and were potentially recorded against the annual FY 1999 cap.[4] The numbers of petitions by Service Center are: Vermont—61,191; Texas—25,261; Nebraska—17,926; and California—30,033. The CLAIMS3 mainframe was used

[4] The actual number of petitions approved subject to the FY 1999 annual H-1B cap is under review. The INS has contracted the firm of KPMG, Inc. to assist in developing the final number.

to identify the population and to select the sample.

Sample: Random samples of 1,100 petitions were selected in each of the 4 service centers providing for an overall total of 4,400. Only 4.2% of the files were not located in Harrisonburg, VA or one of the Service Centers. The final sample size is 4,217; Vermont—1,035; Texas—1,076; Nebraska—1,041; and California—1,065. The petitions were identified by receipt number and pulled for coding at Harrisonburg, VA. A group of coders from INS Headquarters examined each file and recorded the information on a data collection form (attachment 1).

Data Sources and Variables

The source documents for the sample were:

1. INS Form I-129, Petition for a Nonimmigrant Worker (attachment 2)
2. ETA Form 9035, Labor Condition Application (LCA) (attachment 3)
3. Supporting Documentation attached to the I-129 petition

Variable	Source	Notes and Non-Sampling Error
Country of Birth	INS Form I-129, Part 3, Country of Birth	Country was provided on all the records.
Occupation	ETA Form 9035, Job Code	The Department of Labor (DOL) considers the entry of the 3-digit code on the LCA to be a self-service action by the petitioning employer. It is important to note that the job code is based upon reporting directly from the employer and not upon INS or governmental assessment and analysis. The DOL does not perform a quality review of this data element and does not correct employer error. The occupation code was provided on all the records.
Degree Earned	Supporting documentation to INS Form I-129	The degree was not available on the INS or DOL standard forms. It is important to note that the degree earned is based upon reporting directly from the employer and not upon INS or governmental assessment and analysis. Determination was made by searching through a credential evaluation from the employer; the standard terminology "equivalent to" was usually available when a foreign degree was cited and served as the basis of determination of degree earned. Copies of diplomas and certificates were usually available in the file but were seldom used by coders in determination. Degree earned is missing on 0.8% of the records.

Variable	Source	Notes and Non-Sampling Error
Annual Wage	INS Form I-129, Part 5, Wages per week or per year	Approximately 9% of the employers reported wages other than on an annual basis or did not report any wages. Coders sometimes converted from hourly to weekly wages and some interpretation was made when the reporting period was not indicated. Petitions with information other than on an annual basis were excluded from the analysis due to possible problems in comparing compensation rates over different employment periods. The annual wages exclude other forms of compensation.
Age	INS Form I-129, Part 3, Date of birth and date of application receipt as stamped on the petition	Age was calculated by subtracting the date of birth from the date the petition was received. The calculated age is missing on 1.0% of the records.
Nonimmigrant Status	INS Form I-129, Part 3, Current Status and INS Form I-129, Part 2, Question 4, Requested Action	I-129 information keyed into CLAIMS3 was used to determine if a worker was abroad or in the United States at time of applications. Part 2, 4a indicates alien was abroad; Part 2, 4b indicates alien was in the United States. The nonimmigrant status for those checking 4b was copied onto coding sheets by coders. The nonimmigrant status is missing on 0.9% of the records.

Data on H-1B Petitions for FY99 with respect to education, occupation, wages, and country of birth

Location:
(CIRCLE)

California
Nebraska
Texas
Vermont
Harrisonburg, VA

Receipt Number

Date Received (As noted on file)

Data on I-129, Part 1

Company Name

Tax Number

Data on I-129, Part 3

Date of Birth

Country of Birth

I-94 #

Current Nonimmigrant Status

Data on I-129, Part 5

Job Title on I-129

Wages on I-129

Wages per week or per year? on I-129:
(CIRCLE)

Per Year
Per Week

Type of Business

Data on Labor Condition Application (LCA) from Department of Labor

Three-digit Occupation Code on LCA

Prevailing Wage Rate on LCA

Pay Period of Prevailing Wage
(CIRCLE)

Per Year
Per Month
Per 2 Weeks
Per Week
Per Hour

Source of Prevailing Wage Rate

Data in Supporting Documentation

Education: Highest Level Achieved:
(CIRCLE)

High School Diploma
Associate's Degree (e.g., AA AS)
Bachelor's Degree (e.g., BA ,AB ,BS)
Master's Degree (e.g., MA, MS, MEng, MBA)
Professional Degree (e.g., MD, DDS, LLB, JD)
Doctorate Degree(e.g., PhD, EdD)

Education: Primary Field of Study

Attachment 1

Attachment 2

U.S. Department of Justice
Immigration and Naturalization Service

For sale by the Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

OMB #1115-0168
Petition for a Nonimmigrant Worker

START HERE - Please Type or Print

Part 1. Information about the employer filing this petition.

If the employer is an individual, use the top name line. Organizations should use the second line.

F	Given Name	Middle Initial

Company or Organization Name

Address - Attn:

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code

IRS Tax #

Part 2. Information about this Petition.

(See instructions to determine the fee).

1. **Requested Nonimmigrant Classification:** (write classification symbol at right) ______
2. **Basis for Classification** (check one)
   a. ☐ New employment
   b. ☐ Continuation of previously approved employment without change
   c. ☐ Change in previously approved employment
   d. ☐ New concurrent employment
3. **Prior petition.** If you checked other than "New Employment" in item 2. (above) give the most recent prior petition number for the worker(s): ______
4. **Requested Action:** (check one)
   a. ☐ Notify the office in Part 4 so the person(s) can obtain a visa or be admitted (NOTE: a petition is not required for an E-1, E-2, or R visa).
   b. ☐ Change the person(s) status and extend their stay since they are all now in the U.S. in another status (see instructions for limitations). This is available only where you check "New Employment" in item 2, above.
   c. ☐ Extend or amend the stay of the person(s) since they now hold this status.
5. **Total number of workers in petition:** ______

(See instructions for where more than one worker can be included.)

Part 3. Information about the person(s) you are filing for.

Complete the blocks below. Use the continuation sheet to name each person included in this petition.

If an entertainment group, their group name.

Family Name	Given Name	Middle Initial
Date of Birth *(Month/Day/Year)*	Country of Birth	
Social Security #	A #	

If in the United States, complete the following:

Date of Arrival *(Month/Day/Year)*	I-94 #
Current Nonimmigrant Status	Expires *(Month/Day/Year)*

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ Petitioner ☐ Beneficiary	

Class: ______
# of Workers: ______
Priority Number: ______
Validity Dates: From ______ To ______

☐ **Classification Approved**
☐ Consulate/POE/PFI Notified
At: ______
☐ Extension Granted
☐ COS/Extension Granted

Partial Approval (explain)

Action Block

To Be Completed by *Attorney* or *Representative*, if any
☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY S License #

Attachment 2 (continued)

Part 4. Processing Information.

a. If the person named in Part 3 is outside the U.S. or a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want notified if this petition is approved.

Type of Office (check one): ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

Office Address (City) | U.S. State or Foreign Country

Person's Foreign Address

b. Does each person in this petition have a valid passport?
☐ Not required to have passport ☐ No - explain on separate paper ☐ Yes

c. Are you filing any other petitions with this one? ☐ No ☐ Yes - How many? ____

d. Are applications for replacement/Initial I-94's being filed with this petition? ☐ No ☐ Yes - How many? ____

e. Are applications by dependents being filed with this petition? ☐ No ☐ Yes - How many? ____

f. Is any person in this petition in exclusion or deportation proceedings? ☐ No ☐ Yes - explain on separate paper

g. Have you ever filed an immigrant petition for any person in this petition? ☐ No ☐ Yes - explain on separate paper

h. If you indicated you were filing a new petition in Part 2, within the past 7 years has any person in this petition:

1) ever been given the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

2) ever been denied the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

i. If you are filing for an entertainment group, has any person in this petition not been with the group for at least 1 year?
☐ No ☐ Yes - explain on separate paper

Part 5. Basic Information about the proposed employment and employer.

Attach the supplement relating to the classification you are requesting.

Job Title | Nontechnical Description of Job

Ac where the person(s) will work if different from the address in Part 1.

Is this a full-time position? ☐ No - Hours per week ☐ Yes | Wages per week or per year

Other Compensation (Explain) | Value per week or per year | Dates of intended employment From: To:

Type of Petitioner - check one: ☐ U.S. citizen or permanent resident ☐ Organization ☐ Other - explain on separate paper

Type of business: | Year established:

Current Number of Employees | Gross Annual Income | Net Annual Income

Part 6. Signature.

Read the information on penalties in the instructions before completing this section.

I certify, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature and title | Print Name | Date

Please Note: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for the requested benefit, and this petition may be denied.

Part 7. Signature of person preparing form if other than above.

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have any knowledge.

Signature | Print Name | Date

Firm Name and Address

Attachment 2 (continued)

OMB #1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

H Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or total number of workers or trainees you are filing for:

List the alien's and any dependent family members; prior periods of stay in H classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an H classification. If more space is needed, attach an additional sheet.

