MEMORANDUM

TO: MARIA ECHAVESTE
FROM: IRENE BUENO
RE: MEETING WITH CONGRESSIONAL HISPANIC CAUCUS ON IMMIGRATION STRATEGY – November 13, 2000 at 5:30 PM in 2435 Rayburn

PURPOSE: You are meeting with the Congressional Hispanic Caucus to discuss strategy on LIFA immigration provisions. In this meeting it is important to lay out the various options/scenarios and to hear from the CHC members.

BACKGROUND: According to Mark, the CHC is meeting now to prepare for the meeting. It unclear what they will say to us but it is expected that some members may urge the Administration to push for the LIFA provisions. However, Republican leadership has not indicated any interest in negotiating with us on anything at this time.

Some of the scenarios we should discuss with CHC are:

- If they send us CJS, do we sign it since it provides some relief to the class of 1982 and families?
- If they send us CJS and we veto it, what leverage do we have to get additional LIFA provisions?
- Congress passes omnibus bill that includes CJS, Labor, HHS, tax, etc., do we sign of veto this bill?
- If the Hatch LIFE provisions are taken off the table, then what?
- Congress never sends us CJS and we get a CR until the end of the year or 6 months?
- What role does H2A play in this?

ATTENDEES:
You
Rep. Roybal-Allard
Rep. Menendez
Rep. Gutierrez
Rep. Reyes
Rep. Becerra - by phone

Chuck Brain
Mark Magana
Irene

New Info

CR ~~A~~ Until 12/5

CJS will send to us - includes LIFE... we will veto

(Rs are moving backwards)

Scenarios

→ CR for CJS, Labor HHS

→ What after we veto,

(Speaker asked Paul McNulty get involved - works for Armey.)

→ Modified Hatch bill

→ Nothing on parity.

Options

- Late Amnesty - OK

- §245(i) - get up + down vote - get a senate

- Need ~~NACARA~~

Minority ~~[illegible]~~ LIFA Link H2A

12/5 - If Dem, then ask ~~[illegible]~~ for all

- Use this time to build support ~~and~~ + groundwork for next yr.

- political concern -

next Steps

(1) CJS

(2) H2A linkage - reinforce

(3) ~~President Elect~~ Build foundation < Reps lose

Work w/ groups

Passage of Immigration Bill Dim

AP Online
10/31/00, 6:16p

By BART JANSEN

Associated Press Writer

WASHINGTON (AP) - Immigration advocates had hoped election-year pressure would force Congress to pass sweeping immigration legislation, but with lawmakers deadlocked on budget issues and Election Day approaching, that opportunity has dimmed.

"This is a disappointing experience right now," said Frank Sharry, executive director of the National Immigration Forum. "It hurts."

President Clinton has demanded provisions offering permanent residency to three groups of illegal immigrants totaling an estimated 1 million to 2 million people. Earlier in the year, he tried unsuccessfully to link the plan to a bill increasing the number of visas for foreign high-tech workers.

Republicans, led by Sen. Orrin Hatch, R-Utah, have countered with less-sweeping proposals to grant visas to spouses and children of permanent residents and allow appeals for immigrants who want to challenge Immigration and Naturalization Service decisions.

The two sides haven't met for days, and with Election Day less than a week away, immigration advocates worry that if nothing is resolved soon, the issue could fade to the background in a lame-duck Congress.

The impasse comes at the end of a campaign year when politicians of both parties courted Latinos. Both presidential candidates are running ads in Spanish and have Spanish-language Web sites.

Republican George W. Bush and Democrat Al Gore have dueling campaign stops this week in California, where more than one-fourth of the population is Hispanic.

"There is clearly a battle going on in the different philosophies," said Cecilia Munoz, vice president for policy of the National Council of La Raza, a national Hispanic American advocacy group. "It's extremely frustrating that those who are not that far away in political terms ... are not coming to the table."

