Kagan
✓Schroeder
✓Jacoby
✓Echaveste-Vogel
Kalil
✓Busby
✓Parker

✓Fortune
✓Warnath
✓Weiner
✓Mertens
Matsui - Victoria Lynch
Murguia ~~Jessica Gibson~~
Brainard
Kohlenberger

Maria J. Hanratty (CEA)

Regular mtg. to include

- INS
- Labor Dpt.
- State Dpt.

~~Rm 8116 NEOB~~

~~4pm Rm 211 Emp Zone~~

PRESIDENT CLINTON AND CONGRESSIONAL DEMOCRATS WIN IMPORTANT VICTORIES FOR THE IMMIGRANT COMMUNITY
October 19, 1998

Reducing the Naturalization Backlog. The President's FY99 budget included $827 million in funding from the Examination Fee Account and $486 million from the User Fee Account dedicated to providing immigration benefit and inspection services. A recent estimate of INS fee receipts has resulted in a significant reduction in anticipated fee revenue to support the Examination Fee Account and insufficient resources to address the two-year backlog of pending naturalization applications at the INS. As a result, the Administration sought an infusion of $171 million in new resources to support naturalization activities. The Administration urged the conferees to ensure that immigration fees are used to reduce the backlog of pending citizenship applications, as well as to approve the reprogramming request. The final Omnibus appropriations package includes approval of the full $171 million in reprogramming and does not divert any money from the INS's Exams Fee account for unrelated expenses.

FJF unions

Protecting U.S. Farmworkers. The Administration strongly urged the conferees to delete provisions in the Senate-passed CJS bill that would create a new agricultural guestworker program. These provisions would likely increase illegal immigration to the U.S., reduce job opportunities for legal U.S. farmworkers, and depress wages and work standards for U.S. farmworkers. We fought hard, and were successful, at getting these provisions removed from the Omnibus appropriations package.

Defeated Efforts to Dismantle the INS. Some Republicans in Congress made an effort to attach legislation to the Omnibus appropriations bill that would drastically reorganize the INS over the next six months. Though we support efforts to reform the INS and promote greater effectiveness and efficiency, we opposed going forward with such a major reorganization of this important agency without the benefit of hearings by the Judiciary Committee and consideration by the House and Senate. We strongly opposed this legislation, and successfully defeated it.

Deportation Relief for Haitians. Last year we were disappointed that Haitians were excluded from the relief granted Central Americans and Eastern Europeans in the Nicaraguan Adjustment and Central American Relief Act (NACARA). Last December, the President temporarily suspended deportation of certain Haitians for one year and called on Congress to address, through legislation, the circumstances of this group. The Haitian provisions included in the final appropriations bill will allow thousands of Haitians who were paroled into this country after the 1991 overthrow of President Aristide or who applied for asylum prior to 1996, to become legal residents of the U.S.

Visas for High-Tech Workers and Protection for U.S. Workers. The Administration and Congress reached a compromise on legislation that temporarily increases the number of H-1B visas; reforms the H-1B program to ensure that employers do not replace U.S. workers with temporary foreign workers and requires employers to recruit U.S. workers; and provides for a user fee that will generate approximately $250 million over three years in new investments for training and educational opportunities to U.S. workers.

Enhancing Enforcement at the Border. The final budget agreement includes the Administration's request to hire 1,000 additional Border Patrol agents, as well as funds to provide improved technology to detect illegal aliens along the Southwest Border.

Section 377 (late amnesty)

- Last term, we attempted to include in the omnibus appropriations package a change to the INS's registry date that would have allowed those in the country prior to January 1982 to apply to for legal permanent residency. We were unsuccessful.

- We have engaged in discussions with the Department of Justice to determine whether there are any administrative options that could appropriately address the concerns of those who were deterred from applying for amnesty during the 1987-88 window.

Hondurans

- As you know, the Administration fought hard to achieve greater fairness for all foreign nationals, including Hondurans, with pending immigration cases who were adversely affected by the 1996 changes in rules related to suspension of deportation. While we were pleased that the Congress decided to offer relief to some nationalities through NACARA, we were disappointed that others were left out. We will continue to urge Congress to reconsider the exclusion of these other groups.

- In addition, we agree that our immigration and refugee policies should treat similarly situated people similarly. After careful review, we have concluded that some of the Hondurans who came to the U.S. during the 1980s share some of the characteristics of those Salvadoran and Guatemalan who also sought the protection of the U.S. during that period.

- Thus, we are prepared to work with Congress to develop an appropriate legislative solution for those Hondurans who are in the same position as Salvadorans and Guatemalans granted relief under NACARA.

- However, we continue to hold the view that the situation of Hondurans in the United States does not warrant the exercise of the President's extraordinary authority to direct the Attorney General to delay their deportation.

Public Charge

Sal/Guat parity

"Parity" for Salvadorans and Guatemalans
August 3, 1998

Background

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted during the last session of Congress, authorized the more lenient (pre-1996 Act) rules for suspension of deportation to apply to pending cases of Guatemalans and Salvadorans, while providing amnesty (automatic "green cards") for Nicaraguans and Cubans. The Hispanic Caucus and many Central American advocates have urged the Administration to implement NACARA in a way that would achieve "parity" among all Central American groups affected by the legislation. Since last fall, Congressmen Gutierrez and Becerra have strongly supported amnesty for Salvadorans and Guatemalans (equivalent to that received by the Nicaraguans and Cubans). Also, Congressman Gutierrez has introduced a bill that would give amnesty to Salvadorans, Guatemalans, Haitians, and Hondurans. We have consistently taken the position that Hondurans are not similarly situated to the Central American groups covered by NACARA, and thus have opposed special relief for this group.

Talking Points

- I share your concern about the disparities in treatment in NACARA. As I indicated in my signing statement, we are seeking to minimize these disparities in the implementation process.

- In this regard, the Attorney General has authorized a new administrative procedure for adjudicating the cases of Salvadorans and Guatemalans covered by NACARA. This procedure will empower INS asylum officers -- not just immigration judges -- to decide the suspension claims of these individuals. This modified procedure will be less adversarial than immigration court and will thus lessen the need for representation by an attorney, thus reducing the cost.

- Also, the INS will issue a regulation that codifies existing case law on the "extreme hardship" standard to ensure that there is fair and consistent interpretation of this standard to all applicants.

- We expect that these changes will result in a generous approval rate.

- I am generally supportive of efforts to achieve parity among similarly situated groups, but would have to review any proposed legislation carefully before deciding whether I could support it.

Pres. committed to carefully consider leg. efforts

INS Reform
August 3, 1998

Background

The Administration has developed a plan to make federal immigration activities more effective by separating enforcement and service operations within INS -- from headquarters to the field -- while preserving the necessary integrating functions for supporting and coordinating both operations. Congressman Reyes developed an alternative proposal that was introduced by Rep. Rogers last week. This bill would create a separate agency within DOJ that would handle all immigration enforcement; however, the Rogers bill does not address either reforms to the services operation or overall immigration policy coordination. Our legislation was recently transmitted to the Hill and was introduced by Senator Kennedy and Representatives Watt and Berman on Thursday, July 30th. We -- along with the House Democratic leadership (including Rep. Becerras) -- have been trying to persuade Rep. Reyes to work with the Administration our proposal.

Talking Points

- The focus of the Administration's reform effort is to untangle the INS's confusing organizational structure and replace it with two clear organizational chains of command -- one to provide immigration-related services and the other to accomplish its enforcement mission. This separation will result in an INS organization with better accountability and improved efficiency.

- We believe that this proposal is far better than the Commission on Immigration Reform's recommendation to disband the INS and reallocate its responsibilities to the Departments of Justice, State and Labor. That proposal would only compound the current problems with the nation's immigration system. To be most effective, all immigration policy and management should remain within one agency at the Justice Department.

- The Administration did consider Congressman Reyes's proposal to pull enforcement operations out of INS into Main Justice. Consistent with Congressman Reyes's recommendation, our plan consolidates all enforcement operations to create a single point of responsibility and accountability. However, because of the variety of ways in which service officials depend on data collected by enforcement officers, and vice versa, we decided that both operations would work best when housed within a single entity.

Section 377 -- Late Amnesty
August 3, 1998

Background

The Immigration Control and Reform Act of 1986 (IRCA) legalized the immigration status of certain aliens who had been unlawfully present in the United States since before January 1982. IRCA provided for a one-year application period for this benefit, ending in May 1988. The INS's implementation of the legalization program was challenged on the ground that the INS dissuaded some individuals from applying within the requisite time period. Despite a 1993 Supreme Court decision severely limiting the class of those potentially harmed by INS's action, much class action litigation continued.

Section 377 of the 1996 Immigration Act brought this litigation to an end by removing federal court jurisdiction from cases where the claimant couldn't show that he actually filed a legalization application within the specified period, or that he attempted to file during the time period, but was turned away. The Justice Department supported this provision.

Many immigration advocates are concerned that hundreds of thousands of individuals who have resided legally in this country for years will become deportable in the near future as a result of this provision. Many of these individuals claim to have been in the United States since before January 1, 1982, and few would be able to secure any other form of relief from deportation.

Talking Point

- As you know, the Justice Department supported the enactment of Section 377 in an effort to bring an end to lengthy litigation covering individuals without bona fide claims to legalization. However, I have asked my staff to look into this further and welcome your thoughts on this matter.

State & local law enforcement performing immigration functions

Background

The 1996 Immigration Act permits the Attorney General to delegate certain immigration functions to state or local law enforcement officers. The immigrant advocacy community is very concerned about this level of cooperation between the INS and local law enforcement. They fear that this delegation will lead to violations of civil and constitutional rights on the part of insufficiently trained and perhaps wrongly motivated local police. Advocates are also concerned that this delegation will make immigrants fearful of cooperation with local police departments on other law enforcement matters.

Last year, the Attorney General agreed to conduct a one-year pilot project to implement this provision in Salt Lake City, Utah. After negotiations among the Department of Justice (including INS, the Civil Rights Division and the Community Relations Service) and the local police department and community representatives, an MOU was prepared and is ready to be executed by the INS and the local mayor, pending city council approval.

The Salt Lake City MOU allows a small group of selected, trained, and supervised police officers to conduct immigration-related questioning and arrests after a lawful arrest has been made on state criminal grounds or repeat municipal offenses. After the pilot is completed and evaluated, the INS will propose a plan for full implementation of this provision and publish this plan in the Federal Register for comment.

Talking points

- The Department of Justice is taking careful steps to implement this provision of the 1996 Act.
- As in other areas, we want to promote the use of tools that assist local law enforcement in doing their jobs effectively, while maintaining vigilance in protecting people's civil rights.
- The Attorney General will initiate a pilot project to implement this provision in Salt Lake City. The development of this pilot was done in conjunction with the local police department, community advocates, and civil rights groups. We hope that the pilot will assist us in identifying how best to implement this provision, consistent with protecting the civil rights of those affected.
- I welcome your input throughout this process.

Immigration Q&A
June 11, 1998

Food Stamps

Q: What will the Agricultural Research bill, which the President has indicated he will sign, do for legal immigrants?

A: The Agricultural Research Extension and Education Reform Act is a very important step in the President's effort to restore benefits to vulnerable groups of legal immigrants. The bill provides more than $800 million over five years to restore Food Stamp benefits to 250,000 people in 1999, including 75,000 children. It helps five important groups: children, the elderly, individuals with disabilities, refugees and asylees, and Hmong who helped the U.S. during the Vietnam conflict. The provisions for the elderly and the disabled mirror what was provided for them in SSI and Medicaid in last year's Balanced Budget Act. In addition, the bill provides assistance to immigrant children -- a group that did not receive any restorations in the Balanced Budget Act.

INS Reform

Q: What is the Administration's plan for reforming the INS?

A: The Administration's plan will make federal immigration activities more effective by separating enforcement and service operations *within* INS -- from headquarters to the field -- while preserving the necessary integrating functions for supporting and coordinating both operations. One of the most dramatic features of this plan is the replacement of the district field structure with separate Enforcement and Service Areas. This clear delineation of functions will address long-standing concerns about lines of authority and responsibility, consistency of operations, and performance within the INS. It will result in improved enforcement coordination and measurable changes in the way INS provides services to the immigration community.

Q: Everyone agrees that the INS has substantial problems. Why, then, has the Administration rejected the CIR recommendation to dismantle the agency?

A: We believe that the CIR recommendation to disband the INS and reallocate its primary responsibilities to the Department of Justice and the Departments of State and Labor would only compound the current problems with the nation's immigration system. First, such a substantial reallocation of authority could require a six- or seven-year transition, exacerbating existing concerns about long delays in immigration activities. Second and even more important, this reallocation would hinder the coordination and communication necessary to maintain the integrity and efficiency of both immigration enforcement and immigration service operations. To be most effective, all immigration policy and management should remain within one agency at the Justice Department.

Naturalization

Q: What steps is the Administration taking to cure the 2-year backlog in naturalization applications at the INS?

A: The Administration is committed to the highest standards of integrity in the naturalization process as we work to improve waiting times and provide more efficient service to citizenship applicants. The INS has devised a backlog reduction strategy based on the following: the creation of a separate Office of Naturalization Operations within the INS; the provision of $200 million in new resources in FY 1998 to improve the naturalization process; and the development of specific backlog reduction plans within individual field offices, starting with the biggest offices such as Los Angeles and Chicago. In addition, the INS is implementing technological improvements to more quickly process and track naturalization applications and the associated fingerprint cards.

H-1B visas

Q: The House Judiciary Subcommittee on Immigration has recently approved legislation that increases the number of H-1B visas for temporary foreign workers. What is your position regarding this legislation?

A: I am pleased that Representative Smith's bill is consistent with one of my primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. The bill would help ensure that U.S. workers would not lose their jobs to a temporary foreign worker and that qualified U.S. workers would have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, the bill modestly expands enforcement authority to help prevent employer abuses of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, the bill does not contain any provision for additional training opportunities for U.S. workers. Training is a vital component of my strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. I am also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although I agree that the increase should be temporary. I would be pleased to support this bill if it included meaningful training provisions and a modest reduction in the level of increase in the annual H-1B visa cap.

Q: What is your position regarding Senator Abraham's bill?

A: Senator Abraham's bill includes a large increase in the annual number of visas and provides no meaningful reform of the H-1B program. I would be happy to work with members of the Senate to develop a bill that is more consistent with the Administration's principles.

Bilingual Education

Q: What is the Administration's reaction to the passage of Proposition 227 in California?

A. The most important message coming from voters in California is that we have to make sure that students, particularly those who are immigrants or children of immigrants, learn English as quickly as possible. The President agrees with that message, though he disagrees with the particular approach in Proposition 227.

President Clinton and Secretary Riley opposed the Unz Initiative in California because they think it is the wrong way to accomplish this goal. They believe that the Unz Initiative's one-year time limit and one-size-fits all approach will limit the ability of local communities and schools to choose the best approaches for our children.