Classification sought (check one):

- ☐ H-1A Registered Professional nurse
- ☐ H-1B1 Specialty occupation
- ☐ H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense
- ☐ H-1B3 Artist, entertainer or fashion model of national or international acclaim
- ☐ H-1B4 Artist or entertainer in unique or traditional art form
- ☐ H-1B5 Athlete
- ☐ H-1BS Essential Support Personnel for H-1B entertainer or athlete
- ☐ H-2A Agricultural worker
- ☐ H-2B Nonagricultural worker
- ☐ H-3 Trainee
- ☐ H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1A or H-1B classification.

Describe the proposed duties

Alien's present occupation and summary of prior work experience

Statement for H-1B speciality occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment.

Petitioner's Signature   Date

Statement for H-1B specialty occupations and DOD projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of authorized official of employer   Date

Statement for H-1B DOD projects only:

I certify that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by the Department of Defense.

DOD project manager's signature   Date

Section 2. Complete this section if filing for H-2A or H-2B classification.

Employment is: (check one)
- ☐ Seasonal
- ☐ Peakload
- ☐ Intermittent
- ☐ One-time occurrence

Temporary need is: (check one)
- ☐ Unpredictable
- ☐ Periodic
- ☐ Recurrent annually

Explain your temporary need for the alien's services (attach a separate paper if additional space is needed).

Continued on back.

Attachment 3

LABOR CONDITION APPLICATION
FOR H-1B NONIMMIGRANTS

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Employer's Telephone No.
( )

4. Employer's FAX No.
( )

5. Employer's Address (No., Street, City, State, ZIP Code)

OMB Approval No.:
Expiration Date:

6. Address Where Documentation is Kept (if different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed.)

(a) Three-digit Occupational Group Code (From Appendix 2): ______ (b) Job Title (Check box if part-time): ______ ☐

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source (see instructions)	(f) Period of Employment From	To	(g) Locations Where H-1B Nonimmigrants Will Work (see instructions)
______	$______	$______ ☐SESA ☐Other: ______	______	______	______
______	$______	$______ ☐SESA ☐Other: ______	______	______	______

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, I will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

☐ (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrant workers will be employed.

9. DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official ______ Signature ______ Date ______

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from ______ through ______.

Signature and Title of Authorized DOL Official ______ ETA Case No. ______ Date ______

Subsequent DOL Action: Suspended ______ (date) Invalidated ______ (date) Withdrawn ______ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1¼ hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to OMB, Paperwork Reduction Project (1205-0310) Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES.

From: Lisa J. Macecevic on 05/05/2000 11:59:08 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: H-1B markup next week

House Judiciary Committee -- full committee markup
MAY 9 & 10th; 10:00 a.m. - 2141 Rayburn Bldg.

HR4227--Technology Worker Temporary Relief Act (Smith)

- ELIMINATES NUMERICAL LIMITATION FOR FISCAL YEAR 2000;
- INCREASES IN CAP: H-1Bs may not exceed--
  - -- 107,500 in fiscal year 2001;
  - -- 65,000 in fiscal year 2002; and
  - -- 65,000 in each succeeding fiscal year.

HR4227.wpd

Message Sent To:

Steven M. Mertens/OMB/EOP@EOP
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HR 4227 IH

106th CONGRESS

2d Session

H. R. 4227

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 11, 2000

Mr. SMITH of Texas (for himself, Mr. CAMPBELL, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the number of aliens granted nonimmigrant status described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, to implement measures to prevent fraud and abuse in the granting of such status, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Technology Worker Temporary Relief Act'.

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

TITLE I--NUMERICAL LIMITATIONS ON H-1B NONIMMIGRANTS.

SEC. 101. TEMPORARY INCREASE IN ACCESS TO H-1B NONIMMIGRANTS.

(a) ELIMINATING NUMERICAL LIMITATION FOR FISCAL YEAR 2000; CONDITIONING INCREASES FOR FISCAL YEARS 2001 AND 2002- Section 214(g)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)) is amended to read as follows:

`(A) under section 101(a)(15)(H)(i)(b), may not exceed--

`(i) subject to paragraph (5), 107,500 in fiscal year 2001;

`(ii) subject to paragraph (5), 65,000 in fiscal year 2002; and

`(iii) 65,000 in each succeeding fiscal year; or'.

(b) CONDITIONS ON INCREASES- Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

`(5)(A) The numerical limitations in clauses (i) and (ii) of paragraph (1)(A) shall not apply to an alien described in subparagraph (B) after the date on which final regulations fully implementing all provisions of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105-277) become effective.

`(B) An alien is described in this subparagraph if--

`(i) the alien, disregarding clauses (i) and (ii) of paragraph (1)(A), otherwise is eligible to be issued a visa or provided nonimmigrant status under section 101(a)(15)(H)(i)(b); and

`(ii) the employer petitioning under subsection (c)(1) with respect to the alien demonstrates in the petition that--

`(I) as of the last day of the employer's previous tax year, there was a net increase (as compared with the first day of such tax year) in the number of full-time equivalent United States workers (as defined in section 212(n)(4)(E)) on the employer's payroll;

`(II) as of the end of the employer's previous tax year, there was a net increase (as compared with the prior tax year) in the total wages (including cash bonuses and similar compensation) paid to United States workers described in subclause (I) during such year; and

`(III) as of the end of the employer's previous tax year, there was a net increase (as compared with the prior tax year) in the median of the wages described in subclause (II).

`(C) In making the determinations under subparagraph (B)(ii)--

`(i) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer; and

`(ii) the Attorney General shall disregard workers who ceased employment with an employer by reason of the employer's having sold, or otherwise legally transferred for consideration, the assets of a division or other severable portion of the employer's business to another person before the end of the employer's previous tax year.'.

(c) EFFECTIVE DATES-

(1) ELIMINATING NUMERICAL LIMITATION FOR FISCAL YEAR 2000- The amendment made by subsection (a), to the extent that it eliminates the numerical limitation under section 214(g)(1)(A)(iii) of the Immigration and Nationality Act, as in effect on the day before the date of the enactment of this Act, shall take effect on the date of the enactment of this Act.

(2) CONDITIONING INCREASES FOR FISCAL YEARS 2001 AND 2002- In all other respects, the amendments made by this section shall take effect on October 1, 2000, without regard to whether or not proposed or final regulations to carry out such amendments have been promulgated.

SEC. 102. SECRETARY OF STATE TO MAINTAIN RECORDS ON H-1B NONIMMIGRANTS.

(a) IN GENERAL- Section 214(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(3)) is amended--

(1) by striking `(3)' and inserting `(3)(A)'; and

(2) by adding at the end the following:

`(B) Records with respect to the issuance of visas (or the provision otherwise of nonimmigrant status) under section 101(a)(15)(H)(i)(b) shall be maintained in accordance with regulations prescribed by the Secretary of State.'.

(b) CONFORMING AMENDMENTS- Section 416 of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105-277; 112 Stat. 2681-655; 8 U.S.C. 1184 note) is amended--

(1) in subsection (a)--

(A) by striking `214(g)(1)' and inserting `214(g)(1)(B)';

(B) by striking `1184(g)(1))' and inserting `1184(g)(1)(B))'; and

(C) by adding at the end `The Secretary of State, with the assistance of the Attorney General, shall take such steps as are necessary to maintain an accurate count of the number of aliens subject to the numerical limitations of section 214(g)(1)(A) of such Act (8 U.S.C. 1184(g)(1)(A)) who are issued visas or otherwise provided nonimmigrant status.';

(2) in subsection (b), by striking `to count' and inserting `to count, or to assist the Secretary of State in accurately counting,'; and

(3) in subsection (c)--

(A) in paragraph (1), by striking `Attorney General' and inserting `Secretary of State'; and

(B) in paragraph (2), by inserting `and the Secretary of State' after `Attorney General'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect beginning with the first fiscal year that begins after the date of the enactment of this Act.

TITLE II--NEW REQUIREMENTS ON PETITIONING EMPLOYERS

SEC. 201. MINIMUM SALARY REQUIREMENT.

Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended--

(1) by striking `and' at the end of clause (i);

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

`(ii) is offering and will offer during the period of authorized employment to H-1B nonimmigrants wages that are at least equal to an annual salary of $40,000 (including cash bonuses and similar compensation), except if the employer is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965) or a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization, and'.

SEC. 202. SUBMISSION OF DATA ON H1-B NONIMMIGRANTS AFTER EMPLOYMENT COMMENCEMENT.

(a) IN GENERAL- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G) the following:

`(H) The employer will electronically submit to the Secretary, not later than 30 days after the date on which an H-1B nonimmigrant commences employment with the employer, data in an electronic format containing information about the nonimmigrant, including the following:

`(i) The name of the nonimmigrant.

`(ii) The foreign state of which the nonimmigrant is a citizen or national.

`(iii) The academic degrees obtained by the nonimmigrant.