Hispanics in California have traditionally voted Democratic in large numbers, so congressional inaction probably wouldn't send more voters to Gore, said Rodolfo de la Garza, vice president of the Tomas Rivera Policy Institute and a professor at University of Texas. But the issue could affect turnout elsewhere in the country where Hispanics have become a larger voting bloc.

"The question is whether they're going to turn out," he said. "That might mobilize people."

If nothing is approved this week, Rep. Luis Gutierrez, D-Ill., said he plans to campaign on immigration with Gore on Saturday, Sunday and Monday in at least nine states.

"I think there continues to be an urgency to get this done as soon as possible," he said. "These are visceral issues to a community that don't surface in polling, but that strike a chord, strike a nerve."

Senate Majority Leader Trent Lott, however, doubted that immigration would hurt Republicans in the election.

"From what I have heard, from calls I received Sunday and Monday, people are saying, `Good. Hang in there and don't give in to anybody on these fundamental principles that are important,"' said Lott, R-Miss.

- ---=

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***ADMITTED IN MINNESOTA

FACSIMILE

Date: October 31, 2000

To: Maria Echaveste
Deputy Chief of Staff, The White House
Fax #: (202) 456-6218

From: Bernard P. Wolfsdorf, Esquire
Fax #: 310-573-5093

Re: Estimates of Numbers Involved in Immigration Proposals Under Consideration

THIS MESSAGE IS 3 PAGE(S) LONG INCLUDING THIS PAGE

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***ADMITTED IN MINNESOTA

October 31, 2000

John Podesta
Chief of Staff to the President
Fax: (202) 456-2883

Maria Echaveste
Deputy Chief of Staff to the President
Fax: (202) 456-6218

Representative Lucille Roybal-Allard
Chair, Hispanic Caucus
Fax: (202) 226-0350

RE: Estimates of Numbers Involved in Immigration Proposals Under Consideration

Dear Mr. Podesta, Ms. Echaveste and Representative Roybal-Allard:

This office represents thousands of immigrants in Southern California and is currently considered one of the leading law firms in terms of the number of clients represented, hopefully the high quality of services, and our advocacy on behalf of the immigrant community on policy matters.

We have carefully reviewed the current immigration proposals being considered by the Congress and the White House. We have also followed the public statements issued by the Congress and the White House on these proposals, and believe it is important to correct what appears to us to be a misperception on the part of all parties regarding the numbers of people who may be helped by the proposals under consideration.

Public statements by both the White House and Congressional leaders assume that as many as one million immigrants could adjust their status under the various proposals under consideration. Unfortunately, the numbers involved are much less.

First, if the registry provision of LIFA was enacted based on historical figures of utilization of registry, we believe 100,000 to 125,000 immigrants may qualify for this benefit over the next ten years. If the Congress' proposal for legalization is enacted, we believe 150,000 to 200,000 Amnesty-eligible applicants, and approximately 100,000 to 150,000 of their family members, will qualify for adjustment of status within the proposed one-year application period.

Regarding LIFA's parity proposal for Haitians and Central Americans, we do not believe the number of eligible applicants will be anything close to what some supporters and opponents of LIFA suggest. Based upon implementation of NACARA, and our experience representing Central Americans, we believe the number is closer to approximately 200,000 to 250,000.

Finally, regarding the 245(i) issue, the total number of applicants who would be helped by all proposals currently under consideration is the same. Obviously, the reinstatement of 245(i) is far more beneficial to this population since it would eliminate a three-year family separation still required under Congress' non-immigrant proposal.