Instead, the President supports local programs that set a goal of helping students learn English within 3 years, that are given the flexibility and assistance necessary to meet that goal, and that are accountable if they fail to do so. At an appropriate time, the President will propose legislation to translate these principals into law. And the President will continue to press the Congress to support his request to double funding for training teachers to serve limited-English-proficient students.

Q. Will the President support legislation currently in Congress (the Riggs bill) to overhaul the federal bilingual education program?

A. The President believes that efforts to strengthen the federal bilingual education program should be based on the principles he and Secretary Riley have already articulated: (1) a goal for students to learn English within 3 years; (2) accountability for results; (3) local flexibility for determining how best to achieve results; and (4) investments in providing qualified teachers. The President plans to send legislation to Congress fully consistent with these principles when Congress takes up the issue of bilingual education. The Riggs bill now before the House Education and Workforce Committee is not consistent with these principles -- among other things, it eliminates federal support for teacher training, it does not provide appropriate flexibility to schools and it interferes with the enforcement of existing civil rights laws -- and so the Administration is opposed to that bill.

Q: Will you join those who are planning to bring legal action to stop the implementation of Proposition 227?

A. We are not at this time joining in legal challenges to Proposition 227. The Departments of Justice and Education will carefully monitor the educational programs that are put in place under the proposition to ensure that they comply with the civil rights laws. Whether they do so will depend upon how they are implemented and whether children with limited English proficiency are provided a realistic opportunity to succeed academically.

Race Initiative
Q&A

Q. **What has the Initiative accomplished over the past year?**

A. Since the Initiative started, we have worked to develop policies that can make a difference in closing the opportunity gap in the areas of economic development, education, and housing. We have also developed policies that focus on eliminating continuing disparities in health care and the administration of justice. For example, the President's FY 1999 budget includes funding for a scholarship program that will bring the best and finest-trained teachers to high-poverty urban and rural schools. Also, the President took steps to double the number of enforcement actions brought by HUD for violations of the Fair Housing Act and to strengthen the nation's hate crimes laws.

In addition, the Initiative has recruited leaders and encouraged community efforts across the country. The Initiative has identified more than 150 promising practices -- national and community-based programs that are working to bridge racial divides and promote racial reconciliation through dialogue and action -- that can be emulated across the country. These efforts, combined with the President's town hall meetings and the various activities of the Advisory Board, have helped raise the issue of race to the national agenda.

Q. **Has the President made any decision about extending the Initiative on Race beyond September?**

A. The charter for the Advisory Board expires on September 30th. However, President Clinton has always had a personal commitment to these issues and will continue to commit his time and attention to building one America.

Over the next several months, the work of the Initiative will continue. In July, the President will participate in a PBS-sponsored dialogue on race with Jim Lehrer. In October, there will be a conference convened by the National Research Council that will examine past and current trends among racial and ethnic groups in key areas such as health, education, employment and the administration of justice. It will also identify gaps in data and research that inhibit our ability to obtain a comprehensive understanding of race-related issues. This winter the President will release his report to the American people.

Equally important is the infrastructure that has been created over the past 12 months which will continue to build on the year's efforts. For example, Cabinet activities will be ongoing and reported to the President every week. The Initiative has also generated a cadre of leaders all over the country to carry on this important work at the local level.

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

Elena Kagan
Deputy Assistant to the President
for Domestic Policy

TO: Julie

FAX: 65581

PHONE:

PAGES: 8

MESSAGE:

Please call (202) 456-5584 if there are any problems with the transmission.

Julie A. Fernandes
08/03/98 01:15:42 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: POTUS talking points

Elena,
Attached is a draft of the briefing materials for the POTUS's meeting tomorrow with the Hispanic Caucus. I checked w/Maria re: NACARA. She agrees that the President should not express support for legislation that includes amnesty for the Hondurans. Also, I need to coordinate with OMB on the naturalization backlog plan -- to finalize where we are.

POTUS.T

INS Reform
August 3, 1998

separate

Background

The Administration has developed a plan to make federal immigration activities more effective by separating enforcement and service operations *within* INS -- from headquarters to the field -- while preserving the necessary integrating functions for supporting and coordinating both operations. Congressman Reyes developed an alternative proposal that was introduced by Rep. Rogers last week. This bill would create an agency within the DOJ that would handle all immigration enforcement; however, the Rogers bill does not address either reforms to the services operation or overall immigration policy coordination. Our legislation was recently transmitted to the Hill and was introduced by Senator Kennedy and Representatives Watt and Berman on Thursday, July 30th.

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We -- along with the House Democratic leadership (including Rep. Becerras) -- have been trying to persuade Rep. Reyes to work with the Administration on ~~a~~ our proposal ~~that meets all of our goals.~~

Talking Points

- The focus of the Administration's reform effort is to untangle the INS's ~~overlapping and frequently~~ confusing organizational structure and replace it with two clear organizational chains of command -- one to provide immigration-related services and the other to accomplish its enforcement mission. This separation will result in an INS organization with better accountability and improved efficiency ~~that allows each operation to focus on the unique management, knowledge, skills, and abilities of its function. The most dramatic feature of our reform plan is the elimination of the district system and the creation of local offices that are focused either on services or enforcement.~~

no underline

This proposal is far better than

- We believe that the Commission on Immigration Reform's ~~(CIR)~~ recommendation is to disband the INS and reallocate its ~~primary~~ responsibilities to the Department of Justice, ~~(DOJ) and the Departments of~~ State and Labor, would only compound the current problems with the nation's immigration system. To be most effective, all immigration policy and management should remain within one agency at the Justice Department.

That proposal

no underline

- The Administration did consider Congressman Reyes's proposal to pull enforcement operations out of INS into Main Justice. Consistent with Congressman Reyes's recommendation, our plan consolidates all enforcement operations to create a single point of responsibility and accountability. However, because of the variety of ways in which service officials depend on data collected by enforcement officers, and vice versa, ~~to ensure the integrity and effectiveness of both functions -- as when, for example, a service officer discovers that a person has overstayed their visa and become an illegal alien --~~ we decided that both operations would work best when housed within a single entity.

Section 377 – Late Amnesty
August 3, 1998

Background

The Immigration Control and Reform Act of 1986 (IRCA) legalized the immigration status of certain aliens who had been unlawfully present in the United States since before January 1982. IRCA provided for a one-year application period for this benefit, ending in May 1988. The INS's implementation of the legalization program was challenged on the ground that the INS dissuaded some individuals from applying within the requisite time period. Despite a 1993 Supreme Court decision severely limiting the class of those potentially harmed by INS's action, much class action litigation continued.

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Section 377 of the 1996 Immigration Act brought this litigation to ~~an~~ end by ~~removing~~ federal court jurisdiction from cases where the claimant ~~didn't~~ actually ~~file~~ a legalization application within the specified period, or ~~couldn't show~~ that ~~they~~ attempted to file during the time period but was ~~(by presenting a completed application and application fee) and were~~ turned away. ~~This provision was supported by the Administration because the Department of Justice believes that if an individual either did not file during the window period or cannot demonstrate that they attempted to file but were deterred, they are not entitled to relief under IRCA.~~

same ¶ The Justice Department supported this provision ~~as consistent~~

Many immigration advocates are concerned that hundreds of thousands of individuals who have resided legally in this country for years will become deportable in the near future as a result of this provision. Many of these individuals claim to have been in the United States since before January 1, 1982, and few would be able to secure any other form of relief from deportation ~~(the standard for "cancellation of removal" under the 1996 Immigration Act is much stricter than the equivalent "suspension of deportation" standard that existed prior).~~

Talking Point

- As you know, The Justice Department supported the enactment of Section 377 in an effort to bring an end to lengthy litigation covering individuals without bona fide claims to legalization. However, I have asked my staff to look into this further and welcome your thoughts on this matter.

"Parity" for Salvadorans and Guatemalans
August 3, 1998

Background

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The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted during the last session of Congress, authorized the more lenient (pre-1996 Act) rules for suspension of deportation to apply to pending cases of Guatemalans and Salvadorans, ~~but~~ provided amnesty (automatic "green cards") for Nicaraguans and Cubans. The Hispanic Caucus and many Central American advocates have urged the Administration to implement NACARA in a way that would achieve "parity" ~~between~~ all Central American groups affected by the legislation. ~~In addition,~~ Since last fall, Congressmen Gutierrez and Becerra have ~~advocated~~ strongly ~~for~~ amnesty for Salvadorans and Guatemalans (equivalent to that received by the Nicaraguans and Cubans). Also, Congressman Gutierrez has introduced a bill that would give amnesty to Salvadorans, Guatemalans, Haitians and Hondurans. We have consistently taken the position that Hondurans are not similarly situated to the Central American groups covered by NACARA, and thus have opposed special relief for this group.

no underline

supported

Talking Points

- I share your concern about the disparities in treatment in NACARA. As I indicated in my signing statement, we are seeking to minimize these disparities in the implementation process.

- In this regard, the Attorney General has authorized a new administrative procedure for adjudicating the cases of Salvadorans, Guatemalans, ~~and Eastern Europeans~~ covered by NACARA. This procedure will empower INS asylum officers to decide the suspension claims of these individuals ~~(in addition to the review currently available by immigration judges)~~. This modified procedure will be less adversarial than immigration court and will ~~thus~~ lessen the need for representation by an attorney, thus reducing the cost.

and

no underlining

-- not just immigration judges --

- Also, the INS will issue a regulation that codifies existing case law on ~~adjudication of~~ the "extreme hardship" standard to ensure that there is fair and consistent interpretation of ~~the~~ this ~~case law as it applies~~ standard to ~~this class of~~ all applicants.

- We expect that these changes will result in a generous approval rate.

- I am generally supportive of efforts to achieve parity among similarly situated groups, ~~however, I~~ but I would have to review any proposed legislation carefully before deciding whether ~~to~~ I could support it.

State & local law enforcement performing immigration functions

Background

The 1996 Immigration Act permits the Attorney General to delegate certain immigration functions to state or local law enforcement officers. The immigrant advocacy community is very concerned about this level of cooperation between the INS and local law enforcement. They fear that this delegation will lead to violations of civil and constitutional rights on the part of insufficiently trained and perhaps wrongly motivated local police. Advocates are also concerned that this delegation will make immigrants fearful of cooperation with local police departments on other law enforcement matters.

Last year, the Attorney General agreed to conduct a one-year pilot project to implement this provision in Salt Lake City, Utah. After negotiations among the Department of Justice (including INS, the Civil Rights Division and the Community Relations Service) and the local police department/~~local police~~ and community representatives, an MOU was prepared and is ready to be executed by the INS and the local mayor, pending city council approval. ~~A companion MOU between INS and Salt Lake County is being negotiated, and is tentatively scheduled for signature on the same day.~~

The Salt Lake City MOU allows a small group of selected, trained, and supervised police officers to conduct immigration-related questioning and arrests after a lawful arrest has been made on state criminal grounds or repeat municipal offenses. After the pilot is completed and evaluated, the INS will propose a plan for full implementation of this provision and publish this plan in the Federal Register for comment.

Talking points

- The Department of Justice is taking careful steps to implement this provision of the 1996 Act.
- As in other areas, we want to promote the use of tools that assist local law enforcement in doing their jobs effectively, while maintaining vigilance in protecting people's civil rights.
- The Attorney General will initiate a pilot project to implement this provision in Salt Lake City. The development of this pilot was done in conjunction with the local police department, community advocates, and civil rights groups. We hope that the pilot will assist us in identifying how best to implement this provision, consistent with protecting the civil rights of those affected.
- I welcome your input throughout this process.

DRAFT #2 - INS STATEMENT

STATEMENT BY THE PRESIDENT ON 1998 APPROPRIATIONS

"Five years ago, we began an effort to revitalize the INS by providing the resources and commitment to fulfill our responsibilities. During this period, INS funding has grown 153 percent. Our borders have been greatly strengthened through the use of added personnel and better technology. In addition, workplace enforcement has gotten tougher, and criminal and other illegal aliens have been deported in record numbers. By year's end, INS will surpass my goal of 7,000 Border Patrol agents in FY 1998 —representing a 99 percent increase over FY 1993. Also, we have worked to improve and tighten the naturalization process for qualified applicants and made needed reforms to our asylum system for refugees fleeing persecution.

"Today's announcement represents continuing wise use of the additional resources requested by me and provided by the Congress. And it represents my Administration's continuing commitment to an immigration policy that recognizes the value of legal immigration while strengthening our efforts to restrict illegal immigration. "

"I commend the men and women of the INS for their dedication to implementing the nation's immigration policies in a firm and fair way."

-30-30-30-

BACKGROUNDER

12/23/97

The Year in Review
Highlights of 1997

The Immigration and Naturalization Service (INS) has made great strides in 1997 in both enforcing the nation's immigration laws and administering immigration benefits to qualified applicants. During a time of unprecedented growth, and with the help of Congress, the agency has continued to move forward with its key priorities. Progress in these and other areas is outlined below.

I. Border Enforcement and Facilitation

INS made significant strides and achieved important results during 1997 in its comprehensive border management strategy, which seeks to improve the quality of life in border communities by curbing illegal immigration and facilitating legal traffic across the border with Mexico. By putting Operation Rio Grande into place in South Texas, INS has strengthened enforcement in all four major corridors of illegal border crossings. As part of this effort:

- **Operation Rio Grande Launched.** In August 1997, INS launched Operation Rio Grande to gain control of the border in South Texas and New Mexico. The next step in INS' multi-year, comprehensive Southwest border enforcement strategy, Operation Rio Grande builds on the progress achieved by Operations Hold the Line, Safeguard and Gatekeeper. Phase I of the operation began in Brownsville and included an immediate deployment of additional Border Patrol agents and Immigration Inspectors and a major infusion of improved equipment and technology. Early results show that apprehensions in the McAllen sector have declined by roughly 29 percent from last year, accompanied by significant decreases in criminal activity.
- **San Diego Apprehensions hit 17-year low.** Border Patrol apprehensions of illegal aliens crossing the border reached a 17-year low in the San Diego sector, underscoring the success of Operation Gatekeeper, which completed its third year of operation. Fiscal 1997 apprehensions in the San Diego sector declined more than 40 percent from fiscal 1996 and nearly 50 percent from fiscal 1995. In October, Operation Gatekeeper began its third phase with an eastward expansion into California's Imperial Valley.
- **Border Patrol Expanded.** INS expanded the number of Border Patrol agents on duty, adding 985 officers for a year-end total of 6,863, an increase of 17 percent from fiscal 1996 and an increase of 84 percent over the past four years. To help identify and intercept repeat illegal border crossers, INS also deployed 316 IDENT terminals (105 percent of the agency's goal) at Border Patrol stations, district offices and ports of entry.

II. Removal of Deportable and Inadmissible Aliens

- **Record Removals.** INS removed a record number of criminal and other illegal aliens in fiscal 1997. The agency removed 111,794 criminal and other illegal aliens, exceeding its goal of 93,000 removals, by 20 percent.
- **Increased Focus on Criminal Alien Removals.** The agency increased its removals of criminal aliens by 35 percent over fiscal 1996, for a total of 50,165.
- **Expanded IHP.** INS removed 14,851 criminal aliens through the Institutional Hearing Program (IHP) by identifying and processing deportable inmates prior to their release from federal, state, and local institutions. Through the IHP, the Service removed 44 percent more aliens overall than in fiscal 1996 and increased IHP removals from Federal institutions by 70 percent.