`(iv) The nonimmigrant's job title.

`(v) The date on which employment commenced.

`(vi) The nonimmigrant's salary or wage level.'.

(b) REQUIREMENT ON SECRETARY- Not later than 30 days after the receipt of data from an employer that is provided in accordance with section 212(n)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(H)), as inserted by subsection (a), the Secretary of Labor shall make such data available on the Internet.

SEC. 203. ENGLISH LANGUAGE REQUIREMENT FOR H-1B NONIMMIGRANTS PROVIDING INSTRUCTION.

Section 214(i)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(i)(2)) is amended--

(1) by striking '(A)' and inserting `(i)';

(2) by striking `(B)' and inserting `(ii)';

(3) in subparagraph (C), by striking `(ii)' and inserting `(II)'

(4) by striking `(C)(i)' and inserting `(iii)(I)';

(5) by striking `(2)' and inserting `(2)(A)'; and

(6) by adding at the end the following:

`(B) In the case of a position in a specialty occupation that requires an alien to provide instruction in any subject to students in the United States, the requirements of this paragraph also include a requirement that the alien have the level of competence in oral and written English considered by the Attorney General, in consultation with the Secretary of Education, to be appropriate for work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of ability to speak and write English.'.

SEC. 204. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to petitions filed under section 214(c), and applications filed under section 212(n)(1), of the Immigration and Nationality Act on and after October 1, 2000.

TITLE III--ANTI-FRAUD PROVISIONS FOR H-1B NONIMMIGRANTS

SEC. 301. REQUIRING SPECIALTY OCCUPATION WORKERS AND FASHION MODELS TO OBTAIN STATUS AS AN H-1B NONIMMIGRANT.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 101 of this Act, is further amended by adding at the end the following:

`(6) Notwithstanding any other provision of this Act, any alien admitted or provided status as a nonimmigrant in order to provide services in a specialty occupation described in subsection (i)(1) (other than services described in subparagraph (H)(ii)(a), (O), or (P) of section 101(a)(15)) or as a fashion model shall have been issued a visa (or otherwise been provided nonimmigrant status) under section 101(a)(15)(H)(i)(b).'.

SEC. 302. REQUIRING FULL-TIME EMPLOYMENT.

(a) IN GENERAL- Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C.1101(a)(15)(H)(i)(b)) is amended by striking `or (P))' and inserting `or (P)), not less than 35 hours per week (except if the employer is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965) or a related or affiliated nonprofit entity),'.

(b) CONFORMING AMENDMENTS- Section 212(n)(2)(C)(vii) of the Immigration and Nationality Act (8 U.S.C.1182(n)(2)(C)(vii)) is amended--

(1) in subclause (I), by striking `a full-time' and inserting `an';

(2) by striking subclause (II);

(3) in subclause (III), by striking `subclauses (I) and (II)' and inserting `subclause (I)'; and

(4) by redesignating subclauses (III) through (VI) as subclauses (II) through (V), respectively.

SEC. 303. REQUIREMENTS FOR SPECIALTY OCCUPATION.

(a) IN GENERAL- Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)), as amended by section 203 of this Act, is further amended--

(1) by amending paragraph (1)(B) to read as follows:

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

(2) by amending paragraph (2)(A)(iii) to read as follows:

`(iii)(I) completion of a bachelor's degree (or higher degree) that is not described in paragraph (1)(B), (II) experience in the specialty equivalent to the completion of the degree described in paragraph (1)(B) for the occupation, and (III) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.'; and

(3) by adding at the end the following:

`(3)(A) Subject to subparagraph (B), for purposes of this subsection, the term `bachelor's degree (or higher degree)' includes a foreign degree that is a recognized foreign equivalent of a bachelor's degree (or higher degree).

`(B)(i) In the case of an alien obtaining a foreign degree, any determination with respect to the equivalence of that degree to a degree obtained in the United States shall be made by the Secretary of State.

`(ii) In carrying out clause (i), the Secretary of State shall verify the authenticity of any foreign educational credential proffered by an alien. The Secretary of State may enter into contracts with public or private entities in conducting such verifications.

`(iii) In addition to any other fees authorized by law, the Secretary of State may impose a fee on an employer filing a petition under subsection (c)(1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b), if a determination or verification described in clause (i) or (ii) is required with respect to the petition. Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(t).'.

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES- Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

`(t) H-1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT- There is established in the general fund of the Treasury a separate account, which shall be known as the `H-1B Educational Credential Verification Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(i)(3)(B)(iii). Amounts deposited into the account shall remain available to the Secretary of State until expended to carry out section 214(i)(3)(B).'.

SEC. 304. ANTI-FRAUD FEE.

(a) IMPOSITION OF FEE- Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

`(10)(A) In addition to any other fees authorized by law, the Attorney General shall impose an anti-fraud fee on an employer filing a petition under paragraph (1)--

`(i) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b); or `(ii) to obtain authorization for an alien having such status to change employers.

`(B) The amount of the fee shall be $100 for each such petition.

`(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(u).'.

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES- Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as amended by section 303 of this Act, is further is amended by adding at the end the following:

`(u) H-1B ANTI-FRAUD ACCOUNT-

`(1) IN GENERAL- There is established in the general fund of the Treasury a separate account, which shall be known as the `H-1B Anti-fraud Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(10).

`(2) USE OF FEES TO COMBAT FRAUD-

`(A) ATTORNEY GENERAL-

`(i) PROGRAMS TO ELIMINATE FRAUD- 20 percent of amounts deposited into the H-1B Anti-fraud Account shall remain available to the Attorney General until expended for programs and activities to eliminate fraud by employers filing petitions described in section 214(c)(9)(A) and aliens who are the beneficiaries of such petitions.

`(ii) REMOVAL OF ALIENS- 20 percent of amounts deposited into the H-1B Anti-fraud Account shall remain available to the Attorney General until expended for the removal of H-1B nonimmigrants (as defined in section 212(n)(4)(C)) who are deportable under section 237(a)(1)(A) by reason of having been found to be within the class of aliens inadmissible under section 212(a)(6)(C).

`(B) SECRETARY OF STATE- 40 percent of amounts deposited into the H-1B Anti-fraud Account shall remain available to the Secretary of State until expended for programs and activities to eliminate fraud by employers and aliens described in subparagraph (A).

`(C) JOINT PROGRAMS- 20 percent of amounts deposited into the H-1B Anti-fraud Account shall remain available to the Attorney General and the Secretary of State until expended for programs and activities conducted by them jointly to eliminate fraud by employers and aliens described in subparagraph (A).'.

SEC. 305. ADDITIONAL REQUIREMENTS ON PETITIONING EMPLOYERS.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 304 of this Act, is further amended by adding at the end the following:

`(11) The Attorney General may not approve any petition under paragraph (1) filed by an employer with respect to an alien seeking to obtain or having the status of a nonimmigrant under section 101(a)(15)(H)(i)(b) unless the employer satisfies the following requirements:

`(A) The employer--

`(i) is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a governmental or nonprofit entity; or

`(ii) maintains a place of business in the United States that is licensed in accordance with any applicable State or local business licensing requirements and is used exclusively for business purposes.

`(B) The employer--

`(i) is a governmental entity;

`(ii) has aggregate gross assets with a value of not less than $250,000--

`(I) in the case of an employer that is a publicly held corporation, as determined using its most recent report filed with the Securities and Exchange Commission; or

`(II) in the case of any other employer, as determined as of the date on which the petition is filed pursuant to regulations promulgated by the Attorney General; or

`(iii) provides documentation of business activity pursuant to regulations promulgated by the Attorney General.'.

SEC. 306. REQUIRING FILING OF W-2 FORMS.

(a) IN GENERAL- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by section 202 of this Act, is further amended by inserting after subparagraph (H) the following:

`(I) The employer will, with respect to each employee who is an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b), annually submit to the Secretary of Labor a copy of the most recent statement under section 6051 of the Internal Revenue Code of 1986. Such submission may be made by electronic means.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) applies to applications described in section 212(n)(1) of the Immigration and Nationality Act made on or after October 1, 2000, but only with respect to statements made under section 6051 of the Internal Revenue Code of 1986 on or after January 1, 2001.

SEC. 307. EFFECTIVE DATE.

Except for the amendment made by section 306, the amendments made by this title shall apply to petitions filed under section 214(c), and applications filed under section 212(n)(1), of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments.

TITLE IV--EXTENSION OF PROVISIONS FROM THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998

SEC. 401. PROTECTION AGAINST DISPLACEMENT OF UNITED STATES WORKERS IN CASE OF H-1B DEPENDENT EMPLOYERS.

Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking `2001,' and inserting `2002,'.

SEC. 402. ADDITIONAL INVESTIGATIVE AUTHORITY.

Section 413(e)(2) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105-277) is amended by striking `2001.' and inserting `2002.'.

END

April 11, 2000

<u>Note to Ruth Samardick</u>:

As you requested, attached is the bill language and background on our registry date proposal and NACARA Parity legislation.

Please let me know if you need further information. Thanks.

