

EXAMINATIONS (INS)

The present structure of Headquarters Examinations dates from the reorganization of INS in 1994. In this structure, the Associate Commissioner for Examinations is directly under the Executive Associate Commissioner for Programs. The Associate Commissioner for Examinations, in turn, supervises the Assistant Commissioners for Benefits, Inspections, and Records, and the Director of the Administrative Appeals Office. In a recent development, the Executive Associate Commissioner for Programs has announced the establishment a new Naturalization Division which will be headed by an acting Assistant Commissioner. Establishment of this division is in recognition of the INS commitment to naturalization as the final step in assimilation of the immigrant into American society. This Assistant Commissioner will also be under the Assistant Commissioner for Examinations.

Benefits

The change of name of the former Adjudications and Naturalization Division to the Benefits Division and the restructuring of the division were 1996 developments. There are six branches in the Benefits Division: Program Administration, Residence and Status Services, Business and Trade Services, Naturalization and Citizenship Services, Information Program, and Customer Service. The division also has a Service Center Coordination Office. The name "Benefits Division" reflects the image of the division as a service provider, and the realignment of branch responsibilities, with appropriate name changes, provides consistency in structure with the structure of the Service Centers.

Establishment of branches within the Adjudications and Naturalization Division occurred in 1992. The original branches were Operations and Support, Immigrant, Nonimmigrant, and Naturalization and Special Projects. Eventually, the outreach element of Examinations was added and renamed the Examinations Operations Facilitation Branch. The policy-developing branches among the original branches were the Immigrant, Nonimmigrant, and Naturalization and Special Projects branches. Under the new structure, Residence and Status Services, Business and Trade Services, and Naturalization and Citizenship Services are the branches directly involved in policy and regulatory development.

The shifting of responsibilities within the branches can be most clearly seen in the new Business and Trade Services Branch and the Residence and Status Services Branch. The Business and Trade Services Branch handles all matters formerly under the Nonimmigrant Branch with the addition of employment-based immigrant visa petitions which were formerly handled by the Immigrant Branch. All remaining responsibilities of the Immigrant Branch, including relative visa petitions and adjustment of status, are now the concern of the Residence and Status Branch.

The Residence and Status Services, Business and Trade Services, and Naturalization and Citizenship Services branches are product line branches, the products being the various applications and petitions for benefits which come before the Service. Officers in these branches write regulations and policy directives, engage in anti-fraud programs, and participate in the development of systems to support the adjudicative process. These officers also provide

guidance, both verbal and written, on the law, regulations, and policy as they relate to the seeking of and dispensation of benefits.

The Program Administration Branch of Benefits Division has budget and analysis responsibilities, as well as responsibility for training and systems development. The branch is also the lead for the development of INS application and petition forms insuring that they are "user friendly" not only for applicants and petitioners but also for those INS or contract employees charged with data input.

The Information Program Branch is primarily concerned with providing information to the public, particularly through the two INS telephone centers. The Customer Service Branch is involved in outreach, particularly to organizations which assist persons in the immigration process. This branch also provides telephone information and correspondence services at Headquarters, answering inquiries on immigration law and procedures.

Since the Assistant Commissioner for Benefits is the first-line supervisor of the four Service Center Directors for both program and operational purposes, the Benefits Division has a Service Center Coordination Office which is an advocate for the centers to the various branches of the Benefits Division and to other Headquarters programs. This office also coordinates support services for the centers, as well as activities among the centers.

Inspections

~~The Inspections Division of Examinations~~ is charged with the development of systems and programs which will facilitate the entry of international travelers while at the same time protecting the interests of the United States and maintaining the integrity of its borders through the detection of fraud and criminality.

There are four teams and one unit within Inspections. The four teams, each of which is headed by a chief, are Air/Sea, Land, Professional Development, and Automation. The unit is the Carrier Affairs Unit which is subdivided into the Lookout Unit and the National Fines Office.

The Air/Sea Team is charged with handling all policy issues relating to the entry of crew and passengers by commercial aircraft or vessels. Officers of this team are responsible, among other things, for the Visa Waiver Pilot Program, Transit Without Visa issues, negotiations for pre-clearance locations (inspections conducted overseas), security standards for in-transit lounges, standards for international travel documents, and the carrier consultant program (an educational program on travel documents for carrier representatives).

The Land Team deals with issues such as entry of persons under the North American Free Trade Agreement (NAFTA), border crossing cards, liaison with trade associations on both borders, North American Indian issues, liaison regarding port of entry facilities, and issues relating to cross-border trucking, small boats, and private aircraft.

The Professional Development Team, in coordination with Field Operations, handles staffing, budget, training, uniform, and firearms issues. Officers of this team are involved in the development of performance measurements for inspectors, auditing of overtime expenditures and development of overtime policy, and customer surveys.

The Automation Team is involved in the development of programs such as INSPASS (a system to facilitate the entry of business persons who travel frequently), paperless data collection at entry, and the sharing of data with the Department of State to facilitate the entry of immigrants. This team is Inspection's link to the INS automation office, Information Resources Management.

The Lookout Unit has charge of the system which insures that those who should not get into the United States do not get in, as well as enabling INS to identify persons who are of interest to other agencies, most particularly law enforcement agencies. The National Fines Office initiates and follows up on fines for violations of immigration laws, particularly those relating to carriers bringing persons to the United States.

Records

The Records Division has responsibility for all matters pertaining to INS records maintained in INS offices, Federal Records Centers, and INS archives. This division is also involved in projects relating to centralization of records and electronic records (in other words, getting away from paper).

Administrative Appeals Office

This office is divided into the Administrative Appeals Unit and the Legalization Appeals Unit. It adjudicates all appeals made to the Associate Commissioner for Examinations. On the Administrative Appeals side, these include appeals on the breaching of bonds and denials of petitions for employment-based immigrants and nonimmigrants, applications for reentry permits, applications for certificates of citizenship, and petitions for orphans. The Legalization Appeals Unit adjudicates appeals on denials of, or termination of, benefits under the provisions of the Immigration Reform and Control Act of 1986.

Relationship of Examinations to Field Operations

With the 1994 reorganization, operational responsibilities pertaining to Benefits and Inspections were given to the Office of Field Operations. The mission of Field Operations is twofold: seeing to it that the law, regulations, and policies are properly implemented in the field, and that field offices have the resources in personnel and equipment to accomplish their tasks.

There are four branches within the Office of Field Operations at Headquarters; one of the branches has direct relationship to Examinations while the other two branches have less of a relationship. The Services Branch of Field Operations has officers whose primary responsibilities

relate to Adjudications and officers who are primarily concerned with inspections issues. All regulations and policy directives written by Examinations must be cleared by Field Operations before they go to the field. The two branches with somewhat of a relationship to Examinations are the Resource Branch and the Operational Support Branch. Plans developed by Examinations (both Benefits and Inspections) which involve personnel or equipment must pass through Field Operations for implementation.

IMMIGRANT ELIGIBILITY DETERMINATION (INS)

As is the case with the nonimmigrant visa issuing process, INS determines eligibility for immigrant benefits under the INA through the adjudication of petitions and applications.

As a general rule, a petition for immigrant classification must be filed with and approved by INS before an alien is eligible to apply for an immigrant visa. In certain limited cases, an I-130 relative visa petition may be filed with and approved by a U.S. consular officer.

Visa Petitions

An I-130 relative visa petition is filed with INS by a U.S. citizen who is seeking classification of an alien as an immediate relative (spouse, parent, or unmarried minor child); as a first preference unmarried son or daughter (over twenty-one years of age); as a third preference married son or daughter; or as a fourth preference brother or sister. It is also filed by a lawful permanent resident who is seeking classification of an alien as a second preference spouse, unmarried minor child, or unmarried son or daughter.

Form I-130 is filed the INS service center which has jurisdiction over the place where the petitioner is residing. If filed concurrently with an application for adjustment of status (Form I-485), it may be filed with the INS office having jurisdiction over the alien beneficiary's residence in the United States. Usually, this office will be the local INS office (district office or sub-office); however, aliens residing in the jurisdiction of the Baltimore, Maryland, district office file adjustment applications (and any concurrent I-130 petition) with the Vermont Service Center in St. Albans, Vermont.

INS overseas offices may accept and adjudicate I-130 petitions filed by petitioners who reside within their jurisdictions. They may also adjudicate I-130 petitions for petitioners who do not reside in their jurisdictions when it is established that emergent or humanitarian reasons exist, or in the national interest.

In countries where there is no INS office, a U.S. consular officer may accept and approve an I-130 filed by a petitioner who resides in the consular jurisdiction, or in emergent or humanitarian circumstances, or in the national interest. Consular officers may only approve I-130 petitions; petitions for denial must be referred to INS.

Children who meet the definition of "orphan" as found in section 101(b)(1)(F) of the Act are eligible for classification as immediate relatives of U.S. citizens. Usually adoptive parents will begin the process by filing an advanced processing application (Form I-600A) with INS. An advanced processing application relates to the eligibility of the adoptive parent(s). At least one adoptive parent must be a U.S. citizen, and they must demonstrate that they will give the child proper care when the child arrives in the United States. Advanced processing is advisable when a child has not been identified or when the adoptive parent(s) have not yet received full documentation on the child. If the parent(s) have identified the child and have full documentation, they may file the Form I-600 petition to classify the child as an eligible orphan.

In such a case, Form I-600 is not only a petition but also an advanced processing application.

An approved advanced processing application is good for eighteen months; consequently, a child must be identified and an I-600 filed during that time period.

An advanced processing application is filed with the INS local office (district office or sub-office) having jurisdiction over the adoptive parent(s)' U.S. residence. If the adoptive parent(s) are residing in Canada, the application is filed with the INS local office which has jurisdiction over the adoptive parent(s)' proposed place of residence in the United States. If the parent(s) are residing in a foreign country other than Canada, the application may be filed with the INS overseas office having jurisdiction over the adoptive parent(s)' foreign residence, or with the INS stateside local office having jurisdiction over their intended place of residence in the United States.

There are also filing options for the I-600 petition. If the parent(s) are not going abroad to locate and/or adopt an orphan, the petition must be filed with the INS local office having jurisdiction over their U.S. residence. If the parent(s) are going overseas to locate and/or adopt and an advanced processing application has been approved, the petition may be filed at the local stateside INS office or at the overseas INS office if there is one in the foreign country, or with the U.S. consulate if there is no INS office in the country. As was the case with I-130 petitions, U.S. consular officers may only approve I-600 petitions. Petitions for denial must be referred to INS.

Form I-360 is a multi-purpose petition form used to classify an alien as an Amerasian, widow(er), or special immigrant. It has recently been designated as the form to be used by a self-petitioning spouse or child of an abusive U.S. citizen or lawful permanent resident.

An Amerasian child of a U.S. citizen may be classified as an immediate relative, an unmarried son or daughter, or a married son or daughter, as appropriate. The I-360 may be filed by the person claiming to be an eligible Amerasian, or by anyone in his or her behalf. The petition is filed with the INS service center having jurisdiction over the alien's intended place of residence in the United States, or with the INS overseas office having jurisdiction over the alien's residence abroad.

The jurisdictional provisions for the filing of an I-360 petition by the widow or widower of a U.S. citizen are the same as those for the filing an I-130 petition. An I-360 by the spouse or child of an abuse U.S. citizen or lawful permanent resident may only be filed in the United States. Filing provisions are the same as those for filing an I-130 in the United States.

Form I-360 is also used for classification of aliens as special immigrants. When used for ministers of religion or religious workers, the petition must be filed at the INS service center having jurisdiction over the intended place of employment in the United States. If used for a Panama Canal Zone employee, the petition must be filed at the INS Texas Service Center, or at the U.S. Embassy in Panama. If used by certain foreign medical graduates, the petition is filed with the INS service center having jurisdiction over the alien's U.S. residence. If used for a special immigrant with certain specific relationships to an international organization, the petition

may be filed at the INS service center having jurisdiction over the alien's U.S. residence, or at the local INS office having jurisdiction over the alien's U.S. residence if filed with an adjustment of status application. In the case of special immigrant juveniles, the petition is filed at the local INS office which has jurisdiction over the juvenile's U.S. residence; the petition may be filed concurrently with an adjustment of status application. A petition for a U.S. military special immigrant may be filed with the INS Service Center having jurisdiction over the alien's U.S. residence, or with the local INS office if filed concurrently with an adjustment of status application.

Form I-140 is the petition form used to classify an alien as a first, second, or third preference immigrant worker. It is filed by a prospective U.S. employer for first preference classification of an alien as a multinational executive or manager, or as an outstanding professor or researcher; second preference classification; or third preference classification. The alien, or anyone in the alien's behalf, may file an I-140 for first preference classification as an alien of extraordinary ability, or for second preference classification when the alien is simultaneously filing for a national interest waiver of the job offer/labor certification requirement.

Form I-140 is always filed at the INS service center having jurisdiction over the intended place of employment in the United States. Under current regulations, it may not be filed concurrently with an adjustment of status application.

A petition to classify an alien as an entrepreneur (investor) is filed on Form I-526 by the alien in his or her behalf with the INS service center having jurisdiction over the area where the alien's new commercial enterprise is or will be primarily doing business.

If an alien is outside the United States, the approved immigrant visa petition (I-130, I-140, I-600, I-600A, I-526, I-360, or I-730) is forwarded to the Department of State's National Visa Center in Portsmouth, New Hampshire, for commencement of the visa-issuing process. The only exception to this process is the fiance/fiancee petition, Form I-129F, which is sent by the approving INS office directly to the visa-issuing consular post. If the alien is in the United States and a visa number is immediately available, the alien may file for adjustment of status with the INS local office having jurisdiction over his or her U.S. residence. Aliens for whom section 245(i) of the Act is applicable may pay the designated sum in addition to the ordinary fee for adjustment (if applicable) and file for adjustment. These aliens may also process overseas, but if they do so, pursuant to section 212 (o) of the Act, they must remain outside the United States for ninety days before being to obtain an immigrant visa.

An applicant for adjustment of status files the application on Form I-485 with the INS local office having jurisdiction over his or her U.S. residence. Applicants residing in Maryland file with the Vermont Service Center in St. Albans, Vermont.

Waiver Applications

Applicants for immigrant visas or adjustment of status who are found to be excludable from the United States may be eligible to file for certain waivers of the grounds of excludability.

The most common types of immigrant waivers are those provided for by sections 212(g), (h), and (i) of the Act. Under section 212(g), medical grounds of exclusion relating to diseases of public health significance may be waived in the case of certain relatives of U.S. citizens, lawful permanent residents, or aliens who have been issued immigrant visas. Sections 212 (h) and (i) relate to waivers of criminal and fraud grounds of exclusion. Again aliens are eligible due to certain familial relationships.

The form for these waiver applications is Form I-601. If the alien is an applicant for an immigrant visa, the application is filed with the U.S. consular officer who forwards it for adjudication to the appropriate overseas office of INS. Medical waiver applications require review by the U.S. Public Health Service (Centers for Disease Control) before final action by INS. Applicants for adjustment of status may file Form I-601 concurrently with the adjustment application. As previously noted, with the exception of residents of Maryland, these applications are filed with the local INS office.

Aliens who are or were J exchange aliens and who are excludable because of the two-year foreign residency requirement of section 212(e) of the Act may not apply for an immigrant visa or adjustment of status until they have completed the two-year requirement or have received a waiver thereof. The methods for applying are the same as those required of aliens seeking nonimmigrant H or L visas.

The procedures for filing for permission to reapply for admission to the United States by an immigrant visa applicant who has been deported or removed from the United States are the same as they are for nonimmigrant visa applicants. An applicant for adjustment may file Form I-212 for permission to reapply in conjunction with his or her application for adjustment. An alien who is an applicant for an immigrant visa at a U.S. consular post whose departure from the United States will execute an order of deportation may file Form I-212 before departure and receive a conditional approval depending on his or her satisfactory departure.

Removal of Conditions

Aliens who have been admitted as conditional permanent residents based on a marriage to a U.S. citizen or lawful permanent resident are required to file for removal of conditions during the ninety-day period immediately preceding the second anniversary of the date of permanent residence. The same is true of conditional permanent residents who received that status as entrepreneurs (investors). Form I-751, joint petition for removal of conditions, is filed by the alien and spouse with the INS service center having jurisdiction over the alien's U.S. residence. Entrepreneurs file Form I-829 for removal of conditions with the INS service center having jurisdiction over the location of the entrepreneur's commercial enterprise in the United States. Form I-751 may also be used as a waiver application in cases where the qualifying marriage has been terminated, or in cases where there has been battery or cruelty on the part of the U.S. citizen or lawful permanent resident spouse.

Immigrant Documents

There are times when lawful permit residents are required to apply for new alien registration receipt cards (Form I-551). These times include when a card is lost or mutilated, or when the lawful permanent resident changes his or her name. Recently INS has sought to have all lawful permanent residents who hold the old Form I-151 cards apply for and receive the new Form I-551.

Applications for new alien registration receipt cards are made in person on Form I-90 at the local INS office having jurisdiction over the alien's U.S. residence. Exceptions to the in-person rule may be made when the lawful permanent resident is confined due to sickness or infirmity. Adjudication of applications are made at the appropriate INS service center. Cards are currently being processed by a contractor, the Immigration Card Facility in Grand Prairie, Texas.

INS produces and issues two travel documents: the reentry permit and the refugee travel document. A reentry permit enables a lawful permanent resident to apply for admission to the United States after an overseas stay of up to two years. It is also issued to lawful permanent residents who are unable to obtain their own national passports. A refugee travel document may be issued to an alien holding refugee or asylee status, or to a lawful permanent resident who received such status as a direct result of his or her being a refugee or asylee. With certain exceptions, a reentry permit is valid for two years; a refugee travel document is valid for one year.

Applications for either document are filed on Form I-131 with the INS Nebraska Service Center in Lincoln, Nebraska. Applications may not be filed from outside the United States.

NONIMMIGRANT ELIGIBILITY DETERMINATION (INS)

In the nonimmigrant visa issuing process, the U.S. Immigration and Naturalization Service (INS) determines eligibility for benefits sought under the Immigration and Nationality Act (INA) by making decisions on applications and petitions.

In a number of instances, aliens seeking to enter the United States on a temporary basis apply for visas directly to a U.S. consulate. In other instances, however, aliens must be the beneficiaries of petitions filed with INS in their behalf. In both these scenarios, there are times when an alien will have to file an application with INS to overcome a roadblock to visa issuance.

Visa Petitions

The most common of the nonimmigrant visa petitions is Form I-129. This form is filed by a U.S. employer seeking classification of an alien as an H-1, H-2A, H-2B, or H-3 temporary worker; by an employer seeking classification of an alien as an L-1 intracompany transferee; by a petitioner seeking classification of an alien as an O or P temporary worker; or by a U.S. employer seeking classification of a Mexican citizen as a TN professional under the North American Free Trade Agreement (NAFTA). Approval of a petition acknowledges that the petitioner has established the alien beneficiary's eligibility for the classification, and it enables the alien to apply at a U.S. consulate for a nonimmigrant visa in the classification or to apply for admission to the United States in the classification if the alien is visa-exempt. Aliens who are already in the United States in legal nonimmigrant status may use the same I-129 to apply to INS for a change of nonimmigrant classification. Form I-129 is also used for approval of an international cultural exchange program under the Q classification. In such a case, the same Form I-129 is used for classification of one or more individuals as Q nonimmigrants.

In general, petitions for H, L, O, and P classification are filed with the INS service center having jurisdiction in the area where the alien will perform services or receive training. Petitions for Mexican citizens seeking classification as NAFTA professionals are filed exclusively with the INS Nebraska Service Center in Lincoln, Nebraska. Petitions under the Q classification are filed with the service center having jurisdiction over the area where the cultural visitor(s) will perform services or labor or receive practical training.

As noted earlier, several other nonimmigrant visa classes make their applications directly to U.S. consulates without any prior action by INS. These include the diplomatic classes A and G, B visitors, C transits, D crewmembers, E treaty traders and investors, I members of the media, N aliens, R religious workers, and S witnesses and informants.

F and M students also make direct visa applications to U.S. consulates, but only after receiving a Form I-20 certificate of eligibility from a school which has been previously approved by INS for the acceptance of nonimmigrant foreign students. An application by a school for approval to accept foreign students is filed on Form I-17 with the INS local office having jurisdiction over the place where the school is located.

Applicants for J exchange visitor visas apply directly to a U.S. consulate by presenting a Form IAP-66 certificate of eligibility from their program sponsor. This visa is under the auspices of the United States Information Agency (USIA). USIA's involvement in the visa process will be discussed elsewhere.

An alien seeking classification as the fiance/fiancee of a U.S. citizen must be the beneficiary of an approved I-129F petition which has been filed by the U.S. citizen with the INS service center having jurisdiction over the place where the U.S. citizen resides in the United States.

In cases involving petition action by INS, notification is provided to the U.S. Department of State so that the appropriate consulate may act on the alien's nonimmigrant visa application.

Certain aliens are exempt visas, the most significant group being Canadian citizens and landed immigrants of Canada with British Commonwealth nationality. These aliens, however, are required to have passports when coming to the United States from outside the Western Hemisphere. If the alien must be the beneficiary of an approved petition, INS sends notification of approval to the intended U.S. port of entry. There are two exceptions to the no-visa rule for Canadians: E treaty traders/investors and K fiances/fiancees. All aliens in these classes are required to have visas.

Unlike a Mexican citizen seeking TN professional classification under NAFTA, a Canadian citizen seeking TN classification is not required to have a visa or be the beneficiary of an approved petition. This application for TN classification is made directly to INS at the port of entry.

Waiver Applications

There are often instances in the nonimmigrant visa-issuing process when the U.S. consular officer determines that an applicant is excludable from the United States. In the case of visa-exempt aliens, this determination is made by INS. In either case, if a waiver application or like application is needed, it will have to be filed with INS.

An alien who has previously been deported or removed from the United States is excludable unless he or she has been outside the United States for five consecutive years. The required period outside the United States for an aggravated felon is twenty consecutive years. A nonimmigrant visa applicant who is inside these time frames may apply for permission to reapply for admission to the United States. The alien files the application, Form I-212, with the U.S. consular officer if the consular officer is willing to take the application and recommends to INS that the alien be allowed to apply. The application is then forwarded for adjudication to the INS office where the deportation or removal proceedings were held.

Section 212(d)(3)(A) of the Act enables a consular officer to recommend that INS exercise favorable discretion and allow for the admission of a nonimmigrant alien who is excludable for other than security reasons. Section 212(d)(3)(B) enables INS alone to exercise favorable discretion in the visa-exempt cases.

There is no application as such in section 212(d)(3)(A) cases. Consular officer recommendations are made to INS district or sub-offices in the districts of Bangkok, Thailand; Mexico City, Mexico; or Rome, Italy. Recommendations made by the Department of State in Washington are handled by the INS Washington, DC, District Office in Arlington, Virginia.

Applications for the exercise of discretion under section 212(d)(3)(B) are submitted on Form I-192 to the INS district office having jurisdiction over the alien's intended port of entry.

Applicants for H and L visas are ineligible for such visas if they are subject to the two-year foreign residency requirement of section 212(e) as it applies to exchange visitor aliens. There are three possible ways through which these aliens may receive a waiver of the residency requirement, and thus be eligible for the H or L visa.

The first possibility would be a waiver based on a statement from the alien's home government that they have no objection to the alien remaining in the United States. This avenue, which requires the concurrence of USIA, is unavailable to exchange visitors who are foreign medical graduate and who are in the United States for the purposes of obtaining graduate medical education or training. The second possibility, which also requires the concurrence of USIA, is based on the intervention of an interested federal or state agency. The final possibility is through the filing with INS of an I-612 application for a waiver based on persecution, or based on hardship to a U.S. citizen or alien resident spouse or child.

In the first two cases, concurring letters are furnished to INS by USIA so that INS may grant the waiver. In the case of an I-612 application, if INS feels that the case should be approved, it so notifies USIA and asks for concurrence. If USIA gives concurrence, INS approves the application. If USIA does not concur, INS denies the application. INS can also deny the application outright without any referral to USIA.

Decisions on 212(e) waiver cases are made by the INS service center having jurisdiction over the alien's residence in the United States, or, if the alien is overseas, the service center having jurisdiction over the alien's last residence in the United States.

There is one nonimmigrant classification for which waivers normally available to immigrants are applicable. This classification is the K fiance/fiancee classification which is in reality a nonimmigrant/immigrant hybrid. Although these aliens are admitted as nonimmigrants, they become permanent residents soon after admission and marriage.

An applicant for a K visa who is excludable may file an application for waivers under section 212(g) - medical grounds, 212(h) - criminal grounds, and 212(i) - fraud grounds. Applications for any of these waivers are filed with the U.S. consular officer who then forwards them to the appropriate overseas INS office for adjudication. Applications for medical waivers under section 212(g) require review by the U.S. Public Health Service (Centers for Disease Control) before final action by INS.

November 22, 1996

**DEPARTMENT OF LABOR IMMIGRATION PROGRAMS:
STRUCTURE AND RESPONSIBILITIES**

TABLE OF CONTENTS

I. Brief History of DOL Immigration Responsibilities.....	1
II. Overview of DOL Immigration Programs, Activities & Responsibilities.....	3
III. DOL Immigration Programs and Activities.....	12
IV. DOL Agencies and their Immigration Functions.....	28
V. DOL Immigration Organizational Structural Issues.....	62

I. BRIEF HISTORY OF DOL IMMIGRATION RESPONSIBILITIES

The Department of Labor was established in 1913 and initially consisted of four preexisting bureaus of the old Department of Commerce and Labor. The four bureaus were the Bureau of Immigration, the Bureau of Naturalization, the Bureau of Labor Statistics and the Children's Bureau. Of the Department's staff of 2000, some 1700 were employed in the Bureau of Immigration, which administered laws relating to aliens including a division of information that helped immigrants find jobs. The Bureau of Naturalization administered laws for the naturalization of aliens through the courts.

At the outbreak of World War I, the Bureau of Immigration was responsible for rounding up the crews of German ships lying in U.S. waters and dispatching the crews to internment camps. The Bureau was also involved in the so-called "Red Scare" occurring around 1920 during which thousands of suspected "dangerous" aliens were rounded up and processed for deportation. Ultimately, most were released, with only 556 proven Communists being deported.

During the 1920's, administration of immigration laws was the major activity of the Department. This continued through much of the depression, and spurred by the national atmosphere of social and economic uncertainty, the Department focused on deporting undesirable aliens.

Immigration continued to be a primary focus of the Department into the 1930's, with three-fourths of its entire budget going to the Bureau of Immigration. In 1933, pursuant to Congressional authority, President Roosevelt directed that the Bureaus of Naturalization and Immigration be consolidated into the Immigration and Naturalization Service within the Department of Labor. In May, 1940, acting pursuant to the Reorganization Act of 1939, the President submitted to the Congress Reorganization Plan No. V to transfer the Immigration and Naturalization Service from DOL to the Department of Justice. The plan was approved and became effective June 14, 1940. The transfer was based, at least in part, on the outbreak of World War II and the accompanying fears of the divided loyalties in the foreign-born population in the U.S.

Despite this move, DOL continued to be involved in the labor market aspects of immigration through the certification of foreign workers which was carried out by the Manpower Administration and its successor, the Employment and Training Administration (ETA). At first, the focus was on temporary workers, such as those entering under the Bracero program and its successor, the H-2 program. With the 1965 amendments to the Immigration and Nationality Act (INA), DOL's authority was extended to include the certification of permanent workers.

Prior to the enactment of the Immigration Reform and Control Act of 1986 (IRCA), immigration activities within DOL were concentrated in two agencies, ETA which handled the foreign labor certification program and the Bureau of International Labor Affairs (ILAB) which focused on immigration policy. With IRCA's passage, however, other DOL agencies, notably the Office of the Assistant Secretary for Policy (ASP) and the Employment Standards Administration (ESA), became involved in immigration issues. ASP assumed the lead responsibility for IRCA's implementation, in addition to taking on responsibility for estimating the supply of seasonal agricultural workers for the Special Agricultural Worker/Replenishment Agricultural Worker (SAW/RAW) program. ESA took on three new responsibilities: investigating compliance with H-2A temporary agricultural worker applications, checking I-9 work authorization forms under IRCA's employer sanction program, and collecting data for the SAW/RAW program. Both ETA and ILAB's immigration responsibilities also increased as a result of IRCA. ETA was charged with implementing a new H-2A program for temporary agricultural workers. ILAB undertook the research and writing of three series of Presidential reports, those on employer sanctions and legislation as well as the triennial comprehensive reports.

The 1989 Immigration Nursing Relief Act (INRA) created new immigration responsibilities for DOL. ETA became the recipient of the attestation forms filed by employers bringing in temporary alien nurses and ESA was charged with investigating complaints concerning the attestations. ASP was assigned responsibility for the Immigration Nursing Relief Advisory Committee which was charged with evaluating the success of INRA. This program expired in September 1995, however, there remains some pending enforcement actions.

The Department's immigration responsibilities increased again with the passage of the Immigration Act of 1990 (IMMACT). Permanent employment-based immigration expanded from 54,000 to 140,000. While not all these new admissions require labor certification, the new law resulted in a substantial increase in ETA's permanent certification workload. IMMACT also contained three new attestation or attestation-like nonimmigrant (temporary worker) programs: (1) H-1B professional workers, (2) D-visa crewmembers, and (3) F-visa foreign students (now expired). ETA is responsible for receiving the attestations and ESA is charged with investigating complaints.

In 1991, the Miscellaneous and Technical Immigration and Naturalization Amendments (MTINA) created additional responsibilities for the Department. MTINA imposed a stringent timetable on ETA for reviewing the attestations for H-1B temporary professional workers. It also created two major additional research and reporting requirements for the Department: (1) to evaluate the impact of immigration, particularly employment-based immigration on labor needs, employment, and other economic conditions in the United States and to make recommendations and (2) to evaluate the impact of foreign students working off-campus on the prevailing wages of U.S. workers.

II. OVERVIEW OF DOL IMMIGRATION PROGRAMS, ACTIVITIES & AGENCIES

This section provides a brief overview of the Department of Labor's immigration programs and activities and of the functions performed by each of the agencies which has immigration responsibilities. A more detailed description of DOL immigration programs and activities may be found in Section III. A more detailed description of the DOL agencies involved in immigration functions, including analyses of the staffing and budget devoted to these activities may be found in Section IV.

ADMISSION PROGRAMS

Fundamentally, the Department of Labor's role in immigration is to advise the Attorney General and his operating agency, the Immigration and Naturalization Service (INS), regarding the admissibility of aliens in various employment related categories. The Department's statutory authority stems from the Immigration and Nationality Act which authorizes DOL to issue labor certification determinations for employers wishing to bring immigrants to the United States for permanent employment. The Immigration Reform and Control Act of 1986, the Immigration Nursing Relief Act of 1989, the Immigration Act of 1990, and the 1991 Miscellaneous and Technical Immigration and Naturalization Amendments all further amended the INA and expanded the Department's immigration responsibilities with regard to both permanent immigrants and temporary nonimmigrants seeking employment in the United States.

DOL has responsibility for five admission related programs. Only permanent labor certification, however, involves immigrants and the issuance of a "green" card. The other four programs, H-2A (agricultural workers), H-2B (nonagricultural workers), H-1B (persons in specialty occupations and fashion models), and D-visa (foreign crewmembers performing longshore work), involve the admission of nonimmigrants authorized to work in the United States on a temporary basis. The H-1A program (registered nurses) expired in September 1995, and DOL has some residual enforcement activities pending with respect to this program. The F-visa (foreign students) program expired on September 30, 1996.

Permanent Labor Certification

Under the permanent labor certification program, aliens seeking to immigrate to the United States to enter into employment, must obtain a job offer of permanent full-time employment from an employer in the United States. The alien cannot be admitted as a permanent resident unless the employer obtains a labor certification from DOL that qualified U.S. workers are not available for the employment offered to the alien, and that the wages and working conditions offered will not adversely affect those of similarly employed U.S. workers. The labor certification process requires the employer to recruit U.S. workers at prevailing wages and working conditions through the State Employment Security Agency (SESA), by advertising, posting notice of the job opportunity, and by other appropriate means. A DOL Regional

Certifying Officer (CO) makes a decision to grant or deny the labor certification based on the results of the employer's recruitment efforts and compliance with DOL regulations.

H-2A Temporary Agricultural Worker

The H-2A temporary worker program establishes a means for agricultural employers who anticipate a shortage of domestic workers, to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Like the permanent labor certification program, the H-2A program requires a certification by DOL that sufficient U.S. workers are not able, willing, qualified and available at the time and place of employment to perform particular agricultural work, and that the importation of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

An employer seeking H-2A workers must file an application, which includes a job offer, with the ETA Regional office and simultaneously with the local SESA office nearest to the place of employment. The H-2A regulations contain many more detailed requirements for the job than do the permanent labor certification regulations. DOL processes about 3,600 H-2A applications involving 10,000-15,000 alien workers per year. Enforcement activities to ensure compliance with the regulations are performed by ESA.

H-2B Temporary Nonagricultural Worker

The H-2B program permits aliens to come temporarily to the U.S. to perform temporary nonagricultural work. The employer must show its need for work to be performed on a temporary rather than a permanent basis. The process for obtaining an H-2B labor certification is very similar to that required for permanent labor certification, but it is not as extensive or time consuming. The labor certification may be issued for a period of up to one year, renewable for a maximum of three years. The INA places a limit of 66,000 per year on the number of aliens who can be admitted to the U.S. on H-2B visas. DOL receives about 2,500 applications involving 15,000-20,000 aliens each year.

H-1B Specialty Occupations and Distinguished Fashion models

Under the H-1B program, employers who intend to employ alien workers in professional occupations for temporary periods must file a labor condition application with DOL. The labor condition application is similar to the attestation but less onerous in requirements than the H-1A nurses program. The H-1B employer must state that he/she will pay the appropriate wage rate to the alien, that the bargaining representative has been notified or a notice of intent to employ alien workers has been posted, and that there is no strike or lockout. ESA is assigned the enforcement of the promises made in the attestations.

IMMACT redefined and narrowed the scope of the prior H-1B category placing aliens of extraordinary ability, entertainers, and athletes in new O and P visa categories. Therefore, the H-1B classification is limited to aliens coming to the U.S. to work in two categories: 1) a specialty occupation, one that requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a college degree; and 2) fashion models of distinguished merit and ability. The H-1B program has an annual cap of 65,000 aliens who may stay in the U.S. for up to six years. An employer may file one application covering many aliens, jobs and occupations.

D-visa Crewmembers

Under the D-1 visa program, aliens enter the U.S. as crewmembers on maritime vessels and airplanes. (Airline crews are not included in the DOL program.) Alien crewmembers are prohibited from performing longshore work unless: 1) the vessel is registered in a country which has been found by the State Department not to prohibit U.S. crewmembers from performing such work; 2) one or more collective bargaining agreements exist in the port which permit alien crewmembers to do longshore work; 3) the ship is transporting hazardous cargo, as defined by the Department of Transportation; and 4) the vessel uses certain automated self-loading equipment and it has not been determined that it is not the prevailing practice at the port for foreign crewmembers to perform this activity.

If none of the above exceptions apply, employers may seek authorization for foreign crewmembers to perform longshore work by filing an attestation with DOL stating that: it is the prevailing practice for the activity at that port; that there is no strike or lockout; and that notice has been given to workers or their representatives. The program contains no wage protections, no working condition protections and no recruitment requirements. ESA is assigned enforcement of the attestations. There is no numerical cap on the number of aliens employed in this program.

Summary of Admissions Programs

As can be seen, these five programs vary greatly both in the manner and the level to which they protect the U.S. workforce and the alien workers who are admitted. In permanent labor certification and the H-2B programs, all activity and all worker protections provided by the programs occur at the application processing stage. The H-2A program combines the protections of a detailed application with wide-ranging post employment enforcement by DOL. The two newest programs, H-1B, and D-visa, involve a form of "attestation" in which the employer files a promise to meet certain conditions which are reviewed at the "front end" only for completeness and obvious inaccuracies. Worker protections arise primarily from complaint driven investigations of alleged misrepresentations in the attestations themselves or in alleged failure to comply with the attestations after the admission of foreign worker(s).

POLICY AND RESEARCH PROGRAMS

DOL plays a role in immigration policy development, both on the domestic and international scenes. Increasingly, immigration issues play an important role in trade negotiations and other international labor issues. Also, because of its labor market expertise, DOL plays an important role in research efforts on the effects of immigration.

Immigration Policy

Policy is coordinated with the relevant operational agencies by the Department's Immigration Policy Task Force which is chaired by the Assistant Secretary for Policy (ASP). Authority to coordinate immigration policy was delegated to ILAB under Secretary's Order 1-82. The Task Force provides a vehicle for coordination of policy among the various DOL agencies involved in immigration activities. Final immigration policy is decided by the Policy Review Board.

Immigration Research

Major immigration legislation enacted by the Congress such as IRCA, INRA, and MTINA, mandated a number of reports and analyses. ILAB has responsibility for the research and writing of three series of IRCA Presidential Reports: those on employer sanctions and legalization as well as the triennial comprehensive reports, while the H-2A report is written by ETA. The INRA advisory committee was staffed by and research was carried out by ASP. ILAB and ASP worked jointly on the two reports mandated by MTINA, those on foreign student off-campus work and evaluation of IMMACT's effects.

Trade Negotiations

Trade negotiations have focused increasingly on the temporary entry of professionals and/or trade-in-services. ILAB has participated significantly in the successful conclusion of a U. S.-Canada Free Trade Agreement, the North American Free Trade Agreement and the GATS. Additional trade negotiations are on the horizon.

International Immigration Policy

The Department is actively involved in immigration issues on the international level. These activities include the coordination of international immigration policies to ensure that the American workforce is not harmed disproportionately by the new migration pressures stemming from the fall of communism in Central and Eastern Europe or by other events abroad which carry with them potentially severe immigrant/refugee implications for the United States and U.S. workers. These activities are carried out by ILAB in both domestic and international fora. For example, the agency is the U.S. representative to the Migration Working Party of the OECD. ILAB also serves on the Government-wide Migration Task Force (led by the Department of State) to work with other nations to coordinate responses to immigration and refugee crises.

OTHER IMMIGRATION ACTIVITIES

Labor Market Information Pilot Program

Under IMMACT, DOL is authorized to devise a pilot program for using labor market information (L.I.) to determine up to ten shortage or surplus occupations for use in the permanent labor certification program. This program was made optional in 1994.

I-9 Reviews

One of the basic reforms of IRCA was the imposition of employer sanctions on the knowing hiring of illegal aliens. While the Attorney General has the primary enforcement role, DOL was given a role in the inspection of the forms which document the employer's verification of employment eligibility (called I-9 forms) that are required to be maintained. Investigators from Wage/Hour and ESA's office of Federal Contract-Compliance Programs (OFCCP) routinely check I-9 forms as part of their visits to employers.

AGENCY RESPONSIBILITIES

Within the Department, ETA, ESA, ILAB, ASP, the Office of the Solicitor (SOL) and the Board of Alien Labor Certification Appeals (BALCA) all share various responsibilities for immigration programs and issues. ETA's main efforts focus on processing the various applications/attestations that are filed by employers seeking to import immigrant and nonimmigrant workers. ESA is primarily responsible for all enforcement related to immigration, including investigations both directed and complaint driven : ILAB and ASP concentrate on policy and research aspects of immigration. SOL focuses on advice/opinions and litigation which may arise from immigration investigations/issues. BALCA is responsible for deciding labor certification appeals.

ETA

Within ETA, the immigration function is based in the Division of Foreign Labor Certification (DFC). The DFC is responsible for reviewing applications from employers petitioning to fill job vacancies with alien workers.

The DFC is a part of the United States Employment Service (USES). USES administers a State program which provides job seekers with job counseling and assistance as well as job placement. A major function of USES, specifically DFC, is to protect the job opportunities and wages and working conditions of U.S. workers, while assisting employers who are unable to find qualified U.S. workers and are petitioning to fill job vacancies with alien workers. DFC shares this responsibility with a Regional staff spread over ten ETA regions. This Regional staff falls under ETA's Office of Regional Management (ORM). Policy decisions and budget issues are communicated between the National and Regional offices through ORM.

While not a part of ETA's organizational structure, State Employment Security Agencies (SESAs), the State extensions of USES, cooperate in delivering services for several major programs ranging from unemployment insurance to employment or job services. The SESAs are responsible for testing the job market at the local level to see if U.S. workers are available for job vacancies. The SESAs' labor certification activities are funded through a reimbursable grant administered by ETA.

In FY 1996, the DFC National and Regional office staffs involved in immigration totaled 16 Full Time Equivalents (FTEs) and 82 FTE respectively, a reduction from 25 and 131 FTEs respectively in FY 1992. Total FY 1992 funding for immigration activities, was nearly \$70 million including over \$58 million for the SESA reimbursable grant. SESA grants in FY 1996 were reduced to \$45,713,000. It is estimated that, as a result of FY 1997 budget cuts, the SESAs will receive approximately 50% of what they received in FY 1996. In addition to general budget cuts, some of the reduction in funding may be attributed to lower than anticipated workload beginning in FY 1992.

ESA

Within ESA, the Wage and Hour Division (Wage/Hour) has primary compliance responsibility in the area of immigration. Wage/Hour is charged with investigating possible violations of the regulations, contract requirements or attestations under the H-2A, H-1A, H-1B, D-visa and F-visa programs. It is also involved with enforcing the SAW reporting requirements, and, with the OFCCP, in reviewing employment eligibility verification requirements (I-9s) as part of its regular investigatory duties. Where appropriate, Wage/Hour may impose penalties (e.g., civil money penalties), recover back wages, and require specific performance of contractual obligations.

Investigations can be either complaint driven (specific complaints are brought by interested or affected parties, often employees or their representatives, against an employer) or directed (particular industries are targeted for inspection). Investigators are generalists and, with few exceptions, are not trained exclusively to enforce any specific subset of laws within Wage/Hour's jurisdiction. Rather, investigators are responsible for enforcing the nearly 100 laws within its

purview. It is this general knowledge in all areas that allows an investigator to look for violations of all appropriate laws in any one investigation regardless of the original reason for investigating. As a result, it is extremely difficult, if not impossible, to identify discrete investigators whose workload lies solely in the immigration area.