III. New Law Implementation

In fiscal 1997, INS successfully implemented the major provisions of a sweeping new immigration law, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). These provisions include sections related to: revising refugee, parole and asylum procedures; reducing employment of unauthorized workers; and developing and testing status verification pilot projects. As part of this implementation, INS:

- Trained more than 16,000 employees in all provisions of the new law;
- Produced new regulations to 60 different IIRIRA sections;
- Worked with Congress and nongovernmental organizations to ensure that various components of the law were implemented as smoothly as possible, and continued to work with them in reviewing the need for possible modifications to the new law; and
- Implemented provisions related to expedited removal for aliens arriving in the United States either without valid entry documents or attempting entry by fraud.

IV. Naturalization

INS made critical improvements to the naturalization process in fiscal 1997 by adopting several quality assurance procedures and bringing state-of-the-art technological changes to the citizenship program. These improvements will help guarantee the integrity of the program, improve customer service, and reduce the backlog of pending cases.

- **Record Number of Applications.** Received more than 1.6 million applications for naturalization—a 34 percent increase over fiscal 1996. INS completed processing of 700,000 applications —the largest yearly total with the exception of 1996—and swore in 569,822 new American citizens.
- **Formed New Division.** Formed a separate division, the Executive Office of Naturalization Operations, to handle naturalizations. Since May 1997, the office has redesigned the naturalization process to guarantee integrity, incorporate state-of-the-art technology, and provide improved customer service.
- **New Fingerprint System.** Successfully piloted a computerized fingerprint tracking system and began implementing the Machine Readable Data (MRD) program in all

four service centers. In addition, the agency reduced the average turn-around time from the FBI for MRD-processed fingerprints associated with naturalization applications to 14 days.

V. Protection of Individual Rights

- **New juvenile detention standards.** INS implemented a new, comprehensive juvenile alien program in April 1997, providing national standards to ensure the safety and welfare of unaccompanied minors who are in the United States illegally.
- **New escort policy.** INS has developed a new escort policy to ensure that all criminal aliens who represent a risk to the public safety are escorted on repatriation flights. INS screens every alien deported on a case-by-case basis, and escorts any person who may be a threat to themselves or others.
- **Citizens' Advisory Panel and action plan.** INS has adopted many of the CAP recommendations over the course of the last two years. The agency has developed a formal action plan that outlines additional steps and incorporates activities currently being implemented and those in the planning stages. The action plan includes an improved complaint procedures and will bolster professionalism by working with INS managers and bargaining units to establish more uniform standards; expand interaction and communication between the agency and community groups and make information about INS policies and standards more readily available to the public thorough these groups; and improve and expand training for INS employees.

V. Anti-smuggling, Anti-terrorism and Overseas Deterrence

- **Anti-smuggling.** INS achieved impressive results in connection with major smuggling cases. Examples include a multi-regional/international investigation resulting in the dismantling of an alien smuggling and exploitation ring in New York City involving deaf Mexicans. In addition, INS sponsored a national demonstration project investigation linking anti-smuggling efforts to worksite enforcement and participated in the first joint INS/FBI task force investigating alien smuggling.
- **Operation Global Reach.** In an effort to deter global migrant trafficking, INS opened 13 new overseas offices and assigned 45 additional officers overseas as a part of Operation Global Reach, a new effort that is devoted to using overseas enforcement to prevent improper entry and interrupt alien smuggling networks. Operation Global Reach was announced in June 1997.
- **Intergovernmental Cooperation.** INS increased its interagency and international cooperation on enforcement issues with officials from Mexico and Canada and enhanced training of foreign law enforcement and immigration officials.

VI. Worksite Enforcement

- **Largest Settlement.** INS reached the largest worksite settlement ever against a Texas restaurant chain, which agreed to pay a $1.75 million fine in August 1997 for hiring and employing illegal aliens.

- **Exceeded Case Completion Goals.** The agency exceeded its goal for both criminal and administrative case completions, by 14 percent and nine percent, respectively. INS completed 4,668 lead-driven administrative cases in fiscal 1997, exceeding its fiscal 1996 completions by 13 percent. Criminal cases presented to the U.S. Attorney's office increased by 46 percent from fiscal 1996, for a total of 129 in fiscal 1997.
- **Increased Fines.** INS increased fines levied against employers for "substantive violations" to 55 percent of total fines in fiscal 1997, up from 39 percent in fiscal 1996.
- **Unauthorized Workers.** INS identified 33,951 jobs previously held by unauthorized workers. The agency reached agreements with three states—Virginia, California and Florida—to share information about job openings created as a result of worksite enforcement operations to help place legal workers through state-run replacement worker programs.
- **New Pilot Programs.** INS began three new pilot programs, two of which are joint efforts with the Social Security Administration, to test systems designed to quickly and accurately verify whether new employees are legally eligible to work in the United States. INS began seeking employers to participate in the programs in September 1997.

VII. Improvements to INS Infrastructure, Workforce Professionalism and Customer Service

- **Hiring Goals Met.** INS increased its employee ranks by more than 2,500 in fiscal 1997, an increase of 114 percent over fiscal year 1996. The Border Patrol met 100 percent of all officer hiring goals. Over the past two fiscal years, INS has experienced tremendous growth in its officer corps, with an increase of 83 percent in detention enforcement officers, a 40 percent gain in Border Patrol agents, a 30 percent gain in inspectors, and a 25 percent gain in special agents.
- **Training.** INS enrolled more than 3,440 officers in basic law enforcement training and 2,050 graduated by the end of FY97. Another 1,784 officers received advanced training.
- **Competency-Based Promotional Assessments.** The agency completed administration of the new competency-based assessments for promotion to Border Patrol managerial positions, with 2,450 promotional candidates currently in the database. This is the first time a government agency has ever used a competency-based assessment mechanism for determining promotions (previously time-in-grade). Used as a model for other agencies.
- **Equipment.** Spent $46.6 million to replace over-age and over-mileage Service vehicles. In addition, INS awarded a contract to McDonnell Douglas Helicopter Systems permitting an estimated acquisition of 45 helicopters over a five-year period. By the end of FY97, funding was provided to purchase a total of seven helicopters to be delivered in March 1998.
- **Customer Service.** INS opened a prototype National Customer Service Center, with telephone coverage provided at 22 pilot sites. Since the pilot began, INS has

increased its call-answering capability by over 100,000 calls per month and reduced the average time on hold to just under five minutes.

VIII. Improved Community Outreach

- **Improved Community Relations.** INS made great strides in fiscal 1997 to expand its community relations activities. The community relations officer (CRO) position was created as a focal point for identifying and resolving immigration-related community issues and concerns, and for educating the public on new immigration laws and regulations. By the end of the fiscal year, seven officers were on board in key districts and sectors, with another three CRO positions allocated Servicewide.

– INS –

Bring

week of March 16

Bob Bach

INS working group

lawenf, expand — need to be on the same page.

(1) Set up mtg w/ Justice & State next week
re: visa waiver pilot programs.
Expires on April 30th
Could have legislation before then.

HR 2578
Smith's bill.
We like it.
2 yr. extension.

(2) § 343
Health care workers
INS/Justice
Where is the INS reg (?)
Commerce / OSTP / HHS / Labor / State / USTR / VA
mtg. to resolve

(3) Guestworker program
USDA letter
we've had for awhile; hasn't gone out.

(4) EK – ~~Tues. conf.~~ call (to include VP)
~~w/ high-tech~~ & industry.

(5) Copy of Feinstein/Kennedy bill
Abraham/Drier bill

(6) Peter – Reyes being briefed
Brief advocate community after March 31st (?) > Maria (?)

(7) Call Bob re: changes to Booz report
Chapter 3 (a) week on how change will address problem (b) move in the schematic

face to face — Bruce Morrison
Warren Leiden
Michael Teitelbaum

Conference call on rest

I-9

Labor always fine w/proposal
I-9 function as an employment standard!

Advocates + some parts of Labor
that Labor touching function taints their ability to gain the trust of workers
vulnerable to exploitation

Recomm. first made in 1990 (GAO report)

Automation will make this function go away

Discrim issues will come up and we will have to face that

DOL authority to sanction employers — not exclusive authority

DOL will not make referrals
but will tell INS who they sanction
(but not the other thousands that they check)

Sharing info w/ INS.

Civil fines

Appeal process (?)

~~DOL doesn't care if appeals of their process goes to Justice.~~

Resources (?)

~~Substantial addtl work that comes through w/sanction & penalty assessment.~~

A lot of work comes @ ~~[illegible]~~ appeals.

Resources tied to appeals.

Q of where appeals go:

① who adjudicates now for INS.

②

At Labor, appeals done @ regional level.

Appeals by AJs

① perm labor cert for emp. based immig

② H1B

H2B

admissability

6 visa programs

Appeals on application end
permanent programs
H2A
H2B
3,000 denials/year-
Most don't get appealed

Why not (?)

- Regional
- People making decisions are in the regions

Decisions build back into certification process.

(Cert. in one agency
Appeals in another)

May be more of a transition problem than a permanent problem

DOL w/out (necessarily) an institutional opposition

Appeals

strongly opposed to moving adjud. function out of Labor.

May not need a 3-step process, but need a <u>real labor market test</u>.

U.S. Department of Labor

Office of the Assistant
Secretary for Policy
Washington, D.C. 20210

January 30, 1998

BACKGROUND PAPER ON IMMIGRATION

This paper uses data from the INS' 1996 Statistical Yearbook to illustrate the scope of all legal migration to the U.S. Then, each of the employment-based categories for which the Department of Labor has programmatic responsibilities will be described and quantified.

Legal migration can be broken into two main categories -- immigrants and nonimmigrants. Immigrants are those people who are allowed to stay in this country indefinitely. Immigrants are granted lawful permanent residence, and are eligible for eventual citizenship. Nearly two-thirds (64.9%) of the 915,900 people granted lawful permanent residence in FY 96 were admitted under family reunification classes (relatives of U.S. citizens or legal permanent residents). Other major categories of immigrants in FY 96 were refugees and asylees (14.0%) and employment-based (12.8%). (See Table 1.)

The second category of migrants are referred to as nonimmigrants. These are aliens admitted into the country for a specific purpose and temporary period. Of the 24.8 million nonimmigrants who came to the U.S. in FY 96, over three-fourths (76.9%) entered as visitors for pleasure (tourists). The next largest category of nonimmigrants, visitors for business, accounted for 15.2% of the FY 96 total. Temporary worker and trainee categories made up less than 1% (227,440) of nonimmigrant admissions. (See Table 2.) (Note: INS data on nonimmigrants counts entries, not visas. Many classes of nonimmigrants include persons, such as students, who enter the U.S. numerous times during the year.)

Employment-based Immigration

The employment-based immigration system in the U.S. is employer-driven. An employer seeking to sponsor an alien for lawful permanent residence must petition to fill a specific job. Employment-based immigration classes accounted for 12.8% of FY 96 immigration. Of these 117,098[1] persons, less than half (51,224) were principals, and the remainder their spouses and children. There is an annual limit of 140,000 employment-based immigration visas set by law. Employment-based immigration is broken into five preference categories:

1st: Priority Workers: aliens with extraordinary ability, outstanding professors or researchers, multinational executives or managers. NOT subjected to labor market testing, i.e. these are workers considered so valuable that there is no requirement that U.S. workers be unavailable for the positions.
FY 96 admissions: 11,047 principals

2nd: Members of the professions holding advanced degrees or persons of exceptional ability. Category subject to labor market test, whereby DOL must find that there

[1] Excludes 401 persons admitted under the Chinese Student Protection Act.

is no U.S. worker qualified and available for the job for which the alien is sought.

FY 96 admissions: 8,870 principals

3rd: Skilled workers and baccalaureate holders, as well as a limited number of unskilled workers. Category subject to labor market test.

FY 96 admissions: skilled 21,508 principals
unskilled 6,010 principals

The 4th and 5th preference categories are not subject to a labor market test. These categories comprise special immigrants (primarily religious ministers and religious workers) and investors for employment creation. FY 96 admissions for both categories totalled 8,780, including dependents. Table 3 presents a breakdown of employment-based immigration for FY 92 - 96.

Nonimmigrant Worker Categories

Applications for nonimmigrant worker visas, like applications for employment-based immigration, must be made by the employer wishing to hire a foreign worker. The underlying principals of temporary worker programs are that foreign workers should not undercut the wages and working conditions of U.S. workers, and that foreign workers should be protected from exploitative employment. Temporary workers and trainees accounted for 227,440 nonimmigrant admissions in FY 96[2]. Five DOL-administered temporary worker programs accounted for 170,484 of those admissions. (Again, the INS nonimmigrants data reflects admissions or border crossings, not individual workers.)

H-1A: Registered Nurses. A 5-year pilot program, which sunset in 1995, designed to alleviate the shortage of RN's in the late 1980's. Nurses were admitted for stays of up to five years based on an employer attestation. FY 96 admissions of 2,046 represent nurses re-entering the U.S. on currently outstanding or renewed visas.

H-1B: Workers with "specialty occupations" with a baccalaureate degree (or equivalent experience) entering for jobs requiring a baccalaureate degree. (Fashion models of distinguished merit are also part of H-1B.) Visas are issued for a 3-year period, and can be renewed for one additional 3-year period. A "labor condition application" must be filed with DOL, where they are checked for completeness and obvious inaccuracies before a visa can be issued. In this simple, one-page application, an employer must attest to four conditions: (1) the wage offer is the higher of (a) the wage paid to similarly employed, similarly qualified individuals, or (b) the locally prevailing wage for the occupation; (2) working conditions of the H-1B worker will not adversely affect those of similarly-employed U.S. workers; (3) the place of employment is not affected by a strike or lockout; and (4) the employer has given its employees notice of the filing of the attestation, either by posting it at the worksite or giving notice to the union representative, if there is one. There is no stipulation in the H-1B program that the employer engage in domestic recruitment.

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[2] Excludes workers (and their dependents) admitted under NAFTA.

The H-1 category is often used by employers to screen workers who they might later sponsor for permanent labor certification. In FY 96, about half (48%) of the skilled workers granted permanent labor certification through the 2nd and 3rd preference categories were already working in the country with H-1 visas. (See Chart 1.)

The H-1B program, in effect since FY 92, is capped at 65,000 new visas annually (principals only). The cap was reached for the first time in FY 97. Employers often file multiple labor condition applications and offer several positions on each application, just in case they develop a need for workers. Therefore, the DOL processes many more applications (180,739 in FY 97, representing over 400,000 positions), than the INS issues visas. Moreover, because many H-1B workers enter the U.S. multiple times throughout the year, INS admissions data are not useful in counting either new H-1B's or the stock of H-1B's in the country at any given time. (The visa allows for stays of up to six years.) The INS reports 144,458 H-1B admissions in FY 96.