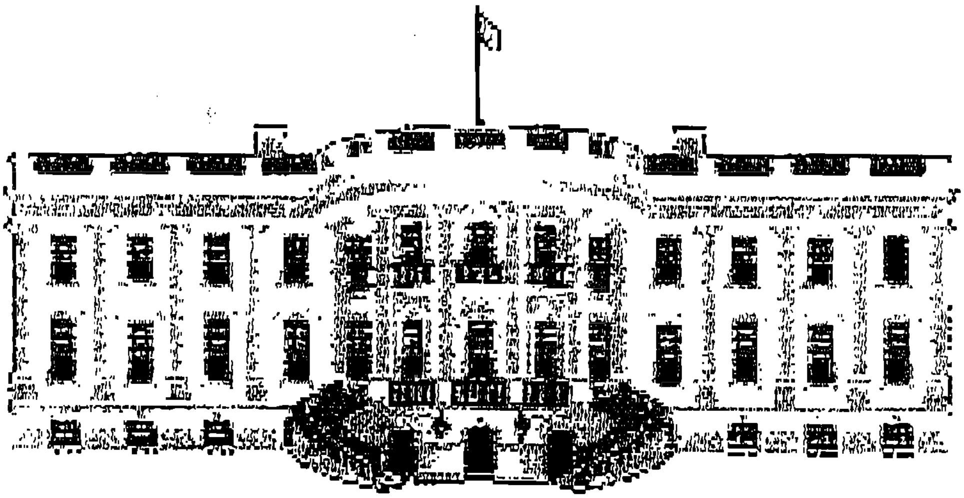
Thank you for considering our views during your important discussions aimed at enactment of urgently needed reform.

Yours sincerely,

BERNARD P. WOLFSDORF
Attorney at Law

ccs: Democratic Leadership

THE WHITE HOUSE



OFFICE OF PUBLIC LIAISON

Laura Efurd
Deputy Assistant to the President
Deputy Director of Public Liaison
Phone: 202-456-2930
Fax: 202-456-6218

To: Irene Bueno

Fax:

Date: 10/31/00

Phone:

Page one of: ~~4~~ 11

Comments: Per my email

Center for Human Rights & Constitutional Law

256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693
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FAX COVER SHEET

To: Maria Echaveste
Deputy Chief of Staff
White House

Fax: (202) 456-6218

From: Peter Schey

Date: 10/30/2000

Time: 4:46:03 PM

No. of pages (including this cover sheet): 25

Fax message:

ASIAN PACIFIC AMERICAN LEGAL CENTER OF SOUTHERN CALIFORNIA

1145 Wilshire Blvd., Second Floor
Los Angeles, CA 90017
(213) 977-7500 • Fax (213) 977-7595

October 26, 2000

President Bill Clinton
Attention: John Podesta, Maria Echaveste
Facsimile (202) 456-2883

Senator Orrin G Hatch
Attention: Sharon Prost
Facsimile (202) 224-9102

Dear President Clinton and Senator Hatch:

The Asian Pacific American Legal Center represents thousands of Asian immigrants in the United States. We also serve as a technical support center for community groups serving the Asian community.

We wish to express our strong support for repeal of section 277 of the 1996 IIRAIRA, and an amendment to the Immigration and Nationality Act requiring the Attorney General to promptly and fairly process the long-pending legalization applications filed by class members in Catholic Social Services v. Reno, and LULAC v. INS. We also strongly urge passage of the Latino and Immigrant Fairness Act in this session of Congress, including reinstatement of section 245 (i) and parity for Haitians and Central Americans.

As you may know, thousands of long-term residents were improperly turned away by the INS when they tried to apply for legalization under the 1986 IRCA and now reside in this country in "underground" status. These amnesty applicants, including well over 100,000 Asians, have built their lives here for almost 20 years and many have U.S. citizen children. National immigration policy would be well served if section 377 was repealed and the Attorney General ordered to process these pending amnesty applications. While we support the proposal of the Congressional leadership to provide a full remedy for the pending amnesty applicants, we urge the Congressional minority leadership and the White House to include provisions in the bill requiring the Attorney General to fund publicity about the program for a 3-6 month period, particularly in the Asian and Spanish-speaking media, and to reimburse community-based groups for the cost of assisting these deserving applicants.