Wage/Hour is comprised of a National office, 5 Regional offices, 54 District offices and about 190 Field offices throughout the U.S. Of the 1,289 employees, 120 work at the National office and 1,169 in the field, of whom about 799 are investigators. In FY 1995 only approximately 4 FTE (including both National and Field office personnel) could be attributed to enforcement of employer compliance with the various attestations and certification requirements, (i.e., enforcement not related to I-9 reviews which are performed in every on-site investigation at an employer's facility.) Of the 30,000 investigations conducted by Wage/Hour in 1995, less than 5% of all investigative time was attributable to immigration enforcement, excluding I-9 reviews.

ILAB

ILAB represents the Department on the President's Task Force on Immigration and Refugee Policy. Within ILAB, the Division on Immigration Policy and Research (DIPR) aids in development of the Department's immigration policy and is responsible for research and reporting responsibilities associated with a number of immigration-related reports mandated by IRCA and MTINA. The Director of DIPR is one of the staff-level co-chairs of the Department's Immigration Policy Task Force.

DIPR has five professional staff members devoted to immigration activities. DIPR's research budget had been significant in earlier years, with funds drawn not only from ILAB itself but also other DOL agencies, and other Government agencies. The Division's research budget was funded at a level of \$1.3 million in FY 1992. By FY 1996, however, the research budget had been completely eliminated.

ASP

In performing its policy review functions, ASP provides the Secretary with analytical support on economic policy issues; assists the Secretary, Deputy Secretary and Departmental agencies in the design and evaluation of programs by providing analytical support and research direction; and performs and/or oversees the performance of research in areas of special interest to the President and the Secretary. ASP's particular involvement with immigration issues stems from the responsibilities it assumed in 1987 for implementing IRCA and assigning research functions among DOL agencies. Since that time ASP's office of Program Economics (OPE) has remained involved in specific immigration related activities.

A staff member of the OPE is one the coordinator of the Immigration Policy Task Force, chaired by the Deputy Assistant Secretary for Policy. OPE expends considerable effort in the development of immigration policy papers as well as in the area of research. OPE has

responsibility for the National Agricultural Workers Survey (NAWS), a national survey on the wages, working conditions and demographic characteristics of U.S. agricultural workers. This survey has proven very valuable in assessing the sectoral impact of an immigrant labor force, and is frequently used in the debate over the need for a new agricultural guestworker program. An OPE staff member also chairs the National Farm Labor Coordinated Enforcement Committee which among other issues, deals with the relationship between the H-2A program and other farmworker issues.

ASP has the equivalent of two FTE, and an associated personnel budget of approximately \$200,000 for each of FY 1996 and 1997 devoted to immigration issues. The NAWS, currently the only immigration-related budget item in ASP, suffered a budget cutback to \$655,000 in FY 1996, but is to be restored to \$755,000 in FY 1997.

SOL

SOL provides legal support for all DOL immigration programs and functions. These services include: providing advice and opinions in support of policy and program decisions; reviewing and in some cases, drafting regulations and policy issuances that govern program operations; reviewing and clearing various correspondence; and litigating cases that arise under the various immigration programs.

SOL is comprised of eleven National Office Divisions, eight Regional Offices and six Subregional Offices. Three SOL National Office Divisions provide the primary legal support for the DOL agencies with immigration responsibilities. The Division of Employment and Training Legal Services (ETLS) serves ETA as its primary client and represents it in immigration activities. The Division of Fair Labor Standards (FLS) represents ESA's Wage and Hour Division in all its activities-including immigration. The Division of Labor Management Laws (LML) represents ILAB, particularly in its international negotiating role.

Litigation in ETA's immigration programs is handled primarily by ETLS. The majority of Wage/Hour enforcement litigation is handled at the trial level by the Regional SOL offices and at the appellate level by the FLS Division.

The SOL workload generally involves advice, opinions and litigation. The INRA and IMMACT programs, have generated considerable workload with regard to requests for opinions and regulatory analysis which often involves complex and novel issues. The newness of these programs has resulted in very little litigation to date. The bulk of litigation has been in the older more stable permanent labor certification program and the H-2A program, with H-2A cases proving to be among the most complex and time consuming.

The SOL workload is driven primarily by the levels of immigration activity in ETA and Wage/Hour. Increases in ETA and Wage/Hour immigration workload increase SOL advice and opinion workload and litigation caseload, which could require additional resources.

BOARD OF ALIEN LABOR CERTIFICATION APPEALS (BALCA)

The Board of Alien Labor Certification Appeals was organized in May, 1987. Pursuant to 20 CFR§656.26 *et seq.*, the Board is empowered to review all denials of applications for labor certification for which review is requested. Previously, appeals were adjudicated by individual administrative law judges within the Department of Labor. BALCA's mandate is to provide uniformity and consistency of decision. Under the regulations, BALCA is chaired by the Chief Administrative Law Judge of DOL and consists of other Department ALJs designated by the Chief Judge.

SUMMARY

Currently, no agency has sole authority for immigration issues. Rather, each agency (and other affected agencies, e.g., the office of Congressional and Intergovernmental Affairs (OCIA)) is represented on the Department's Immigration Policy Task Force. This group convenes as issues/problems involving immigration arise, and strives to reach consensus positions to advise senior Departmental officials. It is also this group that recommends which agency should have the "lead" regarding various immigration issues. Although historically the lead has most often fallen to either ILAB or ASP, depending on the issues, any of the member agencies may represent the Department.

III. DEPARTMENT OF LABOR IMMIGRATION PROGRAMS AND ACTIVITIES

This section provides a more detailed description of the various immigration programs and activities in which DOL engages. First, a review of the programs that have to do with the admission of alien workers; next, policy, research and international immigration activities; then other immigration-related activities.

ADMISSION PROGRAMS

The five admission-related programs vary greatly.¹ These programs include the permanent labor certification program for the admission of immigrant workers, and four programs regulating the admission of nonimmigrants for temporary employment. The programs for nonimmigrant workers are: the H-2A program for agricultural workers, the H-2B program for nonagricultural workers, the H-1B program for persons in specialty occupations and fashion models, and the D-visa program for foreign crewmembers performing longshore work. In two programs, permanent labor certification and H-2B, all the activity and all the worker protections provided by the program occur at the application processing stage. One program, the H-2A agricultural program, aimed at those workers often thought to be among the most exploited, combines the protections of a detailed application and wide-ranging post-employment enforcement. The two newest programs, H-1B, and D-visa both involve "attestations", in which the employer files a promise to meet certain conditions. These attestations are reviewed at the 'front end' only for completeness and obvious inaccuracies. Worker protections generally arise from 'complaint driven' enforcement after admission or employment.

The four attestation programs merely require the employer to make promises relating to the specific job(s) being filled.

1. Immigrants may be admitted for essentially three reasons: family reunification, employment or as refugees. There is a much wider variety of reasons for nonimmigrant or temporary admission, ranging from tourism and diplomacy, to work and study. Not all programs which lead to employment are DOL's responsibility.

Permanent Labor Certification Program

The permanent labor certification program is created under section 212(a)(5)(A) of the INA. That section provides that an alien intending to immigrate to the U.S. for the purpose of entering into employment may not be admitted unless the Secretary of Labor certifies that there are no U.S. workers who are able, willing, qualified and available to take and perform the job at the place of employment and that the admission of the immigrant worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. There is a special proviso that, in the case of teachers and aliens of exceptional ability in the sciences and arts, the U.S. worker must be equally qualified.

Generally, DOL regulations implementing this provision set up a system under which an employer seeking to employ an alien must engage in a recruitment process and, if no U.S. workers apply for the job or no qualified workers are found, a labor certification is granted. There are certain requirements set for the job offer which, if met, enable the Secretary to determine that the employment of the alien will not adversely affect similarly situated U.S. workers.

More specifically, an employer must file an application for labor certification. The application, which includes a job offer, is filed with the SESA serving the place of employment. The job offer must describe the job and state any special requirements for performing the job, usually education and experience requirements. The job description must state the employer's actual minimum requirements. If, for example, the employer hired an alien with less experience than it now requires of U.S. workers, the job offer may be found not to contain the actual minimum requirements for the job. The job offer also must not contain any requirements not justified by business necessity. Often, language requirements and a requirement that a housekeeper live-in are found to raise questions about whether the job requirements are necessary. The job offer also may not contain unusual combinations of job requirements unless the combination can be justified. The job also must be clearly open to U.S. workers, that is, an application to work for oneself or for a corporation that the alien controls will generally not be permitted. All these requirements are intended to assure that the employer is not seeking to unfairly exclude U.S. workers.

The employer must offer to pay the prevailing wage for the job in the local community. This requirement assures that the hiring of the alien will not adversely affect wages.

The employer must file its job offer with the SESA office and must run an advertisement in a local newspaper of general circulation (or, for more specialized jobs, in an appropriate trade or professional publication). The advertisement is a "blind" ad which refers applicants to the SESA office. Notice of the job offer also must be provided to bargaining representatives, if any, and posted in the place of employment. The SESA office then refers to the employer all those individuals who apply for the job and appear to be qualified and any qualified applicants they have available. Generally, the employer is given 45 days to contact the workers and to

report the results of its recruitment, although failure to promptly contact workers or to make more than minimal efforts to contact applicants may itself violate the regulations. The employer must determine whether any of the workers are qualified for the job and report the results, as well as the results of any other recruitment it has conducted, to the SESA office. An employer can reject a U.S. worker only for lawful, job-related reason-. The test for whether a worker is qualified is whether he or she, by a combination of education and experience, appears able to perform the basic requirements of the job with or without minimal training. Thus, an employer may not reject a qualified U.S. worker because the alien is better qualified. (In the case of college and university teachers and aliens of exceptional ability in the arts and sciences, the employer may reject a less qualified U.S. worker.)

The application, including the results of the recruitment are forwarded to an ETA Certifying Officer (CO) in the appropriate regional office. The CO reviews the application, the job offer and the recruitment results and decides whether the requirements of the regulations have been met. If they have, and if no qualified workers have been found, the CO issues a labor certification. If there is any question, the CO issues a Notice of Findings informing the employer of the deficiencies he/she has noted and offering the employer an opportunity to amend the application or to rebut the proposed findings. When this has been accomplished, the CO may either issue a labor certification if the deficiencies have been corrected or explained or issue a final decision denying certification if they have not. The denial may be appealed to the Board of Alien Labor Certification Appeals (BALCA), a panel of DOL Administrative Law Judges (ALJ). BALCA's decision is the final decision of the Secretary.

While labor certifications are denied for a wide variety of reasons, the most common ones appear to be:

- rejection of U.S. workers for other than lawful job-related reasons. This usually happens when an employer rejects U.S. workers as less qualified than the alien or rejects an apparently qualified U.S. worker;

- failure to recruit in good faith. This often arises when the employer does not make any real effort to contact U.S. workers or rejects U.S. workers who might be qualified without interviewing them; and

- job offers containing unusual requirements not justified by business necessity or requiring more qualifications for the U.S. worker than the alien had when hired.

(At the time an employer decides to apply for labor certification, it has already selected the alien as the worker it wants, and, in many cases, the alien is already working for the employer and is a valued employee. Some employers go to great lengths to assure that they will be able to keep their alien employees.)

There also are a few occupations that have been predetermined to be in short supply. An

employer seeking to hire a worker in one of these categories need not apply for a labor certification and may file directly for a visa with the INS. The occupations on this list, called Schedule A, were, until recently: (1) physical therapists and nurses, (2) aliens of exceptional ability in the arts and sciences, (3) persons in religious occupations, and (4) intracompany transferees at the executive or managerial level. Because of the creation of new visa categories in IMMACT, the latter two groups have been eliminated from Schedule A.

A larger number of occupations are on Schedule B, jobs which require little skill or training and for which U.S. workers have been determined to be generally available. It is possible to obtain a labor certification for a job on Schedule B, but the employer must show both that it has followed the regulatory recruitment process and that it has, as a part of its regular operations, unsuccessfully recruited for the job.

College and university teachers and aliens of exceptional ability in the arts and sciences also are designated for special handling. The regulations provide special rules for recruitment in these cases.

IMMACT made a few changes to the permanent labor certification process. It added a requirement that unions representing workers in the jobs for which labor certification is sought be notified of the filing of a labor certification application. If the workers are unrepresented, the employer must notify the workers by posting an appropriate notice. IMMACT also added an authorization that interested persons could complain to the CO about any application for labor certification.

H-2A Program, Temporary Nonimmigrant Agricultural Workers

The H-2A program, like the permanent labor certification program, involves a certification by the Secretary of Labor that sufficient U.S. workers are not able, willing, qualified and available at the place of employment to perform particular agricultural work and that the importation of foreign workers will not adversely affect the wages and working conditions of domestic workers. Also, like the permanent program, the H-2A program involves the filing of an application and job offer containing specified conditions, the payment of an appropriate wage and a recruitment process. The programs vary widely, however, in the specific conditions required.

DOL's role in the predecessor to the H-2A program, the H-2 program was not specifically authorized by statute. Rather, it arose from a delegation from the INS. In 1986, Congress passed IRCA which, among other things, codified the bulk of the H-2 program in the INA and specifically delegated to DOL the authority which it had been exercising.

An employer seeking an H-2A labor certification must file an application, which includes a job offer, with the ETA Regional Office and simultaneously with the local SESA office nearest to the place of employment. The Department cannot require the employer to file its application more than 60 days from the employer's date of need and must make a decision on whether to

grant certification by 20 days before that date.

The job offer must conform with regulatory requirements and specifically describe the terms and conditions of employment. The employer must provide free housing to all non-local workers. The employer must offer working conditions which are customary or are the prevailing practice in the area to all workers and must offer U.S. workers the same benefits as it offers foreign workers. For example, an employer must offer to pay for or provide advance transportation to U.S. workers if it is the prevailing practice in the area to do so or if it offers that arrangement directly or indirectly to its foreign workers. Similarly, an employer must provide family housing if it is the prevailing practice in the area to do so. While the employer may charge workers for meals it provides, the rates it may charge are limited by the regulations. The employer must keep specified payroll records. It also must guarantee to offer the worker work for at least 3/4 of the workdays within the period of the employment contract (a beginning and ending date for the work and the usual days and hours of work must be specified in the job offer).

The employer must offer to pay the highest of the Fair Labor Standards Act (FLSA) minimum wage (or a State minimum wage if higher), the prevailing wage for the occupation in the area or the Adverse Effect Wage Rate (AEWR). The AEWR is a rate set for each State by DOL based on a Department of Agriculture survey of wage rates for field and livestock workers. The AEWR is set at the median wage reported by Agriculture in each of its regional surveys. If an employer pays on a piece rate basis, the employer must guarantee earnings at the appropriate hourly wage rate and, if the piece rate method of payment is the prevailing method of payment, must pay at least the prevailing piece rate. The employer also may not, without DOL authorization, increase productivity standards for workers as the guaranteed wage floor rises. One deviation from these rules, which has been accepted in deference to industry practice, is the "task rate" system of payment in which each individual task of work is paid at a "negotiated" rate which varies from task to task. This method of payment is common in the sugar cane harvest in Florida (and among irrigation workers in Idaho for certain activities). Under this system, each row (or part of a row) of cane to be cut is priced by the foreman as the worker begins his day's work. Since the task system of payment is completely idiosyncratic, prevailing rates cannot be applied. The task rate system is currently under vigorous challenge by farmworker advocates.

Once the application is filed, the SESA local office immediately begins local recruitment. The ETA Regional Administrator (RA) reviews the application and makes a decision whether it is acceptable within seven days. If the application is acceptable, the ES job order is placed into intrastate and interstate clearance so that recruitment can begin on a broader basis. The job order is sent to ES offices in other areas of the State and other States where migrant workers are expected to be found. The RA also notifies the employer whether the positive recruitment plan (for recruitment efforts the employer will perform in addition to those of the ES) the employer must submit with the application is acceptable. The RA also may specify additional positive recruitment efforts the employer will be required to undertake. These efforts may include advertising, recruitment efforts in places of known concentrations of migrant workers, and contacts with crew leaders.

If the application is rejected, the deficiencies are explained to the employer and it is given five days within which to correct them. Alternatively, the employer may obtain an expedited administrative review before an ALJ. The time taken in making corrections the first time or by the appeal process is not deducted from the period in which the application may be processed. Since the entire process of reviewing the application, recruiting and deciding whether to grant or deny certification must occur within about 40 days, every day that is taken for an appeal or by the correction of an application takes time away from the entire process, especially from recruitment efforts. If further corrections are required, the time does count against the employer and the date on which the RA makes the certification determination is set back accordingly.

At the end of the recruitment period, if insufficient U.S. workers have been found, certification is granted for the difference between number of U.S. workers recruited and the total number of workers requested. If the RA determines that the employer improperly rejected U.S. workers, that number of workers also is deducted from the employer's request. Certification may be denied if the employer does not cooperate in the recruitment process. Again, an expedited administrative review process is available.

The employer is required to continue to accept referrals of U.S. workers, but not to engage in additional positive recruitment, after the granting of labor certification until 50% of the contract period has expired. Thus, it is possible that some foreign workers may be displaced by late recruited U.S. workers. An employer also may apply for additional foreign workers if the recruited U.S. workers do not appear or are unable to perform the job. Such requests are acted upon within 72 hours. An employer may also make an emergency application for H-2A certification if for some good and substantial cause, it is not able to submit a timely application.

Although ETA may investigate certain complaints filed by U.S. farmworkers through the ES complaint system and may take actions against H-2A employers based on "random field checks" required to be conducted by local ES offices, primary enforcement responsibility for H-2A matters rests with Wage/Hour of the Employment Standards Administration.² Wage/Hour has a

²Under the H-2A regulations, ETA and the SESAs must immediately refer all employment related H-2A complaints to Wage/Hour. Complaints involving such issues as the rejection of a U.S. worker may still be handled through the ES complaint system since no employment relationship has arisen. Under ETA's ES regulations, SESAs are given five days to informally resolve ES complaints. Although the practice varies in different regions, in some regions employment-related H-2A complaints are referred to Wage/Hour without further processing. In others, the SESAs may seek informal resolution before referral.

Similarly, the ES regulations require SESAs to conduct random field checks on agricultural employers who use ES services. Again, the practices among the regions vary as to how this responsibility is carried out in coordination with Wage/Hour's enforcement mandate. In some regions, Wage/Hour prefers that SESAs not conduct random field checks on H-2A

broad mandate to assure that employers comply with their regulatory and contractual responsibilities. Wage/Hour may investigate complaints or may review employers' records and practices to assure compliance. Depending upon the violation(s) found, Wage/Hour may bring an enforcement action for violations of the FLSA, the MSPA, or, under the H-2A regulations, for unpaid wages and for civil money penalties up to \$1,000 for each violation as to each worker. Wage/Hour findings made under its H-2A authority may be appealed by any party for a hearing before an ALJ. The ALJ's decision is subject to discretionary review by the Secretary. (Other processes exist for resolution of findings made under the FLSA or MSPA.)

Wage/Hour also refers its findings to ETA for consideration of the imposition of sanctions under the H-2A regulations. ETA's sanction authority extends to actions to suspend or terminate an employer's access to the H-2A program or to ES services. If the violation is determined to be less than substantial, the RA may impose special procedures on the employer, additional requirements that the employer must meet to assure that the employer does not repeat the violation. If the employer fails to comply with the special procedures, a penalty may be imposed reducing the employer's request for foreign workers by 25%. If the violations are substantial, more severe penalties may be imposed, including debarment from the H-2A program for one or more years. ETA's proposed imposition of a sanction may be appealed to an ALJ.

The H-2A regulations contain many more detailed requirements for the job than do the permanent labor certification regulations. This is for both historical reasons and because it is felt that special care must be taken to protect agricultural workers from exploitation.

The H-2A program is the most contentious of DOL's immigration programs, with an organized worker advocate bar engaged in a concerted effort to reform or do away with the program and with an organized user community seeking to protect and expand the program and to make it more "employer friendly". It is not uncommon for ETA to be sued by both workers and growers for many of the decisions it makes in administering the regulations.

H-2B Program, Temporary Nonagricultural Workers

The admission of nonimmigrant aliens for temporary employment (other than in agriculture, in specialty occupations, as registered nurses, or as fashion models of distinguished merit and ability) is the statutory province of the *INS*. *INS* may admit such nonprofessional alien temporary (H-2B) workers only if capable unemployed U.S. workers are unavailable. Under the

employers who may be targeted for inspection by Wage/Hour investigators and, depending upon the quality of the information exchange among the agencies, this can mean that no random field checks are conducted. In many regions, the only employers who use the ES system are H-2A employers.

INA, up to 66,000 H-2B workers may be admitted annually. The INS must consult with 'appropriate agencies' before admitting temporary workers. With respect to the admission of H-2B workers, INS consults with DOL.

INS has issued regulations, stating that it will not admit H-2B workers unless DOL certifies to INS that qualified U.S. workers are not able and available and admission of the aliens will not adversely affect the wages and working conditions of U.S. workers similarly employed. INS also has regulations suspending an employer's authority to import additional aliens (if they have not already commenced employment) if DOL certifies the existence of a strike or lockout.

ETA has administrative responsibility for the H-2B program. ETA has issued separate regulations for certification of employment of nonimmigrant logging workers and other workers. The logging program affects workers primarily in northern New England (almost all in Maine) and is operated in much the same way as the H-2A program. The major difference between the H-2B logging program and the H-2A program is that in the logging program there are no statutory penalties or authority to require specific performance of work contracts; however, as in H-2A, denials of certification and debarment of employers for failure to comply with granted certifications are appealable to ALJs.

The basic H-2B program is administered under much the same standards -- availability and adverse effect -- as the permanent labor certification program. In addition, the employer must show that the job is genuinely temporary. Employers file labor certification applications and job orders through the SESA, and must offer prevailing wages and working conditions. U.S. workers may not be rejected for other than lawful job-related reasons. (Employment in the entertainment and sports industries are handled under special procedures, recognizing the uniquely national and heavily unionized natures of those industries.) Determinations (a certification, a denial of certification, or a statement that no determination can be made) under the H-2B program are made by COs (except sports and some minor occupations, which are handled in the ETA national office).

Unlike the permanent labor certification, logging, and H-2A programs, there is no appeal through DOL from a decision not to grant H-2B certification. Instead, the employer may present countervailing evidence to INS on the availability and adverse effect issues. INS can, and has, admitted aliens when DOL has denied certification of the employment and refused admission of aliens for employment who DOL has certified.

The H-2B program operates under a scant set of regulations. Detailed procedures are contained in General Administration Letters issued by ETA a number of years ago, one each for the entertainment and boilermaker (frequently an emergency need) industries and a third for most other H-2B labor certification activities. Sports certifications are handled by the ETA national office under internal guidelines.

H-1B Program, nonimmigrant Workers in Specialty Occupations and Distinguished Fashion Models

The H-1B program is called a "labor condition application (LCA)" program, but, in actuality is a labor attestation program, similar in form, but less onerous in requirements, than the now expired H-1A nurses program. IMMACT redefined and narrowed the scope of the prior H-1B visa category. Aliens of extraordinary ability, entertainers, and athletes are in new O and P visa categories. Their admission is handled by the INS. The H-1B classification is limited to aliens coming to the U.S. to work in two categories: (1) a specialty occupation, one that requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a college degree; and (2) fashion models of distinguished merit and ability (added by the 1991 MTINA). The H-1B program is capped at 65,000 aliens per year, who can stay in the U.S. for up to six years. An employer may file one application covering many aliens, jobs and occupations.

The H-1B process in DOL begins with the employer filing an LCA with an ETA regional office. The employer must promise:

to pay the H-1B alien no less than the higher of the local prevailing wage, determined by the SESA, an independent authoritative source in a published wage survey or some other reliable source, or the actual wage the employer is paying to similarly employed U.S. workers. (The requirement of paying the higher of the prevailing or facility wage was limited by MTINA to the alien worker (in the original Act it had extended to all similarly employed workers).),

to provide working conditions that do not adversely affect U.S. workers,

that there is no strike or lockout at the time of the filing, and

to notify the union or workers of the intent to hire an alien.

Recruitment of U.S. workers for these jobs is not required.

ETA reviews the application for completeness and obvious inaccuracies and must accept or reject it within seven days. No documentation is required to be filed with the application, but documentation to support the statements made in the application must be maintained at the employer's principal office.

Enforcement in the H-1B program is complaint driven. If an aggrieved party believes that an employer has misrepresented in its LCA or has not lived up to its promises, a complaint can be filed with Wage/Hour, which will determine whether there is reasonable cause presented to

believe a violation of the attestation has occurred And, if there is, will investigate and determine whether a violation has occurred. Wage/Hour may order backpay for alien workers who were not paid the proper wage. it may assess civil money penalties in amounts up to \$1,000 per violation if it finds that the employer has violated its promises not-to use alien workers in a strike situation and to provide working conditions that will not adversely affect U.S. workers, has substantially failed to notify U.S. workers or their representatives of the filing of the application or has wilfully failed to pay the proper wage. A Wage/Hour finding of a violation is appealable by any interested party to an ALJ for a hearing. The Secretary has the discretion to review ALJ decisions. once there has been a final determination of a violation, the Attorney General will debar the employer from applying for H-1B workers and from petitioning for workers under all H visa Categories, as well as L, O and P nonimmigrant visas and permanent visas for a period of at least a year.

D-visa Program, Foreign Crewmembers Performing Longshore Work

Another program established under IMMACT is the D-visa program. Aliens enter the U.S. under D-visas as crewmembers on maritime vessels and airplanes. Airline crews are not included in the DOL program. Under IMMACT, alien crewmembers of maritime vessels are prohibited from performing longshore work, that is, loading or unloading cargo, letting go or making fast a ship or operating cargo equipment unless their work falls within certain exceptions. This prohibition does not apply:

- if the vessel is registered in a country which has been found by the Secretary of State not to prohibit U-S, crewmembers from performing such work;

- in a port in which one or more collective bargaining agreements (each covering at least 30% of the longshore workers at the port) permit alien crewmembers to do longshore work;

- if the ship transports hazardous cargo, as defined by the Department of Transportation; or

- if the vessel uses certain automated self-unloading equipment (and it has not been determined that it is not the prevailing practice at the port for foreign crewmembers to perform this activity).

If none of these exceptions apply, or if a prevailing practice determination has been made for an automated vessel, a vessel owner may still seek authorization for foreign crewmembers to perform longshore work if it files with DOL an attestation that:

- it has notified the union or the workers of the filing,

there is no strike or lockout at the port, and

it is the prevailing practice at the port for the alien crewmembers to do the longshore work.

The program contains no wage protections, no working condition protections, and no recruitment duties. There is no numerical cap on this program. Attestations are filed by the employer with ETA regional offices in Chicago or Dallas (the Seattle and Boston Regional offices will be added to the list of offices at which attestations may be filed).

The D-visa program is strictly complaint driven. Upon filing of a complaint, Wage/Hour must determine whether the complaint provides reasonable cause to believe that a violation has occurred. As part of the complaint, the complainant may request a cease and desist order. After an expedited review process in which the employer is given the opportunity to respond to the complaint and present evidence, Wage/Hour decides whether such an order will be issued. Wage/Hour will then investigate the complaint. If it finds a violation of the attestation, it may assess civil money penalties of up to \$5,000 for each crewmember found to be performing longshore work in violation of the attestation. Any interested party who disagrees with the final decision may request an ALJ hearing. The ALJ's decision may be reviewed by the Secretary at her discretion. An employer found to have violated its attestation is banned by the Attorney General from bringing its ships into any U.S. port for a year.

The D-visa program was effectively dormant for the first eight months of its existence. This occurred because in 1991, the State Department made reciprocity determinations for almost all maritime nations. In January 1992, the program became active when the State Department withdrew the reciprocity determination for Japan and ships of that nation have begun filing attestations for ports in Alaska. (We understand that the reciprocity determination also was withdrawn for Germany.

POLICY AND RESEARCH PROGRAMS

DOL also plays a role in immigration policy development, both on the domestic and international scene. Increasingly, migration issues and, thus, immigration issues, play an important role in trade negotiations and other international labor issues. Also, because of its labor market expertise, DOL plays an important role in research efforts on the effects of immigration.

Immigration Policy

Under Secretary's order 1-82, authority was delegated to ILAB for:

Participating in formulating immigration and refugee policy by assisting the Secretary

as a member of the President's Task Force on Immigration and Refugee Policy; specifically, coordinating immigration policy and related activities within the Department, with the exception of operational policies and the administration of the Alien Labor Certification Program.

This was reaffirmed in Secretary's Order 1-95 (signed 4/20/95)

(7) Coordinating immigration policy development and related activities within the Department, with the exception of operational and enforcement policies and the operational and enforcement policies and the administration of the Alien Labor Certification, Attestation, and Labor Condition Application Programs.

However, in the past year, policy has been coordinated with the relevant operational agencies by the Department's Interagency Immigration Policy Task Force which is chaired by the Assistant Secretary for Policy. The Task Force is composed of both political agency heads and relevant DOL staff.

Immigration Research

Under IRCA, INRA and MTINA, a number of reports and analyses were mandated. IRCA mandated four series of reports to be submitted by the President to the Congress:

The Triennial Comprehensive Reports on immigration. DOL is responsible for analyzing "the impact of admissions and other entries of immigrants, refugees, asylees and parolees into the United States on the economy and the labor force",

Reports on Unauthorized Alien Employment. DOL is responsible for analyzing the impact of employer sanctions on 'the employment, wages, and working conditions of U.S. workers and on the economy of the United States",

Reports on the H-2A Program. DOL is responsible for reporting on the numbers admitted , compliance, impacts, and recommendations for modifying the program; and

Reports on the Legalization Program. DOL is responsible for analyzing the employment of those aliens who legalized under IRCA's pre-1982 provisions.

Under INRA, the Secretary was charged with setting up an advisory committee to study the effectiveness of the law and report on needed changes to the law. The Committee was charged to report on the effects of the law on the supply of U.S. workers and the demand for foreign nurses.

Under the 1991 MTINA, two reports were mandated:

Reports on Foreign Student Off-Campus Work. Both the INS Commissioner and the Secretary of Labor were to prepare and submit to Congress by April 1, 1994 (subsequently changed to April 1, 1996) a report on whether the newly authorized off-

campus work authorization program for foreign students should be extended, and the impact of this program on prevailing wages of U.S. workers (program expired October 1, 1996); and

Presidential reports on the effects of various IMMACT mandated changes in immigration law. These reports are to be transmitted to the Congress no later than September 30 of 1994 and 1997. The reports parallel reports to be submitted by the IMMACT-created Commission on Immigration Reform. The reports include studies of:

The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States; and -

The impact of the numerical limitations on the admission of nonimmigrants under the Immigration and Nationality Act.

Additionally, the Administration will be required to report to Congress an analysis of the newly established diversity program under IMMACT. Specifically, the Administration will be required to analyze:

the characteristics of individuals admitted under this diversity program,

how such characteristics compare to characteristics of family-sponsored immigrants and employment-based immigrants, and

the effect of requiring a high school education or two years work experience on the diversity, educational, and skill level of aliens admitted.

The H-2A report was to be written by ETA. The INRA advisory committee was staffed by and research is being carried out by ASP. All other research activities are housed in ILAB.

Trade Negotiations

Trade negotiations have focused increasingly on the movement of workers across national borders. The first major trade agreement to cover these issues was the U.S.-Canada Free Trade Agreement (CFTA) which went into effect on January 1, 1989. This agreement facilitated the movement of business visitors (B-1), treaty traders and investors (E), intracompany transferees (L), and professionals (many of whom would fall under the former H-1 nonimmigrant class of admission which served as the basis for negotiating this category). NAFTA which superseded the CFTA and went into effect January 1, 1994 extended these benefits to Mexico with certain modifications. The most notable difference was in the entry of professionals from Mexico which

was now based upon the H-1B visa in effect during the NAFTA negotiations. Monitoring of the implementation of the migration provisions of the trade agreement falls under the tripartite Temporary Entry Working Group of the NAFTA., on which ILAB represents the U.S. Department of Labor. This group handles such issues as spousal coverage, expansion of the list of professionals, and changes in the numerical limitation on the admission of Mexican professionals.

The United States has made substantial labor mobility commitments under the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS). The U.S. commitments which cover approximately 120 nations include provisions for the temporary admission of the following categories of service providers: Business Visitor (B-1), Intracompany Transferees (L), and Professionals (H-1B's engaged in specialty occupations). Bilateral trade agreements, trade blocs, and worldwide trade agreements are the wave of the future. Initiatives being proposed include Chilean accession to the North American Free Trade Agreement, a Free Trade Agreement of the Americas (FTAA), an Organization for Economic Cooperation and Development (OECD), Multilateral Agreement on Investment and temporary entry of "key personnel," and an Asia-Pacific Economic Cooperation (APEC) initiative to facilitate the mobility of business persons in that region. All of these international trade negotiations fall under the responsibility of ILAB within the Department of Labor.

International Immigration Policy

The Department is actively involved in immigration issues on the international level. ILAB represents the U.S. Government on OECD's Migration Committee which studies international migration issues, with emphasis on labor market and other economic and social aspects. The Migration Committee seeks to develop policy options for OECD's member countries to respond to the challenges and opportunities of international migration. For example, OECD is currently heavily involved in the issues of migration, free trade, development, and regional integration.

ILAB is also involved in immigration activities of the International Labor Organization as well as those of the United Nations. With regard to the latter organization, ILAB represented the United States in the nearly decade-long negotiation of the U.N. Convention on the Rights of Migrant Workers and Their Families. ILAB also served as the Administration's negotiator on international migration issues in developing the U.N.'s Global Plan of Action at the 1994 International Conference on Population and Development in Cairo.

Other Immigration Activities

The Department also has roles to play in other aspects of immigration activities. It performs enforcement record reviews under IRCA and it has other data gathering functions.

Labor Market Information Pilot Program

Under IMMACT, DOL is authorized to devise a pilot program for using labor market information to determine up to ten shortage or surplus occupations for use in the permanent labor certification program. The pilot program was to run for three years from October 1, 1991. Under the pilot program, if an occupation is declared a shortage occupation, a job offer in that occupation is precertified and the employer may file a petition directly with the INS. If an occupation is declared to be a surplus occupation, a labor certification may be granted only if the employer can produce evidence of extensive unsuccessful recruitment.

After extensive public response, DOL recommended repeal of the program. The Immigration Technical Amendments of 1994 changed the program to an optional one.

The use of LMI is not a new phenomenon. To some extent, Schedules A and B in the permanent labor certification regulations represent a determination, based on the Department's labor market expertise, that certain occupations are shortage or surplus occupations. Further, prior to 1978, the regulations governing the permanent labor certification program provided for the denial of certification based on data generated by the SESAs' Employment Security Automated Retrieval System, a compilation of data from open job orders and employment applications. The courts disapproved the use of this data because they did not feel it was sufficiently trustworthy and because the data only showed that workers were available, it did not show whether they were willing to take a particular job.

While it remains true that data alone cannot show whether an individual worker is willing to take a job, the successful use of LMI could provide a basis for simplifying the labor certification process for many employers and focusing the process for others. Particularly if an LMI data base can be developed that works on a regional or local level, LMI also could provide more administrative flexibility to DOL in responding to actual labor market conditions and in focusing its resources on those areas where there is a real need to test the labor market to determine whether an alien should be admitted.

I-9 Reviews

One of IRCA's basic reforms was the legalization of a large number of previously illegal aliens and the imposition of employer sanctions on the knowing hiring of illegal aliens. The means by which IRCA sought to assure that illegal aliens were not hired was through its requirement that employers maintain records to demonstrate that they had checked on the employment eligibility of their new hires. The employer must attest that it verified the employment eligibility of each employee by examining documentation sufficient to demonstrate the employee's legal authorization to work. The Attorney General has the primary enforcement role in this system and is authorized to impose civil and criminal sanctions for violations. DOL also is given a role in the inspection of the forms which document the employer's verification of employment eligibility that are required to be maintained. (The reason for the DOL role is Congress'

recognition that the Department visits many more employment establishments in the normal course of its labor standards enforcement responsibilities than could the INS and thus DOL's inclusion could greatly expand the coverage of the inspection program.)

Investigators from Wage/Hour and ESA's Office of Federal Contract Compliance Programs routinely check I-9 forms as part of their visits to employers. They report their findings to INS, including identifying possible problems for action whether the problem appears to be a serious one or whether it appears merely to be a failure to completely fill out the forms. In a 1989 report, the General Accounting Office (GAO) criticized the employer sanctions enforcement efforts and suggested an expanded role for DOL. An administration task force convened, as required by IRCA, to respond to GAO's findings also suggested an expanded role for DOL. Under a Memorandum of Understanding signed on June 9, 1992, these suggestions were partially implemented. DOL investigators were authorized to issue "warning notices" regarding employment eligibility verification violations detected. The responsibility for imposition of sanctions, however, remains with the INS. A revised Memorandum of Understanding is currently being finalized.

IV. DOL AGENCIES AND THEIR IMMIGRATION FUNCTIONS

This appendix describes the way in which the agencies involved in immigration programs and activities carry out their various functions. It describes the kinds of work involved in carrying out the agencies' duties, the organizational structure of the agency housing the function, the budget and positions devoted to the tasks, and the workload that the tasks have involved.¹

EMPLOYMENT AND TRAINING ADMINISTRATION

Historical Background

DOL has been involved, under various programs dating back to the early 1940's, in certifying the temporary admission of unskilled, nonimmigrant foreign workers to the U.S. These functions have been assigned to the Manpower Administration and its successor ETA. At the beginning of World War II, Mexican farmworkers and other workers began to enter the U.S. for temporary jobs. The Bracero Program, under which Mexican nationals were imported, lasted through the early 1960's. On the East Coast, farmworkers from the English-speaking Caribbean island were imported.

During the Bracero Program, it was noticed that wages in the States with the highest concentrations of Mexican workers tended to be stagnant. To avoid the adverse effect that such alien farmworkers' employment could have on the wages and working conditions of similarly employed U.S. workers, employers had to agree to pay minimum wages (Adverse Effect Wage Rates) and to provide at least prevailing working conditions for the alien farmworkers and their U.S. co-workers. These protections predated Fair Labor Standards Act and farm labor contractor regulatory coverage of such workers by decades.

The Bracero Program ended in 1964, and was replaced by the H-2 program under which DOL, under a delegation of authority from the INS which still had sole authority to admit temporary workers, determined whether foreign agricultural workers could be imported under an availability and adverse effect test. ETA issued detailed regulations in 1970 to implement its responsibilities. These regulations, although revised several times, became the basis of the H-2A program adopted under IRCA.

For permanent workers, DOL had a limited role until 1965. In fact, only 56 requests to admit permanent alien workers were denied from 1952 through 1965. The modern permanent alien

¹ All staffing budget and workload figures used in this section were provided by the agencies. There are some unresolved statistical discrepancies in cases where programs or agency responsibilities overlap.

labor certification program began in 1965 with the first major set of amendments to the INA

since 1952. Previously, immigrant workers could enter the U.S. unless DOL moved to exclude them. The burden was reversed by 1965 amendments to the INA, and permanent alien workers thereafter have been excluded, unless DOL certifies that U.S. workers are not able, willing, qualified and available for the job offered to the alien and employment of the alien will not adversely the wages and working conditions of U.S. workers similarly employed. That legislative framework for permanent workers continues today. .

Processing

ETA's primary function is to process the various kinds of applications/attestations that are filed by employers seeking to import immigrant or nonimmigrant workers. This task ranges from fairly time consuming reviews of permanent labor certification or H-2A applications, which involve a review of a complex application which contains considerable supporting documentation and which may involve monitoring compliance, to reviews of the IMMACT attestations, which involve reviewing a one-page form for completeness and, in some cases, obvious inaccuracies.

More specifically, the Certifying Officer's review of a permanent labor certification application (and to a slightly lesser extent an H-2B application) involves reviewing a file that has been developed by the SESA (the role of the SESA is discussed in more detail later in this section) that contains at least, the application, a job order, an advertisement, a copy of a notice and a report of the results of recruitment. The file may contain a great deal more information if any processing problems or questions arose at the SESA level. The CO must review this application and the backup material against a complex set of regulatory requirements and decide whether all of them have been met. If any questions arise, the CO must issue a Notice of Findings (NOF) setting forth the problems noted, the reasons why they appear to violate the regulations and the way in which the problems may be rebutted or resolved. The CO must review the rebuttal information (which can run to hundreds of pages) and, if a violation continues to exist, must issue a final decision of a specificity equal to the NOF. (If new problems are revealed by the rebuttal information, the CO may have to issue one or more additional NOFS.) There is also provision for requests for reconsideration which must be reviewed and considered. If the denial is appealed, the CO must prepare an appeal file for the BALCA.

The processing of an H-2A application is similar to that of a permanent labor certification except that the application usually is a more substantial document, the regulatory requirements against which the application must be reviewed are more detailed and complex, the time frames for reviewing it are short and the regional office often takes a more active role in monitoring recruitment activities and in resolving problems during the recruitment period. The ETA regional and national labor certification offices also are involved directly in the determination of the prevailing wage for the various crop activities in which H-2A certifications are sought. Prevailing, wages are determined by an in-season survey conducted by the SESA of wages in a

particular crop and labor market area. The regional office reviews the survey and the national office must finally approve it before it can be used in setting the next year's wages. In some crops, the survey is a relatively straightforward job; in others, where rates and methods of pay vary widely, the survey can be quite a complex task and reviewing it also can be difficult. (In some cases, surveys have had to be redone several times.)

The processing of attestations under the D-visa and F-visa programs and of labor condition applications under the H-1B program is simpler, because ETA personnel are required only to check the one page form for completeness and obvious inaccuracies. Also, there is no documentation submitted with the forms, except for a few D-visa attestations. Nevertheless, the forms must be reviewed, certified or returned with an explanation of the reasons and the data must be entered into the ETA tracking system, so the processing of each attestation takes some time.