Irene Bueno
6-6558

A BILL

To amend section 249 of the Immigration and Nationality Act and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 249 of the Immigration and Nationality Act (8 U.S.C. § 1259) is amended --

(1) in subsection (a) by deleting "1972" and inserting in lieu thereof "1986"; and

(2) in the title by deleting "1972" and inserting "1986" in lieu thereof.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft legislative proposal entitled, "[t]o amend section 249 of the Immigration and Nationality Act and for other purposes." We request that it be promptly referred to the appropriate committee or committees, considered, and passed.

Under current United States immigration law, set forth in section 249 of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1259) ("record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924 or January 1, 1972"), certain long-term migrants who have been living in the United States for a substantial period of time (i.e., since before January 1, 1972 -- the so-called "registry date"), who are of good moral character, and who meet various other criteria (e.g., that they are not otherwise ineligible for citizenship or deportable for engaging in terrorist activities) may, in the discretion of the Attorney General, become lawful permanent residents of the United States. This provision of the INA has been in effect since 1952, and a comparable provision has been part of the United States' immigration laws since 1929.

The policy underlying section 249 of the INA is that certain aliens who have resided in the United States for long periods of time have, in many instances, developed close, substantial and longstanding ties with this country. Under this view, there is little interest in, or justification for, attempting to locate and deport such persons. Rather, Congress has long deemed it appropriate from a policy perspective to permit qualifying undocumented aliens to become lawful permanent residents.

The registry date contained in section 249 of the INA has been changed over the years. The current date – January 1, 1972 – was adopted 14 years ago, with the enactment of the Immigration Reform and Control Act of 1986. Before that time, the registry date was June 30, 1948. In recognition of the passage of a substantial period of time since the registry date was last updated, the Administration proposes to amend section 249 of the INA to move the registry date up an additional 14 years, to January 1, 1986. We believe that such an updating of the registry date would enable qualified migrants with longstanding ties to the United States to achieve lawful permanent resident status and would serve to confirm the important policies that led Congress to enact section 249 of the INA in the first instance. Although the actual number is uncertain, we estimate that as many as an additional 500,000 migrants may be able to adjust their immigration status if the registry date we have proposed is adopted.

Thank you for your consideration of this draft legislative proposal. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this proposal.

Sincerely,

Robert Raben

Robert Raben
Assistant Attorney General

Enclosure

A BILL

To amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Central American and Haitian Parity Act of 1999."

SECTION 2. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS FROM EL SALVADOR, GUATEMALA, HONDURAS, AND HAITI.

(a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is amended—

(1) in the section heading, by striking "NICARAGUANS AND CUBANS" and inserting "NICARAGUANS, CUBANS, SALVADORANS, GUATEMALANS, HONDURANS, and HAITIANS";

(2) in subparagraph (a)(1)(A), by striking "2000" and inserting "2003";

(3) in paragraph (b)(1), by striking "Nicaragua or Cuba" and inserting "Nicaragua, Cuba, El Salvador, Guatemala, Honduras, or Haiti";

(4) in subparagraph (d)(1)(E), by striking "2000" and inserting "2003".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective upon the date of enactment of this Act.

SECTION 3. APPLICATIONS PENDING UNDER SECTION 203 OF THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.

An application for relief properly filed by a national of Guatemala or El Salvador under section 203 of the Nicaraguan Adjustment and Central American Relief Act which was filed on or before the date of enactment of this Act, and on which a final administrative determination has not been made, may be converted by the applicant to an application for adjustment of status under the provisions of section 202 of the Nicaraguan Adjustment and Central American Relief Act, as amended, upon the payment of any fees, and in accordance with procedures, that the

Attorney General shall prescribe by regulation. The Attorney General shall not be required to refund any fees paid in connection with an application filed by a national of Guatemala or El Salvador under section 203 of the Nicaraguan Adjustment and Central American Relief Act.

SECTION 4. APPLICATIONS PENDING UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

An application for adjustment of status properly filed by a national of Haiti under the Haitian Refugee Immigration Fairness Act of 1998 which was filed on or before the date of enactment of this Act, and on which a final administrative determination has not been made, may be considered by the Attorney General, in her unreviewable discretion, to also constitute an application for adjustment of status under the provisions of section 202 of the Nicaraguan Adjustment and Central American Relief Act, as amended.

SECTION 5. TECHNICAL AMENDMENTS TO THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.

(a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is amended—

(1) in subparagraph (a)(1)(B), by adding after the word "apply"—

"and the Attorney General may, in her unreviewable discretion, waive the grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest";

(2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding the following as paragraph (2)—

"(2) INAPPLICABILITY OF CERTAIN PROVISIONS.– In determining the eligibility of an alien described in subsections (b) or (d) for either adjustment of status under this section or other relief necessary to establish eligibility for such adjustment, the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. In addition, an alien who would otherwise be inadmissible pursuant to sections 212(a)(9)(A) or (C) of the Immigration and Nationality Act may apply for the Attorney General's consent to reapply for admission without regard to the requirement that the consent be granted prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, in order to qualify for the exception to those grounds of inadmissibility set forth in sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act."

(3) in subsection (a), by striking redesignated paragraph (3), and inserting in its place—

"(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS. — An alien present in the United States who has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. Such an alien may be required to seek a stay of such an order in accordance with subsection (c) to prevent the execution of that order pending the adjudication of the application for adjustment of status. If the Attorney General denies a stay of a final order of exclusion, deportation, or removal, or if the Attorney General renders a final administrative determination to deny the application for adjustment of status, the order shall be effective and enforceable to the same extent as if the application had not been made. If the Attorney General grants the application for adjustment of status, the Attorney General shall cancel the order."

(4) in paragraph (b)(1), by adding at the end the following—

"However, subsection (a) shall not apply to an alien lawfully admitted for permanent residence, unless he or she is applying for such relief in deportation or removal proceedings."

(5) in paragraph (c)(1), by adding at the end the following—

"Nothing in this Act shall require the Attorney General to stay the removal of an alien who is ineligible for adjustment of status under this Act."

(6) in subsection (d)—

(A) by revising the subsection heading to read "SPOUSES, CHILDREN, AND UNMARRIED SONS AND DAUGHTERS.—";

(B) in paragraph (1), by revising the heading to read "ADJUSTMENT OF STATUS.—";

(C) by striking subparagraph (1)(A), and replacing it with the following—

"(A) the alien entered the United States on or before the date of enactment of the Central American and Haitian Parity Act of 1999;"

(D) in subparagraph (1)(B), by inserting the following after "except that"—

": (i) in the case of such a spouse, stepchild, or unmarried stepson or stepdaughter, the qualifying marriage was entered into before the date of enactment of the Central American and Haitian Parity Act of 1999; and (ii)"; and

(E) by creating a new paragraph (3) to read as follows—

"ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

(A) In accordance with regulations to be promulgated by the Attorney General and the Secretary of State, upon approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence under subsection (a), an alien who is the spouse or child of the alien being granted such status may be issued a visa for admission to the United States as an immigrant following to join the principal applicant, provided that the spouse or child:

(i) meets the requirements in subparagraphs (1)(B) and (D); and

(ii) applies for such a visa within a time period to be established by regulation.

(B) The Secretary of State may retain fees to recover the cost of immigrant visa application processing and issuance for certain spouses and children of aliens whose applications for adjustment of status under subsection (a) have been approved, provided that such fees:

(i) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of such processing and issuance; and

(ii) shall be available until expended for the same purposes of such appropriation to support consular activities.";

(7) in subsection (g), by inserting after "for permanent residence" the following—

"or an immigrant classification"; and

(8) by adding at the end the following subsection—

"(i) ADMISSIONS. Nothing in this section shall be construed as authorizing an alien to apply for admission to, be admitted to, be paroled into, or otherwise lawfully return to the United States, to apply for or to pursue an application for adjustment of status under this section without the express authorization of the Attorney General."

(b) EFFECTIVE DATE.—The amendments made by sections 5(a)(3), 5(a)(4), and 5(a)(8) of this Act shall be effective as if included in the enactment of the Nicaraguan and Central American Relief Act. The amendments made by sections 5(a)(1), 5(a)(2), 5(a)(5), 5(a)(6), and 5(a)(7) shall be effective as of the date of enactment of this Act.

SECTION 6. TECHNICAL AMENDMENTS TO THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

(a) Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 is amended—

(1) in subparagraph (a)(1)(B), by adding after the word "apply"—

"and the Attorney General may, in her unreviewable discretion, waive the grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest";

(2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding the following as paragraph (2)—

"(2) INAPPLICABILITY OF CERTAIN PROVISIONS.– In determining the eligibility of an alien described in subsections (b) or (d) for either adjustment of status under this section or other relief necessary to establish eligibility for such adjustment, or for permission to reapply for admission to the United States for the purpose of adjustment of status under this section, the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. In addition, an alien who would otherwise be inadmissible pursuant to sections 212(a)(9)(A) or (C) of the Immigration and Nationality Act may apply for the Attorney General's consent to reapply for admission without regard to the requirement that the consent be granted prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, in order to qualify for the exception to those grounds of inadmissibility set forth in sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act."