H-2A: Agricultural "guestworkers" are admitted on H-2A visas for temporary jobs. In order to be allowed H-2A workers, an employer must prove to the DOL that (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers. Employers are further required to provide free housing to workers outside the commuting area; reimburse workers inbound transportation if they complete half of the contract, outbound also if they complete the contract; guarantee 3/4 of the hours of the contract; and hire any qualified U.S. worker who applies during the first half of the work contract.

Largely because of the housing requirement, the H-2A program is used primarily in the East Coast. Western growers rely more heavily on illegal foreign workers. There is no cap on the number of H-2A visas granted -- in FY 96, H-2A admissions totaled 9,635. There were 1,930 new applications made to DOL in FY 96 -- each application petitions for multiple workers.

H-2B: Temporary nonagricultural workers, such as crab pickers and fishery workers. Limited by law to 66,000 new visas annually, the H-2B visa category accounted for 14,345 entries in FY 96. Like the H-2A program, each application covers multiple workers. In FY 96, the DOL processed 2,100 new applications.

D-1: Crewmembers to perform longshore work at U.S. ports. Generally such work is prohibited, however, one exception requires an employer to file an attestation with the DOL stating that it is the prevailing practice for the activity at that port, that there is no strike or lockout at the place of employment, and that notice has been given to U.S. workers or their representatives. In FY 96, the Department received 59 applications, all filed by Japanese and Korean shipbuilders.

TABLE 1. IMMIGRATION, BY ENTRY CLASS: FISCAL YEARS 1991-1996
(Numbers in thousands)

	1991	1992	1993	1994	1995	1996	1996, in percents
1) Immediate relatives of U.S. citizens	237.1	235.5	255.1	249.8	220.360	300.430	32.8
2) Family preferences	216.1	213.1	226.8	212.0	238.122	294.174	32.1
3) Employment preferences	59.5	116.2	147.0	123.3	85.336	117.499	12.8
4) IRCA legalization	1123.2	163.3	24.3	6.0	4.267	4.635	0.5
Residents since 1982	(214.0)	(47.0)	(18.7)	(4.4)	(3.124)	(3.286)	(0.4)
Agricultural workers	(909.2)	(116.4)	(5.6)	(1.6)	(1.143)	(1.349)	(0.1)
5) Nonpreference	12.3	1.6	0.0	-	-	-	-
6) Refugees & Asylees	139.1	117.0	127.3	121.4	114.664	128.565	14.0
7) Diversity	-	33.9	33.5	41.1	47.245	58.790	6.4
8) Legalization dependents	-	52.3	55.3	34.1	.277	.184	0.0
9) Others	39.9	41.1	35.0	16.8	10.190	11.623	1.3
TOTAL	1,827	974.0	904.3	804.4	720.461	915,900	100.0
TOTAL, NON-LEGALIZATION	704.0	810.6	880.0	798.4	716.194	911,265	NA

Notes: Figures may not add to totals due to rounding.

With the exception of immediate relatives of U.S. citizens, immigrants in a class of admission include principal beneficiaries, i.e., those aliens who directly qualify for the class of admission under U.S. immigration laws, and derivative beneficiaries, i.e., the spouses and unmarried children of principal immigrants.

Brief descriptions of the entry classes:

1) Numerically unrestricted immigrants comprising spouses, unmarried minor children, and orphans adopted by U.S. citizens as well as parents of adult U.S. citizens.

2) Numerically restricted family-sponsored immigrants comprise the following four preference classes:
1. Unmarried adult sons and daughters of U.S. citizens
2. Spouses and unmarried sons and daughters of U.S. permanent resident aliens
3. Married sons and daughters of U.S. citizens
4. Brothers and sisters of adult U.S. citizens

3) Includes immigrants issued employment-based preference visas since FY 1992, as well as immigrants issued third preference (members of the professions or persons of exceptional ability in the sciences and arts), sixth preference (skilled and unskilled workers in short supply), and special immigrant visas prior to fiscal year 1992.

4) Under the 1986 Immigration Reform and Control Act, certain persons who had been in the United States illegally could apply for legal permanent residence.

5) Under the 1986 Immigration Reform and Control Act, immigrants from certain countries determined to have been adversely affected by the 1965 immigration reform were admitted under a special "nonpreference" category.

6) The distinction between refugees and asylees is the location of the alien at the time of application: asylees are already in the United States or at a port of entry.

7) Under the Immigration Act of 1990, a 3-year program (1992-94) authorized 40,000 visas annually for natives of the 34 countries determined to have been adversely affected by the 1965 immigration reform. Another diversity program

of 55,000 visas annually began in fiscal year 1995 aimed at increasing flows from specific countries and regions of the world based on prior low levels of immigrant admissions.

8) Under the Immigration Act of 1990, a 3-year program (1992-94) provided for a maximum of 55,000 visas annually for the spouses and children of legalized aliens.

9) Includes groups such as persons receiving suspension of deportation, Soviet and Indochinese parolees, and registered nurses.

Source: U.S. Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*, Table 4.

TABLE 2. NONIMMIGRANTS ADMITTED, BY CLASS OF ADMISSION: FISCAL YEARS 1994-96

Nonimmigrant class	Admissions 1994	1995	1996
Foreign gov't officials, spouses, & children (A)	105,299	103,606	118,157
Temporary visitors for business (B-1)	3,164,099	3,275,334	3,770,326
Temporary visitor for pleasure (B-2)	17,154,834	17,611,533	19,109,944
Transit aliens (C)	330,936	320,333	325,538
Students (F-1)	386,157	356,585	418,117
Vocational students (M-1)	7,844	7,635	8,786
Spouses and children of students (F-2 and M-2)	33,720	31,260	32,485
Int'l representatives, spouses and children (G)	74,722	71,982	79,528
Temporary workers			
• Registered nurses (H-1A)	6,106	6,512	2,046
• Specialty occupations: professionals (H-1B)	105,899	117,574	144,458
• Temporary agricultural workers (H-2A)	13,185	11,394	9,635
• Temporary nonagricultural workers (H-2B)	15,687	14,193	14,345
• Industrial trainees (H-3)	3,075	2,787	2,986
• Professional workers: U.S.-Canada FTA (TC)	5,031	X	X
Professional workers: NAFTA (TN)	19,806	23,904	26,987
• Workers with extraordinary ability (O-1)	5,029	5,974	7,177
• Workers accompanying O-1 nonimmigrants (O-2)	1,455	1,813	2,112
• Athletes and entertainers (P-1, P-2, P-3)	28,055	28,372	33,633
• International cultural exchange (Q-1)	1,546	1,399	2,056
• Nonprofit religious organization workers (R-1)	5,951	6,742	8,992
• Intracompany transferees (L-1)	98,189	112,124	140,457
• Treaty traders and investors & families (E)	141,030	131,777	138,568
Families of temp. workers (H-4,O-3,P-4,R-2)	43,207	46,380	53,572
Families of CFTA & NAFTA professionals (TB & TD)	6,033	7,202	7,694
Spouses & children of intracompany transferees (L-2)	56,048	61,621	73,305
Foreign media representatives and dependents (I)	27,691	24,220	33,596
Exchange visitors (J-1)	216,610	201,095	215,475
Spouses and children of exchange visitors (J-2)	42,561	39,269	41,250
Fiances(ees) of U.S. citizens (K-1)	8,124	7,793	9,011
Children of fiances(ees) (K-2)	764	768	1,012
NATO officials, spouses and children (N-1 - N-7)	9,135	8,579	10,945
Unknown	878	779	310
TOTAL	22,118,706	22,640,539	24,842,503

Note: These numbers include multiple entries by the same person over time. Consequently, they should not be interpreted as the number of individual nonimmigrants entering in a particular fiscal year.

x Not applicable

Source: United States Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*, Table 39.

TABLE 3. EMPLOYMENT-BASED IMMIGRATION, BY PREFERENCE: FISCAL YEARS 1992-96

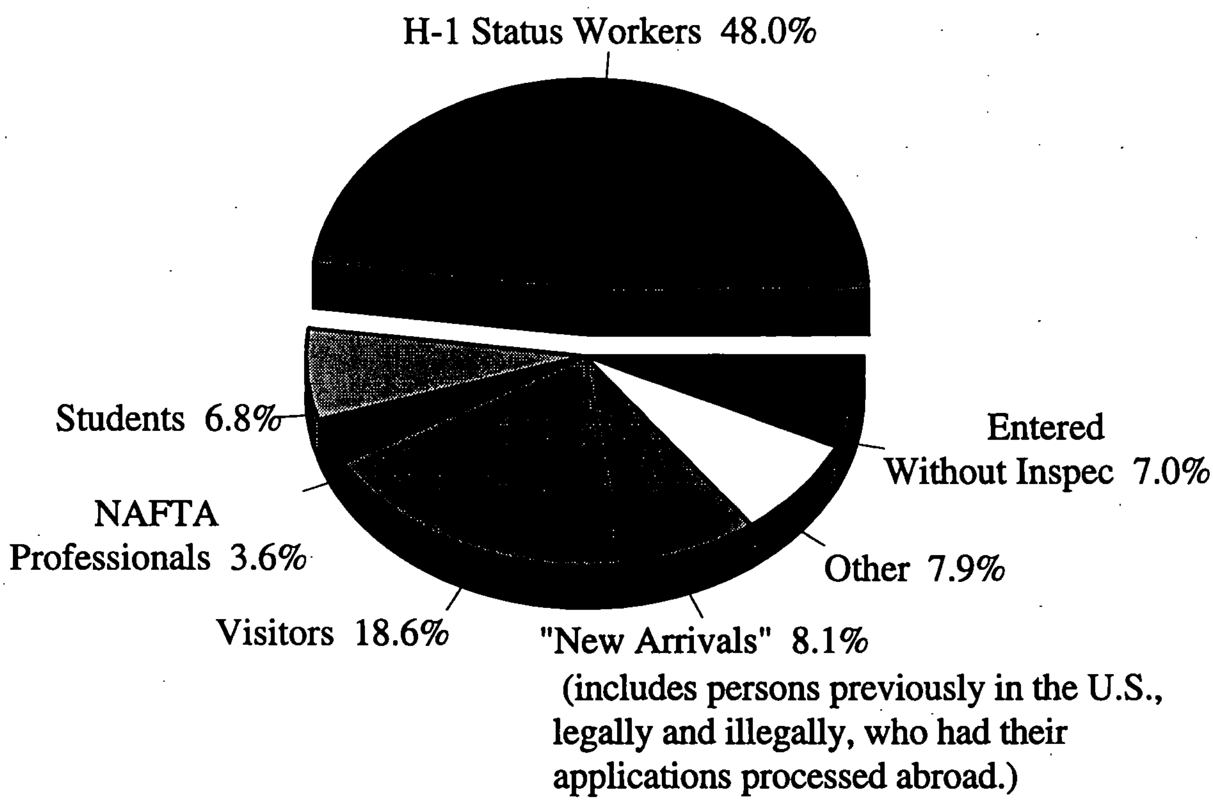
Employment-Based Preference	Fiscal Year 1992	1993	1994	1995	1996
Total, Employment 1st preference	5,456	21,114	21,053	17,339	27,501
Aliens with extraordinary ability	261	1,259	1,313	1,194	2,060
Outstanding professors or researchers	319	1,676	1,809	1,617	2,633
Multinational executives or managers	1,446	5,088	4,975	3,922	6,354
Spouses and children of 1st pref.	3,430	13,091	12,956	10,606	16,454
Total, Employment 2nd preference	58,401	29,468	14,432	10,475	18,462
Members of the professions holding advanced degrees or persons of exceptional ability	27,503	13,801	6,807	4,952	8,870
Spouses and children of 2nd pref.	30,898	15,667	7,625	5,523	9,592
Total, Employment 3rd preference	47,568	87,689	76,956	50,245	62,756
Skilled workers	12,257	12,813	10,139	9,094	16,001
Baccalaureate holders	4,192	9,560	7,732	5,792	5,507
Spouse and child of the above	22,187	28,434	28,398	23,262	28,998
Chinese Student Protection Act	---	26,915	21,297	4,213	401
Principals	---	26,852	21,008	4,134	373
Spouses and children	---	63	289	79	28
Other workers (unskilled workers)	4,017	4,405	4,136	3,636	6,010
Spouse & child of unskilled worker	4,915	5,562	5,254	4,248	5,839
Total, Employment 4th preference	4,063	8,158	10,406	6,737	7,844
Special immigrants	1,768	3,576	4,647	2,929	3,494
Spouse and child of 4th preference	2,295	4,582	5,759	3,808	4,350
Total, Employment 5th preference	59	583	444	540	936
Employment creation, not targeted area	21	159	106	95	143
Spouses and children	32	311	190	190	301
Employment creation, targeted area	3	37	51	79	152
Spouses and children	3	76	97	176	340
Total, Pre-1992 3rd and 6th preference	651	---	---	---	---
Principals	227	---	---	---	---
Spouses and children	424	---	---	---	---
Excluding Chinese Student Protection Act:					
Total, employment pref., principals	52,014	52,374	41,715	33,310	51,224
Percent of all immigration	5.3	5.8	5.2	4.6	5.6
Total, employment pref., dependents	64,184	67,723	60,279	47,813	65,874
Percent of all immigration	6.6	7.5	7.5	6.6	7.2
TOTAL, employment preferences	116,198	120,097	101,994	81,123	117,098
Percent of all immigration	11.9	13.3	12.7	11.3	12.8
Including Chinese Student Protection Act:					
GRAND TOTAL, employment preferences	116,198	147,012	123,291	85,336	117,499

Notes: Percentages may not add to totals due to rounding.

The number of admissions in a given year may exceed the numerical ceiling on visa issuances as immigrant visas may be used up to 4 months after issuance.

Source: U.S. Department of Justice, *1996 Statistical Yearbook of the Immigration and Naturalization Service*, Table 5.

Chart 1: About Half of Employment-Based Immigrants* Admitted Through H-1 Programs



Source: U.S. Immigration and Naturalization Service

* Admissions for FY 1996, includes 2nd and 3rd Preference Principals only. Excludes Chinese Student Protection Act and Unskilled Workers.

Labor Condition Application for H-1B Nonimmigrants

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

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Employer's Telephone No.
( )

4. Employer's FAX No.
( )

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

OMB Approval No.: 1205-0310
Expiration Date: 11-30-97

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

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

(a) Three-digit Occupational Group Code (From Appendix 2): ________ (b) Job Title (Check Box if Part-Time): ________________ ☐

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Ser comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to th Office of U.S. Employment Service, Department of Labor, Room N-4470 and/or the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenu N.W., Washington, DC 20210. (1205-0310).

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix 2 which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and its Source. Enter the prevailing wage rate in terms of the the amount per hour, week, year, etc. If the employer is replying on a wage determination obtained from a State Employment Security Agency, check the box marked "SESA." If the employer is using another source, check the 'Other" box and specify such other source: i.e., published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed, e.g., "collective bargaining agreement," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area." (Only 1 box can be checked per line item).