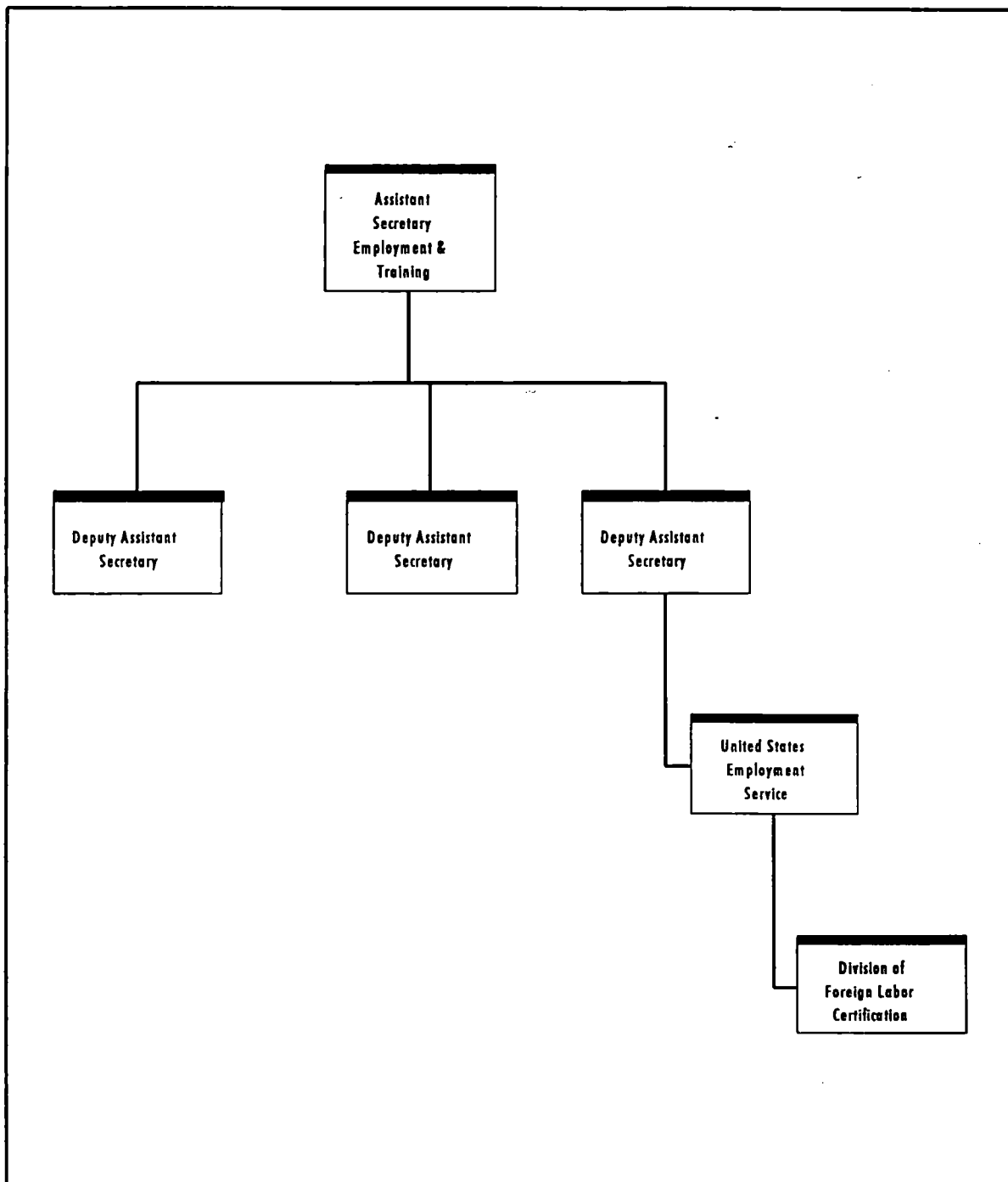
ETA also performs some special functions such as making strike determinations for INS in cases where nonimmigrants are a part of the workforce.

Organizational Structure

Within ETA, the immigration function is based in the Division of Foreign Labor Certification. This Division is responsible for policy, technical assistance to regions and SESAS, training and general administration. DFLC also has some limited responsibility for reviewing applications from employers petitioning to fill job vacancies with alien workers.

The DFLC falls within the United States Employment Service. The USES is headed by a Director who reports to one of the three Deputy Assistant Secretaries of ETA who, in turn, reports to the Assistant Secretary for Employment and Training.

Employment and Training Administration



The USES oversees the State ES system which was created in 1933 by the Wagner-Peyser Act. The ES is a State-administered program which provides job seekers with job counseling assistance and job placement. Similarly, it assists employers with assessing and screening applicants for their job vacancies. One of the functions of the USES, specifically, its DFLC, is to protect the job opportunities, wages and working conditions of American workers while assisting employers which are unable to find qualified U.S. workers and are petitioning to fill their job vacancies with alien workers. .

ETA's immigration function is made up of two components: a national office staff, the DFLC, and a Regional staff in each of the ten DOL regions. Organizationally, the Regional Certifying Officers and their staffs are part of the regional office staff and report to the Regional Administrator. DFLC has no direct line authority over the regional operations. Policy decisions (and budget) are communicated between the national office and the regions through ETA's Office of Regional Management, although informal communications often occur between Washington DFLC and regional staff.

While not part of ETA's organizational structure, the SESAs are funded to deliver services for several major programs ranging from unemployment insurance to employment or job services. The SESAs are responsible for testing the job market at the local level to see if U.S. workers are available for the vacancy. The SESAs' labor certification activities are funded through a reimbursable grant administered by ETA.

Workload

Alien Labor Certification Workload, Fiscal Years 1993-95

	FY 1993	FY 1994	FY 1995
Non-agricultural applications			
Permanent	30,067	27,286	32,509
Temporary (H-2B)	2,255	2,234	2,153
Non-agricultural attestations			
Nurses (H-1A)	1,884	1,591	
Professionals (H-1B)	72,850	97,166	117,345
Crewmembers (D-visas)	205	9	33
Students (F-visas)	2,385	1,735	976
Agricultural applications (H-2A)	3,176	NA	2,654
Agricultural Workers	17,000	16,700	15,394

Staffing

With the many new activities mandated under INRA, IMMACT, and MTINA, the size of the national office alien labor certification staff was increased, from 22 FTEs in FY 1991 to 25 in FY 1992. Because the bulk of the work falls in the ten regional offices, the regional labor certification staff was increased from 103 to 142 between FY 1991 and FY 1993. As a result of subsequent budget cuts, national office staff was reduced to 16 by FY 1996, and regional staff to 82 in FY 1996.

Staffing Directly Involved in ETA-s Alien Labor Certification Functions

	FY 1991	FY 1992	FY 1993	FY 1996	FY 1997 Projected
National FTE	22	25	25	16	16
Regional FTE	103	131	142	82	78
Total FTE	125	156	167	98	94

Budget

The USES, under which the DFLC falls, is funded by annual congressional appropriations from the Unemployment Trust Fund. This fund receives its revenues from a payroll tax (8/10ths of 1 percent) authorized by the Federal Unemployment Tax Act (FUTA). FUTA funds pay for the National Office alien labor certification staff, the regional labor certification staff, support staff, and the reimbursable grants to the SESAs.

ETA REGIONAL OFFICE ORGANIZATION AND FUNCTIONS TO BE ADDED HERE

The SESAs

The SESAs play an important role in the processing of labor certification applications and attestations. As noted above, SESAs initially (or simultaneously in the H-2A program) receive and process permanent labor certification, H-2A and H-2B applications. SESAs also play a major role in the recruitment processes that are a central part of these applications. The SESAs collect the resumes of applicants for a job, send them to the employer, monitor the employer's recruitment activities and sometimes survey the applicants to be sure they were treated fairly. SESAs also determine prevailing wages for all programs except the D-visa program in which no such determination is required, although other sources can be used in the H-1B and F visa attestation programs.

The SESAs are funded for these activities through a cost reimbursable grant that is separate from the primary, formula grant that they receive for their basic employment service activities.² The funding is based on workload and is concentrated in certain States that receive the bulk of the applications. Funds for reimbursable grants have been cut drastically in the most recent fiscal years. For example, grants in FY 1992 amounted to over \$58 million. In FY 1996, almost \$46.9 million was distributed to the States, and for FY 1997, State allocations have been reduced to under \$23.5 million. A State-by-State breakdown of FY 96 and FY 97 funding is contained in attachment A.

While some SESAs continue to process immigration related applications in their local offices, many of the larger SESAs have centralized their immigration operations. Under this system, the employer still uses the nearest local office as the initial point of contact, but the processing of the application and the recruitment are handled by a central staff who are more expert in immigration laws and regulations. This model is thought to be more efficient. It also avoids a kind of conflict that arises in the processing of labor certification applications at the local office level. As mentioned in Appendix A, since many employers who seek labor certifications already have the alien worker on the job and are anxious to retain him or her, the recruitment process can become an exercise in which the employer actively seeks not to hire qualified U.S. workers. Since the predominant activity of the ES is to match workers with jobs, many SESA employees feel that referring workers to job opportunities where the odds are stacked against them is not consonant with the mission of the ES and is unfair to the workers. This attitude can create difficulties at the local office level (a hesitancy or unwillingness to make referrals) which will not be present in a centralized staff.

² While the formula grant is the primary source of funding for basic labor exchange activities, the SESAs also receive separate grants from the Bureau of Labor Statistics (BLS) to perform certain data gathering or LMI functions and from the Veterans' Employment and Training Service (VETS) for housing staff who provide services directly to veterans and disabled veterans. Also, under the 1982 amendments to the Wagner-Peyser Act, the SESAs may enter into contracts with other entities, like JTPA service providers, to provide services on a cost reimbursable basis.

EMPLOYMENT STANDARDS ADMINISTRATION

Investigations

~~Wage/Hour is charged with investigating possible violations of the regulations and contract requirements under the H-2A program and possible violations of the regulations or attestations under the H-1A, H-1B, D-visa and F-visa programs. Where appropriate, Wage/Hour may impose penalties (e.g., civil money penalties), recover back wages, and require specific performance of contractual obligations.³ It also is involved, with OFCCP, in reviewing I-9s as part of its regular investigatory duties.~~

Investigations can be either complaint driven (specific complaints are brought by interested or affected parties, often employees or their representatives, against an employer) or directed (particular industries are targeted for inspection). Wage/Hour investigators are trained to enforce all laws (FLSA, government contracts, immigration, etc.) and, therefore, can conduct any type of investigation. Investigations normally take 20-25 hours to complete⁴ and can be either announced or unannounced. A normal investigation involves: 1) an initial conference with the employer to explain the purpose of the investigation 2) review of all applicable records/documentation; 3) interviews with employees to corroborate or refute information; 4) a closing conference with employer to discuss findings; and 5) if applicable, compliance procedures which may involve anything from writing up a notice of violation to preparation of a case for administrative or judicial enforcement proceedings. In some programs, including most immigration programs, the investigation also involves a review of the complaint, upon receipt, to determine if it shows reasonable cause to believe a violation has occurred.

It is important to note that investigators are generalists and, with few exceptions, are not trained exclusively to enforce any specific subset of laws within Wage/Hour's jurisdiction. Rather, investigators are responsible for enforcing the nearly 100 laws within their purview. Even the farm labor specialists (whose expertise is in farm labor law) are required to perform investigations in all other areas. It is this general knowledge in all areas that allows an

³ In several of the attestation programs, the statute also requires Wage/Hour to report its findings of violations to the Attorney General who may or must impose the additional sanction of debarment from the program or, in the H-1B program, from access to foreign workers under several immigration programs.

⁴ This figure is, of course an average. Investigations can take substantially longer, particularly when violations are found and the investigator may be required to review records for several prior years since it is Wage/Hour's policy to seek wage restitution for the two year period prior to the violation (or three years in cases involving wilful violations). Of course, for immigration programs, this policy cannot apply before the effective date of a program or an attestation or where the program provides no wage protections.

investigator to look for violations of all appropriate laws in any one investigation regardless of the original reason for investigating. As a result, it will be extremely difficult, if not impossible, to identify discreet investigators whose workload lies solely in the immigration area.

In particular, H-2A investigations are closely tied to FLSA and MSPA investigations and are often more complex and time consuming than the "average" Wage/Hour investigation. The H-2A aspect of the investigation adds the additional issues of compliance with the H-2A work contract and regulations. Wage/Hour investigators often conduct "sweeps" or directed investigations, targeting a large number of agricultural employers in a particular crop and area for investigation during the period of time when farmworkers, including H-2A workers, are employed. Because, in many cases, this period can be short, the sweep technique is one that enables Wage/Hour to obtain maximum coverage of the employers and workers involved in the H-2A program.

The I-9 review, while not a complex task, can be time consuming because all, or in some cases a representative sample of, forms must be reviewed, a process that can be lengthy when the employer has a large workforce.

Organizational structure

ESA Structure

The Employment Standards Administration was established in 1971 to administer and promote compliance with laws and mandates which: a) set employment standards for most U.S. workers; b) provide workers compensation benefits to certain employees injured on the job; and c) require nondiscrimination and good faith efforts by Federal contractors to assure equal employment opportunity. ESA has approximately 3,900 employees nationwide with responsibilities for administering about 100 statutes, mandates and regulations. It carries out this mission through the use of investigations, compliance audits, compliance assistance, adjudications and public awareness efforts. The three basic organizations which comprise ESA are: OFCCP; the Office of Workers' Compensation Programs (OWCP); and the Wage and Hour Division. Of these programs, it is Wage/Hour which has primary compliance responsibility in the area of immigration.

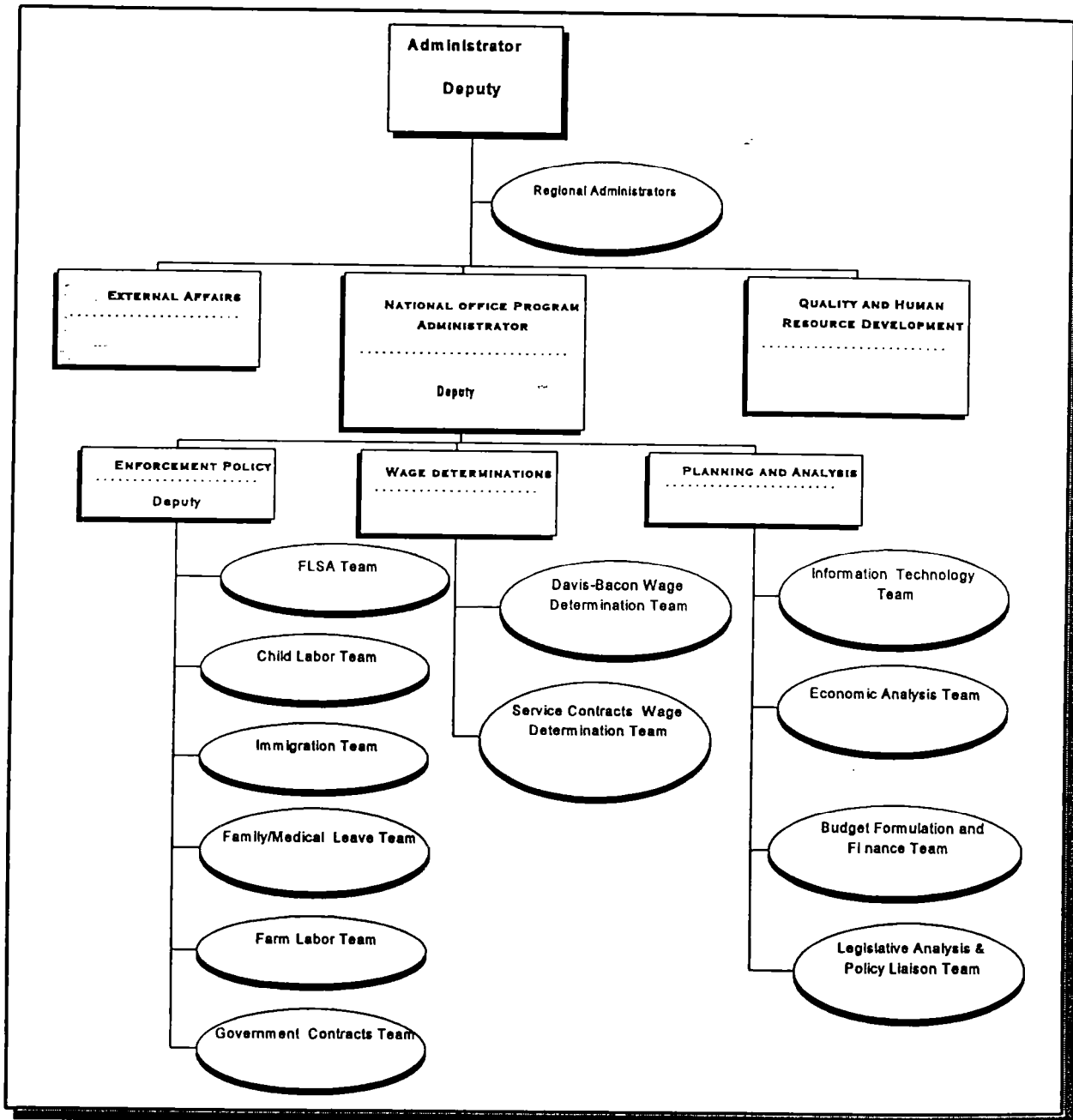
Wage/Hour Structure

The Wage and Hour Division was created with the enactment of the Fair Labor Standards Act of 1938. Wage/Hour has a budget of approximately \$100 million and employs about 1,289 persons. Of these, 120 (management, technical support and government contract wage determination personnel) work at headquarters in Washington, D.C., with the remainder employed in the field. The field structure consists of 5 regional offices, 54 district offices and about 190 field offices throughout the country. of the 1,169 field personnel, approximately 799 are investigators, with the remaining staff performing support and management functions.

Along with FLSA, Wage/Hour enforces and administers numerous other labor standards laws including: MSPA; the Employee Polygraph Protection Act; "Whistleblower" protection laws; several government contracts prevailing wage laws; and immigration laws.

Within Wage/Hour, responsibility for policy and training for immigration programs rests with the Immigration Team within the Division of Enforcement Policy. The Division is a part of the National Office Program Administration. The National Office Program Administrator reports to the Wage and Hour Administrator, who reports directly to the Assistant Secretary for Employment Standards.

Wage and Hour National Office



In the field, investigations generally are assigned to the closest office geographically. In directed enforcement activities, such as H-2A sweeps, investigators may be drawn from a number of offices within a region. Organizationally, field offices report to district directors, who in turn report to Regional Administrators. In ESA, each major component, Wage/Hour, OFCCP and OWCP has a separate staff and separate Regional Administrator. Wage/Hour Regional Administrators report directly to the Wage/Hour Administrator.

Workload

Of the 30,000 investigations conducted by Wage/Hour in 1995, less than 5% of all investigative time was attributable to immigration, excluding time spent on employment eligibility verification compliance (I-9) inspections, a function also performed by OFCCP in every on-site investigation at an employer's facilities.. The following table shows the number of investigations/inspections conducted in FYs 1990-96, as well as a breakdown of the H-2A actions by complaint and directed.

Wage/Hour Immigration Related Investigations Completed

Program	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
H-2A*	472	407	321	313	172	151	85
H-1A		0	2	2	3	2	6
H-1B			1	2	34	26	24
F-Program			1	0	0	0	0
D-Program			0	0	0	0	0
SAW/RAW	2,405	1,385	1,008	391	0	0	0
I-9 Inspections	42,223	31,739	32,612	27,698	22,173	21,547	22,588

*Breakdown of H-2A actions by complaint and directed

	Complaint	Directed
FY 1991	49	358
FY 1992	48	273
FY 1993	66	247
FY 1994	34	138
FY 1995	47	102
FY 1996	27	58

Staffing

Headquarters: The newly-created Immigration Team within the Division of Enforcement Policy has responsibility for Wage and Hour's National Office immigration functions. The team will have five FTE assigned to it when fully staffed. Prior to a December 1995 reorganization, National Office immigration responsibilities were shared by the Office of Policy, Planning & Review, and the Office of Program operations.

The Immigration Team is responsible for the development, formulation, coordination, clearance, dissemination, implementation and enforcement of nationwide policies, regulations and procedures for Wage and Hour's immigration responsibilities. The team serves as a direct conduit for guidance, interpretations, and liaison between Wage and Hour's field operations and the National Office.

In addition, the Deputy Wage and Hour Administrator spends a portion of his time on immigration, focusing primarily on policy and management-related functions.

Field: Immigration-related field activities are primarily investigations, with some necessary support. As stated earlier, currently less than 5% of all investigative time is attributable to immigration, excluding I-9 work. The number of Wage and Hour investigators has declined from 961 in FY 1990 to less than 800 in FY 1996.

The following table shows the staffing attributable to immigration activities. In reviewing this data, it is important to keep in mind that, with regard to immigration, a direct corollary cannot be made between FTEs and actual identifiable persons. This is due to the investigative structure which requires investigators to inspect for all applicable laws in any given investigation and headquarters personnel to perform duties for all Wage/Hour responsibilities, not just immigration.

Immigration Enforcement, FTE Estimates: FY 1991-95

	<u>FY 1991</u>	<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
Direct Enforcement (Including I-9)	40.74	44.60	37.40	32.10	25.22
Direct Enforcement (Excluding I-9)	12.26	18.94	14.92	9.80	4.19
Other	12.92	15.30	12.69	11.09	8.61

Because I-9 inspection authority was assigned to Wage/Hour and OFCCP to assure broad coverage of employing establishments to maximize the effectiveness of IRCA's employer sanctions provisions, it is appropriate, in analyzing immigration resource needs, to look at staffing needs and costs both with and without the I-9 enforcement function.

Budget

The following table shows the budget Wage/Hour devoted or plans to devote to all immigration related enforcement activities in FYs 1991-95. These funds were spent primarily for personnel and support costs. The table also shows the Wage/Hour immigration budget excluding I-9 reviews for the same period.

Immigration Enforcement Budget Estimates, FY 1991-95

	<u>FY 1991</u>	<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
Direct Enforcement (Including I-9)	\$2,515,835	\$2,924,537	\$2,564,103	\$2,399,557	\$1,936,920
Direct Enforcement (Excluding I-9)	\$757,097	\$1,241,945	\$1,022,899	\$732,575	\$321,796
Other *	\$797,855	\$1,003,261	\$870,013	\$822,279	\$661,256

* SAW/RAW reporting costs ended in FY 1992.

Wage and Hour's FY 1996 budget request included \$9,667,000 in funding for 186 FTE (170 investigator FTE and 16 FTE for support staff) as part of the strategy to combat illegal immigration. The plan was to place the additional investigators in District Offices in the seven high-immigration States. The overall budget request represented a net increase of almost \$15.9 million and 158 FTE over the FY 1995 level. Wage and Hour's approved budget for FY 1996 resulted in a net decrease of almost \$1 million from FY 1995 levels and a net decrease of 12 FTE.

In the FY 1997 budget submission, Wage and Hour requested funding amounting to \$118,704,000 and 1,467 FTE. This would represent an increase of \$18.5 million and 173 FTE over the FY 1996 levels. At that level, Wage and Hour anticipates having 966 investigator FTE. The approved budget for FY 1997 included the additional funds requested for the immigration initiative described below.

The FY 1997 budget request discusses the proposed immigration initiative as follows:

The request includes \$15,158,000 in funding for 200 FTE (184 investigator FTE, 16 FTE for support staff) for enforcement activities in areas and industries where employment of unauthorized workers (illegal immigrants) is most prevalent.

Employment is the single most important and pervasive incentive for illegal migration. For a decade, employers have been responsible for the decision to knowingly hire unauthorized workers. IRCA attempted to reduce the incentive of job opportunities for potential illegal immigrants and improve conditions for all workers who compete in the job market with unauthorized workers. The Administration is committed to strong worksite enforcement of employer sanctions and minimum labor standards to reduce the workplace magnet for illegal immigration.

The Department of Labor can make a singularly important contribution to reducing incentives for illegal immigration. Curbing illegal migration and enforcing worker protection laws have a direct connection. Illegal immigrants are frequently subjected to subminimum wages, dangerous workplaces, long hours, and other poor working conditions because they are desperate for work and in a weak position to obtain their rights as workers. Knowingly hiring illegal immigrants both reveals and rewards an employer's willingness to break the law, and undermines wages and working conditions for authorized workers.

Vigorous targeted enforcement of employment standards serves as a meaningful deterrent to illegal migration by denying some of the business advantage that might be gained through the employment of highly vulnerable and exploitable workers at substandard wages and working conditions. Labor law enforcement not only helps ensure fairness and minimally acceptable employment standards in the workplace, but also helps foster a level competitive playing field for employers who seek to comply with the law.

In recognition of such substandard conditions and to block the "low road" to competitiveness by subverting minimum labor standards and mistreating workers, Wage and Hour has developed a strategy that, among other things, increases the proportion of its compliance activities that are targeted to low-wage industries -- such as agriculture, garment manufacturing, janitorial services, restaurants, the hotel/motel industry -- and brings a wider variety of enforcement tools to bear to promote higher levels of compliance and deter violations. For example, Wage and Hour and the Immigration and Naturalization Service (INS) have agreed to strengthen worksite enforcement by developing complementary enforcement strategies which will provide for more interagency cooperation and coordination of enforcement efforts in specific industries and geographic areas. INS and Wage and Hour have identified certain industries with high levels of non-compliance and have agreed to focus coordinated enforcement efforts in seven targeted deterrence zones (TDZ's) across the country. Coordinated enforcement and, where appropriate, joint investigations will focus on industry sectors that have been found to be violating both immigration and labor laws. In the garment industry, Wage and Hour will continue to utilize hot good injunctions, develop monitoring agreements between manufacturers and retailers, and undertake strike force enforcement efforts in particular areas.

Low-wage industries and low-skilled workers are not the only source of unauthorized employment. INS research has shown that nearly half of illegal immigrants are people who enter the U.S. legally with nonimmigrant visas but then stay beyond the authorized period of admission and find unauthorized work. These visa "overstayers" represent only a small fraction of all nonimmigrants, but they comprise a substantial share of the illegal population resident in the U.S.

DOL is committed to reducing the potential for abuse and exploitation of workers, including those with temporary visas and illegal immigrants, and promoting job opportunities for U.S. workers. For example, it is concerned that visitors who overstay their visas too frequently end up employed in abusive situations, tied to a single employer based on promises of permanent residency through the employer's sponsorship. The Administration is also committed to reversing the decline of enforcement of wage and hour laws that has occurred in recent years. This request for additional resources to be targeted to areas where illegal employment is most prevalent and has the greatest adverse effect on U.S. workers and competing businesses serves both of these important purposes. The targeting of significant additional labor standards enforcement efforts in those industries and geographic areas where unauthorized workers are most prevalent will help to reduce economic incentives for such illegal employment practices and will, in turn, contribute to reducing illegal immigration as part of a comprehensive strategy.

The initiative includes three components:

- (1) A dramatic expansion of the Department's labor standards enforcement in selected low-wage industries, especially garment sweatshops, agriculture, landscaping, etc., in targeted enforcement zones in States where immigrant workers concentrate.
- (2) Expanded enforcement of labor standards and protections for U.S. workers under those programs (especially H-visas) that allow employers to hire temporary nonimmigrant workers in order to better address the illegal immigration problem presented by visa overstayers.
- (3) Expanded labor standards enforcement in selected geographic areas and cities surrounding or contiguous with designated targeted enforcement zones to discourage illegal immigrants from migrating to those areas as enforcement is intensified in the zones.

The additional FTE requested will help enable current staff in these areas to focus intensely on the targeted industries and geographic areas. This significant, concentrated effort -- combined with the execution of the other elements of the President's illegal immigration control initiative -- should have the desired impact during the term of this effort. However, it is possible that the strategy, at least in the short term, may serve to diffuse the illegal employment so that the longer term need to sustain and perhaps expand or redirect this initiative will need to be reassessed as it proceeds.

Office of Federal Compliance Programs

ESA's Office of Federal Compliance Programs (OFCCP) administers laws and executive orders that mandate that companies that do business with the government must promote affirmative action and equal employment opportunity on behalf of minorities, women, the disabled and Vietnam veterans.

OFCCP is a party to the DOL-INS memorandum of understanding regarding the inspection of I-9 forms. As part of its compliance reviews of federal contractor's, OFCCP's 400 Compliance Officers routinely review employer's I-9 forms. The agency conducts some 4,000 compliance reviews annually, primarily of larger firms. OFCCP estimates that about 2% of investigative time, or the equivalent of 8 FTE are devoted to the examination of I-9s. In an average inspection, examination of the I-9s is estimated to take four hours.

OFCCP is also currently finalizing a memorandum of understanding with the Office of the Special Counsel for Immigration Related Unfair Employment Practices (OSC) of the Department of Justice. The memorandum will provide for: appointment of liaisons/agency contacts; reciprocal training; dissemination of information to employers; sharing of enforcement

information; referrals involving potential discrimination charges; referrals of complaints for possible joint inquiry; and, coordinated public outreach efforts. Some of these activities have been ongoing on an informal basis.

BUREAU OF INTERNATIONAL LABOR AFFAIRS

Research and Policy Activities

Division of Immigration Policy and Research (DIPR) staff is responsible for conducting research and writing the Department's contributions to a number of immigration-related reports mandated by IRCA and MTINA. Three Ph.D. economists and demographers carry out the mandated research activities. The Director and one staff member combine research, policy and international duties, sitting on the various immigration committees and Working Parties detailed in Appendix A, and serving ILAB in its lead role in the temporary entry negotiations of NAFTA.

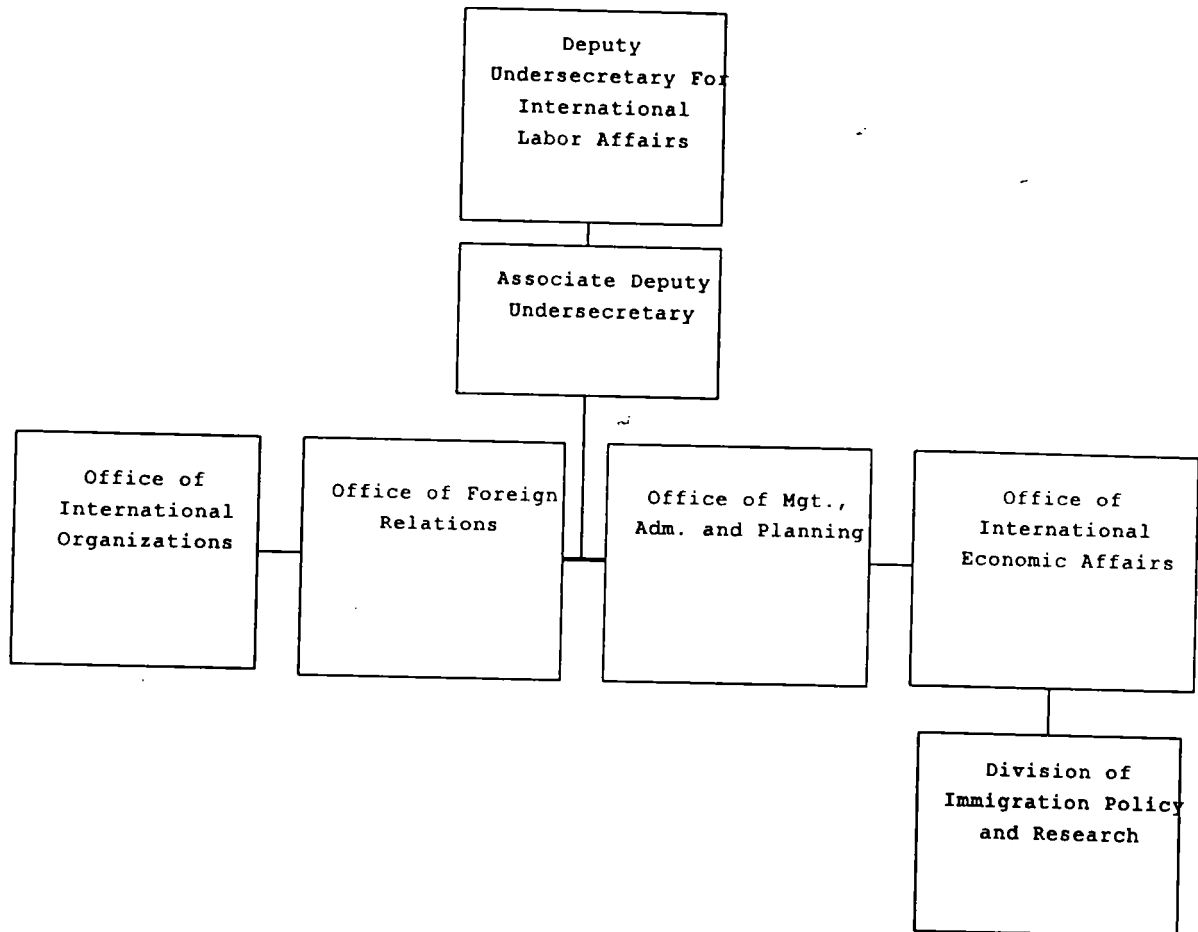
In addition to the research that the staff perform themselves, DIPR is responsible for the contracting and monitoring of both small- and large-scale research projects. The Division contracts for research to support the various statutorily required reports and for related studies of specific interest to the Department's immigration policy concerns.

DIPR plays an important role in the development of the Department's immigration policy, particularly how it relates to international agreements.

Organizational Structure

Within ILAB, DIPR is a part of the office of International Economic Affairs, which is headed by a Director who reports directly to the Deputy Under Secretary/Associate Deputy Under Secretary.

Bureau of International Labor Affairs (ILAB)



Budget

The ILAB budget does not specifically break out the cost of DIPR. However, cost of salary and benefits for the currently authorized staff level would be approximately \$425,000.. DIPR had been receiving \$194,000 annually from ILAB to fund its research. DIPR also received funds from other DOL and government agencies to fund its research activities. As shown in the following table, DIPR's research budget had increased substantially over the five years 1988-92 (largely due to the survey of the newly legalized population, although it has since declined considerably with budget cuts. The budget cut of 1996 effectively halted any new outside research contracts.

DIPR Research Budget

<u>Fiscal Year</u>	<u>ILAB Base Funding</u>	<u>Interagency Agreements</u>	<u>Total</u>
1988	\$194,000	\$50,400 ⁵	\$244,400
1989	\$194,000	\$595,000 ⁵	\$789,000
1990	\$194,000	\$0	\$194,000
1991	\$194,000	\$850,000 ⁵	\$1,044,000
1992	\$194,000	\$1,075,000 ⁶	\$1,269,000
1993	\$194,000	\$348,000 ⁷	\$542,000
1994	\$127,000	\$0	\$127,000
1995	\$145,000	\$108,000 ⁷	\$253,000
1996	\$0	\$0	\$0

⁵Funds transferred from ETA

⁶Funds transferred from the Department of Agriculture (\$500,000), the Department of Commerce (\$50,000), and OASP (\$225,000). Also included is \$300,000 for research carried out by ILAB but funded from the OASP budget (initially transferred from ETA).

⁷Research carried out by ILAB but funded from the OASP budget (initially transferred from ETA).

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY

Historical Background

Established by Secretary's Order 18-63, dated July 1963, the Office of the Assistant Secretary for Policy, Planning and Research (ASPPR) was created to assist the Secretary (then Secretary Willard Wirtz) in developing policies to keep up with economic and social change. It also projected the future course of existing DOL programs, coordinated research programs throughout the Department, and supervised the BLS. Since its inception, ASPPR has undergone many changes. During the Nixon and Ford Administrations, it was renamed the Office of the Assistant Secretary for Policy, Evaluation, and Research (ASPER) and acquired several new responsibilities, including chairing, in the absence of the Under Secretary, the newly created Program and Budget Committee, coordinating and/or performing Departmental evaluation activities, and managing the Research Project Clearinghouse that was created in 1974. In the Carter Administration, the focus of ASPER was once again redirected to the design and implementation of social and economic policies.

In 1982, under Secretary's Order 2-82, ASP was given its present name and was vastly restructured and down-sized. Staff was cut about fifty percent and the office was cut from six suboffices to the current four. In 1983, the office of Regulatory Analysis in ASP was called on to play a significant role in the newly established Policy Review and Coordinating Committee (PRCC). In 1986, the PRCC was supplanted by the Policy Review Board; ASP generally chaired meetings. Prior to 1987, ASP played a minimal role in Departmental research. In early 1987, however, ASP assumed responsibility for implementing IRCA and assigning research functions among DOL agencies. ASP retained responsibility for the IRCA-mandated research on the supply of agricultural workers under the SAW/RAW program. Although that mandate sunset at the end of FY 92, ASP continues to use money transferred from the Department of Agriculture to fund the National Agricultural Worker Survey (NAWS) in order to collect information on the wages, working conditions and demographic characteristics of the immigrant-dominated U.S. agricultural labor force.

Today, ASP is one of the seven units within the Executive Direction structure of the Department. It provides the Secretary with analytical support on economic policy issues; assists the Secretary, Deputy Secretary and Departmental agencies in the design and evaluation of Departmental programs by providing analytical support and research direction; and performs and/or oversees the performance of research in areas of special interest to the President and the Secretary. ASP is organized primarily along functional lines and plays a major role in coordinating DOL immigration policy.

Workload

Aside from its policy review functions as they relate to immigration activities, ASP performs several functions directly involving immigration policy and research. A staff member of the

Office of Program Economics is the coordinator of the Immigration Policy Task Force and also does considerable work in the development of immigration policy papers. The Task Force is chaired by the Deputy Assistant Secretary for Policy.

One ASP staff member works on research projects involving agricultural workers. This staff member's primary work has been the National Agricultural Workers Survey (NAWS), which was the survey used to determine whether a shortage of hired agricultural workers existed for purposes of the SAW/RAW program. As previously mentioned, the SAW/RAW program terminated at the end of FY 1992. The NAWS continues on a scaled down basis, collecting data to inform immigration policy makers regarding farmworkers and to help guide and evaluate farmworker programs throughout the federal government.

The staff Chair of the National Farm Labor Coordinated Enforcement Committee (NFLCEC) is also an ASP staff member. Because of the immigration issues in guestworker programs, farmworker issues have often proved the cornerstone of immigration policies. Therefore, this staff person also spends considerable time on immigration policy issues.

Organizational Structure

ASP is a small organization (32 FTEs), divided into four major functions or offices, each of which reports directly to one of the two Deputy Assistant Secretaries for Policy. Immigration related activities, both research and policy review, are housed in the Office of Program Economics.

Staffing

ASP staff resources cover a broad array of technical, economic and analytical capabilities designed to provide the office of the Secretary with flexible support. In fulfilling its support functions relative to immigration, during the FY 1996 and FY 1997 budget cycles, ASP devoted approximately two FTEs to these activities. ASP also provides support as necessary for immigration related activities which are brought before the Secretary.

The two FTEs devoted to immigration activities currently consist of one full-time person and two part-time people (who each spend approximately 50% of their time on immigration activities). During FY 1996 and 1997 the average cost of an ASP FTE was approximately \$66,600 in personnel compensation plus \$33,400 in fringe benefits per position.

Budget

In addition to the \$200,000 in personnel costs currently attributable to ASP immigration activities, ASP has spent substantial sums for immigration research, both from its own budget and through transfers from the ETA budget. For FYs 1988-91, ASP research expenditures totaled over \$1.7 million annually for NAWS mandated under IRCA. Of that annual sum,

\$756,000 came from an ASP budget item explicitly mandated for farmworker surveys and \$975,000 came from the ETA budget.

In FY 1992, ASP expenditures for immigration research rose significantly to \$2,574,000, primarily because of the need to fund IRCA-mandated and INRA-mandated research projects. Of this amount, \$956,000 was spent on the NAWS, including a reduced ETA contribution of \$200,000. A total of \$1,088,000 has been spent on INRA-mandated projects, with \$910,000 of this money coming from ETA. Another \$305,000 has been spent to fund an evaluation of the new F-visa program mandated by IMMACT, with the entire amount coming from ETA. Another \$225,000 of ASP funds was transferred to ILAB to partially fund a legalization study mandated under IRCA.

In each of FY 1996 and FY 1997, ASP expenditures for immigration-related functions have dropped to personnel expenditures of approximately \$200,000, and \$655,000 in FY 1996 and \$755,000 in FY 1997 for the NAWS. While no longer mandated under IRCA, the NAWS continues on a scaled down basis to collect data on the immigrant-dominated agricultural labor force. Data from the NAWS are used to inform policy makers on immigration issues, particularly in relation to low-skill, low-wage sectors of the economy, as well as to guide and evaluate farmworker programs throughout the federal government.

ASP Research Budget

Fiscal Year	NAWS	INRA	OTHER	TOTAL
1988	\$1,731,000*	-0-	-0-	\$1,731,000
1989	\$1,731,000*	-0-	-0-	\$1,731,000
1990	\$1,731,000*	-0-	-0-	\$1,731,000
1991	\$1,731,000*	-0-	-0-	\$1,731,000
1992	\$ 956,000**	\$1,089,000***	\$530,000	\$2,574,000
1993	\$ 757,000	\$ 50,000	\$700,000	\$1,507,000
1994	\$ 737,000	-0-	\$122,000	\$ 859,000
1995	\$ 755,000	\$ 40,000	-0-	\$ 795,000
1996	\$ 655,000	-0-	-0-	\$ 655,000
1997 est.	\$ 755,000	-0-	-0-	\$ 755,000

* \$975,000 from ETA

** \$200,000 from ETA

*** \$910,000 from ETA

OFFICE OF THE SOLICITOR

Background

The Office of the Solicitor provides legal support for all DOL immigration programs and functions. These services include: providing advice and opinions in support of policy and program decisions that must be made in these immigration related areas; reviewing and, in some cases, assisting in the drafting of regulations and policy issuances that govern program operations; reviewing and clearing various correspondence, including secretarial correspondence; and litigating the cases that arise under the various immigration programs.

Because the Department's immigration functions are spread among four agencies, SOL provides a primary means of coherence even though different Divisions of SOL provide advice and litigation support to the different operating agencies involved. Three SOL National Office Divisions are the primary attorneys for these client agencies. The Division of Employment and Training Legal Services (ETLS) serves ETA as its primary client and represents it in its immigration activities including litigation. The Division of Fair Labor Standards (FLS) provides legal services to Wage/Hour in all its activities, including immigration. The Division of Labor Management Laws (LML) represents ILAB, particularly in its international negotiating role. In addition, the Division of Legislation and Legal Counsel (LLC) provides services to all Departmental agencies in reviewing and obtaining clearance for legislative and regulatory documents and in clearing Congressional testimony. Most Wage/Hour enforcement litigation is handled at the trial level by the Regional SOL offices and at the appellate level by the FLS Division.