(3) in subsection (a), by striking redesignated paragraph (3), and inserting in its place—

"(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS. — An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. Such an alien may be required to seek a stay of such an order in accordance with subsection (c) to prevent the execution of that order pending the adjudication of the application for adjustment of status. If the Attorney General denies a stay of a final order of exclusion, deportation, or removal, or if the Attorney General renders a final administrative determination to deny the application for adjustment of status, the order shall be effective and enforceable to the same extent as if the application had not been made. If the

Attorney General grants the application for adjustment of status, the Attorney General shall cancel the order."

(4) in paragraph (b)(1), by adding at the end the following—

"However, subsection (a) shall not apply to an alien lawfully admitted for permanent residence, unless he or she is applying for such relief in deportation or removal proceedings."

(5) in paragraph (c)(1), by adding at the end the following—

"Nothing in this Act shall require the Attorney General to stay the removal of an alien who is ineligible for adjustment of status under this Act."

(6) in subsection (d)—

(A) by revising the subsection heading to read "SPOUSES, CHILDREN, AND UNMARRIED SONS AND DAUGHTERS.—";

(B) in paragraph (1), by revising the heading to read "ADJUSTMENT OF STATUS.—";

(C) by striking subparagraph (1)(A), and replacing it with the following—

"(A) the alien entered the United States on or before the date of enactment of the Central American and Haitian Parity Act of 1999;"

(D) in subparagraph (1)(B), by inserting the following after "except that"—

": (i) in the case of such a spouse, stepchild, or unmarried stepson or stepdaughter, the qualifying marriage was entered into before the date of enactment of the Central American and Haitian Parity Act of 1999; and (ii)";

(E) in paragraph (1), by creating a new subparagraph (E) as follows—

"(E) the alien applies for such adjustment before April 3, 2003."; and

(F) by creating a new paragraph (3) to read as follows—

"ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

(A) In accordance with regulations to be promulgated by the Attorney General and the Secretary of State, upon approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence under subsection (a), an alien who is the spouse or child of the alien being granted such status may be issued a visa for admission to the United States as an immigrant following to join the principal applicant, provided that the spouse or child:

(i) meets the requirements in subparagraphs (1)(B) and (D); and

(ii) applies for such a visa within a time period to be established by regulation.

(B) The Secretary of State may retain fees to recover the cost of immigrant visa application processing and issuance for certain spouses and children of aliens whose applications for adjustment of status under subsection (a) have been approved, provided that such fees:

(i) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of such processing and issuance; and

(ii) shall be available until expended for the same purposes of such appropriation to support consular activities.";

(7) in subsection (g), by inserting after "for permanent residence" the following—

"or an immigrant classification"; and

(8) by redesignating subsections (i), (j), and (k) as (j), (k), and (l) respectively, and adding as subsection (i) the following—

"(i) ADMISSIONS. Nothing in this section shall be construed as authorizing an alien to apply for admission to, be admitted to, be paroled into, or otherwise lawfully return to the United States, to apply for or to pursue an application for adjustment of status under this section without the express authorization of the Attorney General."

(b) EFFECTIVE DATE.— The amendments made by sections 6(a)(3), 6(a)(4), and 6(a)(8) of this Act shall be effective as if included in the enactment of the Haitian Refugee Immigration

Fairness Act of 1998. The amendments made by sections 6(a)(1), 6(a)(2), 6(a)(5), 6(a)(6), and 6(a)(7) shall be effective as of the date of enactment of this Act.

SECTION 7. MOTIONS TO REOPEN.

(a) Notwithstanding any time and number limitations imposed by law on motions to reopen, a national of Haiti who, on the date of enactment of this Act, has a final administrative denial of an application for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1988, and is made eligible for adjustment of status under that Act by the amendments made by this Act, may file one motion to reopen exclusion, deportation, or removal proceedings to have the application considered again. All such motions shall be filed within 180 days of the date of enactment of this Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1988.

(b) Notwithstanding any time and number limitations imposed by law on motions to reopen, a national of Cuba or Nicaragua who, on the date of enactment of the Act, has a final administrative denial of an application for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act, and who is made eligible for adjustment of status under that Act by the amendments made by this Act, may file one motion to reopen exclusion, deportation, or removal proceedings to have the application considered again. All such motions shall be filed within 180 days of the date of enactment of this Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act.

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit for your immediate consideration and enactment the "Central American and Haitian Parity Act of 1999." Also transmitted is a section-by-section analysis. This legislative proposal, which would amend the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), is part of my Administration's comprehensive effort to support the process of democratization and stabilization now underway in Central America and Haiti and to ensure equitable treatment for migrants from these countries. The proposed bill would allow qualified nationals of El Salvador, Guatemala, Honduras and Haiti an opportunity to become lawful permanent residents of the United States. Consequently, under this bill, eligible nationals of these countries would receive treatment equivalent to that granted to the Nicaraguans and Cubans under NACARA.

Like Nicaraguans and Cubans, Salvadorans, Guatemalans, Hondurans, and Haitians fled human rights abuses and unstable political and economic conditions in the 1980s and 1990s. Yet these latter groups received lesser treatment than that granted to Nicaraguans and Cubans by NACARA. The United States has a strong foreign policy interest in providing the same treatment to these similarly situated people. Moreover, the countries from which these migrants have come are young and fragile democracies in which the United States has played and will continue to play a very important role. The return of these migrants to these countries would place significant demands on their economic and political systems. By offering legal status to nationals of these countries with longstanding ties in the United States, we can advance our commitment to peace and stability in the region.

Passage of the "Central American and Haitian Parity Act of 1999" will evidence our commitment to fair and even-handed treatment of nationals from these countries and to the strengthening of democracy and economic stability among important neighbors. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

Section-by-Section Analysis of the "Central American and Haitian Parity Act of 1999."

Background

The "Central American and Haitian Parity Act of 1999" is part of the Administration's comprehensive effort to support the process of democratization and stabilization now underway in Central America and Haiti and to ensure equitable treatment for migrants from these countries. The proposed bill would allow qualified nationals of El Salvador, Guatemala, Honduras and Haiti an opportunity to become lawful permanent residents of the United States. Consequently, under this bill, eligible nationals of these countries would receive treatment equivalent to that granted to the Nicaraguans and Cubans under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

Currently, section 202 of NACARA allows certain nationals of Nicaragua and Cuba, and their qualified dependents, to have their immigration status adjusted to lawful permanent residence. Eligibility for this relief requires, among other things, continuous physical presence in the United States since December 1, 1995 (not counting absences totaling 180 days or less).

Although section 203 of NACARA permits certain Guatemalans and Salvadorans to apply for permanent relief from deportation or removal, it does not offer the same opportunities available under section 202. Section 203 does not provide for direct adjustment of status, but instead permits an applicant to apply for suspension of deportation or cancellation of removal. These are discretionary forms of relief which may be denied even if the applicant meets basic eligibility requirements. In addition, the eligibility requirements for section 203 relief are generally more restrictive than for section 202 relief. For instance, most Salvadorans and Guatemalans seeking relief under section 203 must establish that they entered the United States prior to 1991 and that they filed an asylum application within a designated time period. Moreover, eligibility for suspension of deportation and cancellation of removal under section 203 generally requires seven years of continuous physical presence in the United States, as well as a case-by-case determination that the applicant or a qualified family member would suffer extreme hardship if the applicant were deported.

Similarly, while the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) provides special opportunities for relief to certain Haitian nationals, those opportunities are not equal to the benefits provided by section 202. HRIFA does provide for direct adjustment of status, like section 202 of NACARA, but contains narrower eligibility requirements. In general, to be eligible for HRIFA a Haitian national must have filed for asylum or been paroled into the United States before December 31, 1995, and is required to have been continuously present in the United States since that date.

Section-by-Section Analysis

Section 1. This bill may be cited as the "Central American and Haitian Parity Act of 1999."

Section 2(a). This section adds Salvadorans, Guatemalans, Hondurans, and Haitians where NACARA section 202 currently refers to Cubans and Nicaraguans, except in subparagraph (d)(1)(A), relating to dependents. A technical amendment below proposes eliminating the restriction that a dependent must be a particular nationality to adjust under NACARA. In addition, this section extends the application deadline from April 1, 2000, to April 1, 2003, for both principals and dependents. This extension is necessary to provide those made eligible for benefits under this Act with sufficient time to apply for benefits. The extension is made applicable to Cubans and Nicaraguans in the interest of a uniform deadline, and because some individuals of those nationalities are made eligible by the technical amendments in section 5.

Section 2(b). This section provides that the amendments made by section 2(a) shall be effective on the date of enactment.