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.731 through 655.734 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lo ut or work stoppage in the course of a labor dispute in the named occupation at the worksite. If such a strike or lockout occurs after this application is submitted, the employer must notify ETA within 3 days of the occurrence of such a strike or lockout and the application may not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may ı lt in additional penalties.

U.S. Department of Justice
Immigration and Naturalization Service

Office of Programs

425 I Street, N.W.
Washington, D.C. 20536

MEMORANDUM DEC 19 1997

TO: John Morrall
Branch Chief
Office of Management and Budget

Debra Bond
Policy Analyst
Office of Management and Budget

FROM: Paul W. Virtue
Executive Associate Commissioner, Programs
Immigration and Naturalization Service

SUBJECT: Delegation of the Attorney General's Obligations to Enforce the Employer Sanctions Laws

In a meeting held on December 15, 1997 at the Office of Management and Budget (OMB) to discuss the Immigration and Naturalization Service's (Service) document reduction proposed rule, a question was raised as to whether the Attorney General may delegate her authority to enforce the employer sanctions laws under section 274A of the Immigration and Nationality Act (INA) to the Department of Labor (DOL). OMB approval of the proposed rule is being withheld until this question is resolved.

Under section 103(a)(6) of the INA, the Attorney General "is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service." With respect to the employer sanctions program, the INA charges the Attorney General with the duty to notify employers of violations of the employer sanctions laws and the power to impose civil money penalties for violations. See INA § 274A(e)(3). In addition, the INA requires the Attorney General to establish procedures "for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection." INA § 274A(e)(1)(D). It appears, therefore, that pursuant to section 103(a)(6) of the INA, the Attorney General may confer these powers and duties upon DOL if DOL so agrees.

At present, the Service and DOL are working under a Memorandum of Understanding (MOU) and are in the process of re-examining this MOU. The Service is committed to working with DOL over the next six months to reassess DOL's role in the employer sanctions program to better accomplish the goals of the program.

As you know, the Domestic Policy Council is reviewing the roles and responsibilities of various agencies in carrying out immigration enforcement. Any delegation of authority between agencies should be part of that discussion. We encourage you to wait for the completion of this process and its broader recommendations for conclusions about the delegation of specific authority.

INGRID M. SCHROEDER
02/26/98 11:08:21 AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:
Subject: Re: Immigration Working Group

Another topic for your ever growing list of items to discuss would be the reauthorization of the Visa Waiver Pilot Program which is set to expire (again!) at the end of April. This was a pain to get extended last September and will probably be difficult again. Several members on the Hill are proposing changes to the program which Justice disagrees with. State and Justice have not been working very well together on this one and I think we need to keep it on our radar screen.

Thanks

(+) visa waiver pilot program - Ingrid (?)

INGRID M. SCHROEDER
02/26/98 09:45:43 AM

Record Type: Record

To: Debra J. Bond/OMB/EOP, Daniel J. Chenok/OMB/EOP, Julie A. Fernandes/OPD/EOP, Steven M. Mertens/OMB/EOP

cc:
Subject: H-1B Visas

18 of 62 items CQ's WASHINGTON ALERT 02/26/98

LABOR: POSSIBILITY OF INCREASING VISAS FOR SKILLED TECHNICAL LABOR
Hill News Highlights
(NEWS 02/26/98; 47 lines)
Item Key: 10154
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---

LABOR: POSSIBILITY OF INCREASING VISAS FOR SKILLED TECHNICAL LABOR

By Rebecca Adams, CQ Staff Writer

Two senators are doing preliminary work on bills that would increase the number of H-1B temporary visas -- usually reserved for foreign workers with technical expertise -- but a Clinton administration official warned yesterday that is only a partial solution to America's need for skilled labor.

Sens. Spencer Abraham, R-Mich., and Dianne Feinstein, D-Calif., are working on bills that would lift the current 65,000 limit on H-1B visas. They discussed their plans yesterday with the Senate Judiciary Committee.

Abraham, chairman of a Senate panel on immigration, said the current limit of such visas could be reached by May, and that it may take that deadline "to gain enough appreciation for this issue."

H-1B visas are temporary permits that allow highly skilled foreign workers to stay up to six years. The business community has been raising concerns that it cannot find enough qualified applicants to fill technical jobs.

Michael Murray, a vice president for Microsoft Corporation, proposed raising the annual H-1B limit to 100,000 permits with minor annual increases, although he said technology firms would prefer abolishing the cap.

However, acting Assistant Secretary of Labor Raymond J. Uhalde countered that while the administration believes the visa program does need reform, removing the limit was not a possibility.

The first priority, he said, should be improved job training for Americans to ensure they gain the kind of work skills that industry needs. "Increased immigration can only be a very small part of the solution," he said.

Abraham said his bill probably would not raise the total number of temporary visas but would redistribute the types of temporary visas so that more H-1Bs are allowed.

Feinstein invited Uhalde and businesses to work with her to temporarily raise the cap but specifically target technical workers within that category. She said she was concerned that workers in other fields not experiencing shortages, such as lawyers, physical therapists, and nurses, can also apply for H-1B visas.

Public Charge draft guidance

cc Julie F
Steve Warnath
Rob Weiner
Emil Parker

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Route Slip

TO: JACK SMALLIGAN	Take necessary action	
NIKKI HIGHSMITH	Approval or signature	
JEFF FARKAS	Comment	
DEBRA BOND	Prepare reply	
JOE PIPAN	Discuss with me	
INGRID SCHROEDER	For your information	
	See remarks below	

From: Steve Mertens   Date: January 20, 1998

Remarks:

Attached is a copy of INS' draft policy guidance on "public charge" for your review and edit. This is the second piece of the INS commitment made to OMB last December and is supposed to reflect the INS/Food Stamp compromise.

INS has also shared this draft with Food Stamps and HHS and will be briefing immigration interest groups (including Bob Greenstein's group this afternoon -- but not sharing this internal draft).

INS has asked for any edits/revisions/comments OMB may have by **Friday, January 23 COB**. Please feel free to forward comments to me (54935) or directly to Barbara Strack at INS (514-3242). Any questions, please let me know. Thanks

now slower timetable

Attachment

c: Julie Fernandez

Option: Just say what can't do?

DRAFT
1/16/98

Public Charge: INA Sections 212(a)(4)
and 237(a)(5)

96 Act ***
HQ *******

All Regional Directors
All District Directors (Including Foreign)
All OICs (Including Foreign)
All Port Directors
All Service Center Directors
All Training Academies (Glynco and Artesia)
All Regional Counsels
All Asylum Directors

Office of Programs

This memorandum provides interim guidance concerning the Public Charge inadmissibility ground of section 212(a)(4) of the INA, the related deportable charge under section 237(a)(5) of the INA, and the impact on these subsections of the new enforceable Affidavit of Support prescribed by the new section 213A of the INA established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). While these new laws do not change the substance of public charge determinations, the renewed focus on aliens receiving public benefits makes it expedient to restate and clarify Service policy on this subject. The standards applied to public charge adjudications in deportation and admission/adjustment are significantly different and are addressed separately in this memorandum.

1. General

All arriving aliens remain inadmissible, and therefore subject to removal under the provisions of section 212(a)(4), if they are likely at any time to become public charges. IIRIRA amended section 212(a)(4) to require the Service to consider the alien's age, health, family status, assets, resources, and financial status, and education and skills when making a public charge inadmissibility determination. However, except for the creation of a new affidavit of support requirement, IIRIRA has not altered the standards the Service has traditionally used to determine the likelihood of an alien's becoming a public charge. Officers must, nevertheless, specifically consider each of these factors in making public charge determinations and specifically articulate consideration of them in every denial order.

In particular, the new law does not create any requirement that aliens repay benefits received in the past in order to avoid being found inadmissible or deportable on public charge grounds, nor has such a requirement existed in the past.

2. Public charge determinations - deportation

Section 237(a)(5) of the INA states that "[a]ny alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable." This section requires a two-step determination. First, the Service must determine whether the alien has become a public charge within five years after the date of entry. Second, if the alien has become a public charge, then the Service must determine whether the alien has demonstrated that the circumstances that caused the alien to become a public charge arose after the alien's entry into the United States. An alien who can make such a showing is not deportable as a public charge. With respect to whether an alien has become a public charge, the Board of Immigration Appeals (Board) has determined that the mere receipt of a public benefit by an alien does not make an alien a public charge for purposes of deportation under section 237(a)(5). Rather, in Matter of B, 3 I&N Dec. 323 (BIA 1948),[1] the Board established a strict three-part test to determine if an alien has become a public charge. In order for an alien to become a public charge under section 237(a)(5), the Service must conclude that:

3 factors for determining whether the alien is a public charge.

1.) The State or other governing body which provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the State must have a cause of action in contract against either the person taking advantage of the State services or other designated relatives or friends. **If there is no charge made, and if the State does not have a cause of action, the alien cannot be said to be a public charge.**

2.) **The authorities must make demand for payment of the charges** upon the persons made liable under State law.

3.) **There must be a failure to pay the charges.** If there is a failure to pay either because of a lack of demand or because the State authorities do not perform their duty to collect the charges, the alien cannot be considered a public charge.

The amendments to the INA in IIRIRA may over time effect the number of aliens who are deportable as public charges. Under the new INA section 213A, all immediate relative and family-based immigrants, and some employment based immigrants, are required to have a sponsor who signs an affidavit of support. Sponsors may be required to repay the government for any means-tested public benefits received by the immigrants they sponsor. If an immigrant receives means-tested public benefits and the sponsor fails to repay them, then the immigrant can become deportable as a public charge if this occurs within five years of entry. However, even in this case, the alien must be given an opportunity to prove that he or she became a public charge for causes that arose after entry. If the alien can make such a showing, he or she will not be deportable as a public charge.

3. Public charge determination - admission and adjustment of status

Under INA section 212(a)(4), an alien seeking admission to the United States or seeking to adjust status to that of an alien lawfully admitted for permanent residence is inadmissible if the alien, "at the time of admission or adjustment of status, is likely at any time to become a public charge." The determination of whether an alien is likely to become a public charge under section

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[1] While this decision concerned the public charge provision of the 1917 Act, the standard set forth continues to be valid under current law, which is substantially the same as the 1917 law. See Matter of L, 6 I&N Dec. 349 (BIA 1954), and Matter of Harutunian, 14 I&N Dec. 583 (R.C. 1974).

Standard for whether alien likely to become a public charge

212(a)(4) is quite different from the determination of whether an alien has become a public charge under section 237(a)(5). An alien receiving a benefit becomes a public charge if the program from which he or she receives assistance is specifically designed to support individuals unable to provide for themselves. Most significantly,[2] an alien may be likely to become a public charge even if the there is no charge for the service or benefit the alien is likely to receive and if reimbursement is not permitted.

The standard for adjudicating inadmissibility under section 212(a)(4) has been developed in several BIA decisions and an Attorney General decision and has been codified in the Service regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA). These decisions and regulations, and section 212(a)(4) itself, create a "totality of the circumstances" test.

In determining whether an alien is likely to become a public charge, Service officers should assess the financial responsibility of the alien by examining the "totality of the alien's circumstances *at the time of his or her application*. . . . The existence or absence of a particular factor *should never be the sole criterion* for determining if an alien is likely to become a public charge. The determination of financial responsibility *should be a prospective evaluation*" based on the alien's age, health, family status, assets, resources and financial status, among other factors.[3] In assessing the totality of the circumstances in a case, it should be noted that the changes in the laws relating to the eligibility of aliens for public benefits have reduced the likelihood that any particular alien will become a public charge because most aliens are now statutorily ineligible for many of the public benefits that could make them a public charge.

(?)

but we just said that no one factor makes a person a public charge

In addition, the Attorney General has ruled that "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of an emergency."[4]

Current receipt of benefits

If at the time of application for admission or adjustment an alien is receiving a public benefit that gives rise to public charge inadmissibility, as discussed below, then the alien is inadmissible. Such an alien may reapply for admission or adjustment after he or she stops receiving public benefits, and at that time should be treated as an alien who has received public benefits in the past.

But I thought that we earlier concluded that no factor alone ~~to~~ triggers this conclusion

2 Service ruling in Matter of Harutunian, pursuant to the standard in section 212(a)(4) --then 212(a)(15).

3 8 C.F.R. § 245a.4(b)(11)(iv)(B), and see INA § 212(a)(4)(B). The Federal Courts have also endorsed this "totality of the circumstances" test. See, e.g., Zambrano v. INS, 972 F.2d 1122 (9th Cir. 1992), *judgment vacated on other grounds, 509 U.S. 918 (1993)*.

4 Matter of Martinez-Lopez, 10 I&N 409, 421-422 (AG, Jan. 6, 1964).

Past receipt of public benefits

repetitive

Past receipt of public benefits will not automatically make an alien inadmissible as likely to become a public charge. Rather it is one factor of many to be considered in applying the totality of the circumstances test and it will not, by itself, render an alien inadmissible. In the case of an alien who has received public benefits in the past, a Service officer determining admissibility should **assess the totality of the alien's circumstances at the time of the application** for admission or adjustment and **make a forward-looking determination** regarding the likelihood that the alien will become a public charge after admission or adjustment. The "length of time an applicant has received public cash assistance is a significant factor."[5] The longer an alien has been receiving benefits, the stronger the implication that the alien is likely to become a public charge. The negative implication of past receipt of benefits, however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting. For instance, a work-authorized alien who has current full-time employment or has a job offer in the United and/or an Affidavit of Support should be found admissible despite past receipt of public benefits, unless there are other adverse factors in the case.

bad way of presenting example

Repayment of public benefits

As a general rule, **an alien is not required to repay public benefits received in the past in order to avoid being found inadmissible as likely to become a public charge. The Service does not have the authority to demand that aliens repay public benefits.** Inspectors and adjudicators should not request repayment or indicate that repayment is required in order to be found admissible to the United States.

Repayment is relevant to the public charge inadmissibility determination only in very limited circumstances. If at the time of application for admission or adjustment of status the alien has an outstanding public debt that would render the alien deportable on public charge grounds under section 237(a)(5) of the INA, then the alien is inadmissible as an alien likely to become a public charge because the alien is, in effect, a public charge and will continue to be so after admission. **Only a debt which satisfies the three-part test under section 237(a)(5) set forth above will render an alien a public charge upon admission.** If the debt is paid, then the alien will no longer be inadmissible based on the debt. However, the past receipt of public benefits and the failure to pay the debt until after the alien sought admission will still be factors in determining admissibility. While the Service may not demand that an alien repay a public debt which meets the three-part test, it may inform an alien that if the alien does not repay the debt, he or she will continue to be inadmissible to the United States. Adjudicators should make sure also to inform aliens that even if they pay the debt, they may still be determined to be inadmissible as an alien likely to become a public charge.

[5] 8 C.F.R. § 245a.2(k)(4).