Services

A. Advice, Counsel, Review and oversight

Requests for advice or opinions may arise from a variety of sources: formal requests from the client agency; Departmental management through the Solicitor; informal contacts with client agency personnel; reviewing document for legal clearance; inquiries from outside sources; and issues that develop during litigation. In addition, Wage/Hour often works closely with the Regional SOL Office during its investigations. The Regional SOL Office provides informal advice or may refer the matter to the FLS Division if it has important policy implications or involves legal issues of first impression. (This is particularly the case in the controversial H-2A program and when new programs like the H-1A and IMMACT programs are being implemented.) Responses may take the form of a formal opinion or of informal written or oral advice. A great deal of the advice-giving function is performed informally, because of efficiency considerations and resource constraints. Nonetheless, because the immigration laws and regulations are new and complicated, the advice-giving function has expanded greatly and seems likely to continue to do so.

The regulation review process may involve close work between attorney and client in the drafting of regulatory documents or it may involve review of a document drafted by the client agency. SOL attorneys from the FLS and ETLS Divisions have played an integral role in the process of drafting the regulations to cover the new IMMACT programs: working directly with the Task Force that wrote options papers and regulations as well as reviewing the regulations; serving on the Expert Advisory Panel that reviewed the regulations and serving on the Steering Committee that oversaw the process. SOL attorneys remain active in the process of finalizing the regulations, providing review, and drafting assistance. As the new laws have required new regulations, the burden on SOL has increased significantly.

The clearance process involves reviewing a wide variety of documents, ranging from Secretarial correspondence to client correspondence with third parties to internal documents. Each document is reviewed for legal sufficiency and conformance to agency policy and, in many cases, clarity and responsiveness. The review process may be a fairly quick process of reviewing and signing off on a document or it may surface important legal or policy issues to be resolved.

The LML Division provides legal advisory services on immigration matters and, in particular, has provided assistance to ILAB on free trade agreements.

B. Litigation

The handling of litigation varies greatly between the ETLS and FLS Divisions because of the way in which the cases each division handles arise.

ETLS

In the ETLS Division, cases arise primarily in the permanent labor certification program and in the processing stages of the H-2A program.

1. **Permanent program.** In the permanent program, adverse decisions by a Certifying Officer may be appealed to the BALCA. The CO is represented before the BALCA by attorneys from the ETLS Division. The process is primarily a record review process in which the BALCA decides the case on the record compiled by the CO and on any briefs that may be filed by the parties.⁸ Because of staffing constraints, ETLS attorneys do not participate in all BALCA cases, rather they participate in a few cases from the outset and review BALCA decisions in cases in which ETLS did not participate and seek reconsideration of those cases that are felt to be of serious concern to the client or to program integrity. After BALCA has decided a labor certification case, it may be "appealed" to a federal district court for review under the Administrative Procedure Act (APA). ETLS attorneys, in conjunction with Department of Justice (DOJ) attorneys, represent the Department in such litigation and in any subsequent appeals to the Courts of Appeals.⁹

⁸ Although there is provision in the regulations for BALCA to hold evidentiary hearings, none has yet been held in the history of the Board. BALCA has heard oral arguments on a few occasions.

⁹ Although ETLS has no independent authority to represent the Department in the federal courts, authority which generally resides in DOL, in fact, ETLS attorneys are often able to arrange with DOJ to represent the Department themselves.

2. **H-2A Program.** ETLS participation in H-2A litigation arises in slightly different ways. On the administrative side, the H-2A regulations provide for employers to request expedited hearings if the RA denies their applications or labor certifications. These hearings may be de novo hearings, that is, hearings at which evidence is presented or, at the employer's option, they may be hearings on the record before the agency. Generally, the entire hearing process is to be completed within an accelerated timeframe. ETLS also defends ETA in APA challenges to a variety of actions and decisions it takes in administering the H-2A program. These cases are brought in federal district court. As with the permanent labor certification cases, ETLS attorneys often play a major role in litigating these cases. These cases involve challenges to decisions to certify or to deny certification, challenges to the regulations, to ETA's interpretations of the regulations and to decisions made in the course of program administration. Generally, these cases too are to be decided on review of the record compiled by the agency, but they also often involve hearings for temporary restraining orders and preliminary injunctions and complex discovery issues. H-2A cases have proved to be among the most complex and time-consuming matters dealt with by ETLS.

The litigation arising out of Wage/Hour immigration compliance activities normally begins when Wage/Hour determines that a violation has occurred and assesses a penalty (or in some cases, decides not to do so.) In three of the programs (H-1A, H-1B and D-visa), "interested aggrieved parties", including the party against whom Wage/Hour's decision has been issued, may contest the Wage/Hour findings; in the two other programs (H-2A and F visa), only the employer charged with violation can obtain a hearing. Under the H-2A program, SOL may file an action in district court to enjoin the violation or to seek specific performance of the work contract. Generally, the litigation is handled at the trial level by the Regional SOL Office for the area where the violation has occurred. In special cases, for example in the first few cases in new programs, the senior trial attorney in the FLS Division will try the case. As the program becomes more familiar, almost all litigation will be handled in the Regional SOL Offices. Attorneys from the FLS Division remain available to provide advice to regional attorneys, to assure that the policy interests of the Wage/Hour National office are being adequately represented in the prosecution of the cases and to provide more direct assistance in particularly complex or important cases.

The role of the SOL attorney in these cases is to uphold the Wage/Hour determination. In this capacity, the SOL attorney acts as a prosecutor, proving the violation and justifying the penalty where violations are charged. SOL attorneys also may participate in hearings on a discretionary basis where no violation is charged and an interested party requests the hearing. The hearings are usually trial-like hearings at which evidence and witnesses are presented. In immigration programs, initial hearings are before ALJS, with a discretionary appeal to the Secretary. Thereafter, APA review in the federal district courts and appeal to the courts of appeals also are available. SOL attorneys participate in these court proceedings, either assisting the Justice Department attorneys or directly handling the cases on delegation from the Justice Department.

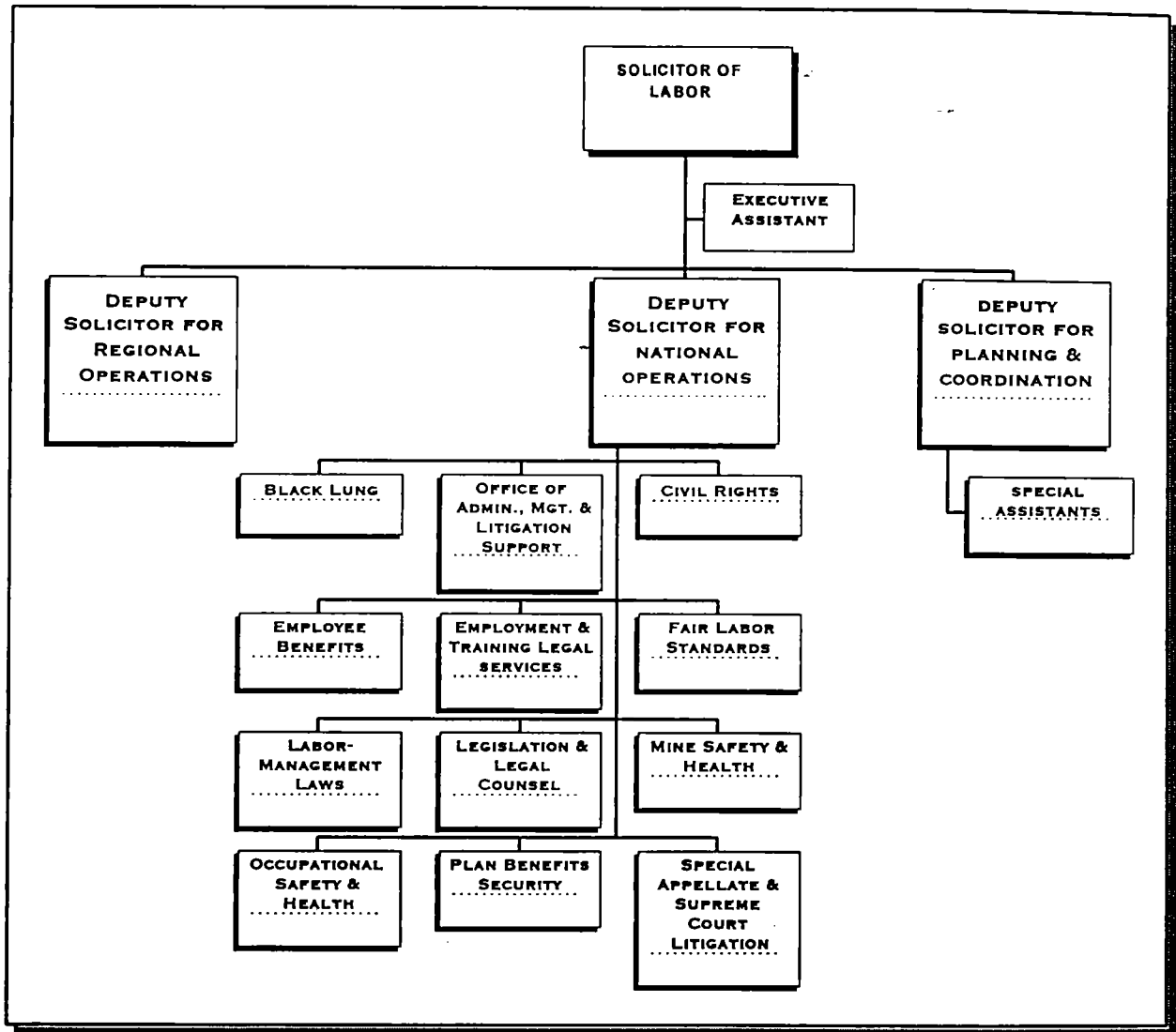
Organizational Structure

Within the National Office, the Solicitor's office is divided into eleven Divisions, each of which reports to the Solicitor through the Deputy Solicitor for National Operations. The Divisions may serve a single client agency (for example, the Occupational Health and Safety Division serves the Occupational Health and Safety Administration) or may serve several clients (for example, ETLS, whose largest client is ETA, also serves VETS in veterans' employment and training matters and OASAM in procurement matters. Two of the Divisions have "cross-cutting" missions: one handling special appellate and Supreme Court litigation and one (LLC) handling legislation, ethics, labor relations and a number of other issues of Department-wide concern.

Each Division is headed by an Associate Solicitor under whom are a Deputy Associate Solicitor and several counsels, who supervise legal services in various areas, organized by function (e.g., litigation) or by subject matter (e.g., unemployment compensation programs). In the FLS Division, there are five counsels, three of whom, the Counsel for Trial Litigation, the Counsel for Employment Standards and the Counsel for Appellate Litigation, are most directly involved in immigration matters. In the LML Division, there are three counsels, one of whom, the Counsel for International Affairs, is directly involved in ILAB and immigration related matters. In ETLS, there are four counsels, two of whom, the Counsel for Litigation and the Counsel for Employment and Immigration Programs are directly involved in immigration related matters.

There are eight Regional SOL Offices, headed by a Regional Solicitor. (In two DOL regions, Denver and Seattle, the SOL Office is a suboffice of one of the larger regions, Denver of Kansas City and Seattle of San Francisco.) There also are six subregional offices. Generally, the Regional SOL Offices are organized into functional counsel areas, with counsels being responsible for one or more program areas. Most Regional SOL Offices have an ESA counsel under whose area all Wage/Hour immigration litigation would fall.

Office of the Solicitor of Labor



Workload

The bulk of the litigation that has occurred in the immigration area has been in the permanent labor certification and H-2A programs. The following table shows the SOL workload broken out by the various kinds of cases and activities. (All figures include both applicable Regional and National Office activities.)

It is important to recognize that cases and opinions are not all the same in terms of time spent or complexity. Immigration cases, particularly H-2A cases, have proven to be among the more complex and time consuming in ETL's workload. For example, one H-2A administrative case involved several weeks of preparation and a three day trial, effectively taking up the full time of a senior ETL's attorney for more than a month. The same has proved true on the enforcement side of the caseload. One of the larger H-2A enforcement cases involved almost full time efforts by the head of a subregional office for several weeks just for analysis and settlement. Additionally, considerable FLS Division resources were needed to provide backup, advice and policy coordination.

SOL Immigration Workload Statistics

Type of case	FY1992	FY1993	FY1994	FY1995	FY1996
Permanent Labor cert					
BALCA	1,020	993	1,236	1,466	1,367
District Court	20	2	8	3	1
Court of Appeals	2	2	2	0	0
H-2A					
ALJ/ETA	10	12	13	3	1
ALJ/WH	10	8	3	24	20
District Court	2	1	2	2	1
Court of Appeals	1	2	1	2	1
Advice/Opinions					
ETLS	96	46	36	25	29
FLS	208	389	444	512	562
H-1A	3	4	5	8	15
H-2B	2	8	18	21	15
Regulations	NA	NA	NA	7	6

Staffing

There are no positions within SOL that are devoted exclusively to immigration work. Nevertheless, because of the increase in the Department's immigration responsibilities and because of the complexity of the work, SOL devotes considerable and increasing staff time to immigration matters.

For some years before FY 1992, SOL did not maintain data on the number of FTE devoted to particular kinds of cases or activities. Thus, the following table shows estimates of FTE devoted to immigration related activities only for FYs 1992-96.

SOL FTE Devoted to Immigration-Related Work

Division	<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>	<u>FY 1996</u>
ETLS	6.5*	8.5*	9.5*	5.5	4.5
FLS	6.0**	9.0**	13.0**	6.0	6.0
LML	0.5	0.5	0.5***	.75	.75
LLC	0.1	0.1	0.1	0.1	0.1
TOTAL	13.1	18.1	23.1	12.35	11.35

* These figures include two additional FTE in FY 1993, primarily for advice and regulatory work and one additional FTE in 1994, primarily for litigation.

** These figures include both FLS Division and Regional SOL staff devoted to immigration work. For FY 1992, it includes 2 FLS FTE and 4 Regional FTE; for FY 1993, it includes one additional FTE in the FLS Division for the additional advice and opinion work and two additional FTE in the Regions to handle the beginning of the increased litigation load. For FY 1994, the number includes four additional FTE in the Regional SOL Offices to handle increased litigation workload.

*** In its FY 1994 budget request LML requested two additional FTEs for ILAB-related work on free trade agreements - While not specifically immigration positions, if present workload patterns hold, these attorneys will be involved in providing some advice related to immigration and international worker migration issues.

Budget

The SOL budget submission for FY 1997 contains a specific request for \$2,040,000 and 23 FTE for immigration related activities. The narrative accompanying the request is as follows:

Recent reports by the President and the U.S. Commission on Immigration Reform recognize that enforcement of labor standards requirements is an important component in an effective strategy to combat illegal immigration. Employment opportunity is the major incentive to such illegal immigrants. Employers in turn have an incentive to hire such immigrants if there is not strong labor standards enforcement since such workers are frequently willing to work for less, and under worse conditions, than American workers. Furthermore, such unauthorized workers, who are not legally in the United States, are unlikely to report violations to the government or to cooperate in enforcement efforts because of fear of deportation. In areas and industries with high numbers of unauthorized workers, a correlation has been demonstrated between unauthorized employment and labor standards violations.

Effective enforcement of the law cannot take place without a demonstrated willingness by the Department to take judicial enforcement action in appropriate cases. This is becoming increasingly difficult as enforcement resources have been stretched more and more, while new responsibilities have been added. Experience has demonstrated that cases involving unauthorized workers can be particularly difficult to litigate and resolve because of the difficulties in gaining the cooperation of the workers. Furthermore, employers in industries such as the garment industry and agriculture often attempt to evade the law by disappearing or changing corporate identity. The filing of suits to seek temporary restraining orders or preliminary injunctions, which are particularly resource-intensive, is sometimes necessary to deal with urgent situations such as the continuation of hazardous or unsanitary housing conditions in agriculture, or to obtain an injunction to stop illegal shipment of "hot goods (goods produced in violation of the law).

The Wage-Hour Division of the Employment Standards Administration envisions assigning additional FTE to district offices in the New York, Atlanta, Chicago, Dallas, and San Francisco regions as part of the Department's strategy to combat illegal immigration through increased enforcement of labor standards. Increases in SOL staff in these regions will be necessary to pursue litigation where compliance cannot be obtained and in egregious cases where there has been a history of violations. Targeted industries include agriculture, construction, garment manufacturing, eating and drinking establishments, hotels and motels, and domestic, janitorial and guard services.

The SOL attorneys would be allocated proportionately to the Wage-Hour Division's increases in the affected regions. One attorney is requested for the national office to litigate those cases which will be appealed, either by the Department or the employer. No additional managerial staff are requested. The managing attorney, when fully trained,

would be able to handle additional cases, and would free up experienced attorneys to handle more complex cases.

BOARD OF ALIEN LABOR CERTIFICATION APPEALS (BALCA)

The Board of Alien Labor Certification Appeals was organized in May, 1987. Pursuant to 20 CFR§656.26 *et seq.*, the Board is empowered to review all denials of applications for labor certification for which review is requested. Previously, appeals were adjudicated by individual administrative law judges within the Department of Labor. BALCA's mandate is to provide uniformity and consistency of decision.

Under the regulations, BALCA is chaired by the Chief Administrative Law Judge of DOL and consists of other Department ALJs designated by the Chief Judge. BALCA is supposed to have nine members divided into three panels of three judges. At the present time, as the result of vacancies, only two panels are in operation. The reduction in the number of members of BALCA coincides with an overall reduction in DOL's number of Administrative Law Judges. A corresponding increase in the BALCA backlog has reportedly taken place.

Request for the denial of a labor certification may be made by an employer or by an alien if the employer also requests review. Failure by the employer to join the request for review will result in dismissal of the appeal. The alien has independent standing to seek judicial review of a denial of labor certification in federal district court. Requests for BALCA review must be made in writing to the Certifying Officer who denied the application within 35 calendar days of the date specified in the Final Determination

Under ordinary circumstances, denials of applications are reviewed by a single panel of three judges. Upon the petition of a party, en banc review may be granted, but only when necessary to maintain Board uniformity or in other cases of exceptional and unusual importance. On occasion, the Board will decide cases en banc without a petition from a party, such as where the issue involved is one the Board deems it necessary to announce a new principle of law. En banc review is a creation of the Board, not a regulatory procedure.

With respect to BALCA's workload, the Board docketed 697 appeals in FY 1995, and 496 appeals in FY 1996. It is estimated that it takes approximately 18 months from the time a case is docketed until a decision is issued.

V. DOL IMMIGRATION ORGANIZATIONAL STRUCTURE ISSUES

This section outlines some of the problems/issues involved in DOL's administration of its functions in the immigration process which result from the DOL organizational structure.

Coordination

Problems involving coordination of activities arise as a result of the several DOL agencies (i.e. ETA, ESA, ILAB, ASP, and SOL) which have immigration-related responsibilities. There have been problems in getting important documents through the interagency clearance process in a timely manner, and in other communications between the agencies. Each of the agencies has significant nonimmigration responsibilities which compete with immigration for attention. Often, immigration issues only receive attention when a crisis arises.

Some efforts have been made to improve coordination among DOL agencies. Among these efforts, was the establishment of the Immigration Policy Task Force.

In March of 1988, with the prospect of the passage of major legal immigration reform legislation in the Congress, a Department-wide Task Force was convened to coordinate immigration issues and policy within DOL. The need to organize an Immigration Policy Task Force stemmed from the increasing number of DOL agencies which had recently become involved in immigration as a result of the enactment of IRCA. Immigration functions were now dispersed within the Department. One of the first actions of the Immigration Policy Task Force was to unify the interests of these diverse agencies into a single Departmental position.

The Task Force is chaired by the Assistant Secretary for Policy, with ILAB's Director of Immigration Policy and Research serving as Task Force Staff Co-Chair.

Both the number of persons and agencies participating on the Task Force has increased over the years as immigration issues involve more and more agencies in the Department. At present the Task Force comprises representatives from ILAB, ASP, ETA, ESA, SOL, the Office of the Deputy Secretary, Bureau of Labor Statistics (BLS), Office of Congressional and Intergovernmental Affairs (OCIA), and the Women's Bureau.

Much of the early thrust of the Immigration Policy Task Force was to coordinate and develop DOL policy positions on legal immigration reform to help shape a unified Administration stance. While both the political and the staff level were, and still are, represented on the Task Force, the Policy Review Board finalized major policy positions before they were presented at the next higher level, the Domestic Policy Council. For nearly three years, legal immigration reform dominated the work of the Immigration Policy Task Force, subsiding with the passage of the Immigration Act of 1990. Other issues such as employer sanctions and labor mobility in international trade agreements, notably NAFTA and GATT have now moved into the forefront of the work of the Task Force.

It has been reported that the Task Force meets quite infrequently. It appears there is no ongoing organization to deal with immigration issues on a systematic basis before they become crises. Instead, immigration issues are dealt with through informal relationships and contacts. Because there are so many priorities of DOL--for example job training, minimum wage, child labor, and so forth, immigration only gets high level attention when there is a problem.

Another effort to address the issue of coordinating DOL immigration activities was the creation of the National Farm Labor Coordinated Enforcement Committee.

The National Farm Labor Coordinated Enforcement Committee (NFLCEC) was established by regulation (29 CFR Part 42) in conjunction with the settlement of litigation initiated against the Department in 1972, NAACP, Western Region v. Brennan. One of the complaints in the litigation was that the different agencies in the Department did not work effectively with each other and on occasion even operated at cross purposes. The committee was charged with the responsibilities for:

- Reviewing policies, guidelines and goals of DOL relative to farm labor protective statutes,
- Resolving any real or apparent conflicts in policies between DOL agencies,
- Advising the Secretary on legislative initiatives affecting DOL's farm labor programs, and
- Providing guidance and recommendations to DOL agencies concerning effective enforcement of DOL farm labor program mandates.

The Deputy Secretary of Labor chairs the Committee which is composed of the original members, the Solicitor and the Assistant Secretaries for ESA, ETA, and OSHA, and the Assistant Secretary for Policy, who was added to the Committee in 1989. There is a staff level working group with membership from the same agencies that provide members for the National Committee. The staff level group meets monthly, raising issues to the National Committee when appropriate. Immigration is very much a part of the business of the NFLCEC since many of the issues which come before the working group arise either from the H-2A program or the illegal immigration debate.

The staff level group also serves as the link between the national office and the regions on matters concerning farm labor. Each regional office also is required to have a regional committee. The national office working group maintains regular contact with the regional committees whose membership, except for ASP, parallels the National Committee. Each region holds an annual public meeting for growers, workers and other interested parties to express to DOL their concerns regarding farm labor issues.

Conflicting Agency Viewpoints

Many within DOL recognize that there are “cultural” or orientational differences between two of DOL’s primary immigration players, ETA and ESA. ETA sees itself and is seen as a “service” agency, whose primary mission is to provide services to clients, whether training to the disadvantaged or referrals to job seekers. In its immigration role, ETA sees its principle role as the protection of US workers which may mean the denying a job to a foreign worker. According to those working in the system, however, the system often does not allow those administering it to protect those US workers to the extent that it was intended.

ESA (Wage/Hour), on the other hand, sees itself as an enforcement agency whose mission is to protect the wages and working conditions of all workers, both foreign and US, and to assure that workers receive the appropriate labor standards protections. The enforcement of immigration laws often presents Wage/Hour with a conflict with its protective role.

Lack of a Single Policy Voice

Because of the shared responsibilities for DOL’s immigration functions, there is no single political appointee who serves as the policy voice for DOL on immigration issues. This has resulted in a lack of continuity in who speaks for DOL on immigration issues. The lack of continuity manifests itself in the changes that have taken place with respect to which DOL agency takes the lead in immigration matters. At various times in the past few years, both ILAB and ASP have served as the primary DOL spokesperson on immigration matters. It is also seen in the lack of any voice when key political people leave. Since no agency has consistently taken the role of DOL immigration policy spokesperson, when a particular person who has filled that role leaves, the agency does not automatically assume the role while a new agency head is being chosen since that role is not an official part of the agency’s mission. Thus, who is in charge becomes a constantly changing cast of characters and agencies--often depending on individual personalities and individuals’ interest in immigration

The lack of a single policy voice also means that there may be several policy voices, each not always working with complete knowledge of what the other is saying. Thus, on particular issues, ETA and ESA also have taken a role as DOL policy spokesperson. There has been some lack of consistency as a result. More importantly, however, it means that outside agencies or the public do not know who to talk to if they wish to discuss immigration issues. It also means that they can “shop around” for someone to give them the answer they want.

Resources

As a result of having the immigration functions spread out among different DOL agencies, DOL is at a disadvantage when it comes to securing adequate funding for immigration activities. Dispersal of the Department’s immigration resources makes it difficult to assess the adequacy of those resources. It also creates an impression in those agencies that funds devoted to immigration

reduce the resources available for their core programs. Although DOL has been assigned additional immigration responsibilities, in recent years, virtually all agencies in DOL involved in immigration activities have either lost staff, probably due to general budget cuts, or their staffing has remained the same. Thus, with the possible exception of Wage Hour's FY 1997 appropriation, DOL has not successfully secured the resources that its additional responsibilities under INRA, IMMACT and MTNA require.

Another likely factor in DOL's diminished resources is the relative influence of business interests with the Congress as compared to the influence of workers and those advocating strong enforcement of worker protection laws and regulations.

Administrative Practices

Much criticism has been expressed about the entire DOL labor certification/attestation system. Many employers and others have stated that the system has become much more complex, primarily through regulatory actions, than was intended by the Congress in enacting the statute. It is pointed out that this unnecessary complexity results in both long delays and increased costs.

	FY 96 distrib	FY 97 ALLOCATION
REGION I		
Connecticut	\$699,384	\$347,636
Maine	\$745,924	\$242,505
Massachusetts	\$1,419,822	\$674,965
New Hampshire	\$226,836	\$104,283
Rhode Island	\$150,413	\$60,000
Vermont	\$247,118	\$125,392
REGION II		
New Jersey	\$2,960,652	\$1,191,268
New York	\$6,207,532	\$2,803,583
Puerto Rico	\$84,035	\$60,000
Virgin Islands	\$60,000	\$60,000
REGION III		
Delaware	\$66,412	\$66,412
District of Columbia	\$922,418	\$328,840
Maryland	\$1,308,396	\$856,572
Pennsylvania	\$1,076,045	\$562,330
Virginia	\$1,888,763	\$1,300,631
West Virginia	\$149,378	\$60,000
REGION IV		
Alabama	\$281,589	\$89,444
Florida	\$1,830,661	\$1,007,865
Georgia	\$776,454	\$321,428
Kentucky	\$264,162	\$264,162
Mississippi	\$145,124	\$60,000
North Carolina	\$1,138,812	\$341,597
South Carolina	\$226,803	\$97,285
Tennessee	\$309,634	\$185,230
REGION V		
Illinois	\$1,279,865	\$648,663
Indiana	\$286,466	\$132,179
Michigan	\$751,784	\$712,347
Minnesota	\$270,822	\$106,122
Ohio	\$720,212	\$243,914
Wisconsin	\$298,925	\$94,876
REGION VI		
Arkansas	\$173,455	\$60,000
Louisiana	\$307,464	\$92,893
New Mexico	\$167,834	\$60,000
Oklahoma	\$299,265	\$97,653
Texas	\$2,154,069	\$1,249,774
REGION VII		
Iowa	\$168,521	\$60,000
Kansas	\$199,442	\$60,000
Missouri	\$348,114	\$91,783
Nebraska	\$166,353	\$120,421
REGION VIII		
Colorado	\$674,373	\$204,932
Montana	\$282,677	\$79,397
North Dakota	\$172,747	\$60,000
South Dakota	\$118,340	\$60,000
Utah	\$435,912	\$212,838
Wyoming	\$351,912	\$100,236
REGION IX		
Arizona	\$531,241	\$236,818
California	\$10,255,740	\$6,352,183
Guam	\$221,605	\$80,125
Hawaii	\$353,643	\$61,473
Nevada	\$511,812	\$190,704
REGION X		
Alaska	\$338,139	\$157,572
Idaho	\$861,536	\$330,164
Oregon	\$407,210	\$124,055
Washington	\$574,047	\$159,430
	\$46,869,892	\$23,452,089

TABLE OF CONTENTS

ORGANIZATIONAL ROLES, RELATIONSHIPS AND ACCOUNTABILITY Building Blocks

INS Structures: Past and Current

. INS Service Centers

Examinations

. Immigrant Eligibility Determinations

. Nonimmigrant Eligibility Determinations

Department of Labor Immigration Programs: Structure and Responsibilities

The Role of the State Department in Migration Issues: A Structural Functional
Analysis of Headquarters

National Visa Center

The Evolution of the Visa Function

The Department of Health and Human Services: Mission, Structure, Programs

INS STRUCTURES: PAST AND CURRENT

INS Before the Regions

Prior to the establishment of regions in 1954, District Directors were under the direct supervision of the Commissioner. The Commissioner was assisted by the Deputy Commissioner. Coordination of INS operating functions were coordinated for the Commissioner and Deputy Commissioner by operations advisors. These individuals made periodic field inspections, conferred with personnel, and ascertained all facts on district operations. Reports and recommendations were submitted to the Deputy Commissioner on any major operational or staff problems or questions encountered.

INS headquarters, then called Central Office, was divided into four divisions, each headed by an Assistant Commissioner: Administrative; Adjudications; Enforcement; and Research, Education, and Information. The INS General Counsel was also located at Central Office, and was on the same level as the Assistant Commissioners.

It is interesting to look at the organizational structure and work performed by some of the Central Office divisions. For instance, although a certain amount of adjudicative work was done in field offices, the bulk of the work was done by the Adjudications Division of the Central Office. In Fiscal Year 1949, this division adjudicated 34,966 visa petitions and 52,036 applications for reentry permits. At the end of the year, there were 1,028 visa petitions and 602 reentry permit applications pending. Compare these figures with INS figures for Fiscal Year 1995, and it is quite apparent how INS work has increased over the years. In Fiscal Year 1995, INS approved or denied over 706,000 immigrant visa petitions and about 232,000 applications for reentry permits or refugee travel documents. Pending figures at the end of the year for these two categories were just over 244,000 and 27,000 respectively.

Work actually done by the Adjudications Division at Central Office included, besides the adjudication of visa petitions and applications for reentry permits, the review of case records, preparation of findings of fact and conclusions of law, and recommendations to the Commissioner on final determinations in cases involving the exclusion and expulsion of aliens, the exercise of discretionary actions, administrative fines and penalties against transportation companies, and the cancellation or forfeiture of immigration bonds.

It is also worth noting that Inspections and Examinations was a section within the Enforcement Division at Central Office. Also included within Enforcement were the Investigation, Border Patrol, and Detention and Deportation sections.

Organization within the districts differed somewhat from that of Central Office. For instance, primary inspection and departure control of persons entering or departing the United States were conducted by officers in the Entry and Departure Section of the District Adjudications Division. This section also made determinations on reentry permit applications, applications for border

crossing cards and similar documents, and applications for extension of temporary stay. In addition, District Adjudications was also authorized to issue warrants of arrest and deportation in certain cases. It also represented INS in certain matters before the court, such as habeas corpus and prosecution for violation of immigration laws. Determinations in naturalization matters, however, were handled by the Nationality, Status, and Expulsion Section, which was another section under Adjudications.

Birth of the Regions (1954)

On December 3, 1954, Attorney General Herbert Brownell, Jr., announced the establishment of four regional headquarters for the Immigration and Naturalization Service. These four regions (Northeast, Southeast, Southwest, and Northwest) were set up to supervise the districts within them and to perform functions such as accounting, personnel, procurement, and records management.

The regional format was designed to provide faster service throughout the United States, allow closer supervision, and place authority for routine administration in the field. It was thought that both time and money would be saved.

Previously, case review and control had been centralized in INS headquarters in Washington. According to Commissioner Joseph Swing, this “resulted in an undue expenditure of time and effort by top echelon officers at the expense of good management.” Furthermore, it was felt that the performance of administrative work at headquarters and in district offices hampered the supervision of operational work. Giving supervision of districts, case review, and administrative work to regional offices would free headquarters officials to perform their proper duties, including field inspections. Files would continue to be maintained at local offices so that the public could be given the fastest possible service.

With the exception of realigning and renaming the regions (Eastern, Southern, Western, and Northern) in 1975, the regional format remained unchanged until 1991.

Proposed 1985 Reorganization

In 1985, under Commissioner Alan Nelson, INS proposed to consolidate the four regions into three (East, Central, and West). The Northern Regional Office was to be eliminated. The three regions would each have a northern border area, a central area, and a southern border area. Thus, each region would experience similar management issues. The proposed reorganization envisioned a reduction in overhead.

The proposal was seen as a continued move toward INS centralization. Previous recent examples of centralization had been the creation of four Regional Adjudications Centers (RACs) and the creation of the Administrative Appeals Unit in Washington under the supervision of the Associate Commissioner, Examinations. The AAU had assumed appellate work formerly done at

the four regional offices.

Implementation of this reorganization was originally scheduled for October 1, 1985; it was delayed by lack of approval from the Office of Management and Budget until November 1, 1985. The November 1 date was scuttled by an amendment to the appropriations bill which required INS to give the matter further study. In September of 1986, the Senate Appropriations Committee removed the prohibition but noted that the closing of any INS office required compliance with reprogramming procedures set forth in the bill. INS at that time took no further action to close the Northern Regional Office. Closing of the Northern Regional Office would not take place until the reorganization of 1994.

Reorganization of 1991

This reorganization of INS was approved by the Attorney General on April 19, 1991. Its stated purpose was to improve the management and operations of INS through improved coordination and oversight. Under the plan, the Commissioner would be able to focus on oversight and external affairs while the day-to-day management of INS would be the responsibility of the newly created positions of Executive Associate Commissioner for Management and Executive Associate Commissioner for Operations. The keynote was centralization.

Actually, the first step toward centralization had taken place on March 1, 1990, with the sending of a memorandum to field offices by Commissioner Gene McNary which noted that the Regional Processing Facilities (RPFs) set up during implementation of the Immigration Reform and Control Act of 1986 had been merged with the Regional Service Centers (RSCs) to become Service Centers, and that the centers were now directly under the Adjudications Division of INS Headquarters.

Another key element of this reorganization was the significant reduction of the responsibilities of those in charge of the four INS regional offices. Formerly Regional Commissioners, these individuals were now designated as Regional Administrators. They were to report directly to the Executive Associate Commissioner for Management. Their task was to oversee, monitor, and evaluate resources provided to other field offices, specifically district offices and Border Patrol sectors.

For operational purposes, district offices and sectors would come directly under the Executive Associate Commissioner for Operations. Requests for resources would go from the Executive Associate for Operations to the Executive Associate for Management who would have independent knowledge of the use of resources through management of the regional offices.

To provide technical assistance to field offices, a new field support unit was established. Field offices were thus provided with an advocacy and assistance organization to deal with special problems and matters of programmatic urgency. The field support unit was to work closely with

both the Executive Associate Commissioners and their staffs.

A new security unit was also established to bring together security functions which had been scattered throughout INS, placing them at a much higher organizational level.

The Latest Reorganization: 1994

The most recent reorganization was announced by Commissioner Doris Meissner on February 1, 1994; implementation began July 1 of that same year. The reorganization was to achieve four major objectives: (1) establishment of an intermediate management layer to direct field operations; (2) fulfillment of a need for a policy and planning function; (3) facilitation of program development; and (4) the sustaining of management support functions.

As previously noted, under the prior organizational structure, field managers reported directly to Headquarters for both operational and resource purposes. In examining that structure, it was determined that Headquarters was attempting to control too many offices. Coordination between Headquarters and field offices was poor, and performance in the field was uneven. Restoration of the intermediate regional level of authority was the recommended solution. In addition, it was noted that the preoccupation of Headquarters with field management led to neglect of program planning and policy development.

In the new structure, the Deputy Commissioner would once again be the INS chief operating officer. The incumbent would supervise four Executive Associate Commissioners (EAC): Programs, Field Operations, Policy and Planning, and Management.

The office of the new Executive Associate Commissioner for Field Operations would respond to field office needs, ensure consistent implementation of policy in the field, and be a contact point at INS Headquarters for field issues. The EAC for Field Operations would directly supervise three Regional Directors (Eastern, Central, and Western). The Northern Region was eliminated, and new boundaries were established for the three remaining regions. The rationale for three regions was as it had been in 1985: similar management issues tied to similar geographical structures. The EAC for Field Operations would also supervise the Director of International Affairs, in effect making the foreign districts of INS a fourth region.

The Regional Directors and the Director of International Affairs would implement INS policy, supervise District Directors and Chief Patrol Agents, participate in the personnel selection process at an appropriately high level, implement and monitor priorities, participate in the budget process, allocate resources, and act as INS spokespersons in their areas.

The reorganization also changed the title of the Executive Associate Commissioner for Operations to the Executive Associate Commissioner for Programs. The Associate Commissioners for Examinations and Enforcement would be directly under this EAC. Although the Office of Programs was primarily tasked with the development of INS policy, the

reorganization called for Service Center Operations and a new Office of Records to be under Examinations, and thus ultimately under Programs. In other developments, the Adjudications and Nationality Division would be under Examinations within the Office of Programs, and a separate assets forfeiture unit would be under Enforcement.

Under the EAC for Management, there would be four administrative centers headed by directors to provide all administrative services to field offices. The centers are located in Burlington, Vermont; Laguna Niguel, California; Dallas, Texas; and Twin Cities, Minnesota. Eventually, a particular administrative service would be rendered nationwide by one center. In addition, the EAC for Management would supervise the Director of Security and the Director of Files and Forms Management.

To fulfill the policy and planning objectives of reorganization, the Office of Strategic Planning was renamed the Office of Policy and Planning to be headed by an EAC. This office was to be a clearinghouse for INS policy and a number of policy activities. It was felt that this change was necessary to tie policy to planning for the future.

Where is this office? The reorganization also split the Office of Congressional and Public Affairs into the Office of Public Affairs and the Office of Congressional Relations. The Office of Public Affairs was to deal with press information, employer and labor relations, and outreach; the Office of Congressional Relations was designed to work with Congress and other agencies on legislative affairs. Setting up the separate Office of Public Affairs was in recognition of a need to enhance the ability of INS to provide the public with reliable information and guidance.

Regions

As previously noted, the Executive Associate Commissioner for Field Operations supervises the three regional directors and the Director of International Affairs who, in effect, is a regional director since the INS overseas district offices are under her direction. The Regional Director has line authority over each District Director and each Chief Patrol Agent in his or her region. Within the office of the Regional Director are a planning, analysis, and review officer, and an operations support officer. Besides being the immediate supervisor of the District Directors and Chief Patrol Agents in his or her region, the Regional Director participates with Headquarters in the selection of District Directors, Deputy District Directors, Chief Patrol Agents and Officers in Charge, and in the budget and resource allocation processes. Regional Directors are also tasked with implementing the Commissioner's priorities.

Next in line of authority under the Regional Director is the Deputy Regional Director, and under the deputy there may be an Associate Regional Director. There are then Assistant Regional Directors with particular operational responsibility in assets forfeiture, adjudications, Border Patrol, data analysis, detention and deportation, inspections, intelligence, investigations, and public information. The offices of these Assistant Regional Directors assist their program counterparts in the district offices by seeing to it that policies are made known to them,

understood by them, and implemented by them.

Just as the INS General Counsel represents the Commissioner, the Regional Counsel represents the Regional Director. As far as authority is concerned, the line runs from the General Counsel to the Regional Counsel to the District Counsels.

The three INS regional offices are the Eastern Regional Office located in Burlington, Vermont; the Central Regional Office located in Dallas Texas; and the Western Regional Office located in Laguna Niguel, California. All three regions have northern border, southern border, and interior responsibilities.

Although the Director of International Affairs is the direct supervisor of the INS foreign District Directors in Rome, Mexico City, and Bangkok, the organization of her office differs from that of any of the three regions. The Director is assisted by a Deputy Director. Within the Headquarters office, there are three branches: asylum, refugee, and parole. Officers in these branches not only develop regulations and policy, but also see to it that these policies are implemented. The office also has a foreign desk unit whose officers act in a liaison capacity between INS foreign offices and Headquarters. They deal not only with personnel and budgetary matters, but with inquiries both from the foreign offices or from the public regarding the foreign offices. The Office of International Affairs also directs the INS unit at the Washington Processing Center which screens all refugees coming from the nations of the former Soviet Union.

Districts

The districts of the Immigration and Naturalization Service are headed by District Directors who are under the direct supervision of the Regional Director. Each District Director has a Deputy District Director.

Under the District Director and the Deputy District Director, there are four Assistant District Directors and, if the district has a sub-office, an Officer in Charge of the sub-office. The four Assistant District Directors preside over Examinations, Investigations, Detention and Deportation, and Management.

Within the Examinations Branch, there are four sections: adjudications, inspections, records, and information. The adjudications section, supervised by one or more supervisory adjudications officers, makes decisions on any applications or petitions for benefits which come before the district. For a district office, such applications and petitions are primarily those which require interviews. The inspections section of a district office is headed by a port director. Depending on geographical location, inspections duties may include land, sea, and/or air inspections. The records section controls files of aliens residing within the jurisdiction of the district, as well as files for persons who have naturalized within the district regardless of current address. The information section handles all in-person inquiries on immigration issues, distributes forms, and receives applications and petitions filed with the district.

The Investigations Branch is usually divided into teams, the number varying according to the size of district. The nomenclature and duties of these teams also vary, but the primary functions of the branch include the detection and arrest of criminal aliens, enforcement of employer sanctions, the prosecution of fraud cases, and the collection of aliens ordered deported for whom all avenues for relief have been exhausted and whose continued presence in the United States is no longer authorized ("bag and baggage" cases).

The responsibilities of the Detention and Deportation Branch include holding aliens who have violated immigration laws and removing from the United States aliens who have been ordered deported. Although detained aliens are sometimes held in INS or Federal facilities, for the most part they are held in contract facilities, including state, local, and private facilities. The Detention and Deportation Section not only transports aliens to and from facilities, but also sees to it that contract facilities conform to Federal specifications. Aliens who are removed might be transported in INS or private conveyances. Deportation officers accompany aliens to the conveyance, or, if needed, actually travel with an alien being deported to the receiving country. The Detention and Deportation Branch keeps a docket of aliens who are in removal proceedings, culling the docket when the alien receives relief in the United States, or departs or is removed from the United States.

The office of the Assistant District Director for Management handles all matters relating to administration (e.g., personnel actions), procurement of supplies and equipment, as well as procurement and maintenance of data-processing (ADP) equipment.