Section 3. This section allows an applicant to convert an application filed under section 203 of NACARA, which is pending on the date of enactment of this Act and which has not been finally adjudicated, to an application under section 202 of NACARA as amended, pursuant to regulations established by the Attorney General. Many section 203 applicants will be eligible for adjustment of status under amended section 202. However, the application filed under section 203 for suspension of deportation or cancellation of removal will not usually contain the necessary information to make a determination of eligibility for adjustment of status under section 202. Thus, a further application may be required. In addition, the Attorney General may wish to include in conversion procedures a mechanism for allowing the 203 application to be converted without the payment of a new filing fee or with the payment of a supplemental fee. The amendment makes clear that the Attorney General may charge a fee to cover the costs of conversion processing, and that the conversion process does not require the Attorney General to refund fees already paid in connection with an application filed under NACARA section 203.

Section 4. This section allows the Attorney General discretion to consider an application filed under HRIFA, which is pending on the date of enactment of this Act and which has not been finally adjudicated, to be an application under section 202 of NACARA, as amended. This will save the government the expense of processing a new application if the applicant would be denied under HRIFA, but granted under NACARA. In such cases the applicant will be saved the time and money associated with filing a new application under section 202.

Sections 5(a)(1) and 6(a)(1). These amendments provide that the Attorney General may waive both the health-related ground of inadmissibility for aliens with a communicable disease of public health significance and the ground of inadmissibility based upon misrepresentations made by an alien to seek to procure any benefit provided under the INA, in determining an alien's eligibility for adjustment of status under NACARA or HRIFA. In either case, the waiver may be granted for humanitarian reasons, to assure family unity, or when it is otherwise in the public interest. Currently, some aliens who would otherwise be eligible for adjustment under NACARA and HRIFA cannot qualify for the waiver of these grounds of inadmissibility contained in sections 212(g)(1) and 212(i) of the Immigration and Nationality Act (INA) because they do not have the required family relationship to a United States citizen or lawful permanent resident.

In keeping with the ameliorative purpose of NACARA and HRIFA, this amendment would allow a very limited number of aliens to apply for a waiver of the health-related ground of inadmissibility. Of particular concern are Haitian nationals who were paroled into the United States long ago from Guantanamo Bay, Cuba, after they were determined to be infected with the Human Immunodeficiency Virus (HIV). With regard to misrepresentations, the amendment would provide the Attorney General with greater flexibility to grant waivers in compelling cases. It is noted that some applicants for relief may have been fleeing persecution and forced to use false identification documents to secure passage out of their homeland and to the United States. Allowing for waivers in this context is in keeping with the Attorney General's authority to grant waivers under similar circumstances in cases involving the adjustment of status of refugees and asylees.

Sections 5(a)(2) and 6(a)(2). These amendments remove obstacles to adjusting under NACARA and HRIFA for those with a previous order of deportation or removal subject to reinstatement, and those inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the INA for having been previously removed or being unlawfully present after a previous immigration violation and subsequently entering (or attempting to enter) the United States without being admitted. These amendments are in keeping with the ameliorative nature of NACARA and HRIFA. INA section 241(a)(5) bars from any relief under the INA aliens who reenter the U.S. illegally after having been removed or having departed voluntarily under an order of removal. The amendment would allow these aliens to adjust status under NACARA and HRIFA, whether they are principal applicants or the family members covered in subsection (d).

In addition, in order to qualify for an exception to the inadmissibility grounds in sections 212(a)(9)(A) and 212(a)(9)(C) of the INA relating to aliens previously removed or unlawfully present after entering the United States without being admitted, an alien must generally obtain consent from the Attorney General to reapply for admission while the alien is outside the United States. The amendment would allow such consent to qualify an applicant for an exception even if consent were given while the alien was in the United States.

Section 5(a)(3) and 6(a)(3). These amendments resolve a potential conflict between subsection (c) and paragraph (a)(2) of NACARA, and the same sections of HRIFA. Subsection (c) is clear that an applicant with a final order of deportation or removal is not entitled to an automatic stay of deportation, based solely on the filing of an adjustment application. Rather, the alien must apply for a stay. The last sentence of paragraph (a)(2), however, could be read to contain the negative inference that the final order is not effective and enforceable until the application is adjudicated. This would effectively provide an automatic stay in contradiction to subsection (c). While congressional intent seems plain in subsection (c), and the INS has implemented NACARA and HRIFA that way, the amendment would remove any potential ambiguity.

Sections 5(a)(4) and 6(a)(4). These amendments clarify that aliens who are currently in lawful permanent resident alien status cannot "readjust" to the same status under NACARA or HRIFA solely for the purpose of providing benefits to their spouses or dependents. NACARA and HRIFA were designed to provide adjustment to those who did not already have lawful permanent resident status. Spouses and dependents can obtain benefits under the current family-based immigration petitioning system, based on the alien's current status. The INS has interpreted and applied NACARA and HRIFA in this manner, but the amendments would remove any ambiguity. The amendments provide an exception for aliens in deportation or removal proceedings who file for adjustment under NACARA or HRIFA as relief from deportation, to leave undisturbed the current rule that lawful permanent residents may assert adjustment as a defense in these proceedings. These amendments have a greater significance in combination with the amendment below which eliminates the requirement that a dependent be of a particular nationality to receive benefits.

Section 5(a)(5) and 6(a)(5). These amendments provide that NACARA and HRIFA do not require the Attorney General to stay the removal of an alien who is ineligible to adjust under those Acts. Currently, NACARA and HRIFA only address stays sought on the basis of the filing of an application. However, upon passage of this Act aliens with final orders who are made eligible for adjustment will not be able to apply for that relief until a method of application is established. These amendments will address stays in this interim period, where aliens may seek to avoid removal based on the intention to file an application. The amendments will clarify that the Attorney General may deny a stay in this situation if warranted. This is especially important for detained aliens with a final order, to ensure that their removal is not delayed if they are ineligible under NACARA or HRIFA.

Section 5(a)(6) and 6(a)(6). In the interest of family unity, the amendments lift the restriction in NACARA and HRIFA that the spouse or dependent of a principal applicant must also be a Nicaraguan, Cuban, or Haitian national to be granted adjustment of status under those Acts. At the same time, the amendments would require dependents to have entered the United States before the date of enactment of this Act to be eligible for adjustment of status, but would establish an immigrant visa process for dependents outside the United States on that date. The dependent must apply for the immigrant visa within a time period to be established by regulation, and is not subject to the filing deadline applicable to dependents applying for adjustment of status. These amendments will discourage dependents from seeking to enter the United States illegally in order to apply for benefits under NACARA or HRIFA, while ensuring that families of eligible principal applicants will be reunited quickly. The amendments also authorize the

Department of State to use the immigrant visa application processing fees it receives from dependents to support its consular activities.

The amendments also add a requirement for spouses, stepchildren, and unmarried stepsons and stepdaughters that the qualifying marriage was established by the date of enactment of this Act. A similar amendment is made for HRIFA. This will prevent fraud by eliminating the incentive to marry solely for the purpose of obtaining NACARA or HRIFA benefits. A further amendment to HRIFA limits the application period for adjustment of status for dependents to April 1, 2003, the same deadline applicable to dependents under NACARA as amended by this Act. This makes NACARA and HRIFA consistent. There is currently no deadline under HRIFA for dependents.

Section 5(a)(7) and 6(a)(7). NACARA and HRIFA contain specific provisions that no offset is required to the number of visas available under the INA when an alien's status is adjusted under those Acts. The amendments extend this provision to an alien granted an immigrant visa classification under the new procedures established in this Act. In general, these new visa procedures provide an alternate avenue of obtaining benefits for dependents who would have been able to adjust under NACARA and HRIFA. This amendment is necessary to ensure that the granting of benefits under this Act, whether in the United States or abroad, will not affect the availability of immigrant visas.

Section 5(a)(8) and 6(a)(8). The amendments clarify that NACARA and HRIFA do not authorize the admission into the United States of an alien to apply for benefits under those Acts. This is to ensure that an alien cannot come to a port of entry without valid documents and claim eligibility to file for adjustment under NACARA or HRIFA to prevent removal. The INS has interpreted these Acts in this way, but the amendment would remove any ambiguity. The INS has established an overseas parole application process for aliens seeking NACARA and HRIFA benefits. The amendment would ensure that aliens who are overseas must follow this process or seek another legal method of entering the United States to apply for those benefits, such as the immigrant visa process for dependents proposed above.

Section 5(b) and 6(b). These amendments provide that certain technical amendments to NACARA and HRIFA made by sections 5(a) and 6(a) are effective as if included in the enactment of those Acts, and that others are effective as of the date of enactment of this Act. The amendments made effective as if included in the original Acts are generally those which clarify ambiguous language in a manner consistent with the way in which the Attorney General has implemented the Acts. The amendments made effective on the date of enactment of this Act are generally those which affect the scope of eligibility under NACARA and HRIFA, or those which specify new procedural requirements.