4. Receipt of benefits by U.S. citizen children

The rule on receipt of benefits by U.S. citizen children was specifically addressed by the Service in a number of memoranda on the issue of public charge for aliens applying for legalization under section 245A of the INA. The Service's approach to the receipt of benefits by family members in the legalization context has been upheld in Federal Court and should govern the question for general public charge determinations as well.[6] The rule is well summarized in an April 21, 1988, memorandum from the Associate Commissioner for Examinations to the Regional Commissioners:

> [a]s a general rule, the receipt of . . . benefits by a member of the legalization applicant's family is not attributed to the applicant for purposes of determining the likelihood that the applicant will become a public charge. . . . If, however, the family is reliant on the . . . benefits as its sole means of support, the legalization applicant may be considered to have received public cash assistance. This determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.

This memorandum addressed the receipt of cash assistance under the Aid to Families with Dependent Children (AFDC) program, but the rule is applicable to any general cash assistance program, or receipt of Food Stamps or medical benefits by the U.S. citizen child of an alien.

5. Benefits that may and may not give rise to public charge determinations of inadmissibility or deportability.

The new laws have not changed the types of benefits that would cause an alien to be considered a public charge. Nevertheless, because of the complexity of the public benefits system, this issue requires some clarification. **The mere fact that an alien has been, is, or may become the recipient of services or benefits paid for in whole or in part from public funds does not necessarily establish that the alien is or may become a public charge within the meaning of INA § 212(a)(4).** The nature of the public program must be considered. An alien receiving a benefit becomes a public charge if the program from which he or she receives assistance is specifically designed to support individuals unable to provide for themselves.

By contrast, receipt of benefits under a program essentially directed at the general welfare of the public as a whole does not make an alien a public charge. What follows are examples of benefits that may and may not give rise to public charge inadmissibility. These lists should be used as guidance, since many benefits aliens might receive are not included. When an alien receives a benefit under a program not listed below, officers must make a determination as to whether or not it is the type of benefit that would render the alien a public charge.

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6 See Perales v. Reno, 48 F3d 1305 (2nd Cir. 1995).

Benefits that may give rise to a public charge determination

As indicated above, only benefits received under Federal, State, or local government programs designed to support individuals unable to provide for themselves may render an alien a public charge. Under recent legislation, Federally-funded programs listed below are not available to most aliens, and, States and local jurisdictions may also limit access to their programs of this type. Therefore, **a finding of public charge inadmissibility will be rare because of use of one of the following programs.** It is not possible to list all such programs here, but the following are examples of such programs.

1.) "Public cash assistance"[7] This includes such programs as:

- Supplemental Security Income under Title XVI of Social Security Act;
- Temporary Assistance for Needy Families (TANF) under part A of Title IV of the Social Security Act; and
- Federal, State, and local cash assistance programs of a similar nature.

2.) Certain non-cash benefits under programs in which eligibility for benefits, or the amount of such benefits, are determined on the basis of income, resources or financial need of the individual, household or family. This includes such programs as:

- Non-emergency medical care under Medicaid pursuant to Title XIX of the Social Security Act;
- The Food Stamp Program as defined in section 3(h) of the Food Stamp Act of 1977 (See special note on Food Stamps in section 5 below.); and
- Federal, State, and local non-cash assistance programs of a similar nature.

Benefits that do <u>not</u> give rise to a public charge determination

There are also many types of benefits and services paid for with public funds that an alien can receive without becoming a public charge. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, receiving emergency medical care, or earned social security payments would not make an alien inadmissible as a public charge, despite the use of public funds.

Again, it is not possible to list all the benefits an alien may receive that will **not** render him or her a public charge. Sections 422(b) and 423(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform), list many of the principal benefits that the Service has determined are in this category. Benefits that do **not** give rise to public charge inadmissibility include:

1.) Emergency medical assistance;
2.) Short term, non-cash, in-kind emergency disaster relief;

[7] As defined in Service regulations at 8 C.F.R. §§ 210.1(n), 245a.1(i), and 245.4(a)(10).

3.) Assistance or benefits under the National School Lunch Act and similar state and local programs;
4.) Assistance or benefits under the Child Nutrition Act of 1966 and similar state and local programs, including the Supplemental Nutrition Program for Women, Infants and Children (WIC) program;
5.) Public assistance for immunizations and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
6.) Payment for foster care and adoption assistance;
7.) Programs, services, or assistance specified by the Attorney General (such as soup kitchens, crisis counseling and intervention, and short-term shelter). (See attached Order of the Attorney General);
8.) Programs for student assistance under Titles IV, V, IX, and X of the Higher Education Assistance Act of 1965, and titles II, VII, and VIII of the Public Health Service Act;
9.) Benefits under the Head Start Act;
10.)Means-tested programs under the Elementary and Secondary Education Act of 1965; and
11.)Benefits under the Job Training Partnership Act.

An alien may receive these and similar benefits without risking a negative public charge determination. **Specifically, an alien currently receiving any of these benefits (including WIC) is eligible for admission and adjustment of status. Further, an alien need not withdraw from the program in order to be admissible or eligible for adjustment of status.** Past or current receipt of these benefits should not be considered in any way in determining whether an alien is likely to become a public charge or has become a public charge.

6. Food Stamps

The treatment of the receipt of Food Stamps requires special consideration because of past State Department policy and the unique nature of the Food Stamps program. Since Congress has greatly restricted the eligibility of aliens for Food Stamps in recent welfare and immigration legislation, the Service has concluded that, with three important qualifications, receipt of Food Stamps should be considered when determining issues of public charge.

The first qualification results from the fact that the Service does not have any prior published policy on use of Food Stamps and the public charge determination while the State Department Foreign Affairs Manual (FAM) has long stated that receipt (or potential receipt) of Food Stamps does not make a person inadmissible as likely to become a public charge.[8] While the Service is not legally bound by the statements in the FAM, because it is the only written guidance available on Food Stamps and public charge, the Service will, as a matter of prosecutorial discretion, apply the policy stated in this memorandum prospectively. **Therefore, Service officers shall not consider any receipt of Food Stamps prior to the date of issue of this memorandum when determining whether an alien is or is likely to become a public charge.** An alien cannot be

but after the date of this, can look to food stamps to determine whether a public charge?

[8] 9 FAM 40.41, n. 9.1.

considered a public charge or likely to become a public charge based on receipt of Food Stamps prior to the date of this memorandum.

The second qualification results from the unique nature of the Food Stamps program. While Food Stamps is a public benefit granted based on family or individual income and need, it differs from other welfare programs in two ways. First, Food Stamps is essentially supplemental in nature; total benefits cannot exceed 30 percent of the Federal poverty line. Second, the Food Stamp program, unlike many welfare programs, allows a person who is fully employed and essentially self-supporting to receive Food Stamps as a food and nutrition supplement. As a result, an alien who has a full-time job and is basically self-supporting may be receiving a small amount of Food Stamp benefits as a supplement. Under the totality of the circumstances test applied to determine whether an alien is likely to become a public charge, such an alien should **not** be determined likely to become a public charge, unless there are additional negative factors present. As a general rule the positive fact that the alien has full-time employment that provides the majority of his or her financial support outweighs the negative public charge implications of the receipt of a small amount of Food Stamps. **Therefore, an alien who is currently employed in a job that provides the majority of his or her income *is* eligible for admission and adjustment of status even if he or she is receiving a small amount of assistance from Food Stamps at the time of application.**

The final qualification relates to the receipt of Food Stamps by the U.S. citizen children of an alien. As discussed above, as a general rule, receipt of benefits by an alien's U.S. citizen children will not be automatically attributed to an alien parent and will not be considered when determining whether an alien is or is likely to become a public charge. Because Food Stamps benefits are by statute only supplemental, it is, as a matter of fact, nearly impossible for an alien and his or her family to rely on Food Stamps as their sole means of support. Therefore, receipt of Food Stamps by the U.S. citizen children of an alien shall not be considered when determining whether or not an alien is or is likely to become a public charge, unless the alien and his or her family are receiving other benefits and are subsisting solely on those public benefits. **An alien shall not be denied admission or adjustment of status even if his or her U.S. citizen child or children are receiving Food Stamps at the time of application.**

7. Affidavit of Support.

The most significant change to section 212(a)(4) of the INA is the creation of a new Affidavit of Support which imposes on the sponsor a legally enforceable support obligation. The Affidavit of Support requirement applies to all immediate relatives (including orphans), family-based immigrants and those employment-based immigrants who will work for a relative or for a firm in which a relative holds a 5 percent or more ownership interest. Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of the modified section 212(a)(4), respectively, unless the appropriate sponsor has completed and filed a new Affidavit of Support if the application for an immigrant visa or adjustment of status was submitted to the Government on or after December 19, 1997. **Note that this requirement applies to these aliens <u>even if</u>, under the factors codified in section 212(a)(4)(B), the examiner would ordinarily find that the alien is not likely to become a public charge.** There are exceptions from this requirement for qualified battered spouses and children and for qualified widow(er)s of citizens, *if* these aliens have filed visa petitions on their own behalf.

The new Affidavit of Support form, Form I-864, and regulations have been published and became effective on December 19, 1997. Separate specific guidance has been issued on adjudicating applications including an Affidavit of Support.

6. Continued Use of Form I-134.

The use of the ***new* Affidavit of Support is mandatory for those categories of immigrants listed in section 212(a)(4)(C) and (D), and a Service officer may not accept a Form I-134 in place of the new Affidavit of Support for these immigrants if the application was filed on or after December 19, 1997**. In those cases not governed by sections 212(a)(4)(C) and (D) and 213A (*e.g.*, parolees, nonimmigrants), in which the Service has traditionally accepted Form I-134, Service officers may continue to do so. Use of Form I-361 will continue in cases involving Amerasians under P.L. 97-361.

7. Public Charge Bonds.

Section 213 of the INA, Admission of Certain Aliens on Giving Bond, was only amended by IIRIRA by including a parenthetical reference to the new Affidavit of Support prescribed in section 213A. Where appropriate, the public charge bond of section 213 should continue to be administered as has been done in the past. Regulations on the bond pilot which under section 564 of IIRIRA must be implemented in five INS districts are forthcoming.

If there are any additional questions, contact Miriam Hetfield, Headquarters Office of Adjudications, at (202) 514-5014.

Paul W. Virtue
Acting Executive Associate Commissioner
Programs

to establish that the alien is eligible to receive a visa under INA 212(a)(15). The bond should be used only in borderline cases. Where an alien appears likely on the facts to become a public charge, for example because of a physical condition and lack of resources, the filing of a bond would not serve any purpose.

N7.1 Procedures for Posting a Bond

The minimum bond which may be accepted is $1,000 for each alien. When a family unit is proceeding to the United States, a bond may be required for more than one member of the family. The consular officer should specify the names of the persons on whose behalf the bond is being requested as well as its amount.

When a bond is required for an immigrant visa applicant who is preceding family members, the number of the remaining family is ordinarily not to be taken into account. The question of public charge, as applied to the members of the family, should be examined at the time the family members apply for their visas. At that time the consular officer should consider, among other such factors, the permanency of employment of the preceding immigrant, the degree of responsibility taken for the family's support during the period of separation, and the plans set forth in the affidavit of support for their maintenance after their immigration.

A public charge bond should be used only in marginal cases, since it is rarely sufficient by itself for INA 212(a)(15) purposes. A public charge bond is usually canceled when the alien dies, departs permanently from the United States, or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. However, an INS district director may cancel a bond at any time if the immigrant is found not likely to become a public charge. It will also be canceled upon review of the case following the fifth anniversary of the admission of the immigrant, provided the alien has filed Form I-356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. The bond otherwise will remain in effect, however, until Form I-356 is filed and the district director renders a decision to breach or cancel the bond after review of the evidence supporting the form.

An applicant on whose behalf a bond has been accepted should be informed that INS may require a larger bond upon arrival at a port of entry. A visa issued to such an alien should bear a notation regarding the filing of the bond. [See 22 CFR 42.73 PN2.3(c).] The official notification received from INS regarding the posting of the bond should be attached to the visa. When the notification is received by telegram, a certified copy of the telegram should be so attached.

N8 Refugees

The Attorney General is empowered by INA 207(c)(3) to waive the provisions of INA 212(a)(15) among others, for humanitarian or other purposes, in the case of an alien seeking admission to the United States as a refugee under INA 207. INA 207, 208 and 209 were added under the terms of Section 201(b) of the Refugee Act of 1980.

N9 Public Charge Aspects of Medical Treatment Cases Considered Under INA 212(g)

Some hospitals and sanatoria are operated by State or Federal agencies and do not make provisions for collecting fees from patients accepted for treatment. Thus, even if the institution is supported by public funds and will not be reimbursed for services rendered, an alien applying for the benefits of INA 212(g) who submits the documentary evidence required by 22 CFR 40.7(a)(1-6) N5.2 is not considered ineligible to receive a visa under INA 212(a)(15).

N10 Public Assistance Programs and Poverty Income Guidelines

The mere fact that an alien is or may become the recipient of services or benefits derived in whole or in part from public funds does not, in and of itself, establish that the alien is or may become a public charge within the meaning of INA 212(a)(15). The essential issue is whether the purpose of the public program in which the individual is participating is specifically designed to support individuals unable to provide for themselves. A program essentially directed to the general welfare of the public as a whole does not present a "public charge" issue. Thus, for example, an alien attending public school, taking advantage of a school lunch program, receiving certain forms of medical care or social security payments, would not be deemed a public charge despite the involvement of public funds.

N10.1 Programs Not Within the Provisions of INA 212(a)(15)

As indicated, the purpose defined in legislation underlying the program determines the applicability of INA 212(a)(15). For example, the preamble of the Food Stamp Act states that the purpose is to strengthen the agricultural economy and help achieve a fuller use of food abundances through improving levels of nutrition among low income households. It has thus a number of objectives of a general nature and is not simply a matter of welfare or relief as such. Although qualification for the program is based on family income, a person need not be actually receiving, or even be eligible for, public assistance in the more specific sense to participate in the food stamp program. The issue may seem to be a close one -- even a matter of semantics -- in many instances, but the rule-of-thumb is that a program that is essentially supplementary in nature, in the sense of providing training, services, food, etc. to augment the standard of living, rather than to undertake directly the support of the recipients, does not fall within the scope of INA 212(a)(15). Examples falling within this guideline include, but are not limited to, the free school lunch program, vocational training programs and rent subsidies as well as the food stamp program. It should also be noted that the value of the benefits derived from such programs is not "income" for the purpose of applying the Poverty Income Guidelines.

N10.2 Forms of Welfare Within INA 212(a)(15)

The more traditional forms of welfare or relief programs, consisting of direct monetary payments to the destitute, needy, blind or disabled who are unable to support themselves, do fall within the provisions of INA 212(a)(15). Examples include Aid for Dependent Children (AFDC) and Old Age Assistance, despite the fact that these programs are "supplementary" in the sense that the amount of assistance provided varies according to the recipient's other income. It should be noted, however, that the above holding is limited to the sole issue of whether a participant in a supplemental program is a public charge simply by virtue of receiving federal or state benefits. The applicability of INA 212(a)(15), on the other hand, remains a factual question for the consular officer to resolve on the basis of an assessment of the overall circumstances in the individual visa case with respect to the likelihood of the applicant becoming a public charge.