If the district has a sub-office, that office is run by an Officer in Charge who sometimes has an assistant. ~~Each sub-office has investigations, examinations, and deportation sections.~~ These sections are on a much smaller scale than their counterparts in the district office. They may or may not have supervisors. If they do not have supervisors, direction and control come directly from the Officer in Charge and the Assistant Officer in Charge. Any decisions made are in the name of the District Director.

The District Counsel is the District Director's attorney; however, he or she is not in the District Director's line of authority. The District Counsel's immediate supervisor is the Regional Counsel who, in turn, is under the INS General Counsel.

Administrative Centers

One of the unique features of the 1994 reorganization of INS was the establishment of the administrative centers. The directors of the four administrative centers are under the supervision of an associate commissioner who, in turn, is under the Executive Associate Commissioner for Management. The four centers are located in Burlington, Vermont; Dallas, Texas; Twin Cities, Minnesota; and Laguna Niguel, California. With the exception of the center in Twin Cities, the centers are co-located with regional offices. The four administrative centers handle all administrative services, including personnel and fiscal. The eventual goal was specialization of

services at a particular center.

Under the Center Director are Assistant Directors for EEO, Security, Human Resources, Budget and Accounting, Information Resource Management, Procurement and Property Management, and Facilities.

INS SERVICE CENTERS

— where do they fit into the structure?

Mission

As originally envisioned, the mission of the service centers was to adjudicate applications and petitions which did not require personal contact with the applicant or petitioner. Taking this burden from local offices (district offices and sub-offices) enabled local offices to concentrate their time and resources on work requiring interviews.

Over time, the centers have evolved into major production centers which are capable of fully processing large volumes of work to such an extent that eventually they will do the initial processing for all applications and petitions, thus freeing up local offices to an even greater extent. Doing this initial work at four centers will mean greater consistency in processing and uniform data entry and tracking.

History and Development

For a number of years, applications and petitions for immigration benefits were filed with local INS offices (district offices and sub-offices). Filings were made in person or by mail. All processing, including adjudication, was done at the local office. As the demand for benefits increased and the number of applications and petitions increased, local offices found it necessary to ship cases to ports of entry where they were adjudicated by immigration inspectors as stand-by work. This initiative, which began in the late 1960s and was called the Remoting Program, temporarily combated the problem of backlogs.

Receipts, however, continued to increase during the 1970s. Initially, the INS response was to remote more work. This worked to a degree until backlogs at remote locations started to increase. Tracking also proved a problem since without sophisticated methods cases were sometimes difficult to trace. Furthermore, increased complexity in the immigration law meant that cases could not be comfortably adjudicated by inspectors who were only working on them on a part-time basis.

By the mid 1970s, growing backlogs and lack of good tracking methods by INS caused many applicants and petitioners to file in person at local INS offices. In response, INS initiated Up-Front Processing, assigning staff to process these walk-in applications and petitions. The theory was that cases could be processed more efficiently if the applicant or petitioner was present to answer questions or be advised of deficiencies in the presentation of his or her case. Up-front processing did cut down on the time devoted to returning cases, but it also cut into productive adjudicative time since officers became more involved in handling inquiries and doing clerical work. Up-front processing also meant longer waiting lines and crowded offices as well as a perception that cases filed in person received preferential treatment.

By the late 1970s, INS had a crisis. Local offices could not handle all their adjudicative work. Ports-of-entry could not keep up with large volumes of remoted work. Up-front processing, though initially helpful, was not the answer. INS needed a process which would complement the

work of local offices by allowing them to concentrate on work which required interviews.

As a model for a new system, INS examined the regional service center processing method developed by the Internal Revenue Service (IRS). Under this method, processing was concentrated at sites which were away from the public. In 1979, INS established a small Remote Adjudications Center (RAC), staffed by examiners and clerical personnel. In contrast to officers involved in port-of-entry remoting, the staff at the RAC was fully devoted to adjudicative work. The experiment proved immediately successful by showing increased production with greater control over the quality of decisions. To further test the RAC concept, INS soon opened another remote site. The two original centers were located in St. Albans, Vermont, and San Ysidro, California.

In 1982, INS formally adopted the remote center concept by establishing remote sites in the two remaining regions. The centers were now called ~~Regional Adjudications Centers~~. All of this was part of a Balanced Adjudication System which set forth a plan for maximum use of three adjudications processing methods. Under the system, ~~local offices continued to receive applications and petitions. Cases requiring interviews were kept at local offices. Simple non-interview cases were remoted to ports of entry. More complex and time-sensitive cases were sent to the RACs.~~

In early 1986, a study of the RACs determined that they were 25% more efficient in processing cases than local offices. Nevertheless, the centers were still relatively small, and continued to receive their cases directly from local offices. Delays in shipping cases to the centers caused problems, particularly in time-sensitive situations. After conducting a thorough review of its processing systems, INS determined that modifications to the Balanced Adjudication System were in order.

The principal modification was again based on the IRS model. IRS had been successful in reducing costs and providing better service by having taxpayers file their returns directly with regional service centers instead of with local offices. INS decided to adopt a similar system, calling it the ~~Direct Mail Program~~.

Activities at the centers would include fee-receipting and other support activities as well as adjudication. Shipping delays and costs would be eliminated. INS planned a three-phase implementation of Direct Mail. In Phase I, time-critical and complex cases not requiring interviews would be filed directly with the centers. All other cases would be filed at local offices which would continue to remote simple non-interview cases to ports of entry and continue to remote more complex cases to the centers. Petitions for temporary workers with accompanying applications for change of nonimmigrant status or extension of stay, petitions for permanent workers, and petitions for fiance(e)s would be filed directly with the centers.

Phase I was implemented in three regions (Eastern, Northern, and Southern) by the end of 1986. Facility restructuring and expansion, as well as the impact of the Legalization Program, caused a

delay in implementation in the Western Region until 1988.

Phase I proved to be a success. Productivity rose 11% from Fiscal Year 1986 to Fiscal Year 1988. Case-tracking problems declined as there was less movement of cases from office to office. Success led to expansion with centers becoming fully responsible for their own products.

The Legalization Program, established as a result of the Immigration Reform and Control Act of 1986, had a major impact on direct mail in that it significantly increased the number of permanent residents who could then file for related benefits. To handle the legalization workload, INS had to expand its processing capacities. Four Regional Processing Facilities (RPF) were created to meet these workload demands. In order to benefit in the long term, three of the four RPFs were co-located with the existing Regional Adjudications Centers so that INS could later integrate the offices. The RPFs proved to be testing grounds for redefinition of the center concept in a large-scale environment which is what would happen to the centers with expansion of direct mail.

With the scaling down of legalization activities, ~~the RPFs and the Regional Adjudications Centers merged in 1990~~. In recognition of their expanded roles, the centers were renamed ~~Regional Service Centers~~ and were made files control offices for files storage.

As of this writing, Phase II of the Direct Mail Program has been implemented at all four centers. Phase II applications and petitions include, but are not limited to, relative visa petitions, petitions to remove conditions on residence, and applications for reentry permits and refugee travel documents.

Under Phase III of the Direct Mail Program, all remaining applications and petitions will be filed with the centers. This includes cases requiring interviews. The centers will do all preliminary processing, including fee collection and data entry. Cases needing interviews will be sent to local offices for interviews and adjudication. To some extent, Phase III has begun. Under the "Citizenship USA" initiative, the centers are pre-processing applications for naturalization filed by individuals in the jurisdictions of the New York, Miami, Chicago, and Los Angeles districts. This amounts to 53 % of all applications for naturalization. In addition, under a pilot program between the Baltimore District Office and the Vermont Service Center (VSC), adjustment of status applications by residents of Maryland are filed directly with the VSC. The next step in Phase III will be to have all applications for adjustment of status by employment-based aliens and asylees filed directly with the centers. In addition, all permanent resident processing for refugees will go to the centers.

The division of work at all four centers is by product line. ~~The product lines are business and trade services; family services; and residence, naturalization, and status services.~~ At the present time, the primary applications and/or petitions adjudicated by officers of these product lines are as follows: I-129 petitions for nonimmigrant workers and I-140 petitions for immigrant workers - business and trade; I-130 relative visa petitions - family; and I-90 applications for replacement of

alien registration receipt card and I-765 applications for employment authorization document - residence, naturalization, and status.

There is specialization at some centers. For instance, the Nebraska Service Center adjudicates and produces all reentry permits and refugee travel documents. The Nebraska Center also adjudicates all I-129 petitions for nonimmigrant workers filed by teams in professional baseball and ice hockey. Petitions for relatives of refugees (Form I-730) are filed exclusively with the Texas Service Center while the same petitions for relatives of asylees are filed with the Nebraska Service Center. Eventually, all applications and petitions relating to refugees or asylees will be filed with the Nebraska Center. Of all the centers, the Nebraska Center is best suited for specialization because its workload has over the years not been as high as the workloads of the other centers.

Service Center Locations and Jurisdictions

~~The current service centers are the Vermont Service Center in St. Albans, Vermont; the Nebraska Service Center in Lincoln, Nebraska; the Texas Service Center in Dallas, Texas; and the California Service Center in Laguna Niguel, California.~~

The jurisdictions of the centers are based on former INS regional jurisdictions. The Vermont Service Center is responsible for Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia. The Nebraska Service Center covers Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. The Texas Service Center handles Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The California Service has responsibility for Arizona, California, Guam, Hawaii, and Nevada.

Facilities

At the present time, three of the four centers have adequate working space and at least two of them have room for expansion. The California Service Center has 145,909 square feet of working space; the Nebraska Service Center has 100,000 square feet; and the Vermont Service Center has 120,000 square feet. Woefully behind the others is the Texas Service Center (TSC) which is located in a building housing the INS Central Regional Office. The TSC has only 58,000 square feet of work space, no possibility of expansion, and houses its files in a separate annex building with a capacity of 7,689 square feet. A November 1995 report by the Department of Justice's Management Division (Justice Management Report) recommended that the center be relocated in the Dallas area to a location of at least 130,000 square feet. That recommendation is under consideration by an INS Benefits Steering Committee which is looking into the future of direct mail and its concurrent demands on space for the centers.

Organization and Structure

Until the spring of 1996, the four directors of the service centers were under the direct supervision of the Assistant Commissioner for Service Center Operations. Under a 1996 reorganization initiative, the office of Assistant Commissioner for Service Center Operations was abolished, and the duties and staff of Service Center Operations were absorbed by the Adjudications Division which was renamed the Benefits Division. The four center directors are now under the direct supervision of the Assistant Commissioner for Benefits. The Benefits Division is under the Office of Examinations which is, in turn, under the Office of Programs.

Each center director has a deputy and seven assistant directors. There are assistant directors for operations, administration, records, and ADP systems, as well three assistant directors who have responsibility for the center's product lines.

All mail processing, filing, and data entry at the four centers are now done by contractors. Additionally, approximately 50% of the data processing support staff are contract employees. As of June 30, 1996, staff at the four centers were:

	<u>INS Employees</u>	<u>Contract Employees</u>
Vermont Center	340	275
Nebraska Center	223	230
Texas Center	240	170
California Center	242	327
Totals	1045	1022

Production and Revenues

Thus far in Fiscal Year 1996 (through June 30, 1996), the four centers have received more than two million applications and petitions, completed over two million cases, and brought in over \$137 million in revenues. A breakout by center follows:

	<u>Received</u>	<u>Completed</u>	<u>Revenues</u>
Vermont Center	671,222	684,379	\$49,091,489
Nebraska Center	426,381	518,559	29,318,100
Texas Center	442,872	435,359	24,225,233
California Center	667,585	623,789	35,638,833
Totals	2,208,060	2,262,086	\$138,273,655

Compared to the same period in Fiscal Year 1995, receipts have increased by 13.9%, completions by 19.6%, and revenues by 20.2%. To further evaluate these figures, the table below shows receipts, completions, and revenues for the four centers for all of Fiscal Years 1993, 1994, and 1995.

	<u>Received</u>	<u>Completed</u>	<u>Revenues</u>
Fiscal Year 1993	2,364,161	2,560,774	\$120,988,759
Fiscal Year 1994	2,449,033	2,447,723	132,649,987
Fiscal Year 1995	2,475,490	2,653,431	151,983,934

An even more impressive comparison can be made between current service center receipts, completions, and revenue and those of Fiscal Year 1990. In that fiscal year, receipts numbered 821,354; completions were 756,471; and revenues amounted to \$28,746,416.

Another way to demonstrate the growth of the centers is to compare the percentages of adjudicative work done by districts, ports of entry, and service centers in Fiscal Years 1990 and 1995. In Fiscal Year 1990, 46.4% of adjudications were completed in districts; 26.6% at ports of entry; and 27% at service centers. In FY 1995, the percentages were 33.7% in districts; 9% at ports of entry; and 57.3% at service centers.

To illustrate the types and amount of work done at a service center in a single month, the California Service Center's (CSC) production report for May 1996 is a good example. During that month, the CSC approved 60,754 applications and petitions, and denied 4,419. Among the approvals were 9,289 non-spousal I-130 relative visa petitions; 1,148 petitions for immigrant workers (Form I-140); 4,745 petitions for temporary workers (Form I-129); 10,858 applications for replacement alien registration receipt cards (Form I-90); and 18,041 applications for employment authorization documents (Form I-765). Denials for the same types of petitions and applications numbered 436; 124; 226; 232; and 2,151.

Budget and Expenditures

As can be seen from foregoing data, the centers are a major INS revenue source. Fees collected from applications and petitions are deposited in the Immigration Examinations Fee Account. In Fiscal Year 1995, this account was appropriated \$378.6 million from all sources. Service center revenues represented a significant source of deposits in the fee account.

It has been previously noted that service center revenues for Fiscal Year 1995 totaled more than \$150 million. The cost of operating the centers during that same period amounted to about \$62 million. The approximate costs of running the four centers were \$21.5 million for the California Service Center, \$13 million for the Nebraska Service Center, \$11 million for the Texas Service Center, and \$16.5 million for the Vermont Service Center. Operating costs include salaries and benefits, general expenses, rent, and contractual services. It is evident from the revenues and

operating costs that the centers are self-sustaining.

Processing Times and Quality Control

There is some variance in processing times among the four centers. This variance is dependent on the volume of receipts, staffing, the Automatic Data Processing (ADP) environment at the center, and other factors such as special projects.

As an example, the processing of a non-spousal I-130 relative visa petition at the Vermont Service Center may take up to 330 days while the processing of such a petition at the Nebraska Service Center takes no more than 60 days. On the other hand, there is more consistency in the processing of more time-sensitive or time-specified applications and/or petitions such as I-129 petitions for nonimmigrant workers. The time frames for these petitions at the four centers are relatively close: 21 days at the Vermont and Nebraska Centers; 30 days at the California Center; and 40 days at the Texas Center.

Considering the large volume of work and large numbers of employees at the centers, quality control can present problems. In addition to ordinary supervisory oversight, quality control is achieved through feedback on center decisions from the Administrative Appeals Office and the Board of Immigration Appeals and random sampling of center decisions by Headquarters.

As previously noted, all four centers are under the direct jurisdiction of Headquarters. ~~As such, they have less autonomy than local INS offices.~~ In addition, all centers are required to have written Standard Operating Procedures (SOPs). This provides for national consistency, particularly in processing methods. The ultimate goal is to have one SOP for all four centers.

Relationship with Other INS Offices

With the growth of the centers, there is now a corps of adjudications officers whose sole experience has been in a service center. Concurrently, there are officers in local offices who have never been exposed to the types of adjudications conducted at the centers. ~~INS management is making efforts to bridge the gap between these two groups of adjudications officers.~~

Most recently, center adjudications officers have been detailed to key local offices to supplement local staff under the "Citizenship USA" initiative. This detail is seen as a precursor of future efforts to expose center officers to local office work and public contact. The future may see the institution of an exchange program where officers from both environments would be exposed to each other's work.

INS Headquarters has also initiated center-based modular training for new adjudications officers, ~~asylum officers, and information officers.~~ Instructors from the centers are conducting training in immigration law and related subjects at the service centers. However, if a local office had a rather large group of employees to be trained, training could be conducted in a venue outside a center.

What diff.
work done
btwn Service
Ctr. and
District office
all direct
mail
But, can
you do your
visa applicat-
@ a District
office?

Training in other subjects such as firearms and language acquisition will continue to be conducted primarily at the Federal Law Enforcement Training Center in Glynco, Georgia. This additional training is at the option of the employee with the concurrence of local management.

It is also worth noting that training conducted at the center for non-center officers will introduce them to center processing including what happens to cases before they are referred to local offices for interview and/or investigation. This exposure should go a long way in introducing all parties to the future, i.e., full implementation of Direct Mail.

Public Contact

~~Since all work at the service centers is received by direct mail or through field offices, there is generally little contact between service center employees and the public.~~ Over time, however, centers have found it to be in their best interest to allow some public access. For instance, adjudicators at the Texas Service Center may contact attorneys by telephone to request additional information in specific cases. A similar procedure is employed by adjudicators in the business and trade product line at the California Service Center. Permitting contact such as the foregoing saves time for all parties.

Although service centers were not envisioned as “walk-in” offices, both the California and Nebraska Centers have arrangements whereby status requests may be made in person. The California Center has a public information counter which is staffed by information officers from 9 AM to 2 PM, Monday through Friday.

For the most part, however, inquiries and status requests from the public to all four centers are made telephonically by calling a number in the Telephonic Information Electronic Response System (TIERS). Applicants and petitioners are given this number, as well as processing time frames, on Form I-797, Notice of Action, which advises them that their application or petition has been received by the center.

The TIERS system gives the caller a menu of options. One of these options is an automated voice which will give the caller the status of a case. The option prompts the caller to give a receipt number and then gives a status update: approved, pending, or decision has been made. The caller then has the option of holding for “live” assistance. It should be noted that automated assistance is available 24 hours a day.

Getting into TIERS can be a problem. The lines are often busy. Waiting for live assistance can also be time-consuming. For instance, the Vermont Center advises that the waiting time may be two to three minutes while the Nebraska Center simply says the wait may be lengthy. The Justice Management Report noted the high volume of “busy signals” and the lengthy “on-hold” times before reaching a “live” person. In fact, the report speaks of one immigration attorney who stated that he often spends up to 45 minutes on hold when calling an un-specified center. In summary, the TIERS system has fallen well short of expectations.

Two of the centers, California and Texas, give clients another option: faxing. The Texas Center has found this method to be fast, efficient, and time-saving for both center employees and the public.

Telephonic inquiries at all four centers are handled by information officers. The number of incoming lines varies by center; for instance, the Vermont Center has 22 lines while the Nebraska Center has 12. All the centers have lines dedicated to inquiries from Congressional offices.

INS attitudes on public availability vary. Some feel that response to public inquiries is a hallmark of service while others feel that such inquiries disrupt the isolation of the centers and cut into productive work.

Quantity vs. Quality

Are individual adjudicator production standards compatible with quality decision-making?

There is no denial that the INS workload has increased significantly over the years. It is also evident that personal interviews and investigations need to be conducted in a number of cases. The service centers have demonstrated that large volumes of work can be completed in an environment where there is little or no public contact and where adjudicators can work with interruption. Nevertheless, questions arise concerning the quality of the centers' products.

Performance ratings for service center adjudicators are based on the number of completions. A temptation, therefore, is to "rubber stamp" virtually everything which crosses one's desk in order to meet or surpass the number of completions which relates to the highest rating possible: excellent or, even better, outstanding. It is easy to approve cases; writing denials is difficult and time-consuming. Writing denials requires research which is sometimes extensive. Unless based on statutory eligibility and already composed in the computerized system, denials can involve a good deal of thoughtful, ordered writing.

There have been some complaints from local office adjudicators about the quality of petition and application approvals by service center adjudicators. There have also been some complaints from Department of State consular officers about petitions which they have returned to centers for reconsideration and which have been returned by the centers with reaffirmation of the original decision. Consular posts have maintained that their returns were based on solid derogatory information; centers have countered that the information furnished has often been insufficient to support a revocation.

What assurances can be placed in the process to insure that production stays at a desirable level without loss of quality? Here are some suggestions. There may be more.

- 1) The ratings of adjudicators should be based on a weighted point scale rather than on a

numerical scale so that due credit is given for the writing of a complex denial.

- 2) Approvals should be randomly checked by supervisors for quality. This will require the supervisor to be proficient not only as a manager but as a technician.
- 3) Samples of decisions, both approvals and denials, should be reviewed by Headquarters Benefits on a random basis.
- 4) Fraud profiles should be developed by representatives of all parties (Headquarters, centers, and field offices) so that problem cases will easily come to the attention of adjudicators.

~~The eventual goal of direct mail is that all applications and petitions will go to the centers for initial processing. Cases requiring interview or investigation will be sent to field offices by the centers.~~

How can there be assurance that cases are properly referred to field offices?

The temptation here is that in an effort to obtain maximum efficiency and customer satisfaction the standards for referral might be set at a minimal level. Who will determine which cases are referred? What will be the criteria for referral?

To give an example from current procedures, district directors are now authorized to waive interviews in adjustment cases based on guidelines issued by Headquarters. Many directors have used this as an opportunity to make a dent in backlogs; others have been reluctant to do so citing the necessity to interview in order to make a quality decision. With full direct mail, this decision will be made at only four locations: the four service centers. Some suggestions follow:

- 1) Develop a system based on profiles whereby certain suspect cases and a random sampling of other cases will be referred to local offices for interview and/or investigation.
- 2) Insure that center adjudicators have the ability to refer cases based on their examination of the facts. This would require proper training for adjudicators and the regular dissemination of information on fraud practices and trends.
- 3) Give credit through ratings or rewards for significant referrals. On the other hand, referrals by examiners in order to avoid making decisions should have an adverse effect on a rating.

THE ROLE OF THE STATE DEPARTMENT IN MIGRATION ISSUES: A STRUCTURAL-FUNCTIONAL ANALYSIS OF THE HEADQUARTERS

Mission

The mission of the State Department is to execute foreign policy as formulated by the President. Statutory responsibility falls to the Secretary of State. The Department is the only cabinet department created initially for a geographic, rather than a functional responsibility. This horizontal mandate automatically cuts across the vertically integrated functions of other federal departments. The role of the State Department is to coordinate the competing viewpoints of the functional departments in the context of the U.S. government's overall foreign policy goals. The Department is thus responsible for overall direction, coordination, and supervision of interdepartmental actions of the U.S. Government overseas. This includes providing overall policy guidance to the U.S. Agency for International Development and the U.S. Information Agency. To accomplish this mission, the Department maintains more than two hundred fifty embassies and consulates (foreign service posts) in more than one hundred seventy countries with which the U.S. has diplomatic relations. The overseas missions are staffed mainly by Foreign Service Officers who traditionally work in one of posts' four major sections: administrative; consular; economic; and political. Officers assigned to posts' consular sections have traditionally been responsible for the handling of migration matters outside the U.S. This has involved principally the adjudication of immigrant and nonimmigrant visa applications. Foreign Service Officers have also been involved in refugee affairs, in coordination with the INS. Domestically, however, control over the various aspects of migration policy involving legal immigrants, asylees, and refugees have been dispersed procedurally around various offices and bureaus in the State Department.

Organizational Structure

The State Department is headed by the Secretary of State and aided by a Deputy Secretary (D), five Under Secretaries, and nineteen Assistant Secretaries. Several specialized offices and bureaus focus on certain critical foreign policy areas and on important management issues. The Executive Secretariat (S/S) serves as a coordinating office for the flow of information and decision-making papers to and from the principal officers in the Department. The Operations Center (known as "the Watch"), a part of the Executive Secretariat, provides around the clock operations in order to alert and brief Department officials on overseas events and to coordinate the Department's response to emergency situations.

Responsibilities for policy formulation, program execution, and administrative management have

traditionally been centered at the bureau level within the State Department. Most bureaus have their own executive office which develops budget projections based on policy concerns and operational programs. Additionally, the executive offices have personnel experts and general services technicians who deal with the daily personnel and administrative support issues. Their responsibilities also include coordination with the Department's centralized personnel system and central finance office.

The primary bureaus within the State Department involved in migration issues are:

The Bureau of Consular Affairs [CA] which administers the procedures affecting the issuance and denial of visas both immigrant and nonimmigrant and which has policy responsibility in the Department on questions of the control of legal immigration into the U.S.;

The Bureau of Democracy, Human Rights and Labor [DRL] which has an office that monitors all asylum requests in the U.S.;

The Bureau of International Organization Affairs [IO] which follows UN and other international organizations and which monitors policies developed by the Department's various functional and geographic bureaus for use at the UN, UNHCR, and other international and regional organizations to assure that they do not conflict with other U.S. government policy aims;

The Bureau of Population, Refugee and Migration Affairs [PRM] which develops policy for U.S. positions on international population issues, works with both refugees entering the U.S. and organizations which provide assistance to refugees abroad, and it has the coordinating policy role in the State Department on 'migration issues' outside the U.S.; and

The Office of the Legal Adviser [L] which serves as the State Department's lawyer on migration issues and which has two offices dealing specifically with legislation and policy issues on consular affairs, human rights, and refugees.

The current Administration established a fifth Under Secretary position, that of the Under Secretary for Global Affairs [G], which brought two of the foregoing bureaus [DRL and PRM] functionally under of one senior official. Both bureaus still operate under the direction of separate Assistant Secretaries. The addition of a greatly expanded population portfolio to the former Bureau of Refugee Programs provides for greater emphasis on population matters when migration policy is considered. The Bureau of International Narcotics and Law Enforcement Affairs [INL], containing an Office of International Criminal Justice which deals in part with migration issues affecting some law enforcement issues (particularly alien smuggling), also falls under the direction of the Under Secretary for Global Affairs. A copy of the office's latest interagency working group report on deterring alien smuggling is enclosed. In the new restructuring, the Bureau of Consular Affairs remains under the direction of the Under Secretary

for Management [M]. Also, the Bureau of International Organization Affairs [IO] reports to the Under Secretary for Political Affairs [P].

In the daily course of business, some policy decisions must be brought to the personal attention of the Department's senior managers. Both information and action memoranda, including those on migration issues, addressed to principals above the Assistant Secretary level must be forwarded through the Department's Executive Secretariat. This includes policy position papers developed within the Department for consideration and review by the National Security Council [NSC]. The Executive Secretariat [S/S] has formal responsibility to review such memoranda for format, sufficiency of content, and appropriate clearances. The latter responsibility ensures procedurally that all geographic and functional bureaus have an opportunity to provide comments on policy and management issues affecting them and about which the senior leadership should be aware.

The Budget Process

Responsibility for overseeing the State Department's worldwide financial planning process rests principally in the Bureau of Finance and Management Policy [FMP]. The Bureau carries out the budget process in three phases: planning; formulation; and execution. In the planning phase, the Bureau issues annually a formal request to each geographic and functional bureau to provide a financial review of what expenditures were made last fiscal year, what is currently being expended, and what is projected for the next fiscal year. These are referred to as Bureau Program Plans [BPP]; overseas missions traditionally submit Mission Program Plans [MPP] to the appropriate geographic bureaus. The BPPs provide for at least three sections: current fiscal year performance reports; a performance plan for the next fiscal year; and an outline of the bureau's resources strategy.

The bureaus are expected to utilize the Department's Strategic Plan (required by the Government Performance and Results Act [GPRA] of 1993) as the broad policy umbrella under which to formulate goals and objective and develop performance indicators. The matching of foreign policy goals with program and administrative operational needs has been recognized as one of the ongoing dilemmas for the Department's senior managers. Major policy exercises such as 'State 2000' and the Strategic Management Initiative [SMI] have been attempts to provide some unity of vision as to the long term operation of the State Department. A recent address (enclosed) by the Secretary of State to West Point cadets reflects some of these concerns.

The guidance provided by the finance office to the various bureaus follows OMB's detailed instructions on how to prepare and submit annual budgets. Both the present and projected fiscal

year plans call for a listing of results-driven objectives, indicators of performance, and progress of attainment in an attempt to link the Department's programs and activities to available financial resources.

The plan also takes into account projected reimbursement from other agencies for administrative services provided overseas. Given the concern expressed in many quarters about the probable inaccuracy of the cost accounting for services and physical space provided to other agencies operating abroad, the foreign affairs administrative support system [FAAS] is undergoing reform to implement a more equitable cost allocation system. Approximately \$187 million was provided to the Department in FAAS reimbursements in FY 1995. Since the Department believes that it is subsidizing the overseas operations of other federal departments and agencies, a new International Cooperative Administrative Support Services [ICASS] System, developed by the President's Management Council, will be implemented in FY 1997 to capture the Department's full costs for support to other agencies and to examine more closely the quality of services provided.

The Bureau's analysts review materials submitted, make a preliminary identification of budget issues, meet with the geographic and functional bureau managers, consider economic and programmatic implications of the proposals (including wage and price calculations), and submit recommendations for review up the Department's chain of command. Although the Bureau has primary responsibility for reviewing the bureau specific program planning process documents, the Office of Resources, Plans and Policy [S/RPP] also reviews the various funding accounts to ensure that the Department's formally stated objectives are considered on an interagency basis. This is necessary as funding for the Department's foreign affairs and foreign assistance activities is included in different authorization and appropriation legislation. It also ensures that the funded programs and policies are consistent among State, USAID, and USIA.

The Department's financial officer provides recommendations to the Under Secretary for Management [M] as to prospective funding levels by bureau. This takes into account necessary continuing operations domestically and abroad, new initiatives, capital projects, the annual hiring plan as well as potential cuts in funding levels. The Under Secretary focuses on the priorities established by the bureaus, ensures that all the Department's programs are correlated to each other, and reviews appeals by bureaus as to funding levels.

Once the Under Secretary for Management approves the budget proposal, the Deputy Secretary [D] is briefed on the financial plan, how the Department's objectives are being considered financially, the interface of all foreign affairs and assistance programs, and the implications for specific foreign policy goals. As a result of the briefing, and if no further changes are deemed necessary by the senior principals, the formal recommendations are made to OMB (which has its own review process) for inclusion in the President's budget to be submitted to the Congress. A

copy of the pertinent pages from The Budget in Brief for Fiscal Year 1997 detailing the Department's programs and activities is enclosed.

Based upon congressional appropriations, or what has been approved provisionally (as may occur with continuing resolutions) and the subsequent OMB apportionment of funds, the Bureau carries on an execution review process through the Department's chain of command similar to the formulation phase. The chief financial officer, the Under Secretary for Management, and their staffs are principally involved in the line item allocations. At the conclusion of the review of formal plans, which now take into account the authorized funding levels, the bureaus are provided with passback levels for the year. Funds are apportioned quarterly and reviews are required from the bureaus on any variances to normal expenditures and on key resource issues. The financial office subsequently monitors the financial plan execution on a monthly basis, comparing planned versus actual obligations by each bureau. Additional funding requirements are considered only during quarterly financial reviews.

The financial office traditionally retains at least one percent of the total level for unexpected and unprojected senior level foreign travel, foreign exchange rate fluctuations, unscheduled international conferences, and other emergency needs. The Department's goals and objectives can be impacted by resource-intensive contingencies, such as wars with major internal civil strife, natural disasters, mass refugee and migration flows, and emergency evacuations.

Although the Department's overall budget contains a variety of different accounts, a key concern remains the funding level for the headquarters operations since this provides the operational platform for the government's overseas diplomatic and consular activities. The funds actually appropriated by the Congress for Salaries and Expenses for the headquarters operations continues to decline annually, as noted below:

FY 1995	\$367,407,000
FY 1996	\$367,898,000
FY 1997	\$352,300,000

Personnel Structure

The decisions on funding levels, both in the planning and execution phases, are also provided to the Director General of the Foreign Service and Director of Personnel [M/DGP], who must project personnel staffing levels within the amounts provided by the budget. The Department is currently working on developing an "overseas staffing model" which will be used in the future

for allocating and redistributing personnel positions overseas. The goal of the model is to provide a more rational method for distributing personnel resources based on workload, foreign policy goals, and personnel availability. This will call for closer coordination among the regional and functional bureaus. The computer model compares overseas posts with similar workload factors (consular work, for example, will review high visa volume, level of visa fraud, educational and language competence of the foreign service national staff, etc.). The model will also compare five separate components among all posts: core responsibilities (political, economic and labor reporting); administrative work; consular functions; information management needs; and security. After using the relationship of various factors to determine compatibility of workload, the model will then compare staffing levels to determine which posts are overstaffed or, alternatively, understaffed. Looking at the matchups, the Department will then try to redistribute positions, as needed, to meet posts' requirements.

Preliminary results from the models developed by the Department indicate that additional personnel positions may be necessary. However, since the Department has been in a 'down sizing' mode for some time (thirty-six diplomatic or consular posts have been closed over the past four years), it remains to be seen what action will be taken on the findings.

Unlike most federal departments and agencies which have only one hiring system, the State Department has three distinct systems. The Foreign Service of some four thousand officers and specialists must agree to serve abroad at any of the U.S. diplomatic or consular posts. The Foreign Service career consists of three broad career stages: junior officer (probationary status); career officer; and senior foreign service officer. Junior officers must expect to spend the major portion of at least one overseas assignment in consular work as a precondition for consideration for promotion to the career level. Advancement within the Foreign Service is competitive and is based on performance. The Civil Service workforce, of more than five thousand professional, technical, and administrative employees, serve in Washington, D.C. and at field offices throughout the U.S. More than nine thousand foreign service national [FSN] employees, normally citizens of the host countries where U.S. embassies and consulates are located, perform a variety of administrative duties on behalf of the State Department. Their service on behalf of the U.S. government is covered by regulations distinct from the foreign and civil service systems.

A recent report by the General Accounting Office [GAO] reviewing the staffing of U.S. diplomatic and consular posts, the linkage of the overseas staffing process to foreign policy priorities, and potential options to be considered in adjusting staffs to meet reduced budgets is enclosed.

Since 1983 the State Department's total personnel level has been reduced by two thousand two hundred positions. A summary of the Department's employment levels for the past three fiscal

years follows (to include part-time intermittent [PIT] employees, who may be professional or consular associates, individuals hired under personal services contracts, or locally resident Americans hired into FSN positions):

	FY 1994	FY 1995	FY 1996
Foreign Service	8,512	8,207	7,936
Civil Service	5,191	4,972	5,001
PIT employees	2,725	2,464	2,249
Total	16,428	15,643	15,186
FSN Est. Total	9,412	9,555	9,555

The Bureau of Consular Affairs [CA]

Summary. The Bureau of Consular Affairs [CA] is a long established bureau with a wide span of control covering the issuance of visas abroad to foreigners wishing to enter the U.S., the issuance of passports to American citizens, and assistance to American citizens living and traveling abroad. All of these responsibilities have both foreign policy and domestic policy considerations and they involve legal, humanitarian, and management concerns. From 1952 to 1978 the Bureau was known as the Bureau of Security and Consular Affairs [SCA]. The Bureau, which employs approximately 1000 employees, has three major directorates, each headed by a Deputy Assistant Secretary: the Visa Office; the Passport Office; and the Office of Overseas Citizens Services. The Bureau has a staff of approximately 315 in its Washington office, and some 474 permanent staff plus an additional 200 seasonal and part-time hires at its 15 passport and processing agencies around the U.S.

A summary of the State Department's total financial program activities for consular relations budget activities (as noted in the enclosed 'The Budget in Brief') follows:

1995 Actual	\$239,543,000
1996 Estimate	\$223,187,000
1997 Request	\$220,943,000

The foregoing funding levels do not include \$19.5 million in Border Security costs which the Department's budget request assumed would be funded by Machine Readable Visa [MRV] fees in FY 1996 and \$28.4 million in Border security costs to be funded by MRV fees in FY 1997.

(Final FY1996 and FY 1997 approved appropriation levels and MRV funded costs for FY 1996 will be available in the near term.) The Department has made formal recommendations to the Office of Management and Budget [OMB] on how to best utilized MRV fees in support of the border security program for Fiscal Years 1997 and 1998. The availability of these user fees has enabled the Department, and particularly the Consular Affairs Bureau, to address more seriously some of the border security concerns of the Congress.

The Bureau itself is large in terms of personnel; however, its span of control is not as formidable as might appear at first glance. It is responsible for policy guidance on visa procedures and for assistance to Americans abroad. However, the consular offices abroad (which are staffed by eight hundred and twenty-eight American officers and two thousand five foreign service national employees) are funded and administered by their individual embassies and regional geographic bureaus. The consular officer positions designated as those devoted to visa functions currently number some seven hundred. However, many officers rotate among the different units of consular sections, given the level of work to be performed as well as the season nature of nonimmigrant visa work at some post. Based on statistics received from foreign service posts for all aspects of consular work, the following actual work years devoted to the visa function abroad in FY 1995 can be extrapolated to present a more quantifiable picture worldwide. The following includes part-time employees and temporary hires during the fiscal year:

	<u>American</u>	<u>Foreign Service National</u>	<u>Total</u>
Immigrant	164	589	753
Nonimmigrant	430	1,176	1,606
Total	594	1,765	2,359

Performance evaluation reports on visa officers at U.S. embassies and consulates are prepared by supervising officers abroad rather than by senior personnel in the headquarters operations. Thus, formal direct oversight falls to the chiefs of missions rather than the Assistant Secretary for Consular Affairs. Staffing of American officers to consular sections is carried out by the Department's central personnel system not the Bureau of Consular Affairs, although assignments are handled in coordination with the appropriate geographic bureau and the Consular Affairs Bureau's Executive Office.

Organizationally, the Bureau has a policy office which is located in the Office of the Assistant Secretary. That office tracks legislation in the Congress but it is not staffed to study immigration or migration policy on any detailed basis. The Visa Office, which focuses on implementation, has no formally designated policy planning staff, but it does have an office that provides legal interpretation of legislation and regulations for consular officers performing visa work abroad. The Visa Office also maintains statistical records on legal immigration flows into the U.S. The

Bureau's fraud prevention office works at tracking and disrupting flows of illegal immigrants into the U.S. and offers policy suggestions for coping with the burgeoning problem.

While the Bureau focuses on legal immigration policies, the Office of Policy in the Bureau of Population, Refugees, and Migration [PRM] has the lead organizationally within the Department on policy formation pertaining to international migration issues and it represents the U.S. at international conferences on these issues. PRM requests the Bureau of Consular Affairs's assistance when issues relating to U.S. legal immigration policies are raised at international forums.

Functional Role of the Consular Affairs Bureau in Immigration Policy. The Secretary of State has statutory authority to promulgate and interpret regulations and to establish forms and procedures for handling individual visa cases. The exercise of this authority has been largely delegated to the Bureau of Consular Affairs and particularly to the Bureau's Visa Office. This authority also includes the authority to interpret the law. A brief historical overview of the visa function is enclosed. The exercise of these authorities results in the creation of a substantive and procedural framework within which individual visa cases are adjudicated by consular officers abroad. By law consular officers exercise wide discretionary authority in the adjudication of individual visa cases. Only rarely does the Secretary of State become personally involved in individual cases. However, the Secretary of State has traditionally taken an active role when the final decision on visa policy for nationals of certain countries, for members of certain organizations, and for specific individual cases have an immediate public impact on U.S. foreign policy. The Secretary has likewise testified before the Congress, when necessary, to outline his position on visa policy formulation as an integral part of U.S. foreign policy. The highly visible position taken by Secretary of State Dean Rusk in calling for the elimination of the national origins quota system on foreign policy grounds, for example, demonstrates the degree to which the Secretary is prepared to argue for migration policies reflective of the national society.

Responsibilities within the Bureau are delineated both vertically and laterally in what can be described as a matrix system with several units serving as central coordination nodes. For reasons of operational practicality, this system is driven far more by function and area of responsibility rather than hierarchy. Typically, one Directorate within the Bureau takes the lead on an issue with other Directorates or offices clearing, again depending on the issue involved. If an impasse is reached, an overlapping issue is elevated to the Principal Deputy Assistant Secretary or to the Assistant Secretary for resolution. Within the Bureau, the Visa Office assumes the lead role for policy and program development on immigration issues. The Director of the policy staff, the Director of the Fraud Prevention Program office, and the Executive Director are also involved. Other senior consular officers in the Bureau are consulted on an ad hoc basis as needed. Policy papers on immigration matters will usually be staffed out first to the Visa Office which is then responsible for clearance of the papers with other interested offices in

the Bureau. Once a draft on any important issues is prepared, it will be reviewed by the policy staff and the front office special assistant to assure that it has sufficiently addressed all aspects of the problem. The paper will then be presented to the Assistant Secretary. Depending on the sensitivity of the issue, the paper may be shown to the Assistant Secretary before it is taken outside the Bureau or outside the State Department for discussion.

The Bureau's involvement in the legislative formulation of broad immigration policies has been tied historically to the leadership role played by the Assistant Secretary. Significantly, this has meant the extent to which the Assistant Secretary has understood both the congressional dynamic of immigration issues and the political dynamic within the American society, as well as the incumbent's dedicated personal efforts to be heard publicly on the broader issues. Additionally, concurrence of the White House may be called for in dealing with such issues given the political sensitivity accorded to them. While the Visa Office is deeply involved in the administration of U.S. immigration law, the Bureau itself has not played a major role in the direction of formal legal immigration legislation for the past decade. The Bureau's senior management team has rather concerned itself extensively with the challenges of a burgeoning workload in an environment of ever shrinking resources. Initiatives to enhance the management, support, and operations of consular operations generally, to include new automation techniques, have been the major focus of the senior officials.

The Bureau perceives itself as a implementer of congressional policy. In particular, the Visa Office considers its main role as implementing the laws and regulations derived from broad congressional legislative mandates on the structure of the nation's immigration policies in governing the admission of over half a million legal immigrants annually and an additional six million nonimmigrant visitors and business travelers. The Visa Office promulgates regulations and gives operational guidance to consular sections abroad. The Bureau also offers advice to Congress on how various legislation should be shaped to accomplish congressional intent. Thus, policy papers frequently focus on how congressional legislation will affect the workload of the Bureau of Consular Affairs and the operations of overseas embassies and consulates, or how legislation could be better be written to achieve the desired congressional intent. Such policy recommendations are based on a careful review of law and regulation and generally concern technical aspects of the implementation of laws or regulations. Additionally, the Bureau's fraud prevention program office may comment on such recommendations which may or may not facilitate the Department's efforts to combat fraudulent practices impacting on visa work abroad. The Bureau's Executive Office will also comment on any new legislation and provide cost estimates when appropriate. As the Congress rarely provides sufficient funds to execute new programs, the Executive Office is known for the care it takes in estimating exactly what changes will mean in terms of personnel staffing and funding.