Section 7. Due to the technical amendments in sections 5 and 6 of this Act, some individuals may be made eligible for NACARA or HRIFA benefits who have a final administrative denial of an application under one of those Acts. The amendments in this section would ensure that such individuals are not barred from filing a motion to reopen, for the purpose of having their application reconsidered, by any time or numerical limits imposed by law on filing such motions. Such limits are contained in 8 C.F.R. sections 3.2(c)(2) and 3.23(b), for example, which provide that an alien may file one motion to reopen proceedings, and that in most cases the motion to reopen must be filed within 90 days of the date of entry of a final administrative order. Proceedings reopened for this purpose would be limited to consideration of the application for adjustment of status.

Fact Sheet

"Central American and Haitian Parity Act of 1999"

The President today is transmitting to the Congress a legislative proposal entitled the "Central American and Haitian Parity Act of 1999." This legislation would expand section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), which currently provides qualified Cubans and Nicaraguans the opportunity to become lawful permanent residents. The proposed legislation would extend the same benefits to eligible nationals of Guatemala, El Salvador, Honduras, and Haiti.

Like Nicaraguans and Cubans, many Salvadorans, Guatemalans, Hondurans, and Haitians fled human rights abuses or unstable political and economic conditions in the 1980s and 1990s. The United States has a strong foreign policy interest in providing the same treatment to these similarly situated people. In addition, returning migrants to these countries would place significant demands on their fragile economic and political systems. Passage of the "Central American and Haitian Parity Act of 1999" will evidence our commitment to fair and even-handed treatment of nationals from these countries and to the strengthening of democracy and economic stability among important neighbors.

Although special benefits were extended to Guatemalans and Salvadorans under section 203 of NACARA (relating to suspension of deportation and cancellation of removal), and to Haitians under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), the scope of those provisions is in many respects narrower than section 202 of NACARA. The proposed legislation would eliminate this disparity. At the same time, relief would still be available under section 203 of NACARA and under HRIFA so that no one who is currently covered by these laws would be deprived of opportunities for relief.

In addition, the legislation contains technical amendments to both NACARA and HRIFA that would:

- lift the requirement that the spouse, child, or unmarried son or daughter of a principal applicant be of a specific nationality to be granted relief, in the interest of family unity.

- require dependents to have entered the United States before the date of enactment of the Central American and Haitian Parity Act, but also establish an immigrant visa process for dependents outside the United States on that date. This will discourage illegal entry to obtain benefits, while ensuring that families of eligible principal applicants will be united quickly.

remove certain obstacles to relief, such as the requirement that an alien be outside the United States to apply for an exception to certain inadmissibility grounds relating to previous removal from the United States. The legislation would also expand the Attorney General's authority to consider, on a case-by-case basis, whether to grant relief to an applicant who might otherwise be precluded (a) based on a health-related condition, or (b) for attempting to enter the United States (or obtain an immigration benefit) through misrepresentation.

Talking Points
Dreier/Lofgren H-1B Bill

I. We recommend modifying the following provisions as specified.

H-1B Cap

- Suggest decreasing the cap to 175,000-180,000 visas for FY 2001-2003.

- Maintain the set-asides for institutions of higher education and persons with a master's degree or higher.

Per Country Ceiling

- Suggest limiting this provision to the length of the cap increase (e.g., in this bill October 1, 2003) - terming the provision as a pilot. This would allow for an evaluation of the impact this provision may have on immigration policy prior to adopting it permanently.

One-time Protection Under the Per Country Ceiling

- Suggest limiting this provision to applications that are filed within the 1st three years the nonimmigrant is in the country on an H-1B visa; OR,

- Suggest limiting the provision to H-1B workers that have already applied for adjustment of status as of the effective date of the bill.

Extension of Stay due to Lengthy Processing (same changes as above)

- Suggest limiting this provision to applications that are filed within the 1st three years the nonimmigrant is in the country on an H-1B visa; OR,

- Suggest limiting the provision to H-1B workers that have already applied for adjustment as of the effective date of the bill.

Internet Recruitment

- Suggest changing this provision to allow Internet recruitment to be an acceptable form of recruitment, but not the exclusive form of recruitment.

Application of Internet Based Technologies

- Suggest extending the time period to establish an Internet based system from 12 months to 18 months. It will take time to establish the Technology Advisory Committee and then develop and implement the system.

W-2 Forms

- Suggest deleting this provision. It creates unnecessary burden on employers and DOL, without providing any benefit.

Fee Structure & Distribution

- See the attached options.

- Suggest adding language that allows the DOL and INS to spend the fee on activities related to the administration of the permanent ALC program in addition to the H-1B program.

II. We recommend adding the following provisions.

Extension of Attestation Requirements and DOL Investigative Authority

- Suggest extending these requirements through the length of the cap increase – e.g., in this bill until October 1, 2003.

Permanent Alien Labor Certification (ALC) Program

- Suggest adding a provision that states that DOL has enforcement authority under this program. (See the DOL draft language in the FY 2001 fee proposal.)

- Suggest adding subpoena authority for the ALC program.

III. Other items to consider.

Permanent ALC Fee

- Consider adding the Administration's FY 2001 fee proposal -- $1,500 per ALC application.

H-1B Damages Provision

- Consider modifying the damages provision relating to employment contracts to make it more favorable to the worker – currently State court ruling.

Definition of Exempt H-1B Workers

- Consider phasing in a higher compensation level, currently $60,000. For example, FY 2002 – $62,500; FY 2003 -- $65,000.

Draft

H-1B Fee Revenue & Distribution

	Current Fee $500 107,500 cap		Hatch/Abraham $500 245,000 cap		Smith $1,000 107,500 cap		Dreier/Lofgren $1,000/$500 200,000 cap	
	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue
Job Training Activities	56.3%	47,742,400	36.2%	68,056,000			25%	56,125,000
DOL	56.3%	47,742,400	36.2%	68,056,000				
DOC							25%	56,125,000
Incumbent workers								
Educational Activities	36.2%	30,697,600	56.5%	106,220,000	92.5%	131,350,000	65%	145,925,000
Low-Income (NSF)	28.2%	23,913,600	30.7%	57,716,000			15%	33,675,000
Merit-based (NSF)	4.0%	3,392,000			88.5%	125,670,000		
K-12 Reform (NSF)	4.0%	3,392,000	23.3%	43,804,000	4.0%	5,680,000		
K-12 Grad Teach (NSF)								
Loan Forgiveness (Ed)							33%	74,085,000
Upward Bound (Ed)							17%	38,165,000
Gear-Up (Ed)								
Digital Divide			2.5%	4,700,000				
Admin./Enf. Activities	7.5%	6,360,000	7.5%	14,100,000	7.5%	10,650,000	10%	22,450,000
INS	1.5%	1,272,000	1.5%	2,820,000	1.5%	2,130,000	2%	4,490,000
DOL	6.0%	5,088,000	6.0%	11,280,000	6.0%	8,520,000	8%	17,960,000
Fraud (INS & State)								
Total	100.0%	84,800,000	100.2%	188,376,000	100.0%	142,000,000	100%	224,500,000
5 year receipts		248,400,000		599,600,000		305,600,000		913,100,000
fee time period		1999-2001		1999-2002		1999-2001		1999-2003

	Option 1 $1,000		Option 2 $1,000		Option 3 $1,000		Option 4 $1,000	
	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue	2001 Percentage	2001 Revenue
Job Training Activities	35%	82,985,000	45%	106,695,000	50%	118,550,000	56.3%	133,487,300
DOL	20%	47,420,000	25%	59,275,000	25%	59,275,000	56.3%	133,487,300
DOC								
Incumbent workers	15%	35,565,000	20%	47,420,000	25%	59,275,000		
Educational Activities	35%	82,985,000	30%	71,130,000	23%	54,533,000	36.2%	85,830,200
Low-Income (NSF)	7%	16,597,000	7%	16,597,000	5%	11,855,000	28.2%	66,862,200
Merit-based (NSF)	8%	18,968,000	8%	18,968,000	10%	23,710,000	4.0%	9,484,000
K-12 Reform (NSF)							4.0%	9,484,000
K-12 Grad Teach (NSF)	10%	23,710,000	5%	11,855,000	5%	11,855,000		
Loan Forgiveness (Ed)								
Upward Bound (Ed)	5%	11,855,000	5%	11,855,000				
Gear-Up (Ed)	5%	11,855,000	5%	11,855,000	3%	7,113,000		
Digital Divide								
Admin./Enf. Activities	30%	71,130,000	25%	59,275,000	27%	64,017,000	7.5%	17,782,500
INS	20%	47,420,000	15%	35,565,000	15%	35,565,000	1.5%	3,556,500
DOL	5%	11,855,000	5%	11,855,000	7%	16,597,000	6.0%	14,226,000
Fraud (INS & State)	5%	11,855,000	5%	11,855,000	5%	11,855,000		
Total	100%	237,100,000	100%	237,100,000	100%	237,100,000	100.0%	237,100,000
5 year receipts		971,900,000		971,900,000		971,900,000		971,900,000
fee time period		1999-2003		1999-2003		1999-2003		1999-2003

*The cap is held constant in each option at 175,000.
*The fee level is held constant in each option. It exempts colleges, universities, and non-profits from the fee.
*All of the options assume a cap increase through 2003.