N10.3 Qualification Standards for Various Assistance Programs

The Department doubts the feasibility or efficacy of attempting to approach the question of a specific income standard based on the qualifying figure for participation in the various programs of public assistance. Not only does such a qualifier frequently vary from program to program, it varies from state to state as well as federal to state. In each instance it is predicated on a complex formula. In short, such an approach would require far more specific information than would usually be available to a consular officer.

N10.4 Poverty Income Guidelines

As a suitable alternative to the system noted above, the Department believes the federally developed Poverty Income Guidelines provide a uniform basis or "bench mark" for evaluating general income requirements for the assessment of INA 212(a)(15) applicability. It is emphasized, however, that these guidelines are not conclusive in themselves and should not be arbitrarily applied as a substitute for the consular officer's judgment. They are simply a point of reference to assist the consular officer in determining the applicability of INA 212(a)(15). In this sense, if the income available for the applicant from all sources (as shown in Exhibit I) is below the relevant amount on the specific poverty income table, there would arise a rebuttable presumption of ineligibility under INA 212(a)(15). The burden would then be on the applicant to establish by presentation of additional evidence, such as actual or anticipated expenditures for rent, food, etc., that such income is sufficient for self-support under the particular circumstances of the case. On the other hand, when the demonstrated income is more than minimally above the relevant poverty income threshold, there would be a presumption of eligibility under INA 212(a)(15) and, in the absence of any negative factors, additional support evidence would not be necessary.

Julie A. Fernandes
01/29/98 06:13:39 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: INS reform and H1B visas

Elena,

Any reform that we recommend to the H1B program will likely cause employers to raise other issues related to immigration and the Labor Department. The following are a couple of policy issues that we may have to confront as part of this process.

1. Labor Certification

As the Labor folks indicated yesterday, employers use the H1B program as a way to get foreign workers into the country fast -- short application and no labor certification process (as there generally is with the permanent employment-based visa program). Thus, any changes that limit or more closely subscribe the use of the H1B may cause employers to focus on what they believe is wrong with the labor certification process, as presently performed by the Labor Department.

The CIR recommended that the Labor Department no longer perform labor certification prior to the issuance of a permanent employment-based visa, largely because it takes them too long and because the tools that they use do not fairly reflect the dynamics of the labor market. The CIR did not suggest an alternative method for testing the labor market to determine if workers are needed in a particular job category, but suggested, as part of their overall proposal, that State somehow take care of it. The Carnegie folks suggested, informally, that the function could be contracted out to a private entity who could do the labor market tests more quickly and maybe better.

This is an issue that we likely need to focus on as part of the overall INS reform package and as it relates to the H1B program. As you would imagine, any proposal to change the labor certification process is very controversial -- particularly any proposal to eliminate Labor's role in performing a market-test as a predicate to an employment-based permanent visa.

2. Employer Sanctions

The CIR recommended that Labor should be empowered to sanction employers for failure to verify whether their employees are authorized to work. Under the current system, if a Labor Department inspector discovers that an employer is not verifying authorization to work (as demonstrated by their not filling out the I-9 forms), they refer the case to the INS -- Labor has no authority to sanction the employer for this violation. The CIR and others have suggested that Labor have this sanction authority, in part b/c referrals to the INS for this are almost never followed up on.

In preliminary discussions about this, Labor expressed some concern that their increased role in enforcing the immigration laws might chill the reporting of other labor violations by undocumented workers. However, Labor already has a role (by checking for I-9 violations and reporting them to INS) and this increased authority could be understood as enforcing labor laws (that relate to the labor market), not immigration laws. The chief opponents to this change would likely be Republicans on the Hill who are concerned with businesses not being penalized for hiring illegals at all. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers is a strong one. Also, this is a good companion to our successful push last year to launch an employer verification pilot program, to improve the system of verifying whether employees are authorized to work.

Aside from the concerns that relate to the Labor Department, there are two areas of policy decision-making that we may want to resolve in conjunction with the INS reform. These are both less pressing, but are likely important to keep an eye on.

1. State Department and Visa Issuance

For employment-based visas issued overseas, there are three players: INS, State and Labor. Many (including the CIR, State and INS) have commented that this current process is duplicative. One suggested reform would be to remove State from doing a separate analysis of the application, and limiting their role to checking to ensure that there were no international or foreign policy restrictions on the applicant (checks with Interpol, etc.). Under the current system, State often readjudicates the visa petition rather than perform a more limited check. State has also identified a need for greater clarity regarding ultimate responsibility for certain decisions (like this one) where more than one agency plays a role.

We may, as part of our proposed reform, want to better clarify State's role as limited to international/foreign policy concerns only.

2. Immigration appeals

Under the current system, administrative review of immigration decisions is conducted by numerous entities located at the various agencies (State, Labor and Justice). In addition, the Bureau of Immigration Appeals (BIA) -- a 15 member panel appointed by the AG -- has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal decisions. Decisions of the Bureau of Immigration Appeals are reviewed by the Attorney General. The CIR recommended the creation of an independent body within the Executive Branch to hear all appeals of immigration-related administrative decisions, including deportation hearings. Decisions by this entity would be binding on the Executive Branch.

We have not yet fully explored whether the existing immigration appeals system needs dramatic reform or, if so, whether we would recommend a solution along the lines of that proposed by the CIR. It is not clear that this question has to be answered in the short term, but we may want to keep it within our sites.

Immigration Working Group
February 18, 1998
Meeting Summary

1. Public Charge
   a. Jack Smalligan to set up a meeting to discuss options for us. We should all review the INS's proposed guidance. We need to decide what we think of the guidance issued by the INS on the definition of public charge and whether we want this to be guidance or a regulation.

   b. Scott will speak to contacts at the State Department about their inconsistent guidance.

2. Haitians
   a. INS/DOJ is putting together a letter to Meeks as a follow-up to the meeting on the Hill.
   b. March 5th -- mark-up (Senate subcommittee) on Graham bill (Graham, Mack, Abraham -- Conyers, Diaz-Ballard). Legislation provides green cards for Haitians in the DED class. Graham has asked us to endorse the bill. Florida folks are trying to get state-wide officials to sign on to this. Senate looks good. Wait and see on the House.

3. Central Americans
   a. Question for DOJ: know that INS intends to temporarily suspend adjudication of affirmative asylum requests filed by potential beneficiaries. What about others covered by NACARA who are not in the ABC class?

   b. Guidance or regulation that codifies the law? — DOJ prefers guidance b/c (1) no notice & comment (so no opportunity for advocates to push for changes in the standard (2) Don't want to piss off EOIR any more.

John Morton is getting me a break down of the # of folks covered by NACARA that will not be able, under the current scheme, to have their suspension claim adjudicated by an asylum officer that had either b/c already in an asylum process or in immigration court (non-ABC) not eligible for one or already in immigration court

Breakdown by country of origin. 40-50K ?

2/19/98

4. H1B visas
   a. What is the breakdown of the 65,000 visas that were issued last year under this program?

5. INS Reform
   a. I-9 issue. Do we support this? INS has told Steve Mertens that the AG can delegate the authority to sanction employers for I-9 violations to the Labor Department. This could be part of recommendations made as part of INS reform.

   b. Any way to co-opt Carnegie on our view of the reform?

   c. Meeting with Commissioners?

   d. Still have not received interim report from Booz-Allen. Due on Monday the 16th.

6. Foreign Health Care Workers
   a. Ask INS and State whether there is a way to resolve these two provisions. Is there a way to administratively reconcile them? **Bo Cooper** at INS (general counsel's office) and **Katherine Brown** at State.

Barbara Strack is sending me an update on § 343.

7. Section 377
   a. Follow-up from Rick Gonzales?

White House Immigration Working Group
February 18, 1998

• Where are we
• Next steps

1. Public Charge

(+) Scott to speak to State about their inconsistent guidance.

Jack to set up mtg. w/ options

2. Haitians

a. DED for long-term asylum seekers and parolees — Burden on govt. to stay — INS / DOJ putting together a letter to Meeks.
b. Legislation
   i. March 5th mark-up ~~(of whose Bill? Meeks? Kennedy?)~~ Subcommittee Senate Graham, Mack, Abraham, Conyers, Diaz-Balart
   ii. Questions remaining: scope of the class; type of relief requested
c. Hondurans?

Green cards for Haitians in class.

3. Central Americans

a. AG signed memo outlining procedure; asylum officers adjudicating claims for suspension. — what about others in the process. guidance or reg that codifies the law.

Graham has asked us to endorse Fla. folks trying to set state-wide officials to sign on to this. Sen. looks good. Wait & see on Senate.

4. H1B visas

a. Options memo from Labor/Commerce/State/INS
b. Policy recommendation by February 25th (hearing)

breakdown 65,000 last year.

5. INS reform

a. Had an inter-agency review process; made some preliminary conclusions internally.
   i. Separation of enforcement from benefits; unclear on the details (including whether to follow Reyes recommendation and pull enforcement into Main Justice). Rejected idea for State to take over benefits side.
b. Hill process (Elena & Peter)
   i. Abraham wants to keep everything within Justice, but keeping options open.
   ii. Staff are concerned about appropriators
c. Booz-Allen -- interim report due on February 16th; final report on March 1st.

I-9 issue

Carnegie Co-op

6. Foreign nurses -- Section 343 → spoke w/ Mike Koplavsky @ USTR Chapter 16 of NAFTA says can't have certification requirements. Once reg. is out, we will have to enforce the §. (*) Developing policy on whether we can/should push to carve out exception for Canada/Mexico

7. Section 110

a. Abraham has introduced (?) legislation that would make this consistent with out trade agreeements -- possibly exempt Cananda?

INS/State we want X outcome.

Administratively reconcile

Meeting w/ Commissioners

Bo Cooper

Virtue

Katherine Brown

C:\WORK\WP\IMMIGRAT\WORKING.OUT

Rick: follow-up on 8377

Public
Charge

Public
charge

Nicolette Highsmith

Record Type: Record

To: Jack A. Smalligan/OMB/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Public Charge -- WIC Related Problems

We should make this clear in both the State Dept. and INS guidance. The State Dept. cable is unclear on how to treat a public charge determination if a person receives benefits that they are eligible to receive under welfare reform (e.g. WIC, emergency medical services under medicaid).

Jack A. Smalligan

Jack A. Smalligan
02/10/98 04:35:33 PM

Record Type: Record

To: Steven M. Mertens/OMB/EOP@EOP, Diana Fortuna/OPD/EOP@EOP, Nicolette Highsmith/OMB/EOP@EOP, Julie A. Fernandes/OPD/EOP@EOP
cc: Anil Kakani/OMB/EOP@EOP, Matthew McKearn/OMB/EOP@EOP
Subject: Public Charge -- WIC Related Problems

Below is some information on problems with WIC similar to the problems that were occuring this Fall with Medicaid. Unlike Medicaid, WIC is a clear call in INS's draft public charge guidance -- the guidance says that use of WIC is not a factor in determining whether or not an immigrant is a public charge. However, until we resolve the Medicaid and Food Stamp problems and authorize INS to release the guidance, this information appears not to be getting out to the INS field.

I am eager to discuss INS's guidance ASAP. If it looks like the Medicaid and Food Stamp issues are going to take a while to resolve, we may want to consider an interim notice to the field on WIC.
---------------------- Forwarded by Jack A. Smalligan/OMB/EOP on 02/10/98 04:28 PM ---------------------------

Anil Kakani
02/10/98 03:06:08 PM

Record Type: Record

To: Jack A. Smalligan/OMB/EOP@EOP
cc:
Subject: WIC-related immigrants issue

A quick fyi and question for you, which come out of Barbara's talk this morning to the National

Association of WIC Directors (NAWD). A number of folks asked questions about and urged OMB/INS to put a guidance or some other form of statement out to INS field offices explaining that WIC is not to be treated as a public charge benefit. Apparently numerous INS offices have been telling immigrant WIC recipients that they are considered public charges per welfare reform and subsequently can be deported for WIC participation. Not only are immigrants being told to pay back the amount they have received through WIC and to disenroll immediately, but they are being asked at the border if they have previously received WIC benefits.

Also on the immigrant front, some pointed out that the State Dept. sent letters to universities around the country informing them that WIC recipients are not eligible for student visas. University officials have therefore been informing immigrant students that they must not be on WIC in order to retain their student visas.

Has any guidance gone out on these issues (primarily the former)? If not, is something in the works?

Message Copied To:

steven m. mertens/omb/eop
diana fortuna/opd/eop
julie a. fernandes/opd/eop
anil kakani/omb/eop
matthew mckearn/omb/eop

[redacted]

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: State Dept. and INS Guidance

Here's the email that I left you a voice mail about. what's the meeting you're holding on the 18th? We should put our heads together on the attached.

---------------------- Forwarded by Diana Fortuna/OPD/EOP on 02/10/98 11:25 AM ---------------------------

Nicolette Highsmith [redacted]

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Jack A. Smalligan/OMB/EOP

Subject: State Dept. and INS Guidance

Diana, I was recently made aware of a State Department Cable that went out to all of the Consular Officials in December regarding the Affadavit of Support and the issue of Public Charge.

There are several places in the guidance that are not quite consistent with the INS Guidance. For instance:

- 1) The State Department does not look at the totality of an alien's circumstances to make a forward looking determination regarding whether or not an applicant is likely to become a public charge.

- 2) The State Department guidance does not clearly state that certain benefits that individuals are eligible to receive under the Welfare bill (e.g. sections 422(B) and 423(b)), should not give rise to a public charge determination. These are benefits such as emergency medical assistance, WIC, immunization treatment and testing, etc. The State Department guidance notes that "It thus is appropriate to consider whether the alien would likely need to rely on public assistance programs, even if the Welfare Act permits such assistance to be paid."

Moreover, since this was an internal State Department guidance, it was not sent to OMB or DPC for clearance. Therefore, no one caught these inconsistencies.

I know that you might have some reservations about an Immigrant Working Group. However, a group run by DPC could coordiante some of the guidance that is going out on the issue of public benefits.

I understand that Julia Fernandez wants to start the Immigrant Working Group and would like to have the first meeting on Feb. 18th at 3:00pm. I'd like to know if you think that the INS Guidance and State Department Guidance would be a good first topic? It seems that the INS changed the "tone" and substance of their guidance, once we got involved. I think that the same involvement might help State as well.

Please let me know what you think.

Jack A. Smalligan
02/10/98 04:35:33 PM

Record Type: Record

To: Steven M. Mertens/OMB/EOP, Diana Fortuna/OPD/EOP, Nicolette Highsmith/OMB/EOP, Julie A. Fernandes/OPD/EOP

cc: Anil Kakani/OMB/EOP, Matthew McKearn/OMB/EOP
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Subject: WIC-related immigrants issue

A quick fyi and question for you, which come out of Barbara's talk this morning to the National Association of WIC Directors (NAWD). A number of folks asked questions about and urged OMB/INS to put a guidance or some other form of statement out to INS field offices explaining that WIC is not to be treated as a public charge benefit. Apparently numerous INS offices have been telling immigrant WIC recipients that they are considered public charges per welfare reform and subsequently can be deported for WIC participation. Not only are immigrants being told to pay back the amount they have received through WIC and to disenroll immediately, but they are being asked at the border if they have previously received WIC benefits.