Organizational charts of the Bureau of Consular Affairs and its various functional units involved in immigration issues are attached. A synopsis of the structure and functioning of the Bureau's

various offices follows.

Office of the Assistant Secretary [CA]. The Assistant Secretary for Consular Affairs formulates and implements policy relating to immigration and consular matters and provides guidance on related foreign policy issues to Department principals and to Foreign Service posts. Under provisions of the INA, as amended, the Assistant Secretary formally administers the Act and all other immigration and nationality laws relating to the powers, duties, and functions of the U.S. diplomatic and consular officers, except those conferred by law directly on consular officers. The most important of those conferred on consular officers involves the authority to issue and to deny visas.

The Office of the Consular Affairs Assistant Secretary is a fairly small unit composed of the Assistant Secretary, a special assistant, two staff assistants, several secretarial staff, and the Bureau's senior managers. The special assistant and staff assistants ensure that major issues are properly staffed and that the Assistant Secretary's scheduling needs are always met. The Assistant Secretary's chief advisors are the CA senior staff of three Deputy Assistant Secretaries [DAS] (one of whom is designated as Senior or Principal) and an Executive Director who also are the managers of their respective areas. The Office also includes a staff for Policy, Public Affairs, and Legislation which reports to the Principal Deputy. In addition, the Director of the Fraud Prevention Programs [CA/FPP], a mid-level officer, also reports directly to the Principal DAS.

Office of the Executive Director [CA/EX]. The ten person Office of the Executive Director, includes the director, a deputy, and four management analyst officers. The Office is sometimes augmented by retired senior officers on specific assignment to analyze specialized management problems. The four foreign service management analysts are charged with overseeing the Consular Package process (described below) and alerting senior staff as resource problems arise abroad. Both the Director and the Deputy are active participants in policy formation on immigration issues given the extensive emphasis placed by the Consular Affairs Bureau on studying the resource implications of any proposed change to current policy. The Office also produces the "Consular Management Handbook," which supplements the Foreign Affairs Manual and other formal written guidance from the Department to consular operations abroad. The Handbook (enclosed) provides detailed instructions and guidance for consular managers abroad on analyzing and coping with varying workload, supervisory practices, reporting, interfunctional and external relationships, internal controls, anti-fraud programs, investigating malfeasance, and handling the collection of fees. The publication is currently under revision (with the updated version to be printed at the beginning of 1997) as it has not kept pace with changes in the law and the technology of the consular workplace. It remains, however, the best overall compendium of guidelines for consular managers abroad.

The staff of the Executive Director involves itself in policy and operational matters involving all aspects of consular functions to include visa policy. Two major functions of the Executive Office involve budgeting for consular activities and the development of new computer systems and other programs for consular sections abroad.

Internal and External Budget and Personnel Issues. The five person Resource Management Division under the Executive Director is in charge of the Bureau's budget management. The staff prepares the Bureau's budget presentations and it tracks expenditures during the year. The General Services and Personnel Management Divisions, with sixteen and twelve staff members respectively, support domestic operations and are rarely involved in policy making.

The Bureau's budget does not normally include funding for overseas consular activities. The Bureau's headquarters budget level for FY 1997 (to include funding for some passport administrative services and season/temporary employees at the fifteen passport offices around the U.S.) is estimated at forty-six million dollars, of which eleven and a half million will be funded by machine readable visa [MRV] fees and the remainder by appropriated funds. Due to a split in responsibilities, consular sections abroad are funded through appropriations handled by their respective geographic regional bureaus, not the Bureau of Consular Affairs. Budget allocations to the geographic and functional bureaus are made by the financial management office following an extensive intragency budget process.

Assignment of consular officers to posts abroad are handled by the State Department's central personnel system and staffing levels are set by the central administrative system, again in coordination with the Bureau of Consular Affairs' Executive Office and the applicable regional geographic bureaus. Thus, setting staffing levels and actually staffing posts abroad with personnel is a complex negotiating process within the formal bureaucracy. However, the Executive Office does exercise some influence over the selection of senior consular managers abroad. In particular, the Deputy Executive Director (a senior foreign service officer) traditionally plays a coordinating role in developing the Bureau's position on who it supports in filling some of the key consular positions.

While the Consular Affairs Bureau does not distribute financial resources to support overseas consular activities, it does support the function worldwide by taking the pivotal and considered key role in determining specific consular resource requirements overseas. The Bureau's annual budget submission (bureau program plan -- [BPP]) covers only its own staff and functions in the U.S., but the Bureau, separately and informally, makes an important contribution to the geographic bureaus' budget requests covering consular activities in their regions. The major administrative tool used in this task is the annual Consular Package submission. The Package,

devised more than twenty years ago, is an annual aggregation, comparison, and analysis of five years' consular workload compiled from individual post submissions. The information is used both to request resources from the Congress and to analyze post specific staffing and other resource needs. The information is used by the regional geographic bureaus and the Office of the Chief Financial Manager [M/FMP] to reflect staffing needs in the Department's overall annual budget request to the Congress. In particular, the database shows workload trends to determine consular personnel needs and where additional positions should be allocated.

Data provided by the Consular Package also helps explain the needs of the Department and its posts abroad to the Office of Management and Budget [OMB]. Beyond providing the basis for systematic program planning, the information provides the Bureau's senior management with information vital in shifting resources when responding to external events, crises, and new legislative mandates. The Consular Management Handbook (enclosed) provides a synopsis of the Consular Package instructions to the field and an example of one such report.

The Executive Office is also prepared to offer expert guidance and assistance on managerial issues to consular sections when so requested by posts abroad. Whenever changes in immigration legislation are proposed or made, the Executive Office has responsibility, in coordination with the Visa Office, to analyze the workload implications and the costs associated with the changes. As noted earlier, legislators rarely allocate sufficient resources to support new immigration laws; thus, the Executive Office tends to be cautious in its response to new programs.

Automation and System Issues. The other major responsibility of the Executive Office is oversight of the development of new systems to handle consular workload abroad. This includes oversight of the development of the Machine Readable Visa [MRV] system, improving the capability of the visa CLASS computer lookout systems, and supporting the automation functions of other consular activities.

The Consular Systems Division [CA/EX/CSD] of twenty-five persons handles the program development for posts abroad in both visa and passport system. Staffed principally by computer specialists, the division works as a liaison between consular posts abroad and the contractors (currently numbering two hundred) who actually write and test the varied computer systems. The staff is responsible for servicing, updating, and continually improving the automated computer consular lookout and support system [CLASS], the immigrant visa automated control system [IVACS], the immigrant control and records system [ICARS], and the daily interface of the Bureau's automation systems with those of other departments and agencies to include INS, DEA, and Customs. The systems staff works closely with Visa Office personnel to ensure that computer software programs are modified, when necessary, due to legislative or regulatory

changes. For example, more than twenty such changes may be required in the CLASS lookout system due to legal changes called for by the recently passed immigration legislation.

The Division's personnel are actively involved with issues stemming from the INS-State Senior Task Force (started in March 1995) on seeking ways to improve adjudications, visa issuance, admissions, and border control through the automation of data collection, sharing of such data, transmitting it between federal agencies, and storing it for prompt retrieval when necessary. This includes pilot projects to create a more secure border crossing card, imaging nonimmigrant visa applications to be shared with the INS, and automatic data transfer of issued immigrant visas to the INS. The Division is working at improving the algorithmic name check function, particularly for Arabic and Chinese names, as the visa lookout accountability issue continues to be of major concern to visa issuing officers. Questions are raised continually about how proficient technologically the U.S. government can be in accurately identifying persons potentially ineligible for entry to the U.S. Action on data exchanges issues, such as increased access by consular officers to records held by other U.S. government agencies, takes place under the auspices of the Interagency Border Inspection System [IBIS].

Consular Training. The Executive Office also works with Consular Training Division in the School of Professional Studies at the National Foreign Affairs Training Center (which runs more than three hundred courses, including some sixty foreign languages, ranging in length from several days to two years) to ensure that the latest information on consular management procedures and immigration policies is made available to officers undergoing formal consular training. Instruction is provided through the Basic Consular Course (a twenty-five day course given in six segments), the three week Advanced Consular Course for experienced consular officers, a five day course on automation for consular managers plus a three day automation update course, as well as the correspondence courses (meeting the specialized needs of overseas foreign service national employees). These courses are available to Foreign Service, Civil Service and other employees (from more than forty-three other government agencies) on a space available basis. The Center's training staff also assists in setting up regional training workshops abroad, which are normally attended by experienced staff from the various components of the Consular Affairs Bureau. A list of the ongoing consular courses for the current fiscal year, as found in the Schedule of Courses, is enclosed.

Office of Consular Fraud Prevention Programs [CA/FPP]. The seventeen persons (both Civil Service and Foreign Service) assigned to the Fraud Prevention Program Office direct the formulation of policies and practices related to anti-fraud programs in all aspects of consular work. They have responsibility for monitoring and coordinating internally the Bureau's efforts to combat fraud programs. The Office Director reports directly to the Bureau's Principal Deputy Assistant Secretary. The Office is divided into two teams: one concentrating on intelligence gathering, dissemination of intelligence and fraud information, and training; and the other

various offices follows.

Office of the Assistant Secretary [CA]. The Assistant Secretary for Consular Affairs formulates and implements policy relating to immigration and consular matters and provides guidance on related foreign policy issues to Department principals and to Foreign Service posts. Under provisions of the INA, as amended, the Assistant Secretary formally administers the Act and all other immigration and nationality laws relating to the powers, duties, and functions of the U.S. diplomatic and consular officers, except those conferred by law directly on consular officers. The most important of those conferred on consular officers involves the authority to issue and to deny visas.

The Office of the Consular Affairs Assistant Secretary is a fairly small unit composed of the Assistant Secretary, a special assistant, two staff assistants, several secretarial staff, and the Bureau's senior managers. The special assistant and staff assistants ensure that major issues are properly staffed and that the Assistant Secretary's scheduling needs are always met. The Assistant Secretary's chief advisors are the CA senior staff of three Deputy Assistant Secretaries [DAS] (one of whom is designated as Senior or Principal) and an Executive Director who also are the managers of their respective areas. The Office also includes a staff for Policy, Public Affairs, and Legislation which reports to the Principal Deputy. In addition, the Director of the Fraud Prevention Programs [CA/FPP], a mid-level officer, also reports directly to the Principal DAS

Office of the Executive Director [CA/EX]. The ten person Office of the Executive Director, includes the director, a deputy, and four management analyst officers. The Office is sometimes augmented by retired senior officers on specific assignment to analyze specialized management problems. The four foreign service management analysts are charged with overseeing the Consular Package process (described below) and alerting senior staff as resource problems arise abroad. Both the Director and the Deputy are active participants in policy formation on immigration issues given the extensive emphasis placed by the Consular Affairs Bureau on studying the resource implications of any proposed change to current policy. The Office also produces the "Consular Management Handbook," which supplements the Foreign Affairs Manual and other formal written guidance from the Department to consular operations abroad. The Handbook (enclosed) provides detailed instructions and guidance for consular managers abroad on analyzing and coping with varying workload, supervisory practices, reporting, interfunctional and external relationships, internal controls, anti-fraud programs, investigating malfeasance, and handling the collection of fees. The publication is currently under revision (with the updated version to be printed at the beginning of 1997) as it has not kept pace with changes in the law and the technology of the consular workplace. It remains, however, the best overall compendium of guidelines for consular managers abroad.

The staff of the Executive Director involves itself in policy and operational matters involving all aspects of consular functions to include visa policy. Two major functions of the Executive Office involve budgeting for consular activities and the development of new computer systems and other programs for consular sections abroad.

Internal and External Budget and Personnel Issues. The five person Resource Management Division under the Executive Director is in charge of the Bureau's budget management. The staff prepares the Bureau's budget presentations and it tracks expenditures during the year. The General Services and Personnel Management Divisions, with sixteen and twelve staff members respectively, support domestic operations and are rarely involved in policy making.

The Bureau's budget does not normally include funding for overseas consular activities. The Bureau's headquarters budget level for FY 1997 (to include funding for some passport administrative services and season/temporary employees at the fifteen passport offices around the U.S.) is estimated at forty-six million dollars, of which eleven and a half million will be funded by machine readable visa [MRV] fees and the remainder by appropriated funds. Due to a split in responsibilities, consular sections abroad are funded through appropriations handled by their respective geographic regional bureaus, not the Bureau of Consular Affairs. Budget allocations to the geographic and functional bureaus are made by the financial management office following an extensive intragency budget process.

Assignment of consular officers to posts abroad are handled by the State Department's central personnel system and staffing levels are set by the central administrative system, again in coordination with the Bureau of Consular Affairs' Executive Office and the applicable regional geographic bureaus. Thus, setting staffing levels and actually staffing posts abroad with personnel is a complex negotiating process within the formal bureaucracy. However, the Executive Office does exercise some influence over the selection of senior consular managers abroad. In particular, the Deputy Executive Director (a senior foreign service officer) traditionally plays a coordinating role in developing the Bureau's position on who it supports in filling some of the key consular positions.

While the Consular Affairs Bureau does not distribute financial resources to support overseas consular activities, it does support the function worldwide by taking the pivotal and considered key role in determining specific consular resource requirements overseas. The Bureau's annual budget submission (bureau program plan -- [BPP]) covers only its own staff and functions in the U.S., but the Bureau, separately and informally, makes an important contribution to the geographic bureaus' budget requests covering consular activities in their regions. The major administrative tool used in this task is the annual Consular Package submission. The Package,

devised more than twenty years ago, is an annual aggregation, comparison, and analysis of five years' consular workload compiled from individual post submissions. The information is used both to request resources from the Congress and to analyze post specific staffing and other resource needs. The information is used by the regional geographic bureaus and the Office of the Chief Financial Manager [M/FMP] to reflect staffing needs in the Department's overall annual budget request to the Congress. In particular, the database shows workload trends to determine consular personnel needs and where additional positions should be allocated.

Data provided by the Consular Package also helps explain the needs of the Department and its posts abroad to the Office of Management and Budget [OMB]. Beyond providing the basis for systematic program planning, the information provides the Bureau's senior management with information vital in shifting resources when responding to external events, crises, and new legislative mandates. The Consular Management Handbook (enclosed) provides a synopsis of the Consular Package instructions to the field and an example of one such report.

The Executive Office is also prepared to offer expert guidance and assistance on managerial issues to consular sections when so requested by posts abroad. Whenever changes in immigration legislation are proposed or made, the Executive Office has responsibility, in coordination with the Visa Office, to analyze the workload implications and the costs associated with the changes. As noted earlier, legislators rarely allocate sufficient resources to support new immigration laws; thus, the Executive Office tends to be cautious in its response to new programs.

Automation and System Issues. The other major responsibility of the Executive Office is oversight of the development of new systems to handle consular workload abroad. This includes oversight of the development of the Machine Readable Visa [MRV] system, improving the capability of the visa CLASS computer lookout systems, and supporting the automation functions of other consular activities.

The Consular Systems Division [CA/EX/CSD] of twenty-five persons handles the program development for posts abroad in both visa and passport system. Staffed principally by computer specialists, the division works as a liaison between consular posts abroad and the contractors (currently numbering two hundred) who actually write and test the varied computer systems. The staff is responsible for servicing, updating, and continually improving the automated computer consular lookout and support system [CLASS], the immigrant visa automated control system [IVACS], the immigrant control and records system [ICARS], and the daily interface of the Bureau's automation systems with those of other departments and agencies to include INS, DEA, and Customs. The systems staff works closely with Visa Office personnel to ensure that computer software programs are modified, when necessary, due to legislative or regulatory

changes. For example, more than twenty such changes may be required in the CLASS lookout system due to legal changes called for by the recently passed immigration legislation.

The Division's personnel are actively involved with issues stemming from the INS-State Senior Task Force (started in March 1995) on seeking ways to improve adjudications, visa issuance, admissions, and border control through the automation of data collection, sharing of such data, transmitting it between federal agencies, and storing it for prompt retrieval when necessary. This includes pilot projects to create a more secure border crossing card, imaging nonimmigrant visa applications to be shared with the INS, and automatic data transfer of issued immigrant visas to the INS. The Division is working at improving the algorithmic name check function, particularly for Arabic and Chinese names, as the visa lookout accountability issue continues to be of major concern to visa issuing officers. Questions are raised continually about how proficient technologically the U.S. government can be in accurately identifying persons potentially ineligible for entry to the U.S. Action on data exchanges issues, such as increased access by consular officers to records held by other U.S. government agencies, takes place under the auspices of the Interagency Border Inspection System [IBIS].

Consular Training. The Executive Office also works with Consular Training Division in the School of Professional Studies at the National Foreign Affairs Training Center (which runs more than three hundred courses, including some sixty foreign languages, ranging in length from several days to two years) to ensure that the latest information on consular management procedures and immigration policies is made available to officers undergoing formal consular training. Instruction is provided through the Basic Consular Course (a twenty-five day course given in six segments), the three week Advanced Consular Course for experienced consular officers, a five day course on automation for consular managers plus a three day automation update course, as well as the correspondence courses (meeting the specialized needs of overseas foreign service national employees). These courses are available to Foreign Service, Civil Service and other employees (from more than forty-three other government agencies) on a space available basis. The Center's training staff also assists in setting up regional training workshops abroad, which are normally attended by experienced staff from the various components of the Consular Affairs Bureau. A list of the ongoing consular courses for the current fiscal year, as found in the Schedule of Courses, is enclosed.

Office of Consular Fraud Prevention Programs [CA/FPP]. The seventeen persons (both Civil Service and Foreign Service) assigned to the Fraud Prevention Program Office direct the formulation of policies and practices related to anti-fraud programs in all aspects of consular work. They have responsibility for monitoring and coordinating internally the Bureau's efforts to combat fraud programs. The Office Director reports directly to the Bureau's Principal Deputy Assistant Secretary. The Office is divided into two teams: one concentrating on intelligence gathering, dissemination of intelligence and fraud information, and training; and the other

focuses on program management and post support (this latter team is divided geographically). It maintains continuing liaison with other Federal agencies (INS, Customs, and U.S. attorneys), representatives of foreign governments, and other bureaus within the Department. Officers work closely with the staff of the INS Forensic Document Laboratory.

The Office of Public Affairs and Policy Coordination [CA/P]. The Director of the eleven person staff reports directly to the Principal Deputy in the Bureau. In the area of public affairs, the office prepares daily press guidance and information to reporters and journalists on consular-related foreign policy developments, and it coordinates requests for media interviews with Bureau personnel. It prepares, edits, and designs the brochures and pamphlets on consular matters distributed publicly by the Bureau. It has responsibility for physically maintaining the automated public systems, including the Consular Microlog telephone recording system, the Consular Affairs Electronic Bulletin Board, the auto-fax back system (which disseminates foreign travel advisories and warnings as well as country specific consular information sheets) and the Bureau's Internet web page (Internet Web address: <http://travel.state.gov>). The Bureau's web site is currently among the top ten federal government Internet connections used by the general public.

In its policy coordination role, the Office analyzes and follows the progress of proposed legislation concerning consular matters, proposes Bureau legislative strategies, prepares testimony for Bureau principals, and coordinates the preparation of formal comments on legislation. The Office works closely with the Bureau of Legislative Affairs [H] to ensure that all relevant information on daily legislative events impacting or potentially impacting the Consular Affairs Bureau are brought to the attention of the senior policy managers. The Office also takes an active role in coordinating policy-related issues which affect more than one directorate within the Bureau.

The Consular Affairs Bureau's Visa Office [CA/VO]. Since 1918 a Visa Office has existed within the State Department in order to supervise generally the issuance of visas by consular officers. The present mandate stems from Section 104(c) of the INA. As an office concerned mainly with the administration of visa law and the interpretation of visa regulations, the Visa Office is not structured currently to focus on policy formulation per se. It is headed by a Deputy Assistant Secretary [DAS] with a Managing Director as the Deputy. Both the DAS and the Managing Director are involved principally in running the Visa Office, dealing with high level questions on visa work, and explaining visa policies to various congressional and public organizations. One of the primary functions of the Office is to assure that the field understands and properly implements visa law and regulations and that concerns of the Congress and the public are answered promptly.

The Visa Office does not have administrative line supervision over visa sections at American embassies and consulates abroad. Rather it sets policy implementation guidelines, issues regulations (codified in Volume 9 of the Foreign Affairs Manual), and advises officers on how regulations should be applied. The Foreign Affairs Manual [FAM] is a principal tool for ensuring that consular laws and regulations are applied uniformly and fairly. The FAMs include a detailed compilation of the immigration laws, the implementing regulations, formal notes (based on legal analysis of court cases, legislative intent, and opinions rendered in previous cases) explaining the regulations, and copies of exhibits and visa forms. When problems arise in visa sections abroad, the Office works as an advocate with the regional geographic bureau or the embassy to correct the situation, but it has no formal line of command. However, by establishing the formal guidelines and management responsibilities both vertically and horizontally for visa processing abroad, the Visa Office has established wide 'persuasive' authority for its role within the Department.

The eighty-five persons employed in the Visa Office (including the management staff of the National Visa Center) are functionally assigned to three main divisions: the Office of Public and Diplomatic Liaison; the Office of Legislation, Regulations and Advisory Assistance; and the Office of Field Support and Liaison. The total staff numbered one hundred and four in FY 1990 but has shrunk due to ongoing budgetary cuts.

The Office of Public and Diplomatic Liaison [CA/VO/P]. This Office, with a staff of twenty-seven persons, is the public face of the Visa Office. Its information section (staffed by ten employees) responds to all public inquiries from all sources including the Congress. The Written Inquiries Branch receives at least fifty percent of the total correspondence, on all subjects, sent to the Department from the general public as well as from Members of Congress. It replies annually to almost two thousand requests for information from congressional offices (largely for assistance in dealing with constituent services) as well as to more than ten thousand other visa related inquiries. It also responds to inquiries directed to the White House and specifically to the Secretary of State in another one thousand instances. The Department's telecommunications system is used extensively by the Branch to obtain factual information from consular sections abroad prior to responding formally to many of these inquiries. The Telephone Inquiries Branch is the focal point for the direct telephone calls from congressional offices (averaging thirty-five calls daily) on specific visa cases of constituent interest. The Branch uses a Microlog recorded message information system (tel. no. 202-663-1225) to respond to more than nine hundred telephone inquiries received daily from the general public. The system is updated periodically as legal and regulatory changes affect the immigration system. Officers are available to respond to inquiries not answered by the recorded message system. Each officer normally handles an average of one hundred fifty telephone calls daily. Separate Microlog telephone numbers are used to respond to call about the immigrant visa diversity programs and the priority dates for persons subject to the numerical limitations, under both family-sponsored and employment-based immigration.

The Office's Diplomatic Liaison Branch is charged with the administration of diplomatic visas and the issuance of visas to diplomats and representatives of international organizations in the U.S. The nine person staff reviewed more than thirty-eight thousand applications in fiscal year 1996 for nonimmigrant diplomatic [A], treaty trader and treaty investor[(E), international organizational [G], temporary workers [H], intra-company transferees [L], and journalist [I] visas. The U.S. Mission to the United Nations at New York renews the visas of employees assigned to or working at the international organization's headquarters. The Office's Communications and Records Division, with only four employees, is the file research hub of the Visa Office, maintaining more than one hundred thousand paper records pertaining to aliens.

The Office of Field Support and Liaison [CA/VO/F]. The twenty person staff maintains responsibility for all operational matters regarding visa procedures. It maintains daily liaison with overseas posts and with other government agencies. The Office has three divisions: Immigrant Visa Control and Reporting; Post Liaison; and Systems Liaison.

The six person Immigrant Visa Control and Reporting Division administers the provisions of the INA pertaining to numerical limitations on immigrant visa issuance, and maintains statistics on worldwide immigrant and nonimmigrant visa workload. The Division's responsibilities for quota control can be traced to the original Visa Office. The Division publishes monthly the "Visa Bulletin" which announces immigrant visa priority dates and which provides general information on changes in visa policy. Annually the Division provide an in-depth look at the immigrant visa waiting list in both the family-sponsored and employment-based preferences. The waiting list as of January 1996 was not published due to government furloughs. Copies of the Visa Bulletin are enclosed. The Office likewise produces a detailed "Annual Report of the Visa Office."

The eleven person Post Liaison Division provides operational and procedural guidance to all visa issuing posts, and maintains liaison with other U.S. agencies concerning visa matters. It also performs a coordinating roles on behalf of the Consular Affairs Bureau with geographic and functional bureaus within the State Department. The Division is responsible for developing all visa forms, coordinating all adoption visa matters (particularly with the Bureau's Office of Overseas Citizens Services and INS offices), and offering policy guidance on visa reciprocity with foreign nation-states. The Division also handles any post specific question on handling parole cases abroad. It is generally considered the main point of contact on procedural issues by visa sections at American embassies and consulates abroad.

The two-person System Liaison and Procedures Division, while small in number, provides a coordinating role within the Visa Office to ensure that computer systems issues are raised and

those knowledgeable on specific issues participate in interagency planning and steering committee issues. This includes the Department's efforts to improve U.S. border security through data sharing with agency members of IBIS, the Interagency Border Inspection System. The staff advises the Bureau's senior managers on actions taken to achieve the goals of IBIS and provides periodic reports to foreign service posts on the status of the various data exchange pilot projects.

The Office of Legislation, Regulations and Advisory Assistance [CA/VO/L]. This Office serves as the main resource on immigration policy in the Visa Office. Headed by a civil service officer and staffed mainly by civil service lawyers and foreign services officers, the office interprets regulations and immigration laws and gives guidance to consular officers abroad, various government organizations, the Congress, and interested private immigration organizations. It will normally be the first office tasked with the responsibility for commenting on proposed immigration legislation or for the development of language for new legislation and regulations on immigration matters. Contacts both formal and informal with congressional offices are frequent. Congressional legislation on visa issues is often vetted informally with the office before being proposed formally. This has served to reinforce a perception that the Visa Office and the Bureau of Consular Affairs generally administer rather than make immigration policy. The thirty person office has three divisions: Legislation and Regulation; Advisory Opinions; and Coordination.

The five person Legislation and Regulation Division is responsible for keeping the Foreign Affairs Manuals [FAMs] current and for explaining new laws and regulations to the field offices. Thus, it serves both as an information office and as one involved in procedural formulations. The responsibility is a formidable one as the Department strives to assure both uniformity and fairness in the visa decision-making process. The Division attempts to provide as much general instruction in the standing instruction manuals as possible. It does involve itself in many policy aspects of visa matters, particularly on the issues of treaty traders and treaty investors which, by statute, fall under the jurisdiction of the Secretary of State.

The eleven person Advisory Opinions Division replies to inquiries from consular officers on case specific issues and matters of legal interpretation of the law and regulations which are out of the ordinary, or which are particularly complex. This involves ineligibility to receive visas, proper visa classification, and foreign state chargeability. The Division tries to assure in its formal comments that uniformity exists in the interpretation of the visa law throughout the Department. Thus, while it can offer opinions and guidance on interpreting the law and how the immigration laws may impact on the facts in a case, it still remains up to the consular officer to ascertain what are the actual facts. The Division also has responsibility for processing Freedom of Information Act [FOIA] and Privacy Act requests relating to visa files and handling litigation involving visa refusals.

The eleven person Coordination Division has responsibility for coordinating closely matters with U.S. government intelligence agencies and within the State Department on visa cases where security issues are raised. This includes cases involving known or suspected foreign hostile intelligence operatives, possible terrorists, and foreign policy visa refusal cases. The Division also processes waivers of ineligibility in security cases when considered appropriate by the government. Like the Advisory Opinions Office, it offers specific guidance and advise to consular officers on the handling of security related visa cases. While consular officers have extensive discretion in visa issuance, once an advisory opinion is requested of the Department by an officer (regardless of the specific office to which it is directed) departmental procedures require that no further action will be taken on the application until a formal response has been received from the Visa Office. This ensures that all appropriate agencies have been consulted on the applicant's potential ineligibility for a visa.

National Visa Center [NVC]. The Bureau of Consular Affairs established the National Visa Center at Portsmouth, New Hampshire in 1994, as a successor to the Transitional Immigrant Visa Processing Center [TIVPC], to process and to store both electronically and physically immigrant visa petitions and applications up to the point when applicants abroad must be interviewed by a consular officer to determine eligibility for issuance of an immigrant visa. TIVPC had been established in 1991 by the Department to cope with the Immigration Act of 1990, which increased legal immigration significantly but, concomitantly, did not include additional financial support to handle the sharp workload increase. NVC works closely with the INS's four regional service centers which initially process the immigrant visa petitions. The Center also processes petitions approved by the INS for immediate family members of asylees and refugees. The NVC manages the annual Diversity Immigrant Visa Lottery Program. Work at the facility is performed primarily by contract employees. The NVC Director reports directly to the Managing Director of the Visa Office. A detailed discussion of the operation of the NVC is enclosed.

Issues Impacting the Department of State's Role on Legal Immigration

As the consular function is one of the four major designations for the Foreign Service, work carried on by the Bureau of Consular Affairs has broad ramifications for the Department's work as a whole. As noted earlier, the Bureau sees itself more an implementor of policy rather than an initiator. However, the Bureau's senior managers have raised questions about establishing a formal Policy Unit in the Visa Office to address our nation's foreign policy interests in immigration and developing policy perspectives from that analysis. It remains to be seen to what extent this view will be considered. Additionally, the Bureau's senior managers are reviewing ways to streamline the consular operations abroad (principally through automation), to better manage the work place, to provide for a more rational and constant revenue stream, and to better

address matters of public and congressional concern.

Unfunded and Under-Funded Mandates. Efforts to produce the Machine Readable Visa [MRV], a more tamper proof nonimmigrant visa which can be read by INS machine readers, and to install the MRV system world-wide (in accordance with the Anti-Drug Abuse Act of 1988) could not have occurred without the allocation of specific user fees for that purpose. Additionally, the complex diversity immigrant visa programs could not have been developed without the aid of processing fees. However, the legislative mandates for such programs did not take into account initially the financial resources necessary for implementing them. The Visa Waiver Pilot Program [VWPP] has been temporary for many years, and yet, should it be permitted to expire, the human resources necessary to issue once again nonimmigrant visas to millions of travelers to the U.S. do not now exist around the world. State Department officials are concerned that the Congress tends to provide legislative programs and mandates without a thorough review of the financial resources essential to implementing migration programs and policies successfully and, subsequently, to carrying them out competently over the long term.

Given the constant budetary pressures on consular servies, a major goal of the Bureau of Consular Affairs is to recover the costs of many services. In fiscal year 1995 the State Department collected a total of \$552 million in total consular fees. The funds reverted back to the Treasury. Since 1994 the Department has been authorized to retain the surcharge collected for machine-readable visas [MRV], expedited passport fees, and certain processing fees. For fiscal years 1994 and 1995, the Department was permitted by statute to retain up to \$107.5 million. However, only \$8.7 million and \$74.5 million were collected in MRV user fees in FY 1994 and FY 1995, respectively. The Department is permitted by appropriation language to retain up to \$125 million in FY 1996 and \$150 million in FY 1997. Although a final accounting has not yet been made by the Department's finance office of all funds collected at overseas posts, it is estimated that between \$105 and 110 million was collected in MRV user fees during FY 1996. The funds have been used by the Bureau of Consular Affairs to make major improvements in passport and visa programs and to extend the number of overseas posts using the machine-readable visa system. As a result, all overseas embassies and consulates where visas are issued now have computer on-line MRV systems.

An ancillary concern by Department management involves the implementation of new programs or regulations by another department or agency which, due to their particular focus, can add to the State Department's workload, either domestically or abroad. Additionally, new procedures or the use of new forms for persons seeking adjustment of status in the U.S. may, likewise, apply to those applying for immigrant visa abroad. Interagency consultation on the issue may be late in the process, or not at all. If an agency is entitled to user fees in implementing a new form, such funds normally accrue to that agency, and not to the State Department, when the service is performed abroad by consular officers. The Department is reviewing currently the whole issue of user fees. A major contract study has just been completed. The Bureau is reviewing the

recommendations with an eye towards revising current fees and initiating new ones.

The issue of proper funding for the consular function as a whole, to include visa services, has also been the study of the American Foreign Service Association [AFSA], which is the exclusive employee representative for the Foreign Service bargaining units at the Department on both professional and labor issues. A copy of AFSA's position on budget priorities and reductions in force is enclosed along with its recently released detailed policy statement on the future of the consular function in the State Department (to include comments on relocating the Bureau under Global Affairs).

Accountability, Border Security and the Visa Issuing Function. Streamlining consular procedures and increasing the efficiency of consular staff continues to remain high on the Bureau's list of priorities. The recurring budget constraints and steady growing workload can be reconciled, in the Bureau's view, only through even greater emphasis on automation. At posts abroad, it is recognized that organizational patterns within consular sections vary due to the workload patterns specific to a particular society. Additionally, such measures as the visa lookout accountability by issuing officers fails to take into account the extreme vast complexity of the issues as well as the need to expend extensive funds to meet the congressional mandate. Developing broad ranging linguistic-based name check algorithms hinges on sufficient funding to create a statistically accurate system. There are, for example, five hundred thirty-eight possible correct spellings for the complete name of the blind Sheik Rahman, who was convicted for his actions in the bombing at the New York World Trade Center. Questions are raised continually about how proficient technologically the U.S. government can be in accurately identifying persons potentially ineligible for entry to the U.S. How do officers satisfy themselves that they have accounted for all possible name checks, that all relevant security sources have been accessed, and that they have timely access to the records on multiple hits? Some name checks require tremendous computer time, thus delaying both appropriate visa denials and valid issuances. Within the Korean society, for example, sixty-five percent of all Koreans are known by the surnames of Kim, Park or Lee. Timeliness in adjudication cannot be assumed. The latest in high speed telecommunication lines plus computer speed itself is essential in such cases.

In addition to providing reliable high speed telecommunications lines and modern computer equipment, the Consular Affairs Bureau looks upon increased data sharing with other agencies and departments as essential to a better visa adjudicative process. Consular officers are required by law to check all visa applications against an automated database. While the data available through the Department's automated name check system, CLASS, has been expanded during the past year to include some data from the DEA and INS (particularly deportation data that has been downloaded by computer from the Treasury Enforcement Communications System [TECS]), data from other agencies, including information on drug offenders and other felons, is not always available through CLASS. Lookout information from the FBI for downloading into the

Department's CLASS system, for example, is not currently available electronically.

The Department's efforts to improve U.S. border security through data sharing will eventually require access to entire databases and to the types of information contained in the INS Central Index System [CIS] and the Nonimmigrant Information System [NIIS]. This processing data contains extensive case status information and history, including admissions, change of status, naturalization, and details of deportations. Down loading of selected elements to a consular database may not be practical or desirable. However, access to such data for foreign service posts abroad would permit a secondary check of lookout systems (to include electronic records of visa waiver overstays and refusals and as well as other port-of-entry turnarounds), the verification of status in connection with immigrant visa processing, improved performance of services on behalf of INS, to include the verification of legal status prior to the issuance of transportation letters, and the checking of the authenticity of alien registration cards. Similarly, this would permit other departments and agencies to gain access to the Department's database records through a new Corporate Database system. Immigrant visa and nonimmigrant visa data, automated data on lost and stolen foreign passports, and border crossing card data would be automatically available for law enforcement purposes. All of the foregoing goals about records sharing are being pursued through discussions conducted under the auspices of the Interagency Border Inspection System [IBIS].

The Bureau of Democracy, Human Rights and Labor [DRL]

The Bureau of Democracy, Human Rights and Labor [DRL] was formed in 1994 under the policy direction of the Under Secretary for Global Affairs [G] and included the previous Bureau of Human Rights and Humanitarian Affairs [HA]. While there is growing recognition that human rights problems sometimes form the impetus for migration flows, the Bureau's main role in migration affairs continues to be through its Office of Asylum Affairs [DRL/ASY].

The division of labor in the Department, which places refugees under the Bureau of Population, Refugees and Migration [PRM] and asylees under a completely different bureau, is not found in other countries. In the early 1970's asylum requests were relatively rare and generally involved persons fleeing the communist bloc. Asylum appeared to relate more to a political human rights issue rather than a refugee problems as the total numbers were low. In the late 1970's, however, the Bureau was unable to manage the large Vietnamese Resettlement program. A decision was made to set up a separate Refugee Affairs Office to manage the refugee assistance and Resettlement budget and programs, leaving Humanitarian Affairs to focus on policy. The Humanitarian Affairs Bureau argued, however, that it had to keep some refugee responsibilities. The White House acquiesced to the then Assistant Secretary's request. Thus, oversight of

asylum requests, then a very small part of the refugee mandate, was left separate.

The formal split in the handling of refugees and asylees represents more than simple bureaucratic maneuvering. Unlike most western countries where refugees and asylees are given almost identical benefits of housing, health care, and relocation expenses, there is no similarity of treatment in the U.S. Refugees are enveloped in a system of financial care from the moment they are approved for refugee status by the INS. Applicants for asylee status, on the other hand, obtain no financial assistance.

With the massive influx of asylum claimants in the 1980's and 1990's, the growing asylum backlog now estimated at over 400,000, and the legal court proceedings evolving out of the Guatemalan and Salvadoran asylum cases, extensive resources were allocated to the establishment of a new asylum corps in the INS together with an expansion of the number of immigration judges to handle appeal cases. However, no additional funding was provided by the Congress for the State Department to carry out its formal review of the mushrooming asylum cases. The Office has shared in the financial downsizing which has impacted the Department over the past few years.

At present, the Bureau's Asylum Office is staffed by one full time Foreign Service Officer Director and two Civil Service secretaries. It is augmented by ten retired officers (most are senior officers, including former ambassadors) who work on a part-time basis. A Civil Service Deputy spends half of the fiscal year managing the annual production of the congressionally mandated Country Reports on Human Rights Practices. Other Foreign Service Officers can be assigned to the Asylum Office when the central personnel system has a need to place them for relatively short periods in Washington. Because of the huge workload, the officers screen cases to identify any which warrant more careful review and formal comment to the Justice Department, and to obtain information for the production of its principal written product -- the individual Profiles on Country Conditions and Asylum Claims. The Profiles focus tightly on the pattern of claims made by applicants from specific countries together with additional comments relating the various patterns to internal country conditions. No other organization (public or private) produces such an analysis. This is possible as the Asylum Office is the only federal office to receive and to review all asylum claims by country of origin. Simultaneously, the Office's staff reviews daily telegraphic reporting (both classified and unclassified) from all U.S. embassies and consulates on internal events in the asylum generating countries.

The Asylum Office works with the INS's Resource Information Center [RIC], which gathers materials published by a wide variety of public and private organizations but it makes not determination as to the reliability of the materials. The RIC neither carries on any extensive analytical work of its own nor does it review individual asylum applications. Nor does it

communicate with U.S. missions abroad. Alternatively, the Asylum Office can promptly direct requests to overseas posts on questions bearing directly on specific asylum claims as well as political and human rights matters raised in proceedings which are not discussed in the public domain. In particular, the Asylum Office has served as a major resource for the immigration judges of the EOIR when they desire some specific information which embassy and consulate officials can provide on country conditions, on specific events addressed in the claims, and on statements made by applicants which can be verified by department officials. The Asylum Office can accomplish this on behalf of the judges using the Department's secure telecommunications system so as not to compromise the integrity of the asylum proceedings.

Some sixty requests for waivers of the two-year foreign residency requirement under 212 (e) of the INA are received annually by USIA from exchange visitors who claim fear of persecution should they return home. As USIA has no formal organizational structure to verify such claims, it depends upon the Asylum Office to review the applications and to make formal recommendations on the credibility of the comments made in the written applications.

The Asylum Office's budget runs less than half a million dollars annually. It must compete for ever shrinking financial resources available for multiple Bureau programs. As the Bureau has no Executive Office of its own to manage financial, personnel, and computer services, these functions are carried out by the Executive Office of the Bureau of Oceans and International Environmental and Scientific Affairs [OES/EX]. OES is another Bureau under the direction of the Under Secretary for Global Affairs.

Previous audits carried out by the Office of the Inspector General [OIG] have questioned the current location of the Asylum Office, noting that the work might more logically be carried out in the Bureau of Population, Refugees and Migration (previously the Bureau of Refugee Programs). However, the OIG has not taken a forceful position on the issue. Given lack of resources within DRL to support increased activities by the Asylum Office, the Bureau of Population, Refugee and Migration Affairs [PRM] continues to take the lead internationally on asylum issues at all international conferences. This has been consistent with the previous administration's desire to centralize internal State Department discussions on international migration issues generally through one bureau (the Bureau of Population, Refugees and Migration).

The Bureau of Population, Refugees and Migration [PRM]

The Bureau of Population, Refugees and Migration is an amalgamation of the former Bureau of Refugee Programs [RP] and the population office of the Bureau of Oceans and International

Environmental and Scientific Affairs [OES]. The Bureau is headed by an Assistant Secretary and falls under the jurisdiction of the Under Secretary for Global Affairs [G]. In the reorganization, which was initiated by the current administration, the Office of the Coordinator for Refugee Affairs [S/R] was abolished. The Assistant Secretary has two Deputies plus a Coordinator for Population. The work of the Bureau is conducted by seven divisions which report through the Deputies to the Assistant Secretary. The Office of the Assistant Secretary is staffed by nine persons. The program and administrative activities undertaken by the seven functional offices in the Bureau are carried out by eight-six permanent, full-time staff in Washington, DC and twenty staff abroad. Refugee coordinators are assigned to a number of U.S. embassies abroad, particularly in locations with high refugee populations. The seven persons assigned to the Refugee and Migration Affairs Section at the U.S. Mission in Geneva maintain liaison with the staff of the major international relief organizations headquartered in that city.

Management and Funding Process. As a program bureau which administers some seven hundred million dollars in annual appropriations, PRM has extensive programmatic and financial management responsibilities. The Bureau funding is appropriated in the annual Foreign Operations Appropriations Bill. Budget formulation and justification is managed by the Policy Office [PRM/P] for the program budget and by the Executive Office [PRM/EX] for the Bureau's internal operating administrative budget. The Comptroller's Office has responsibility for financial execution and control.