H-1B Legislation

Key Issues

1. H-1B Cap

   ✗ *Set-asides for Master's or Higher Degree.* Include a set-aside within the cap for workers with a master's degree or higher. Phase-in the increase – 40% in 2001, 45% in 2002, and 50% in 2003.

   Justification. Currently, approximately 40% of H-1B workers have a master's or higher degree. The set-aside should increasingly target visas towards higher skilled workers.

✗ *Set-asides for Higher Education.* If included, should be within the cap (either as a fixed number or a percentage).

2. Registry Date and NACARA Parity

   ✗ Include the Administration's proposals on the registry date and NACARA parity in the bill.

3. H-1B Fee Level and Distribution

   ✗ Increase the fee level to $2,000 per petition.

   Justification. Employers currently pay $500 per petition. Given the substantial increase in the cap, the requirement for an on-line application system, and the permanent extension of stay for H-1B workers due to the backlogs at INS and DOL, the fee should be increased to adequately fund administration and enforcement, as well as additional training and educational activities for U.S. workers. As structured in current law, the $2,000 fee would apply to all petitions (initial status, extension of stay, and changing employers) with the exception of colleges/universities, and non-profit and Government research organizations.

   ✗ Revise the fee distribution – 50% for training activities in DOL, 25% for educational activities, and 25% for INS and DOL to cover a portion of the administration and enforcement of employment-based immigration programs.

   Justification. The first and primary policy for increasing the availability of high-skilled workers must be focused on increasing the education and training of U.S. workers. The bipartisan Workforce Investment Act (WIA) of 1998, being implemented by DoL, establishes a comprehensive system to provide workers with the information, advice, job search assistance, education, training and support they need to get and keep good jobs, and that provides employers with skilled workers. The infrastructure for that system is now in place, and efficiency calls for its utilization.

In addition, given the H-1B program is a "feeder" program for the permanent employment-based program and these programs are operated and enforced by the same staff and equipment, it is appropriate to allow the agencies to fund administrative and enforcement costs related to other employment-based programs with this fee. Without such funding, backlogs will dramatically increase and fraud will go undetected.

4. Extension of Attestation Requirements and DOL Investigative Authority

✗ Extend these requirements through the length of the cap increase – e.g., if the cap increase is until FY 2002 then these provisions would be extended until October 1, 2002.

Justification. The Administration fought hard for increased protections for U.S. workers. These protections should be extended through the length of the cap increase. Currently, the provisions sunset in October, 2001.

5. **Internet Recruitment**

✗ Allow Internet recruitment to be an acceptable form of recruitment, but not the exclusive form of recruitment.

Justification. Employers filing a petition for permanent employment must take a number of steps to prove good faith recruitment of U.S. workers. H-2A, H-2B, H-1C, and H-1B dependent employers and willful violators of H-1B must also recruit U.S. workers. Allowing Internet-only recruitment would gut current worker protections by allowing an insufficient test of the U.S. labor market prior to seeking foreign workers. In addition, it would unfairly disadvantage those on "the other side" of the digital divide who seek equal opportunity to apply for these jobs. Lastly, accepting Internet-only recruitment in the immigration context may set a precedent for other employment-related issues such as affirmative action and non-discrimination.

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H-1B Legislation
Other Issues

1. One-time Protection Under the Per Country Ceiling and Extension of Stay due to Lengthy Processing

✗ Limit one-time protection and extension of stay to applications that are filed within the 1st three years the worker is in the country on an H-1B visa; **OR,**

✗ Limit one-time protection and extension of stay to H-1B workers that have already applied for adjustment of status as of the effective date of the bill.

Justification. Providing unlimited protection for these workers would create a back-door permanent employment-based immigration program. Recognizing that inadequate government processing has contributed to this problem, providing relief that effectively mitigates the impact on the labor market is appropriate.

2. Technical Issues

✗ Include a provision that makes the processing of "failure to select" cases (when a U.S. worker is passed over for a foreign worker) consistent with citizenship status discrimination cases.

Justification. Under current law, a worker must go through a very complicated process. First, the worker must first file a claim with DOJ for a reasonable cause determination. If that is approved, the worker then files with the Federal Mediation and Conciliation Service for findings of fact. If found, the worker is sent back to DOJ for relief. Amending the current law to provide for administrative hearings instead of arbitration is desirable because it would provide consistency in the procedures and evidentiary standard used to resolve these similar causes of action and would be more cost-efficient.

✗ Include the Administration's FY 2001 permanent alien labor certification (ALC) fee proposal -- $1,500 per ALC application.

Justification. Given employers are sponsoring these workers for permanent employment in the U.S., it is appropriate to require a fee to fund additional training and educational activities, as well as administration and enforcement.

✗ *Application of Internet Based Technologies*. If included, provide at least 18 months for INS and DOL to establish an Internet based system.

✗ *W-2 Forms*. A provision requiring employers to provide copies of W-2 forms to DOL creates unnecessary burden on employers and DOL, without providing a benefit.

✗ Clarify DOL's current enforcement authority under the permanent alien labor certification (ALC) program.

Justification. This is very important for DOL's re-engineering efforts to be a success.

3. Per Country Ceiling

✗ Include a provision to require DOS, in 3 years, to study the impact this provision has on U.S. immigration policy; **OR** sunset this provision with the length of the cap increase.

Justification. Given this provision basically lifts the per country/area ceiling in a calendar quarter, it is important to evaluate the long-term impact this provision will have on U.S. immigration policy.

Proposed Amendment to ACWIA

When the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) was enacted, it lacked a cost-effective mechanism to adjudicate claims by U.S. workers who alleged they were passed over for foreign professionals on temporary H-1B visas ("failure to select" complaints). ACWIA should be amended to utilize the existing citizenship status discrimination procedures created by the Immigration Reform and Control Act of 1986 (IRCA) for U.S. workers who are not selected.

ACWIA created a complicated process under which the Department of Justice makes reasonable cause determinations in U.S. workers' claims that they applied for a job, were qualified, but were not selected by certain covered employers petitioning for H-1B visas. Next, it sends the worker to the Federal Mediation and Conciliation Service (FMCS) for findings of fact, and then finally back to the Department of Justice for relief. This system, for which no funding was provided, is unfamiliar to employers and workers alike, and relies upon arbitrators not used before in immigration-related employment discrimination cases.

This amendment would make the processing of "failure to select" cases consistent with the already-existing mechanism for resolving analogous citizenship status discrimination cases under IRCA, and would be more cost-efficient for the government. Amending ACWIA to provide for administrative hearings instead of arbitration also is desirable because it would provide consistency in the procedures and evidentiary standard used to resolve these similar causes of action.

Since ACWIA currently lacks a funding mechanism, the amendment authorizes such sums as may be necessary to carry out the Attorney General's new "failure to select" complaint receipt, review, investigatory and prosecutorial functions.

The Department of Justice proposes that ACWIA be amended to reflect a change from mandatory arbitration to adjudication by Department administrative law judges. The Department proposes that the first sentence in subparagraph (1)(5)(B) of ACWIA be amended to read as follows:

> (B) Aggrieved individuals who have submitted a resume or otherwise applied in a reasonable manner for the job that is the subject of the condition of paragraph (1)(G)(i)(II) may file charges with the Attorney General respecting an employer's failure to meet the condition of paragraph (1)(G)(i)(II) or petitioner's misrepresentation of material facts with respect to such condition.

The Department also proposes that subparagraph (1)(5)(C), (D), and (E) be deleted and amended to state:

> (C) If the Attorney General finds that a charge has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such charge has occurred, the Attorney General shall determine whether or not to bring a complaint with respect to such failure or misrepresentation before an administrative law judge. Where the Attorney General determines not to bring such a complaint, the aggrieved individual may file such a complaint directly before an administrative law judge within 90 days of receiving notification that the Attorney General has determined not to file such a complaint. Where the Attorney General or the aggrieved individual brings such a complaint, the complaint shall be filed and adjudicated pursuant to the procedures and rules set forth under § 274B(e),(f), and (i). Judicial review of such adjudications shall be governed by § 274B(j)(1), (2), and (3).
>
> (D) Where the administrative law judge finds, upon the preponderance of the evidence, that an employer failed to meet the condition of paragraph (1)(G)(i)(II) or misrepresented a material fact with respect to such condition, (i) the administrative law judge may impose administrative remedies (including civil monetary penalties in an amount not to exceed $1000 per violation or $5000 per violation in the case of a willful failure or misrepresentation and reasonable attorneys' fees to the prevailing party, other than the United States) as the administrative law judge finds appropriate; and (ii) the Attorney General shall not approve petitions filed with respect to that employer and for aliens to be employed by the employer under section 204 or 214(c)
>
> > (I) for a period of 1 year; or
> > (II) in the case of a willful failure or willful misrepresentation, for a period of 2 years.

The Department recommends that subparagraph (F) be re-designated as subparagraph (E). The new subparagraph F should authorize to the Attorney General such sums as may be necessary to carry out the Attorney General's investigatory and prosecutorial functions.