Also on the immigrant front, some pointed out that the State Dept. sent letters to universities around the country informing them that WIC recipients are not eligible for student visas. University officials have therefore been informing immigrant students that they must not be on WIC in order to retain their student visas.

Has any guidance gone out on these issues (primarily the former)? If not, is something in the works?

U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210

MEMORANDUM FOR ELENA KAGAN

FROM: SETH HARRIS

DATE: FEBRUARY 9, 1998

SUBJECT: ATTACHED DRAFT OPTIONS MEMORANDUM REGARDING THE PROPOSED H-1B CAP INCREASE

Last Thursday, you asked the Labor and Commerce Departments to draft a memorandum setting forth options with respect to the proposal to increase the cap on H-1B visas. Specifically, you asked us to identify 2 or 3 "middle ground" options between an absolute "yes" or "no" to the proposed increase in the cap. We have had an intensive interagency process since that meeting, also involving the INS, the State Department, and Steve Warnath, which produced the attached draft memorandum.

Secretary Daley, Deputy Secretary Higgins, and senior staff from the INS and State have approved the memo.

The attached memorandum reflects consensus as to the statement, background, and discussion of the issue. We did not achieve consensus on a recommended option, although the agencies are not at opposite ends of the spectrum. The agencies' views are expressed in the memo.

As I have mentioned to Laura, the Office of the U.S. Trade Representative may have views on this issue since it has implications for our GATS obligations. Accordingly, you may want to contact USTR before sending a memo to the President. Joseph Papavitch would be a good senior-level person to speak with; Peter Collins is the best-informed staff level contact

I hope this is responsive to your assignment. Please let me know if you need any additional information or would like to discuss the memo.

<u>Attachment</u>
cc: Julie Fernandez
Distribution

February 6, 1998 6:00 pm

DISCUSSION DRAFT
February , 1998

MEMORANDUM FOR:

FROM:

SUBJECT: Options Relating to Skilled Temporary Foreign Workers

Issue

Existing law permits 65,000 H-1B visas each year for skilled temporary foreign workers. The computer and health care industries are primary users of the H-1B program. The annual 65,000 visa cap was met for the first time in FY 1997, and is likely to become a legislative issue in this session of Congress.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H-1B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

This memo provides options on how to address the H-1B cap issue. Labor Department staff have had preliminary discussions with staff for Senators Abraham and Kennedy, organized labor, and representatives from the business community and believe that certain elements of the IT industry might be willing to forge a legislative agreement.

Background

Since 1993 the Administration has sought reforms of the H-1B program: requiring employers to "recruit and retain" U.S. workers before hiring foreign temporary workers, prohibiting laying off U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, specifically allowed under the U.S. commitments made under the Uruguay Round Agreements, have not yet been enacted.

This is a very controversial issue. Industry advocates of raising the H-1B cap, such as the Information Technology Association of America and the American Electronics Association, say hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. These industry advocates argue that these worker shortages are reflected in rapidly rising wages documented by surveys undertaken by industry groups, and changes in industry behavior that are consistent with such shortages -- increased training, more active recruitment, and the creation of a variety of partnerships with all levels of education. Critics of raising the H-1B cap, such as the AFL-CIO, the Institute for Electrical and Electronic Engineers and the American Engineering Association, say industry: (1) drastically overstates any problem by equating job vacancy data with evidence of skill shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large job lay-offs); (3) does not hire, retrain or retain mid-career IT professionals out of a preference for cheaper workers (e.g., 70-80 percent of highly-skilled IT professionals are 44 years of age or younger); (4) hires only a tiny fraction of job applicants; and (5) fails to tap reservoirs of talent available to fill these jobs by loosening its very specific recruitment requirements and providing more training.

Despite controversy over the magnitude of the problem, it is clear that IT employment is growing rapidly and that IT labor markets are tight. Accordingly, the Administration announced several specific steps to address IT labor market issues at the recent convocation in Berkeley, including: (1) a $6 million grant program to expand private-sector involvement in school-to-work programs focused on high-tech jobs; (2) a $3 million grant program to establish partnerships between employers and training providers to train dislocated workers for high tech jobs; and (3) a series of town-hall meetings where representatives of business, academia, state and local governments, and employee organizations can discuss IT workforce needs. Further, we are planning to look at other options for helping the IT industry, as well as other industries faced with increasingly tight labor markets, meet their workforce needs by better utilizing existing U.S. workers.

Discussion

Labor Markets and Skill Shortages

Demands to increase the H-1B cap arise from trade association surveys of job vacancies, stimulated by the IT industry assertion that the rapidly growing demand for workers has created widespread IT worker shortages in a tight national labor market. Tight labor markets, while potentially threatening wage-induced inflation, create incentives for employers and workers to behave in ways needed to achieve many of your top priorities: hiring welfare recipients, out-of-school youth, and workers dislocated by trade; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Accordingly, care must be taken before turning to immigration to expand the supply of workers. This Administration has expounded the proposition that increased immigration should be the last -- not the first -- public policy response to skill shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training.

Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving job overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving your other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

Current H-1B Program

The existing H-1B program allows employers to import up to 65,000 temporary foreign workers each year. The visas last for up to six years. The foreign worker must have a 4-year degree or the equivalent in combined education and work experience. The employer must employ the foreign worker in a job requiring the minimum level of skills, agree to pay the prevailing wage, give notice to its workers of its use of foreign workers, and attest that there is no strike or lockout affecting the occupation.

As highlighted by a recent DOL Inspector General report, the existing program fails to provide adequate protections for both U.S. and temporary foreign workers. Weaknesses in the current program include: (1) no labor market test for U.S. workers; (2) no prohibition against laying off U.S. workers to replace them with temporary foreign workers; (3) no direct tie to skill shortages (some employers use this program to bring in physical therapists, auditors, accountants, and lawyers); (4) employers facing skill shortages are disadvantaged because they must compete on a first-come, first-served basis with other employers that do not face shortages; (5) nonimmigrant foreign workers are tied to one employer and vulnerable to exploitation; and (6) the Labor Department has inadequate resources for labor standards enforcement.

The H-1B program seldom operates as a temporary worker program with workers coming to this country for a short duration and then returning to their homes. Instead, it operates often as a "probationary" employment program where employers bring workers to the United States and, if they perform well, sponsor them for permanent admission to this country. This linkage permits employers to hire foreign workers without first recruiting U.S. workers and then retaining the foreign workers by obtaining permanent immigration status for them. The result is that U.S. workers are never provided a genuine opportunity to compete for these jobs.

The Administration's proposed reforms, if accompanied by adequate enforcement resources, would address many of these problems. In addition, the proposed requirement that employers recruit U.S. workers, to the extent that it can be enforced, *would reduce pressure on the visa cap* by screening out employers who are not faced with skill shortages and have no interest in recruiting U.S. workers.

The IT Skill Shortage

Employment in high-skill IT occupations -- a major source of high-wage, high-benefit jobs -- has been growing by 10% a year and is expected to continue growing at a comparable rate through 2006. An industry association survey of job vacancies indicates that there is already a shortage of 350,000 workers in the IT industry. This conclusion, however, is not entirely accurate. The fact that there are 350,000 job openings at a point in time, as opposed to jobs that cannot be filled, **does not equate to a skill shortage**. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth. The IT industry, and any other industry with rapid employment growth and high worker turnover, will have large numbers of job openings even without experiencing any skill shortages.

Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed. BLS wage trends for broad computer-related occupational categories show *average* wage growth between 1988 and 1997 for all categories, but with *above-average* growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations. These wage data do not suggest acute skill shortages nationwide, but may be consistent with skill shortages occurring in specialized occupational areas and selected local areas.

Further, the IT labor market has begun to respond to these signals of increased demand. Enrollments in U.S. 4-year computer science programs, after falling over the previous decade, surged by 46% in 1996/1997. Moreover, two-thirds of persons in computer science or programming jobs have degrees outside of computer science and information science -- a substantial though less visible pool of labor supply. The IT industry also has begun to establish partnerships with community colleges and high schools to develop training programs for U.S. workers.

It is important to note that the H-1B program is not limited to the IT industry. Several other industries where there is no evidence of a skill shortage also use the program. For example, the second largest industry user of H-1B visas is physical and occupational therapy, a field where worker advocates claim that there is now a glut of workers.

Strategy

The Administration should push hard for its H-1B program reforms and condition our willingness to accommodate any increase in the cap on the extent to which the needed reforms are incorporated in law. The reforms we have sought will reduce pressure on the cap, better protect U.S. workers facing competition from temporary foreign workers, and more closely link use of the program to real, temporary skill shortages. Without these reforms, we need to keep the cap at

65,000 to provide some element of worker protection. If the Administration's reforms -- possibly excepting the reduction in allowable length of stay from 6 to 3 years -- can be accomplished, we would be better able to accommodate greater flexibility in the cap.

Options

Any policy response to the perceived IT skill shortage must include three parts: (1) increased efforts to expand access for Americans to get these jobs through improved information, job matching and education and training; (2) reform of the H-1B program; and (3) if 1 and 2 are done, then a temporary increase in the H-1B cap can be considered. The options presented below would require expanded enforcement resources (perhaps acquired through user fees) for the Labor Department and the INS to ensure that added protections for U.S. workers could be effectively implemented.

The preferences of the Agencies involved in this process with regard to specific options are all consistent with the strategy outlined above. DOL prefers options 2 or 3, but would not object to option 4 if this option is accompanied by increased efforts to expand access for U.S. workers to get IT jobs . The State Department and INS prefer option 4. The Commerce Department prefers option 4, but would support option 3.

Option 1: **Maintain cap at current level with no other change.**

Pros
- In a tight labor market, allows market to produce the incentives needed for achieving other Administration priorities.
- Maintains maximum incentive for IT industry to train U.S. workers.
- Confirms policy of not increasing immigration as first response to reports of skill shortages.
- Does not exacerbate existing problems with H-1B program.
- Strong opening position that is more likely to induce involved industries to bargain.
- Supported by unions and other worker representatives.

Cons
- No new immigration response to perceived IT skills shortages.
- Will be portrayed as hurting IT industry and U.S. economic growth.
- Does not provide a lever for enacting the Administration's proposed reforms.
- Strongly opposed by industry and some members of Congress.

Option 2: **Maintain cap at current level, *but seek passage of the Administration's reforms of the H-1B program.***

Pros and cons same as Option 1 except:

Pros

- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.
- Indirectly addresses the "cap" issue and needs of IT employers facing actual skill shortages by screening out employers, not faced with such shortages, who do not meet reform requirements.

Cons

- Response to any IT shortages indirect as opposed to direct.

Option 3: **Maintain cap at current level, but seek passage of the Administration's reforms *and give administrative priority within 65,000 cap to industries experiencing skills shortages (or possibly provide for a set-aside).***

Pros

- Responds to the perceived needs of the IT industry and, therefore, may gain their support.
- Maximizes use of the 65,000 visas for shortage occupations.
- Consistent with position that immigration should not be principal public policy response to deal with reports of skill shortages.
- Does not increase number of workers bound to employer and potential exploitation.
- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.

Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages.
- May face a challenge from some countries arguing it is not consistent with U.S.'s WTO obligations.
- Likely to be opposed by industries using the H-1B program but not experiencing skill shortages (*e.g.*, physical and occupational therapy).

Option 4: **Raise cap to between 80,000 and 100,000 on temporary basis (with added visas to sunset after 2-3 years), enact Administration reforms, *and impose additional requirement on the temporary visas above 65,000 giving priority to industries experiencing skill shortages (possibly tie directly to IT occupations).***

Pros

- Visible response to skill shortages in all industries.
- Ties increase in cap more directly to skill shortages.
- Administration reforms provide greater protections for U.S. workers and screen out employers not faced with skill shortages, thereby reducing pressure on the cap.
- Restrictions on increased cap may be supported by some parts of IT industry.

Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages as well as two separate tracking systems for the visas.
- Could discourage IT industry from training U.S. workers.
- Immigration response to deal with reports of skill shortages.
- Any increase likely to be opposed by unions and other worker representatives.
- Some employers may oppose the combination of Administration reforms and added restrictions on the increase in the cap.

Option 5: **Raise the cap to between 80,000 and 100,000 with no other changes.**

Pros
- Very visible response to alleged skill shortages in all industries.
- Strongly supported by industry and some members of Congress.

Cons
- Creates the wrong incentives for achieving other administration priorities, by significantly dampening incentives for industry to provide training.
- Immigration put forth as principal public policy response to deal with reports of skill shortages.
- Increases number of workers bound to employer and potential exploitation.
- May not deal effectively with IT or other skill shortages because of first-come, first-served visa allocations.
- Opposed by unions and other worker representatives.

NACARA

Implementation of Central American Legislation

Background:

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted at the end of the last session of Congress, provides that certain Guatemalans, Salvadorans and nationals of former Soviet Bloc countries may apply for "cancellation of removal" under standards that existed for suspension of deportation prior to enactment of the 1996 Immigration Reform Act. The 1996 Act severely restricted the availability of suspension of deportation. If they were required to proceed under the 1996 Act, huge numbers of Salvadorans and Guatemalans would not be eligible for relief.

In addition, to the new standards for suspension for Salvadorans and Guatemalans, NACARA authorized Amnesty (automatic green cards) for Nicaraguans and Cubans. Many Central American advocates have urged us to implement NACARA in a way that would achieve "parity" between all Central American groups affected by the legislation. Specifically, they have pushed for INS to issue a regulation that would provide for a presumption of "extreme hardship" for those covered by the legislation. In addition, the advocates strongly suggested that those covered by NACARA should be processed through an administrative adjudication rather than through a more adversarial process before the Administrative Judges at the Executive Office of Immigration Review (EOIR).

The President stated in his signing statement that he was troubled that NACARA treats similarly situated people differently. He stated that the relief made available to these people should be consistent and that the differences present in the legislation could be minimized in the implementation process.

- On February 2, 1998, the Attorney General authorized an administrative adjudicative process for Salvadorans, Guatemalans and Eastern Europeans covered by NACARA. This process will integrate the adjudication of cancellation of removal under NACARA (new form of suspension of deportation) into the affirmative asylum process. Thus, those covered by the legislation will be able to have their cancellation claims heard by asylum adjudicators, rather than Administrative Judges. If the applicant is denied relief, he or she is still eligible to go before an AJ.

- Because the applicant will be able to present their suspension claim before an administrative adjudicator rather than an AJ, it will be faster and cheaper. Administrative proceedings before an adjudicator are generally much less adversarial, and thus there is less of a need for an attorney. However, the applicant will always have the option of presenting his or her claim before an AJ.

- In order to maximize consistency in application of the NACARA cancellation provisions, the INS intends to temporarily suspend adjudication of affirmative asylum requests filed by potential beneficiaries.

- We are continuing to work with INS to ensure that they promulgate appropriate guidance to the administrative adjudicators to ensure that there is fair and consistent interpretation of the case law as it applies to this class of applicants.

- INS has established a target date of September 1998 to begin implementation of these new procedures.