The Bureau's Executive Office, staffed by twelve persons, has responsibility for administrative management and support for the Bureau. This includes executive budget formulation and execution; personnel and resource management and analysis; facilities management and procurement; systems analysis, automation and maintenance; inspection compliance and internal controls. While the Bureau works closely with the Department's Office of Financial Management [M/FMP], particularly in budget deliberations with the Office of Management and Budget [OMB], the nature of the Bureau's formal funding by the Congress is significantly different from the other bureaus and offices in the State Department involved in migration matters. Separate funding under the Foreign Operations Appropriations Bill includes the assistance appropriations as well as wages and salaries for the Bureau's employees. However, authorization legislation is handled by the House International Relations Committee and the Senate Foreign Relations Committee. Office space and housing abroad for personnel assigned to U.S. embassies and mission is costed out under the foreign affairs support service procedures used by the Department in allocating and recovering costs incurred by other departments and agencies which have employees on assignment abroad. The Bureau negotiates with M/FMP to determine the payment to be made that year to the Department's main budget account. Input on this figure comes largely from data provided by administrative officers from the supporting posts. This separately marked congressional allocation of funds to the Bureau provides for a measure of resilience against the budget woes which have impacted the Department over the past few years.

The Bureau views its first priority as managing the Migration and Refugee Assistance Appropriation [MRA]. Congress appropriated \$671 million FY 1996 for MRA. Substantial contributions are made to a number of multilateral organizations on a regional basis, with occasional earmarking with regard to specific programs or activities within an area. The Emergency and Migration Assistance Fund [ERMA] provides an additional source of funding for urgent needs that cannot be met from the annual Bureau program budget. ERMA can be used, however, only by Presidential determination and for urgent, unforeseen situations where a response, based upon inter-agency agreement, is in the U.S. national interest. The Fund is permanently authorized (up to a level of \$100 million), with replenishments appropriated annually.

The Department is concerned about advancing U.S. humanitarian principles by providing assistance to victims of persecution and civil strife, maintaining regional stability, promoting sustainable development, and relieving human suffering. However, these goals of providing effective and equitable responses from the U.S. require a matching of a humanitarian assistance policy with financial resources. The Bureau's Office of Policy [PRM/P], staffed by sixteen persons, has the responsibility of articulating this confluence and ensuring that the policy proposals coincide with those foreign policy and national security goals worked out in the intra-agency process under the direction of the Department's Office of Resources, Plans, and Policy [S/RPP]. The most broad based policy on international migration currently followed by the Bureau can be found in the September 1994 Report of the International Conference on Population and Development, which the bears significantly the policy thinking of the Bureau's leadership (copy enclosed). As the Office of Policy has the mandate of laying out the general parameters of U.S. refugee policy, it necessarily works closely with USAID, DOJ, relevant international organizations, and nongovernmental organizations both in the U.S. and abroad, in reviewing the most effective focus of the Bureau's efforts to provide ongoing refugee protection, humanitarian assistance, and solutions to the settlement of refugees and other displaced persons.

The allocation of resources in accordance with policy formulation is achieved through an in-house Bureau Policy and Program Review Committee [PPRC] before recommendations are presented to the Assistant Secretary for decision. The Assistant Secretary personally approves the individual program expenditures. The PPRC considers major policy proposals, recommends an annual budget plan, and reviews all proposed funding agreements for more than \$100,000. The PPRC is chaired by the Director of the Policy Office [PRM/P], and it includes the other six PRM office directors. The Committee meets weekly, with issues for its consideration that involve either a commitment of funds or a significant policy decision (proposed actions are distributed previously in the form of draft memoranda to Committee members).

Personnel Staffing. All personnel filling refugee positions at home and abroad are part of the Department's personnel structure. Thirty five percent of the Bureau's domestic staff are

members of the Foreign Service. The remainder are Civil Service employees. Foreign Service officers desiring assignments to refugee positions, either within the Bureau or abroad, must compete with their departmental colleagues through the normal central personnel assignment process. However, the Bureau has the lead responsibility for proposing the candidates of choice for position vacancies. Annual performance evaluation reports for refugee coordinators are normally written by the Deputy Chiefs of Missions [DCM] at embassies (and occasionally by Political Counselors if the coordinators are assigned to embassies' political sections) and formally reviewed by the Ambassadors. The Bureau does prepare memoranda on its views of the coordinators' performance from the headquarters perspective. This information is provided to the DCMs, with the recommendation that it be incorporated into the final performance evaluation reports prepared at posts.

Program Oversight, Monitoring, and Control. Given the level of appropriated funds handled by the Bureau, an extensive oversight and monitoring effort is required. Program monitoring and evaluation is carried out by the Bureau's staff in several venues. Refugee coordinators, who are located abroad, conduct on-going monitoring of programs in countries within their regions of responsibility. Copies of legal cooperative agreements signed with private voluntary agencies are forwarded by the Comptroller's Office to the refugee coordinators abroad. Formal instructions to the coordinators on how to monitor the agreements are also included with the texts. Washington based program officers monitor the programs for which they have responsibility, either in conjunction with refugee coordinators or independently. The Bureau's Admissions Office staff monitors the Bureau-funded resettlement projects carried out by private voluntary organizations.

The Bureau's Comptroller, with a staff of eight persons, performs financial oversight and executes contributions to international organizations and cooperative agreements between the Bureau and non-governmental organizations. The Comptroller's Office also monitors the repayment of refugee transportation loans extended by the Bureau through the International Organization for Migration [IOM]. When repaid, these funds are again available for loan, reducing the drain on newly appropriated funds. Additional oversight responsibilities are also exercised by the Department's Office of the Inspector General [OIG]. The OIG has responsibility for conducting audits, inspections, security oversight, investigative, and special reports on all aspects of the Department's operations, to include the operation and management of the refugee bureau and the refugee assistance programs.

International Assistance Function. The Bureau's two international assistance offices have responsibility for monitoring refugee-generating conditions around the world and for formulating U.S. policy responses. The two offices, which are organized geographically (PRM/AAA -- Africa, Americas, and Asia; and PRM/ENSA -- Europe, Near East, and South Asia), are each staffed by eight persons who must work closely with the Department's geographic and functional bureaus, USAID, DOJ, and DOD in developing policies to internationalize the U.S. policy

response to refugee crises, conflict victims, and other migration concerns. The Offices monitor the policies and programs of all the international organizations supported by the Bureau; they also monitor the utilization of funds supplied to such organizations and to nongovernmental organizations for specific projects. The Office of Policy [PRM/P], however, manages Bureau's overall relations with international organizations and represents the U.S. at international conferences on migration issues generally.

Admissions and Resettlement. The Office of Refugee Admissions has responsibility for establishing policies, priorities, and the numerical allocations governing refugee admissions to be authorized by the President in consultation with the Congress. Staffed by sixteen persons, the Office is divided into two units, one section which has responsibility for overseas processing and a second which handles reception and placement of refugees in the U.S. The Office provides information, field support, and policy advice to INS (which has final authority to approve a refugee's admission to the U.S.) regarding refugee admissions, and it works with the Office of Refugee Resettlement of HHS regarding onward aid funded by it. The Office also has oversight responsibility for the Washington Processing Center [WPC] (headed by a foreign service officer and staffed by INS and contract personnel) which handles all processing activities connected with the former Soviet Union refugee admissions program. The Office also monitors the work of the New York-based Refugee Data Center [RDC], which operates under contract with the Bureau to provide a data base and computer services to the joint committee of resettlement agencies. The Center receives biographic information from foreign service posts abroad concerning refugees in need of sponsors. The cases are distributed among the voluntary agencies under cooperative agreements with the Bureau. The voluntary agencies locate sponsors and relay the information concerning the sponsors to the RDC which, in turn, transmits assurance of sponsorship assistance for specific refugees prior to their travel to the U.S.

Population Concerns. The current administration viewed early on that control of population growth was crucial both to containment of environmental damage and to slowing pressure for massive uncontrolled migration out of economically deprived areas. As the administration tried to add an element of rational bureaucratic structure to the State Department, it noted that three of the four bureaus dealing with Global Issues had three functional areas. The Bureau of Refugee Programs, however, had only one area, but had mandates to deal with migration issues. Only one person had been working full-time on population issues in OES; additional personnel vacancies existed in the refugee bureau. It was also recognized that the up-coming International Conference on Population and Development at Cairo would require additional personnel resources if the U.S. were to be a competent player at the conference. To that end, the Department's population office was merged with the refugee bureau to give added emphasis to population issues when dealing with refugee and migration issues. The Bureau's Office of Population [PRM/POP], now staffed by five persons, represents the U.S. at international forums on population issues and programs, and it works closely with USAID, the primary implementing agency responsible for assisting developing countries in formulating comprehensive population and development programs.

Inter-Agency Coordination. While the Bureau oversees the annual admission of refugees to the U.S. for permanent resettlement, the INS and HHS play the key roles, assisted by various state and private voluntary agencies, in the formal admissions and resettlement process for individual refugees. As a functional program bureau, PRM does not make individual decisions on the granting of refugee status or the admission of individual refugees to the U.S. Thus, the allocation of funds to meet specific U.S. foreign policy and international humanitarian goals necessarily involves an extensive amount of inter-agency discussions as well as consultations with nongovernmental voluntary agencies.

The basic decision to internationalize the U.S. government's response to refugee needs has resulted in the channeling of most of its financial assistance for refugees and displaced persons through the multilateral organizations. This, in itself, requires extensive and continual discussions and review of program operations. The Bureau administers and monitors the U.S. contributions to multilateral organizations such as the Office of the UN High Commission for Refugees [UNHCR], the World Food Program [WFP], the UN Relief and Works Agency for Palestine Refugees in the Near East [UNRWA], the International Committee of the Red Cross [ICRC], and the International Organization for Migration [IOM]. In recent years, the Bureau has provided, for example, approximately twenty-five percent of UNHCR's overall financial needs. Most refugees admitted to the U.S. receive Bureau-funded transportation loans from IOM, which must be repaid when the refugees becomes employed. The Bureau also supports the core administration costs associated with Food for Peace [FFP] contributions to refugee populations. Discussions are ongoing daily with the U.S. Agency for International Development in providing humanitarian assistance in conflict situations where there are both refugees and internally displaced persons. USAID is also the primary implementing agency for assisting developing countries with comprehensive population programs.

The Bureau cooperates with the private voluntary organizations [PVO] or voluntary agencies [Volags] in both refugee processing and in addressing a broad range of humanitarian needs. The most common form of working arrangement involves a cooperative agreement. Under such arrangements, which includes the drawing up of a legal document, U.S. government funds are supplied for specified tasks or functions which are then combined with private contributions obtained by the organization in support of that organization's program objectives. Such agreements typically involve medical care in first asylum camps, projects to enhance refugee self-sufficiency, and building of sanitation systems or other infrastructure in refugee-impacted areas. American voluntary organizations often play a key role in U.S. refugee admissions processing abroad, frequently through a Joint Voluntary Agency [JVA] arrangement where one particular agency in effect represents all the others in preparing case files in a particular country. JVAs usually work under the guidance of a refugee coordinator. Within the U.S., ten voluntary agencies, funded by the Bureau, sponsor and provide placement, orientation, and resettlement assistance to refugees during their first ninety days in the U.S. Thereafter, these same agencies

often supply ongoing assistance under arrangements with state and local governments (with funding provided by HHS). The Bureau enters into agreements with these agencies annually, based on a proposal submission and review process, in which the agencies state their responsibility for assuring that certain services are provided to the newly-arrived refugees. Most major U.S. private voluntary agencies engaged in humanitarian assistance abroad and in domestic refugee resettlement belong to an umbrella organization called the American Council for Voluntary International Action [INTERACTION]. This umbrella organization serves as an important channel of two-way communication on refugee issues.

The Bureau of International Organization Affairs [IO]

The Bureau of International Organization Affairs [IO] follows events at the UN and other international organizations and coordinates the development of U.S. policy decisions to be used in these international bodies. The Bureau rarely follows the details of refugee and immigration issues. It generally follows the lead of the Bureau of Population, Refugee and Migration Affairs [PRM] in setting policy positions in dealing with bodies such as UNHCR, world population conferences, etc. While PRM provides funds to many international organizations such as IOM and UNHCR, IO is not active in the daily mechanics of program implementation. However, it is involved actively when decisions must be made on new policy initiatives involving such international organizations. While the Bureau is knowledgeable about PRM's activities, it is unlikely to intervene unless a proposed position is in conflict with some broader U.S. policy goal. The Bureau participates more extensively when migration issues reach the level of the General Assembly or Security Council deliberations. It will then be actively involved in the policy debates. It will also serve as an advisor internally within the Department on how U.S. policies will be viewed internationally and how to best garner support for a U.S. position among other international players during the deliberations.

The Office of the Legal Adviser [L]

The Office of the Legal Adviser furnishes legal advice on problems, domestic and international, that arise in the course of the Department's work. The staff typically drafts, negotiates, and interprets international agreements, domestic statutes, federal regulations, executive orders, and other legal documents. It is the State Department's lawyer. The Office is composed of approximately one hundred attorneys and sixty support staff. The Legal Adviser reports directly to the Secretary of State and is assisted by five Deputy Legal Advisers. They, in turn, collectively supervise twenty Assistant Legal Advisers assigned to work specifically with the Department's various functional and geographic bureaus. Frequently policy decisions

(particularly those having to do with proposed legislation) are vetted in the Legal Adviser's Office. Two of the twenty offices supervised by Assistant Legal Advisers provide direct legal support to bureaus involved directly with migration and immigration issues: the Office of the Assistant Legal Adviser for Consular Affairs [L/CA] and the Office of the Assistant Legal Adviser for Human Rights and Refugees [L/HRR]. Both L/CA and L/HRR are currently staffed by four attorneys and one secretary. The other Assistant Legal Advisers normally participate on migration issues on a case specific basis.

In order to keep abreast of ongoing issues, the Legal Adviser's attorneys actively participate in the regular staff meetings chaired by the Department's functional and regional Assistant Secretaries. The Office also has a long standing working relationship with its counterparts at other federal departments and agencies, to include the INS's Office of the General Counsel. It works closely with the Bureau of Legislative Affairs [H] as well as the various bureaus in reviewing legislative proposals which impact on the Department's statutory role, responsibilities, and functions as they relate to legal immigration, refugee, and asylum issues. It is not uncommon for the Legal Advisor's lawyers to accompany other departmental officers to attend international migration conferences and meetings.

United States Information Agency [USIA]

Although USIA was created in 1953 to manage cultural and information objectives of U.S. diplomacy, its functions have always been an integral part of America's foreign policy program to inform and influence foreign publics in the promotion of U.S. national interests. The Agency is under the general direction and overall foreign policy guidance of the Secretary of State. Over time the personnel structure of USIA has mirrored that of the State Department. For recruitment purposes, the same examination is administered. Additionally, for review of work performance, the same performance evaluation form is now used by both agencies.

Among its missions, it administers the various cultural grants for visiting foreign professors, scholars, and other experts through a variety of programs. It is the main federal agency involved in the maintenance of the exchange visitor [J] visa program. Any U.S. sponsor wishing to bring an exchange visitor must proceed through an exchange visitor program designated by the Agency. The Mutual Educational and Cultural Exchange Act of 1961 [Pub. L. 87-256, also known as the Fulbright-Hays Act] authorizes the Director of USIA to designate exchange visitor programs. It also processes requests for waivers of the two year foreign residency requirement.

U.S. Agency for International Development [USAID]

The U.S. has been giving foreign aid since after World War II. The Marshall Plan aided Europe's reconstruction. The International Cooperation Agency [ICA], USAID's precursor, was created in 1955 specifically to handle the distribution of those funds. USAID assumed that role with its creation in 1961. Like USIA, USAID falls under the general direction and foreign policy guidance of the Secretary of State. It administers U.S. economic and humanitarian assistance designed to promote sustainable development in less developed countries. Its programs focus on improving health and population conditions, protecting the environment, promoting economic growth, and supporting democracy. Its Bureau of Humanitarian Response [BHR] works closely with its own geographic bureaus, the State Department's geographic bureaus and PRM as well as the Department of Agriculture in developing responses to political crises which produce massive refugee problems. Abroad USAID mission directors are responsible for various agency programs, including dollar and local currency loans, grants, and technical development assistance. The U.S., for example, is a major donor of grain and other foodstuffs under the Food for Peace Program [FFP] administered by USAID.

Coordination of Migration Policy and Management Issues Among the Foreign Affairs Agencies

Migration Emergencies. In major foreign policy and national security issues involving migration crises, it will usually be the applicable State Department regional geographic bureau rather than one of the functional bureaus which will have the lead on policy decisions. These crises are rarely viewed initially as part of a migration policy problem but rather as a unique country specific problem which must be dealt with in individual terms. It was difficult initially, for example, to see the Yugoslav refugee situation or the Somali situation as anything more than a byproduct of chaos in those countries. However, as the crises unfolded the various functional bureaus became active participants in policy discussions and ongoing actions to deal with the problems generated by the internal conflicts.

Policy making on emergency migration issues tend to be done on an ad hoc basis with various bureaus competing to have their views accepted, first by their Under Secretaries, and then by the Secretary of State. In any given issue of major importance at least three Under Secretaries may be involved: Political (the regional geographic bureau concerned and particular international organizations); Global Affairs (asylum, population, refugee, and migration concerns) and Management (consular affairs issues). Task Forces, under the direction and coordination of the Secretary's Executive Secretariat, are constituted and dissolved as needed. Representatives from

other agencies (including the military) frequently participate in such Task Forces. This structure, while seemingly complicated, is actually routine in the Department's decision-making process.

Legal Immigration and Emergencies. Legal immigration issues rarely rise to the crisis level requiring the establishment of a Task Force. However, it is not unheard of for participants of crisis driven Task Forces to consider legal immigration options when reviewing ways to deal with a particular foreign policy problem. The consideration of granting Temporary Protected Status [TPS] to nationals of countries undergoing some type of upheaval frequently emerges early on in policy discussions. This could lead to a request by the Department for an interagency meeting with the Department of Justice to discuss possible options.

As particular policy issues on legal immigration rarely involve crisis situations, they tend to be addressed at the inter-bureau working group level. Again such groups can be formed as the need arises, with players from the various bureaus concerned called to meet quickly to discuss policy options and the need for wider federal government involvement. Policy making on pure 'immigration' topics of legal immigration or visa matters rarely draws attention from bureaus other than Consular Affairs. Refugee and asylum issues rarely are of concern to the Consular Affairs Bureau. However, a noticeable exception, for example, would occur when national security concerns are raised which would bring together, at a minimum, the Bureaus of Consular Affairs, Population, Refugees and Migration, Democracy, Human Rights and Labor, Intelligence and Research as well as the Office of the Legal Advisor, the Coordinator for Counter Terrorism, and possibly the Bureau of Legislative Affairs.

Organizational Issues. The various policy concerns of the senior managers responsible for migration issues generally have been noted previously in the discussion of the two major responsible bureaus within the State Department -- the Bureaus of Consular Affairs, and Population, Refugees, and Migration. A brief highlight of some of questions about the current organizational structure and the responsibility for those policy issues follows.

Consular Affairs. With regard to legal immigration issues, additional attention may be devoted to the problem of bringing better policy focus organizationally to foreign policy interests in legal immigration. Should the Bureau of Consular Affairs establish a separate policy unit within the Visa Office to provide greater attention to issues? Or, should attention be given to expanding the role of the Policy Office located directly under the Assistant Secretary? What would be that unit's specific mandate?

The INS has gradually increased its presence abroad through the establishment of pre-inspection operations, overseas district offices, and circuit riding by officers interviewing refugee claimants.

Are their additional functions which INS officers should perform? Could some of the current functions (such as refugee interviews) be carried out, however, more rationally by State Department officers, given a greater understanding of foreign country conditions and the extensive training provided in foreign languages provided by the Department?

Oversight responsibility for the Bureau of Consular Affairs remains organizationally under the jurisdiction of the Under Secretary for Management. Should the Bureau continue to function separately from the Global Affairs grouping? Does the usage of two separate bureaucratic chains of command hinder the development of a coherent domestic approach to migration issues?

Refugee and Asylum Issues. The location of the Asylum Office within the bureau responsible for humanitarian issues has been debated within the Department over the years. It has also been the subject of continual review by the Office of the Inspector General. Would it make sense, given the constant budgetary strains placed upon that Office, to move its functions to the Bureau of Population, Refugees, and Migration which may be less impeded by financial constraints? Would this improve or hinder the Department's role in providing timely foreign country condition information to asylum adjudicators? How would it impact on the ongoing functions of the Bureau of Democracy, Human Rights and Labor? Would such an organizational transfer provide for greater consistency in applying U.S. refugee law both domestically and internationally?

The Bureau works closely with USAID in a number of countries on humanitarian issues. The Agency's Office of Foreign Disaster Assistance [OFDA] within the Bureau of Humanitarian Response deals with internally displaced persons. Could, or should, some of the responsibilities in this area be performed more effectively by PRM? Could PRM do more organizationally to address the return of internally displaced persons? Should PRM be the organizational unit within the federal government to focus on the middle ground between displaced persons in crisis and long term planning necessary to restore civil society to countries which have undergone war or civil strife? If not, what additional role could, or should, PRM appropriately play?

Final Comment. The lead role, by statute, within the federal government on policy making on domestic immigration issues rests with the INS. Given the importance of the migration issue internationally, some internal restructuring of the foreign affairs agencies may be called for so as to provide clearer and reasoned advice to INS on how programs being developed domestically will affect, or be affected, by international events. The degree to which the foreign affairs agencies, and particularly the State Department, will play a crucial role in the decisionmaking process domestically depends, in large measure, on how the various parts can pull together organizationally to produce coherent and reasoned policies.

NATIONAL VISA CENTER

Mission

The National Visa Center [NVC] was established as a permanent immigrant visa processing center to relieve US embassies and consulates (foreign service posts) of a substantial amount of the administrative and clerical work that is required to process immigrant visa petitions. The Center is responsible for processing and storing both electronically and physically immigrant visa petitions and supporting documents up to the point when applicants abroad must be interviewed by consular officers to determine eligibility for issuance of immigrant visas. The Center was also established to manage the operation of the annual Diversity Immigrant Visa Lottery Program.

History and Development

Prior to the passage of the Immigration Act of 1990 (Pl. 101-649) the Department of State had been able to cope with the gradual annual increase in legal immigration to the United States. However, the new legislation (which called for the adoption of a new legal immigration system effective October 1, 1991) had potential budgetary consequences accompanying the most far-reaching revision in the legal immigration system since the 1965 amendments which repealed the national origins quota system established in 1924. An analysis of the immigrant visa workload showed that the number of cases to be processed (both issuances and refusals) in FY 1992 would increase by approximately 300,000 cases, or about fifty percent over the FY 1989 level. A decision was required on resource commitment for FY 1991 in order to cover the start-up costs required to handle the workload increase that would begin in FY 1992 and continue in subsequent years.

It was recognized that such a large increase would be an untenable burden on foreign service posts poorly equipped for a major increase in immigrant visa programs. No additional major funding was authorized in the Immigration Act by the Congress for the Department to process the additional workload. However, the projected workload increase would require more employees in consular sections overseas, reconfiguration of work space to accommodate them, and expanded file room capacity to house non-current immigrant visa cases. Three approaches were examined by the Department to address the problem of increased immigrant visa processing: (1) the current system with a proportionate increase in resources; (2) the current system without a proportionate increase in resources; and (3) centralization of some of the immigrant visa processing abroad to include centralization of some functions in the US.

In reviewing the available options, the Consular Affairs Bureau's Executive Office determined

that an additional 89 new foreign service officers and 331 foreign service national employees would be required at posts abroad to process the projected FY 1992 caseload. The personnel costs for this additional staff as well as for an increase in overseas administrative support was projected at just over sixteen million dollars in FY 1991 and thirty-five million dollars in FY 1992. Taking into account an increase in domestic support requirements, systems hardware and software support, additional facilities requirements for the eighty foreign service posts affected by the new legislation worldwide, and training of new personnel, the total cost estimate rose to more than thirty-four million and sixty-three million dollars in FY 1991 and FY 1992, respectively.

Only embassies and consulates in Africa and the Near East were projected as being able to possibly cope, in the short-term, with the increased workload of family-sponsored and employment-based immigrant visa cases. Without a proportionate increase in resources, it was concluded that reduced quality of review, substantial increase in vulnerability to fraud, and a drop in internal controls capacity would result at posts in other regions of the world. It was also concluded that legal action might not be avoided if the number of immigrant visas allowable under the new legislation were not processed, as required, on a timely basis.

Some overseas centralization of immigrant visa processing could be accomplished. However, the highest volume immigrant visa processing posts also tended to be the most efficient, based on both a statistical and analytical review of their operations. Some transfer of work to a central facility in the US appeared possible, along with some centralization, particularly in Mexico, in the immediate near term. Additionally, practical limitations presented themselves on just how much immigrant visa processing could be centralized, particularly the interviewing of the applicants themselves. The ease of travel between various countries, potential hardship for the traveling public, potential adverse foreign policy considerations, and the commonality of the languages remained as important factors in the decision making on the issue. Since the greatest increase in personnel to handle the caseload involved additional foreign service national employees, a better approach appeared to require that all non-current immigrant visa files be retained in a US domestic facility. Time would be required, however, to establish a proper new facility. Thus, a transitional center, the Transitional Immigrant Visa Processing Center [TIVPC], was opened in October 1991. It was co-located with the Washington Processing Center [WPC] which already had extensive experience in handling the high volume refugee applications flowing from the former Soviet Union.

TIVPC was required to receive all new immigrant visa petitions and provide initial notifications to qualified beneficiaries and petitioners. Those petitions with non-current priority dates under the numerical limitations were to be stored at the temporary facility rather than forwarded abroad. The Center also set up detailed procedures for handling the newly legislated three-year diversity lottery for natives of countries that qualified under the previous NP-5 visa lottery program. The

Center was also mandated to develop plans, based on its experience, for a new permanent central file repository.

While the Department was considering various options for the establishment of a central repository, the Congress stated in an appropriation report that the permanent facility should be located at either Pease Air Force Base in southeast New Hampshire or the Lexington Bluegrass Army Depot in central Kentucky. Both military facilities had been targeted for closure by the Defense Department. A detailed study (carried out under contract by the Mitre Corporation) concluded that the Pease Air Force Base offered the best support for the proposed new facility. The Department's senior management accepted the study's recommendations. Additionally, the Congress appropriated additional funds to enable the Department to cope with the increased workload. In April 1994 the National Visa Center was formally opened and co-located with the Department's National Passport Center [NPC]. The transfer of operation from the TIVPC in Rosslyn, Virginia to the new Center was completed in July 1994.

Facilities and Staffing

The Center currently has adequate working space and room for expansion, if necessary, provided funding is available to rent additional buildings on the Base. Currently 75,000 square feet of working space has been rented by the State Department for the Center's use.

The Center is managed by a Foreign Service Officer [FSO] on a two-year rotational assignment. Currently only one other FSO, the Center's administrative officer, is assigned to the Portsmouth facility. The daily work at the Center is carried out by a contract staff managed by Statistica, Inc. The contract employees include specialists in fifteen different languages to assist in processing petitions, translating letters, and aiding public inquiries. Statistica has 175 employees on its staff; this staffing level can vary depending on personnel needs. The current contract awarded to Statistica provides six million dollars to accomplish the required work.

Immigration Programs

The Center is presently tasked with handling three separate petition programs.

Immigrant Visa Petitions. The Center receives approved immigrant visa petitions from the four INS Service Centers. INS receipt numbers are electronically entered into the Center's database

immediately upon receipt. This allows the Center to respond to questions from the public about the status of the petitions from the date of receipt. Subsequently, the petitions are reviewed by staff of the processing center to process the cases for correct data entry. Those visa cases which are subject to the numerical limitation imposed by the immigration law, and which have priority dates for processing which are not current, are filed in the Central File Facility. 1.8 million cases are currently housed. (Note: A detailed breakdown of the all cases by number of beneficiaries and visa category will not be available until late November. The Center will take advantage of the long Thanksgiving holiday weekend to run specific computer programs which produce the detailed immigrant visa waiting list published by the Visa Office.)

Petitions with current priority dates as well as those not subject to numerical limitations (immediate relative petitions) are reviewed by the Quality Control Unit to verify that the information on the petition matches what was entered into the computer record. Any discrepancies are corrected. Beneficiaries with current priority dates are advised to obtain the documents necessary to process their immigrant visa applications; others with non-current dates are advised that their priority dates have not been reached.

Monthly the Center receives statistical information from the Visa Office on those priority dates which will be current within the next six months. The Center runs the qualifying data against the total database, pulls the files of those petitions which will be current, reviews the petitions for quality control, and mails out packets of information advising the beneficiaries of the documents necessary for the formal immigrant visa interview. The petitions with electronic computer tapes are then forwarded to designated consular processing posts abroad. The consular posts are responsible for all further actions in processing cases to a conclusion. Should, in the course of the proceedings, it become known that the beneficiary is in the US and wishes to adjust status there, the immigrant visa petition is automatically forwarded to the INS Service Center which approved the petition. The INS Service Center then assumes responsibility for transferring the case to the appropriate INS office holding the adjustment of status hearing.

Beginning in 1996, all current petition beneficiaries who use stateside addresses are advised by a formal letter that they may be eligible to adjust their status in the US. They are requested to advise the Center of their intent to adjust in the US or to apply for an immigrant visa abroad. The Center takes no further action on the petitions when the beneficiaries state that they will apply for adjustment of status with the INS. Should it be indicated that visa processing abroad is the preferred option, the petition beneficiary is advised by an information packet to obtain the necessary documentation. The paper file, together with an electronic tape of the computer file, is subsequently sent to the post of record. Petition beneficiaries with foreign mailing addresses are not advised of the stateside adjustment program.

ns desiring to adjust their status are provided with an instruction letter which outlines the sary steps to be taken in applying formally with the INS. The INS has been adjusting the of such applicants using only the formal Notice of Petition Approval (Form 171) and nation available in the INS computer data system. The National Visa Center is not aware persons adjust status in the US. No decision has been made by the Service regarding the sition of petitions still on file at the National Visa Center for those beneficiaries who have adjusted to legal permanent residents. Previously, the Center did not have to purge any files t responsibility rested with the consular posts which dealt with the applicants who failed to e their cases. Since the beginning of year the INS has been housing at its Service Centers petitions which indicate that the beneficiaries are in the US. Additionally, the Service has requesting the return of numerous petitions filed previously on behalf of spouses and en of legal permanent residents by petitioners who have now become US citizens. This ts the Service to accord the beneficiaries immediate relative status and to adjust their status.

rt of the initial centralization program, a coordinated plan was established for the transfer to enter of all non-current visa petitions on file at foreign service posts abroad. This served to p storage space at posts. Many had been facing severe storage problems.

sity Lottery [DV]. The Immigration Act of 1990 provided for a third stream of grants to permanently enter the US (in addition to the family-sponsored and employment-systems). Following a number of temporary diversity programs, the Act provided that, ng in FY 1995, up to 55,000 diversity immigrants and their immediate family members l be admitted to the US from the world's six geographic regions. Because the concept of a ased regional center (TIVPC) had proven successful in conserving resources, the addition of esponsibilities to the permanent facility seemed appropriate.

ning in June 1994 NVC was tasked with responsibility for conducting the permanent visa y program which would begin actual visa processing during the coming fiscal year. The FY program was known as DV-1. NVC received approximately fifteen million applications for ipation in the program. The following year eight million applications were received and ssed by the Center under the diversity program named DV-96. Some six and a half million ations have been received by the Center for the FY 1997 program (DV-97). The Center ered one hundred thousand applications for the available fifty-five thousand permanent nt visas to ensure that all DV-97 visa numbers will be used.

ormal registration period for written applications runs for thirty-days. Center staff are nsible for screening all incoming envelopes containing the applications and numbering hich qualify within the geographic regions. The Center's computer is programmed to nly select the winning numbers within each of the six regions. Envelopes annotated with

THE EVOLUTION OF THE VISA FUNCTION -- A HISTORICAL OVERVIEW

The Immigration Act of 1952, as amended, vests the Secretary of State with the responsibility for the administration and enforcement of the immigration laws relating to the powers, duties and functions of diplomatic and consular officers. Responsibility for the issuance and refusal of immigrant and nonimmigrant visas (under Section 104(a) [8 U.S.C. 1104(a)]) rests with American consular officers stationed at consular offices abroad. Within the State Department, the Assistant Secretary of State for Consular Affairs is charged by the Secretary for the administration of the immigration laws. The Assistant Secretary, in turn, issues visa regulations and, through the Visa Office, supervises the administration of the immigration laws by consular officers abroad. The Visa Office issues general instructions to consular officers, controls the allocation of immigrant visa numbers to consular officers, and assists them in individual visa cases by rendering advisory opinions. While final responsibility for the issuance and denial of visas rests with consular officers, they are bound by the regulations and legal rulings of the State Department.

The responsibilities of the Secretary of State and the State Department's consular officers in the administration of the immigration laws, particularly with regard to the issuance and denial of visas, have evolved over time. The statutes establishing these responsibilities have coincided largely with the domestic debate over immigration levels and frequently in relationship to heightened domestic economic and security concerns. The following outlines the development of the visa function legislatively and its applicability to both immigrants and nonimmigrants.

From 1798 to the present time, numerous statutes have been enacted for the regulations and control of foreign nationals entering the United States. These statutes have, in turn, resulted in a myriad of executive orders, rules, regulations, and operating procedures. From its inception, the U.S. has been a nation state receiving immigrants, rather than an exporter of its citizenry. The early immigration statutes tended to focus on qualitative features of those entering, while later statutes tended to highlight the quantitative nature of the foreign population desiring to enter the U.S.

Early Legislation. While the earliest migration legislation (Alien Act of 1798) enabled the President to order the departure of anyone deemed dangerous to the country, the law proved unpopular and was not renewed at end of its two-year term. It was not until 1819 that the Congress, in an effort to improve the lot of those immigrating to the U.S., provided for improved transportation conditions on shipping vessels. This was the first of the so-called 'steerage legislation' laws (Passenger Act of 1819)[3 Stat. 488] which were enacted between 1819 and 1908. From 1819 to 1835 immigration was neither encouraged nor discouraged by federal legislation. However, in reaction to increased immigration levels, there were a number of

legislative attempts to make nativism a national issue. As a result, in 1836 the Senate agreed to a resolution directing the Secretary of State to collect certain information respecting the immigration of paupers and criminals. Two years later, the House of Representatives agreed to a resolution which provided that the Judiciary Committee consider the expediency and propriety of providing by law against the entrance of vagabonds and paupers deported from foreign countries. This resulted in the first congressional investigation of any question bearing on immigration. While the committee reported and made recommendations, no immigration legislation was enacted for the next ten years. The 1819 steerage statute was further amended in 1847, 1848, and 1855.

Encouragement of Immigration. While many States had been carrying on programs to encourage immigration, the federal government did not do so by direct legislation until 1864. The Act of July 4, 1864 to encourage immigration [13 Stat.385], subsequently repealed in 1868 (Consular and Diplomatic Act [15 Stat. 56]), responded to President Lincoln's annual message to the Congress that the nation was in need of laboring men. The Select Committee, which recommended passage of formal legislation, noted that one million and a quarter Americans were fighting for the national survival and that the war had resulted in a distressing labor vacuum. The legislation established a Commissioner of Immigration, under the direction of the Department of State, and provided that all labor contracts made in foreign countries by emigrants would stipulate that these emigrants pledged the wages of their labor for a term not to exceed twelve months to repay the expenses of emigration and that the contracts would not be considered under U.S. law as creating a condition of slavery or servitude. A United States Emigrant Office was to be established in New York with a Superintendent of Immigration (reporting to the Department's Commissioner of Immigration) who would arrange the transportation of the incoming immigrants to their final destination and protect them against imposition and fraud. Various companies were established with agents abroad to encourage immigration to the U.S.

Some of the legislative debate immediately following enactment of the 1864 Act focused on promoting immigration, and one bill provided that the work of the special agents abroad be done by U.S. consuls and not by agents of the contracting companies. However, subsequent congressional proceedings, while reflecting general sentiment against the importation of contract labor, indicated support for more 'worthy immigrants.'

Qualitative Immigration Legislation. It was during the Grant Administration that congressional debates first indicated a strong sentiment in favor of national control of immigration. The first restrictive legislation to be passed by Congress (Act of March 3, 1875 [18 Stat. 477]) provided for inquiry by State Department consular officers as to contracts of immigrants from China or Japan for service for lewd or immoral purposes; penalties for citizens of the US transporting Chinese or Japanese without free consent for a term of contract service; and penalties for contracting to supply coolie labor. The immigration of convicts and of women

for purposes of prostitution was also forbidden. Another act passed in 1882 (Act of August 3, 1882 [22 Stat. 214]) provided for the exclusion of paupers and criminals. Expenses for the return of any person was borne by the owners of the shipping vessels. The Act also provided for a head tax or duty of fifty cents to be levied against each alien passenger arriving on boats sailing from foreign ports to the U.S. The funds were to be deposited to the credit of an "immigration fund," which would be used to defray the expenses of the examination of passengers on arrival who might, upon such examination, be excluded as "convicts, lunatics, idiots, or persons unable to take care of themselves without becoming a public charge." Thus, the first immigration user fee was legislated.

The legislative restriction of immigration was first applied only against one nationality group, the Chinese, in 1882. The Burlingame Treaty of 1868 had permitted the Chinese "privileges, immunities and exemptions in respect to travel and residence" in the U.S. as might be enjoyed by citizens or subjects of the most favored nations. The surge in Chinese immigrants to the West led to another treaty with China in 1880. Legislative acts aimed at excluding Chinese were passed in 1882 (Act of May 6, 1882 [22 Stat. 58]) and again in 1884, with the latter extending the suspension of immigration of Chinese laborers. The Chinese were also subject to exclusion by laws passed in 1888, 1892, 1902, and 1904. All of these exclusion laws were subsequently repealed in 1943 (57 Stat. 600). The burden of enforcement fell to masters of vessels transporting aliens, who were subject to penalties for violation of the Acts and possible seizure of their vessels. The Acts did not consider the precedence set in 1875 of involving U.S. consuls resident in China.

Contract Labor Legislation. In 1885 (Act of February 26, 1885 [23 Stat. 332]) and 1887 (Act of February 23, 1887 [24 Stat. 414]) the Congress passed laws making it unlawful to import aliens into the U.S. under contracts to perform labor or service. However, exceptions were made for those temporarily in the U.S. and for artists, lecturers, servants, and skilled workers in an industry not yet established in the U.S. These laws were in response to complaints made by labor organizations that certain businesses and employers were lowering the American labor standards by importing cheap foreign workers. The practice had begun in 1869, as prospective employers, particularly in coal mining, advertised abroad asserting that shortages of labor existed when, in fact, it was uncovered that many claimed shortages did not exist. Penalties for violating these laws were directed at shipping companies and vessel masters. This latter act was amended in 1888 (Act of October 19, 1888 [25 Stat. 566]) to provide, for the first time since the 1798 Act, for the expulsion of immigrants who had landed illegally. The Act also established a provision which encouraged Americans to seek out violators of the immigration law. It authorized "the Secretary of the Treasury to pay to an informer who furnishes original information that the law has been violated such a share of the penalties recovered as he may deem reasonable and just." However, no action was called for by the State Department in these statutes.

Visa Requirements. While a number of legislative vehicles dealing with immigration matters were enacted by the Congress to restrict the entrance into the U.S. of various classes of aliens (such as the Immigration Act of 1907 (34 Stat. 898) and the Immigration Act of 1917 (39 Stat. 874) -- the latter based extensively on the findings of the Dillingham Commission on Immigration, 1907-1910), it took a state of war for the full implementation of a world-wide visa requirement. Instructions of the State Department dated April 17, 1917 and the superseding Joint Order of the Department of State and the Department of Labor of July 26, 1917 required consular and diplomatic officers to refuse visas to enemy aliens, unless previously authorized, and to warn all aliens applying for visas that they might be excluded from the U.S. The Joint Order required that aliens proceeding to the U.S. in time of war should have passports issued by the government to which they owed allegiance and have those passports inspected, and visaed by American consular officers abroad. The consul could refuse a visa if the admission of an alien was found to be contrary to the public safety.

The Joint Order was validated by the Act of May 22, 1918 [40 Stat. 559], which authorized the President to control the departure from and entry into the U.S. by citizens and aliens alike, in time of war or national emergency. According to the Act, passports were required for all entries and departures of U.S. citizens. The departure from as well as the entry into the U.S. of aliens would be regulated by rules and regulations established by the President. An Executive Proclamation issued August 8, 1918 [Proclamation No. 1473] designated the Secretary of State as responsible for establishing rules and regulations to implement the law. This Act was amended by in 1920 to provide for both an application (one dollar) and a visa fee (nine dollars). An executive order, also issued on August 218, 1918 [Executive Order No. 2932], prohibited the issuance of a visa unless there appeared that "there is reasonable necessity for entering the United States." The Congress also passed subsequently another wartime measure -- the Act of October 16, 1918 [8 U.S.C. 137] related to the exclusion and expulsion of anarchists and other radical aliens.

While the wartime measures focused on departure controls using the passport and visa requirements to restrict entry to the U.S. of undesirable aliens, they did not extend this consular function to the exclusion of ordinary immigrants. The exclusionary measures focused on the nonimmigrant traveler.

Given the language of the Act of May 22, 1918, the authority to issue and to deny visas would not expire until a formal declaration of peace had been achieved, or until March 4, 1921. The Senate's rejection of the Treaty of Versailles postponed the expiration of such authority. However, recognizing that the visa authority would expire shortly, the Congress incorporated language in an appropriations bill (Act of March 2, 1921 [41 Stat. 1217]) which stated briefly "that the provisions of the Act approved May 22, 1918 shall, in so-far as they relate to requiring passports and vises from aliens seeking to come to the United States continue in force and effect

until otherwise provided by law.” This reconfirmed the President’s authority to require visas for nonimmigrant travelers; similarly, it thus provided for presidential discretion to require a passport of a nonimmigrant traveler as well as the need to have that passport visaed.

Subsequent legislative hearings documented that a total of 373 employees (119 American and 254 foreign local employees) were engaged by the State Department in the issuance of passport visas to foreign nationals. The additional work required to issue such visas had brought about the creation of a special Visa Section in the Bureau of Citizenship in the State Department. It was set up on August 13, 1918 in the Division of Passport Control. Beginning on December 1, 1919, the Visa Office began operating as a separate unit. Its name was subsequently changed to the Visa Division in 1931.

Quantitative Immigration Legislation. Immediately following the First World War, the Congress gave considerable attention to the question of restricting immigration. For the first time, the Congress passed a law placing a ceiling on the number of aliens permitted admission to the U.S. as immigrants during any one year. Reacting to the unsettled conditions in Europe at the end of the First World War (which fueled the desire of at least two million persons to immigrate immediately to the U.S.) and pressing U.S. urban housing and urban unemployment problems, the Congress passed the Quota Law of 1921 [42 Stat. 5]. The Quota Law limited the number of immigrants of any nationality entering the U.S. to three percent of the foreign-born persons of that nationality living in the U.S. in 1910. The law had a one year life but was later extended for another two years.

Although the Quota Law imposed numerical limitations, consular officers abroad could cease issuing visas only when notified that the quotas had been exhausted, or if they found the entry of an intending immigrant would be prohibited by the Presidential Proclamation of August 8, 1918. The qualitative restrictions and standards established by the Immigration Act of 1917 applied only to the examination of such immigrants by officials of the then Bureau of Immigration at U.S. ports of entry.

The legislative hearings leading up passage of the 1921 Act, as well as subsequent ones, raised serious questions about the propriety of foreign nationals going through the process of breaking emotional and financial ties with a home country only to be turned around at ports of entry. Shipping companies also voiced complaints that they were required to take back large numbers of persons not admitted to the U.S. “The ridiculous spectacle was repeated again and again at New York of vessels racing each other into port in order that their passengers might get the preference under the quotas and their owners or masters escape the penalties imposed for bringing aliens in excess of the numbers allowed by the Law.” (A. Warner Parker, “The Quota Provision of the Immigration Act of 1924,” *The American Journal of International Law*, Vol.

XVIII, No. 4, October 1924, p. 738) Additionally, while visas could only be denied to persons believed to pose a threat to the U.S. (such as an anarchist), legislators expressed concern that no action could be taken to deny visas to documented criminals and persons likely to become public charges in the U.S. These concerns were voiced more forcefully three years later (1924) during major legislative hearings held by the House Committee on Immigration and Naturalization.

Immigration Act of 1924. This broad sweeping legislation preserved the grounds for exclusion contained in the Act of 1917, and provided for the establishment of permanent quotas based on national origin beginning in 1929. It clarified a number of earlier provisions of law and introduced concepts of immigration policy which became the basis for similar provisions in the Immigration and Nationality Act [INA] of 1952. In the interim, it changed the base quota year from 1910 to 1890 and reduced the quotas from three to two percent for immigrants being admitted during the period 1924 to 1929.

The Act [43 Stat. 153] also established the provision that no immigrant could be admitted to the U.S. unless he had an unexpired immigrant visa issued by an American consular officer abroad. American consuls were authorized to issue immigrant visas only if the qualitative tests of the immigration laws were met and a quota number was available (provided the alien was subject to the quota system). This system left unchanged the authority of the then Bureau of Immigration to control the admission of aliens at U.S. ports of entry.

The Act provided for consular officers to issue passport visas to all classes of nonimmigrants seeking entry to the U.S. for temporary stays for pleasure or business, and for purposes of transiting the U.S. en route to another destination. Consular officers were also authorized to issue limited entry certificates to aliens to enter for ten days or less for specific purposes and border-crossing cards to aliens to pass back and forth across the border of Mexico and Canada for twenty-nine days or less.

The Act intentionally provided for a double check or dual control system of aliens seeking admission as immigrants or nonimmigrants by officials of two separate federal agencies -- first by consular officers before the visas were issued, and second by immigration officers after the aliens reached a U.S. port of entry. To implement the Act, a new Executive Order [Executive Order No. 4027] was issued, superseding the previous 1918 Executive Order. The Secretary of State and the Secretary of Labor (who oversaw the Bureau of Immigration) were instructed to issue the necessary rules and regulations for carrying out the immigrant and nonimmigrant provisions of the new Act.

Foreign Service Act of 1924. The year 1924 also saw passage of landmark legislation (Rogers Act of 1924) to merge the U.S. diplomatic and consular services into a joint foreign service. It

was argued that an amalgamation of the two services on an interchangeable basis would bring benefits of economy and efficiency accruing through a system of combined administration. This remained the basic law dealing with the organizational structure of the State Department until 1931, when it was superseded by the Moses-Linthicum Act [U.S. Statutes at Large, Vol 46, pp. 1207-1217] and later by the Foreign Service Act of 1946 [U.S. Statutes at Large, Vol 60, Part I, pp. 999-1040], which codified a number of previous laws and made some major personnel management changes (including the codification of the concept of the Foreign Service rank-in-man rather than in personnel position).

Legislative hearings held in 1925 by the House Committee on Foreign Affairs (pursuant to H.R. 11957 on authorizing the President to reduce or abolish application and passport visa fees) detailed congressional understanding of the Department's visa function and how it was being implemented abroad. It included the first legislative discussion of reciprocal agreements with other nation states in eliminating nonimmigrant visa fees as well as impact of such action on a then financially self-sustaining consular service (with excess profits being turned over to the Treasury to reduce the heavy public debt).

Unemployment and Immigration Restrictions. Due to the excessive demand for immigration visas under the various quotas established by the 1924 Act, it became necessary shortly after the passage of the Act for the State Department's Visa Division to maintain waiting lists of applicants under each of the quotas. From 1925 to 1930 the number of quota visas issued came close to the actual quotas determined by the national origin basis. However, in September 1930, following a presidential statement on the subject, the Department formally advised consular officers abroad that, in view of the serious unemployment situation, care should be exercised in examining intending immigrants to determine whether they would likely become public charges if permitted entry into the U.S. In its annual report of 1932 on immigration work, the Department noted that from October 1, 1930 to March 31, 1932, more than 315,000 aliens who might have been admitted during normal times did not enter. This included both quota and nonquota immigrants.

While consular officers paid close attention to the public charge issue, Secretary of State Stimson argued in formal congressional testimony in 1930 that, as immigrants were only temporarily turned away due to the economic situation, the Congress should provide a legislative policy on the level of protection to be administered during the depression period. The Congress debated a two-year suspension of general immigration but no legislative action was taken in response to the Secretary Stimson's request. However, the continued denial of large numbers of immigrant visas motivated some organizations to press the Congress, for the first time (1932), to establish an overriding appeal process in the U.S., under the supervision of the Department of Labor, of consular officers' decisions abroad. The federal courts (Court of Appeals of the District of Columbia) had ruled previously, also for the first time (1929), that the actions by consular

officers in refusing to issue a visa is not reviewable by the courts [U.S. ex rel. Ulrich v. Kellogg (U.S. App. D.C., 1929), 30 Fed. (2d) 984].

Review of the Double Check System. Concerns have been raised at different times and from different quarters about the federal immigration structure and the multiplicity of control by various agencies. This includes the system of having visas issued by consular officers abroad and examinations at the port of entry conducted by officers of a separate agency, the Immigration and Naturalization Service.

In the Senate Committee on the Judiciary's 1950 investigation of the immigration system (pursuant to S. Res 137), which provided the analytical framework for the Immigration and Nationality Act of 1952, the reporting special subcommittee was persuaded that, "although there are some points in the mechanism where coordinated action is necessary and duplication must be eliminated, the over-all structural pattern ought to be maintained." It concluded that "the distribution of responsibility places additional barriers in the way of undesirable aliens, additional fences of protection which the alien must surmount."

The Special Subcommittee commented specifically on the Hoover Commission Report on Organization of the Executive Branch of the Government (1949) which recommended that the responsibility for non-diplomatic visas be transferred from the State Department to the Department of Justice as, it argued, that the State Department should not have responsibility for operating specific programs. Of note, however, the Hoover Commission did not conduct a study of the organization and management of the Department of Justice and the INS. The Special Subcommittee's report added that "if a double check was essential 25 years ago to protect the United States against criminals and other undesirables, it is the opinion of the subcommittee that it is even more necessary in the present critical condition of the world to use the double check to screen aliens seeking to enter the United States."

The recommendations of the Special Committee served as the basis for the Immigration and Nationality Act of 1952 [Public Law 82-414] which incorporated admission requirements, including the use of a visa system with the responsibility for the issuance and refusal of visas resting with American consular officers stationed at consular offices abroad -- the system in place today.

The Department of Health and Human Services: Mission, Structure, Programs

Mission: A recent draft mission statement of DHHS notes its mission to enhance the well-being of Americans by providing for effective health and human services and by fostering strong, sustained advances in the sciences underlying medicine, public health and social services. DHHS seeks to improve the health and well-being of individuals, families and communities in the U.S. and throughout the world through leadership in medical sciences and public health, through stewardship of the national public assistance and safety net programs, and through promotion of self-sufficiency and parental responsibility.

The focus of DHHS, viewed in terms of the programs it manages, is national health. The following health programs and administrative structures for their management exist in DHHS:

The Health Care Financing Administration

Federal administration of Medicare and Medicaid.

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention

Center for Substance Abuse Treatment

Center for Mental Health Services

Agency for Health Care Policy and Research

Center for Cost and Financing Studies

Center for Health Care Technology

Center for Health Information Dissemination

Center for Information Technology

Center for Organization and Delivery Studies

Center for Outcomes and Effectiveness Research

Center for Primary Care Research

Center for Quality Measurement and Improvement

Center for Medical Effectiveness Research

Agency for Toxic Substances and Disease Registry

Centers for Disease Control and Prevention

National Center for Chronic Disease Prevention and Health Promotion

National Center for Environmental Health

National Center for Injury Prevention and Control

National Center for Infectious Diseases

National Center for Prevention Services

National Center for health Statistics

National Institute for Occupational Safety and Health

National Immunization Program

Administration for Children and Families

Administration on Children, Youth and Families

Administration for Developmental Disabilities

Administration for Native Americans

Office of Child Support Enforcement

Office of Community Services

Office of Family Assistance

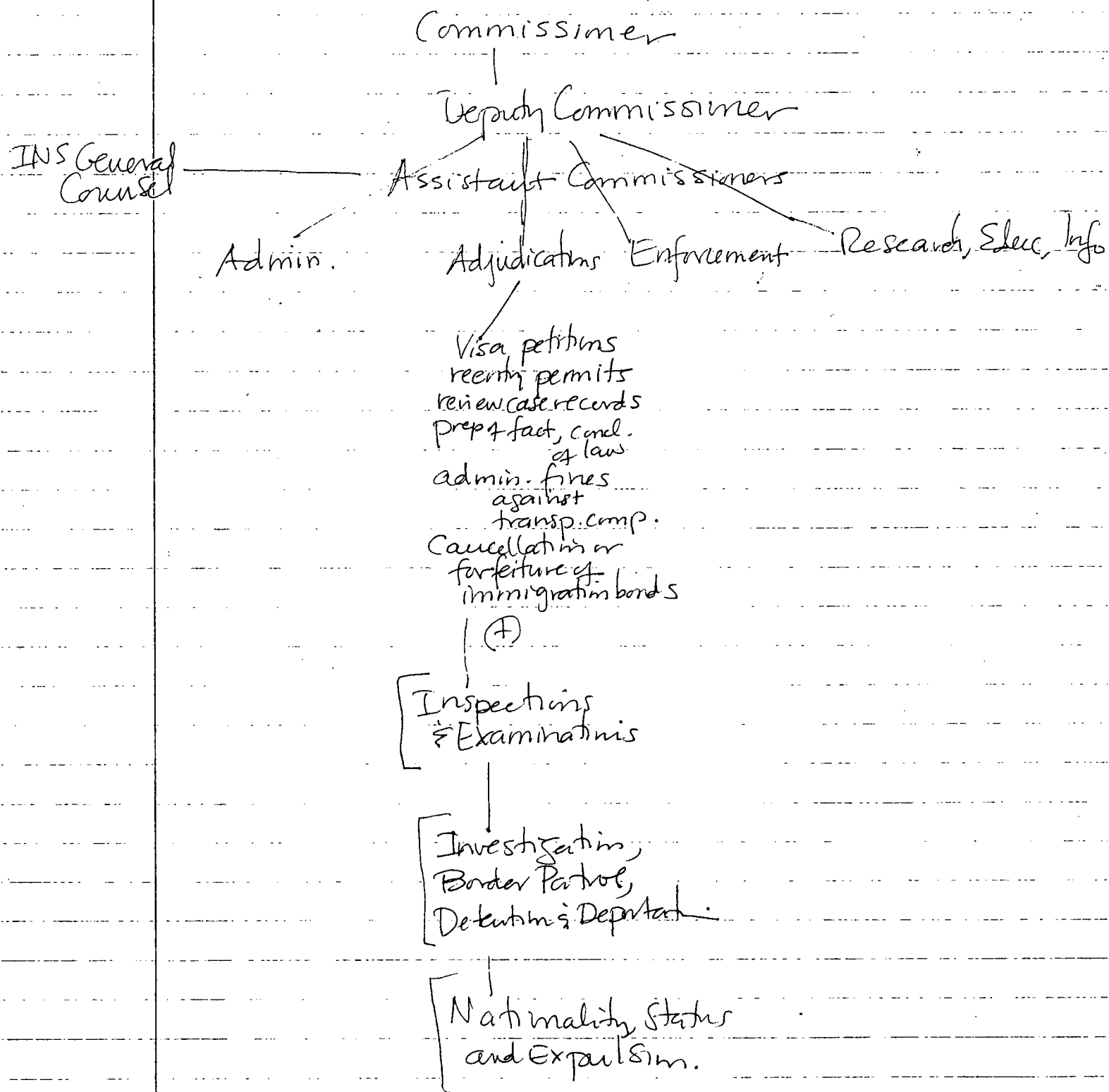
Office of Refugee Resettlement

DHHS's health programs blanket all aspects of physical and mental health care, research, training, prevention, and disabilities. The Department regulates all aspects of physical and mental health; it sets standards, approves products and procedures, and provides funding to states and other public and private organizations for health care. The Department directly implements some research and teaching functions, as well as regulating and funding a great deal more. It provides a small amount of direct service, but primarily serves as a national source of technical expertise and experimental research. It is the national funding resource for health care to the elderly, the indigent, and some categories of needy families. The Department purchases services, provides funding for states, establishes policies for reimbursement of care providers, conducts research, assesses quality of health care facilities and services. It promotes quality of life by preventing and controlling disease, injury and disability and by preventing exposure and adverse human health effects and diminished quality of life due to exposure to hazardous substances, foods, drugs, and other products. The Department exercises leadership in developing medical practices and in regulating drugs and fosters advances in the sciences underlying medicine and public health.

On the human services side, the Department's mission is the public welfare--in its broad sense--of children, youth, families and the elderly. The Department provides funds to public and private organizations for the implementation of services and assistance as legislated and establishes regulations which guide these services and assistance. The Department also funds some research and evaluation and plays a role in technical assistance and documentation and dissemination of best practices. Most of the Department's human services programs are implemented in partnership with state governments, including its efforts to collect child support. The Head Start program is the Department's most directly managed human service program under which grants are awarded directly to local providers. The Department's role has been diminished in the largest human services program, public welfare, by recent legislation which block-grants funds to states and specifically rejects a federal role in regulating state programs or approving their plans.

Operational structure. In health, most program activity is undertaken through contracted private institutions, both for research and for care. There is no longer a Public Health Service operating health clinics, for example, although HCFA does contract directly for Medicare services with health care providers. The Department does not have a national network of sub-offices engaged in determining eligibility and disbursing services and benefits. Medicare is administered via the Social Security Administration and Medicaid is administered through the state, county or city Medicaid structures. Some research is done in-house, but most of it is contracted out.

Very Old INS



1954 : Established 4 regional HQs
to supervise districts

(+) accounting, personnel, procurement
and records management.

Regional format
Unchanged until 1991

1985

4 Regional Adjudications Centers (RACs)

Admin. Appeals Unit in D.C.

(under supervision of Assoc. Commissioner)

1991

Day to day management to 2 ^{offices} ~~people~~:

(1) Executive Assoc. Commissioner
for Management ~~Executive~~

(2) Executive Assoc. Commissioner for Operations

In 1990, Regional Processing Facilities merged w/
Regional Service Centers to become Service Centers.

Under the Adjudications Division of INS HQ

Regional Commissioners became Regional Administrators

to oversee, monitor,
and evaluate resources
provided to other field
offices, specifically
district offices & Border Patrol
sectors.

Report to
Exec. Assoc. Comm
for Management

~~Executive~~ ~~for~~

EOC for Operations

District
offices

Sectors

If want resources

EOC for O → EOC for M

managing
regional
offices

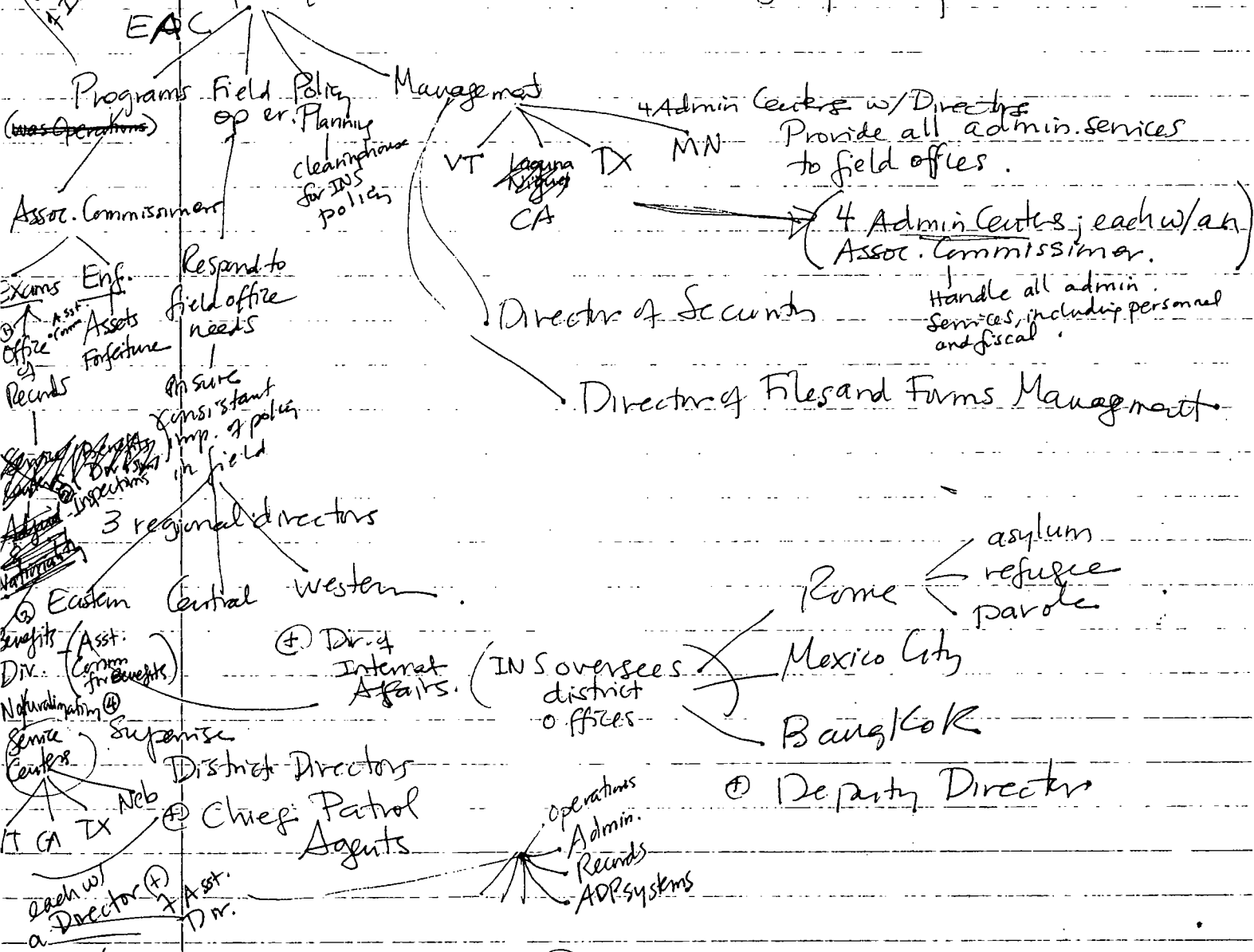
1994 Restructuring

Established intermediate management layers to direct field operations

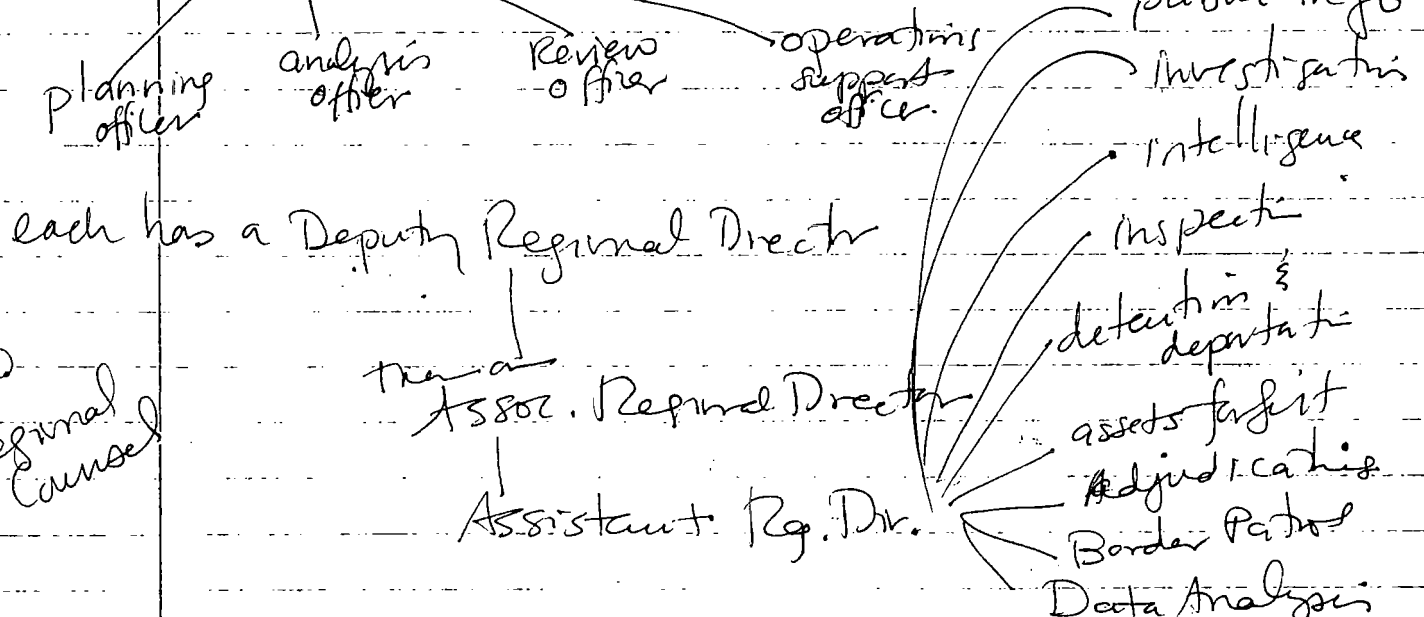
Prior system had field managers reporting to I+O for both operational & resource purposes

Primarily tasked w/ development of INS policies

Deputy Comm — INS Chief Operating Officer.



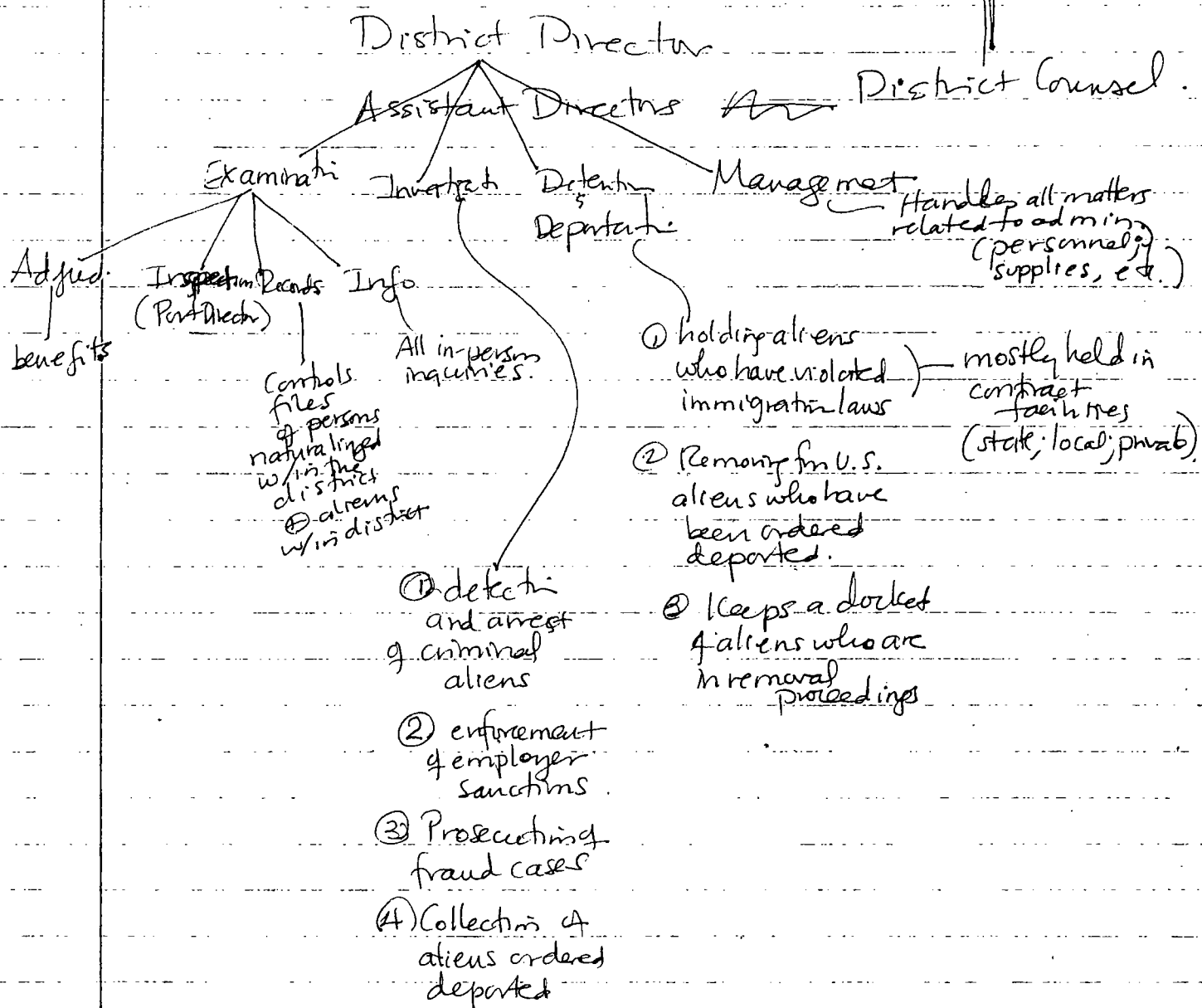
w/in each office of Regional Director



INS Gen Counsel

||
Regional Counsel

At district level



Q: What different work is done in a Service Center and a District office?



**Immigration
and
Naturalization
Service**

Action Plan

In response to

**The Citizen's Advisory Panel
Report to the Attorney General**

December 1997

IMMIGRATION AND NATURALIZATION SERVICE

ACTION PLAN

The Immigration and Naturalization Service (INS) has developed this Action Plan in response to the Final Report of the INS Citizens' Advisory Panel (Panel). The Panel was chartered to provide recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against INS employees, and to minimize or eliminate the causes of those complaints. The Panel was also directed to make recommendations on community policing and training initiatives for law enforcement personnel in order to strengthen the relationship between the INS and all members of the community.

Panel recommendations focused on improving:

- General INS information-sharing, dialogue, and involvement with the broader community;
- Complaint process case management, including access, receipt, investigation, timely processing, and resolution of complaints;
- Professionalism of INS staff, use of complaint information as background in personnel selections, and policies that increase consistency in discipline across the INS; and,
- Training methodologies for new supervisors and in-service training, including the incorporation of community-based organizations in training delivery.

The INS Action Plan incorporates most of the Panel's recommendations into activities that were in the planning or early implementation phases. It also develops new activities to meet these suggestions. A few recommendations require additional analyses before appropriate action can be developed. In these cases, assignments to conduct these analyses have been included in the Plan as action steps. Several of the Panel's recommendations were directed to the Attorney General and, therefore, were beyond the scope of INS' authority to implement.

In response to the Panel's Final Report, the INS will accomplish the following: increase the information available to the public on INS policies and standards; expand the dialogue between the INS and community groups; enhance INS information dissemination; increase public knowledge about the complaint procedure; improve complaint process case management; utilize the complaint process database more broadly in personnel selections; foster more consistency across the INS in disciplinary actions; incorporate local community representatives in providing orientation and training for INS staff, and explore the adoption of a field training officer program to follow INS academy training.

GENERAL AREAS OF CONCERN

PANEL RECOMMENDATION

The Panel required the INS Office of Internal Audit (OIA) to issue an annual report of its operations and activities to the public under the Commissioner's signature. The Panel reserved for itself, or its successor body, the right to review the annual report and to provide comments on it to the Commissioner and the Attorney General.

The Panel recommends that the Commissioner issue an annual report on all aspects of Border Patrol/INS community involvement in the United States.

The Panel urges the Attorney General to direct the INS to prepare materials that explain the regulations for use of firearms, use of force, vehicular pursuits, searches, site inspections, and powers to arrest, interrogate and detain. These materials should be distributed to the community.

INS ACTIONS AND TARGET DATES

The Commissioner has received annual reports from OIA since 1995. The 1996 report became the first publicly issued report when, upon request, it was provided to the Citizens' Advisory Panel.

1997 -- The Commissioner will continue to make the annual OIA report available for public use, and will disseminate it within the INS.

Since 1996, the Commissioner has made community involvement and participation an agency priority, evidenced by its inclusion in the Commissioner's Priority Planning system. The INS conducts quarterly meetings to monitor implementation of these activities. The Commissioner strongly supports the idea of an annual report on the INS' community involvement, which would include activities in community policing and community relations programs.

1998 -- The Commissioner has directed that an annual report be prepared by the Office of Policy and Planning on community programs and activities undertaken by the INS. The FY 1997 report will be disseminated to the public.

FY 1998, Quarter 2 -- The Commissioner has directed staff to prepare written materials, in a form appropriate for public release, that describe INS policies, powers, and standards on areas such as use of firearms, use of force, vehicular pursuits, searches, site inspections, and powers to arrest, interrogate and detain. The INS is currently reviewing and revising many of these items. As this process is completed for each item, materials will be prepared and disseminated to community organizations. The first materials will be available in FY 1998, Quarter 2.

PANEL RECOMMENDATION

The Panel recommends the institutionalization of a permanent citizens advisory committee to the Immigration and Naturalization Service.

INS ACTIONS AND TARGET DATES

1998 -- The Commissioner has directed the Office of Policy and Planning to proceed to create a successor citizen's advisory committee and other mechanisms for community consultation to involve organizations broadly in educating the public about INS policies and procedures, to determine the impacts of those policies and procedures, and to increase the knowledge of INS officers about the communities in which they work.

COMPLAINT PROCEDURE

PANEL RECOMMENDATION

The Panel reaffirms its concerns and continues to recommend that the Spanish-English posters and complaint forms be readily accessible in areas that are available to detainees and the general public.

INS ACTIONS AND TARGET DATES

Completed -- The Commissioner has ordered all INS offices to visually inspect and confirm in writing through their chain of command that they are in compliance with the Commissioner's instruction of February 12, 1996, on display of the Spanish-English poster and availability of the complaint forms.

Completed -- The INSpect review guide, which is used in on-site reviews of INS field locations, has been modified to include compliance with the poster directive.

FY 1998, Quarter 2 -- The INS will develop straightforward written materials describing the INS complaint process and containing the complaint form for dissemination to community organizations. The materials will be translated into Spanish and other appropriate languages.

FY 1998 -- The INS District Directors, Sector Chiefs, and Community Relations Officers will organize a series of community meetings and invite the INS OIA staff to describe the complaint process and the OIA annual report. The Department of Justice Office of Inspector General staff will be invited to participate in the presentations.

PANEL RECOMMENDATION

The Panel recommends the institutionalization of a permanent citizens' advisory committee to the INS Office of Internal Audit, the DOJ Office of the Inspector General, and the Civil Rights Division.

The Panel recommends the Attorney General develop and impose reasonable guidelines for the Civil Rights Division's and Assistant United States Attorney's decisions to initiate prosecutions.

The Panel encourages the Civil Rights Division and Assistant United States Attorneys to consider the alternative of state or local prosecution.

In the interest of timely administrative action, the Panel strongly urges the Department to reach a timely decision on the recommended change to the current policy which prohibits concurrent criminal and administrative investigations.

INS ACTIONS AND TARGET DATES

The Panel's recommendations in this area are beyond the INS' scope of authority. However, the Commissioner supports the Panel's desire for an efficient intra-Departmental case management process.

Completed -- The Commissioner has recommended that the Attorney General form an interagency working group, with representation from the INS Office of Internal Audit, the DOJ Office of Inspector General, and the Office of Civil Rights, in order to facilitate complaint processing. The working group would be charged with communicating on a weekly basis to review complaints received, investigative time frames of on-going cases, and any resolution of complaints and/or allegations.

FY 1998, Quarter 2 -- The Commissioner has directed the Office of Policy and Planning, the Office of Internal Audit, and the Office of Human Resources and Development to convene a working group to: (1) study information and database systems that are currently available and how the data is reported; (2) discuss the type and amount of information that is most frequently requested and would assist in the description and reporting of complaints and their dispositions; and (3) recommend a process for collecting and reporting future case data to address the nature, extent, and effect of delays in INS disciplinary/adverse actions.

PROFESSIONALISM

PANEL RECOMMENDATION

The Panel recommends that substantiated complaints and their dispositions be included in all selection packages for promotions, transfers, and relevant personnel actions.

INS ACTIONS AND TARGET DATES

Current -- The INS procedure for the selection of senior positions currently provides information to the selecting official from investigation/complaint records, personnel, security, and EEO files.

FY 1998 -- The INS will address this issue in upcoming negotiations with bargaining unit representatives on merit promotion policy. The proposal is that selecting officials for

PANEL RECOMMENDATION

The Panel recommends that unsubstantiated complaints in the OIA case management system be used as a management tool to identify trends in abuse and flag employees who may need additional training and/or supervision. The Panel further recommends the INS establish the receipt of three unsubstantiated complaints (of any nature) as the threshold notification level from the INS OIA case management system to the employee's immediate supervisor.

INS ACTIONS AND TARGET DATES

merit promotions to enforcement positions request a report from the Office of Internal Audit case management database to determine if any substantiated complaints had been lodged against the applicant to be selected. Because this process will create significant additional workload beyond current resource constraints, the proposal is to initiate this practice in cases involving selection of a candidate for a supervisory Border Patrol position who is currently not employed in the Sector with the vacancy.

FY 1998 - The INS will also engage in extensive managerial level discussions to study and develop policies and procedures on how substantiated complaints can and should be considered in promotions.

The Commissioner recognizes that it is a continuing source of frustration, both to those who file complaints, and to those who investigate them, that some misconduct may go unpunished because there is not enough evidence to defend disciplinary action under Federal laws. This action plan includes steps to expand public knowledge of the complaint process and the information necessary to document a complaint, to improve coordination of complaint processing between the OIA, OIG, and CRT, and to analyze the types of complaints received in order to determine if more appropriate or alternative responses are warranted. In order to create a successful model, steps are also included to involve the INS bargaining units in the study and planning process, and to prepare explicit guidance to explain the policy to supervisors and employees.

FY 1998, Quarter 2 -- The Commissioner has ordered completion of a trends analysis of complaints closed during the past three years.

FY 1998, Quarter 3 -- The OIA will develop a draft protocol for a non-punitive mechanism for identifying both individual employees and systemic vulnerabilities (e.g., training deficiencies) which need attention. To develop the draft, the OIA is working with other agencies who have

PANEL RECOMMENDATION

The Panel recommends the Attorney General direct the INS to develop and implement a critical element which addresses the reporting review/investigation, and resolution of complaints and/or allegations. This critical element must be included in the performance standards of employees from first-line supervisors to the senior executive staff of the Service.

INS ACTIONS AND TARGET DATES

identify and work with those employees who are the subject of multiple complaints within a specified time period, or who are involved in multiple use of force incidents during that time period. The INS unions will be advised that this review is underway, and provided information about the organizational models we are studying.

FY 1998, Quarter 4 -- The protocol will be referred to a joint union-management group for review and comment and the development of implementing guidelines.

The INS Western Regional Office has included such an element in the performance work plans of its Chief Patrol Agents and District Directors. During FY 1998, the OIA will provide information to the Regional Director to assist in the evaluative effort and the Regional Office will provide feedback to the Human Resources and Development Division (HRD) on its experience with the element. The HRD will also monitor and be available to assist as the Regional Office modifies its approach to conform to the new INS Performance Management System, when adopted.

FY 1998, Quarter 3 - The HRD will develop an interim report on the pilot effort based on a partial performance year and determine whether additional experience is required prior to decision.

FY 1999, Quarter 1 -- The Commissioner will appoint a task force to research and recommend standardized performance evaluation benchmarks for all employees in public contact positions and all supervisors/managers in their management chain. The benchmarks should address not only "reporting, review/investigation, and resolution of complaints and/or allegations," but misconduct prevention and efforts to ensure proper, humane treatment as well.

FY 1999, Quarter 2 -- A determination will be made as to whether to implement the benchmarks, or modified version of the benchmarks, throughout the agency during the following performance year.

PANEL RECOMMENDATION

The Panel recommends that INS develop general guidelines for the application of discipline across the Service. Because management discretion varies widely, the Panel believes that general guidelines should be imposed to ensure fairness and equity.

The Panel recommends that INS develop a protocol for the assignment of an employee who is accused of a civil rights violation involving aggravated assault, rape, or shooting to a non-public contact position, while the allegation is unresolved.

INS ACTIONS AND TARGET DATES

FY 1998, Quarter 1 -- The INS has developed "A Supervisor's Handbook to Discipline," which will be distributed to all INS supervisors and managers, and used as a handout in the first-line supervisor training.

FY 1998 -- The INS Adverse Action Working Group is exploring additional ways to provide information to field managers, such as off-the-shelf portable training through videos and computer software.

FY 1998, Quarter 2 -- The Commissioner has directed that an analysis be conducted to determine the number and characteristics of allegations, involving aggravated assault, rape or shooting, lodged against INS employees in public contact positions during the past three years, and the resolution of the complaints. The report should include any warranted recommendations for actions that could be taken to ensure public safety, while protecting employee rights. Utilizing the analysis, the HRD, in consultation with appropriate parties and including the INS bargaining units, will propose guidelines for addressing such situations.

TRAINING

PANEL RECOMMENDATION

The Panel restates its belief that training must remain a top priority in this period of rapid growth at INS. Therefore, the Panel recommends that the INS continue its training efforts for new and current employees, with specific emphasis on: customer service; cultural awareness; prevention of bias; civil and constitutional rights; the range of penalties and sanctions; and INS complaint procedures.

INS ACTIONS AND TARGET DATES

Completed -- In response to this Panel recommendation, the INS Leadership Development Center has included guest speakers from community based organizations and class mentors for Basic Supervision courses.

FY 1998, Quarter 3 -- The Office of Policy and Planning, working with HRD/Training and the Community Relations Officers, will develop an Introduction to the Community curriculum for an orientation and training course to

PANEL RECOMMENDATION

The Panel encourages INS to develop and provide (1) systematic in-service training at regular intervals; and (2) external training opportunities.

The Panel strongly urges INS to consider the integration of knowledgeable community-based organizations (CBOs) into official INS training at appropriate stages. The Panel also believes that INS would benefit by having CBO instructors among its official training curriculum resources.

The Panel recommends that all new first-line supervisors receive basic supervisory training prior to assuming supervisory responsibility, and that such training be systematically enhanced at regularly scheduled intervals of two to three years.

The Panel recommends that the INS take every action necessary, including (but not limited to) distributed learning, modular curricula, video tapes, local and regional workshops, teleconferencing, and other innovative instructional approaches to export first-line supervisor training to all field locations that are scheduled to receive new academy graduates under INS hiring initiatives.

INS ACTIONS AND TARGET DATES

introduce INS field staff to community leaders and organizations in their locality, and provide broader opportunities to understand the cultural issues and experiences that may affect individual/community reactions to law enforcement authority figures. Subsequently, the course would be offered on a periodic basis for INS staff who are new or relocating to the area. The course will be tested first in those Districts and Sectors where the Community Relations Officers can assist community-based organizations to adapt the curriculum to local community issues and perspectives, and facilitate the training schedule.

FY 1998 – The Training Division will prepare a plan that identifies opportunities for in-service training, considering existing mechanisms and new strategies.

Current – First-line supervisors currently receive Basic Supervision training within six weeks of entrance on duty as a new supervisor.

Current – INS is exploring other technologies and methodologies to provide first-line supervisor training at the earliest possible opportunity.

PANEL RECOMMENDATION

The Panel recommends that the Attorney General direct INS to visit and study current Field Training Officer programs of state and local law enforcement agencies; and fully fund a Field Training Officer Development Program for implementation within INS if these programs are deemed suitable and relevant to the needs of the INS.

INS ACTIONS AND TARGET DATES

FY 1998 -- The Commissioner has directed the HRD to conduct an evaluation of the San Diego Sector's local Field Training Officer (FTO) program, as well as of FTO programs of State and local law enforcement agencies.

FY 1999, 2nd Quarter -- A determination will be made as to the suitability of a FTO program. If the decision is made to proceed, staff from the HRD/Training will develop a proposal for implementing an agency-wide FTO program.

Citizens' Advisory Panel Members

Contact List

Yvonne Campos
Assistant United States Attorney
Southern District of California
San Diego, CA

Miguel A. Conchas
President and C.E.O
Texas Chamber of Commerce
Laredo, TX

Edwin J. Delattre
Dean of the School of Education
Boston University
Boston, MA

Carol Rogoff Hallstrom, ESQUIRE
San Diego, CA

Bill Ong Hing
Professor of Law
San Francisco, CA

Tom Leupp
Acting Regional Director, Eastern Region
Immigration & Naturalization Service
Burlington, VT

Kenneth G. Leutbecker
Director, Office of Humanitarian Assistance
Immigration & Naturalization Service
Washington, DC

Eileen M. Luna
University of Arizona
American Indian Studies Program
Tucson, AZ