Very truly yours,

Stewart Kwoh

Stewart Kwoh
President and Executive Director

4201 Connecticut Ave., N.W.
Suite 300
Washington, DC 20008
Tel: (202) 244-2990
Fax: (202) 244-3196
e-mail: adc@adc.org
http://www.adc.org

October 20, 2000

By fax
The Honorable Spencer Abraham, (202) 228-4506
Attention: Stuart Anderson
The Honorable Orin Hatch, (202) 224-9102
Attention: Sharon Prost
U.S. Senate Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senators Abraham and Hatch:

We are writing to urge your support of an amendment to the Immigration Act repealing section 377 of the 1996 IIRAIRA as part of the appropriation bill for Commerce, Justice and State. Enactment of section 377 stripped the federal courts of jurisdiction to implement a remedy for thousands of immigrants who have continuously resided here since before 1982 and were unlawfully turned away by the INS when they sought to apply for amnesty in 1987-88 because they had briefly traveled abroad sometime after 1981. The 1986 amnesty law specifically allowed "brief" departures from the United States, but during the 12-month application period in 1987-88 the INS held to the view that such immigrants were "ineligible to apply" for amnesty. Tens of thousands of amnesty applicants from all parts of the world, including the Middle East, to this day continue to reside here underground, working in jobs that violate federal laws, solely because of INSI unlawful amnesty travel rules (which the agency ultimately repealed after federal courts held the rules invalid).

These amnesty applicants deserve a remedy. The country will benefit more by their legalization than by forcing them to continue living here illegally. We therefore strongly urge your support for a repeal of section 377 of the 1996 IIRAIRA, which we understand will allow court ordered remedies to be implemented for most of the applicants who did not benefit from the 1986 amnesty solely because of unlawful rules adopted by the INS in direct conflict with the law as enacted by Congress.

Thank you for your consideration.

Sincerely,

Hala Maksoud

Hala Maksoud, Ph.D.
President

cc: Maria Echaveste, (202) 456-6218

THAI COMMUNITY DEVELOPMENT CENTER
3465 W. 8th Street, 2nd Floor
Los Angeles, CA 90005
Phone: (213) 739-8455 Fax: (213) 738-9919

October 30, 2000

URGENT

Via Facsimile

President William Clinton
The White House

Senator Trent Lott
Majority Leader
United States Senate

Dear President Clinton and Senator Lott:

The Thai Community Development Center represents thousands of Thai immigrants in the United States. We serve as a community support center for Thai immigrants throughout the United States, and also directly represent hundreds of immigrant families in Southern California.

We strongly support passage of the Latino and Immigrant Fairness Act, repeal of section 377 of the 1996 IIRAIRA, and an amendment requiring the Attorney General to quickly and fairly process the pending legalization applications filed by class members in *Catholic Social Services v. Reno*, *LULAC v. INS* and *Zambrano v. INS*.

These amnesty applicants, including several thousand immigrants from Thailand, have built their lives here for almost 20 years and many now have U.S. citizen children and own enterprises and homes. They have no intention of leaving the United States. If enacted, this legislation will immediately permit thousands of applicants to apply for adjustment of status. Please also consider requiring that the Attorney General work with the Asian and Spanish-language media to publicize the program, and with community-based organizations assisting this large immigrant population.

Thank you for your consideration.

Very truly yours,

Chanchanit Martorell
Executive Director

THAI COMMUNITY DEVELOPMENT CENTER
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LOS ANGELES, CA 90005
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FACSIMILE TRANSMITTAL SHEET

TO: Maria Echaveste	FROM: Chanchanit Martorell, Executive Director
COMPANY: White House	DATE: 10/30/00
FAX NUMBER: (202)456-6218	TOTAL NO. OF PAGES INCLUDING COVER: 2
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NOTES/COMMENTS:
Attention

THAI COMMUNITY DEVELOPMENT CENTER
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October 30, 2000 ***URGENT***

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Thank you for your consideration.

Very truly yours,

Chanchanit Martorell

Chanchanit Martorell
Executive Director

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The Law Offices of Paresh A. Shah

October 30, 2000

Re: Support for Congressional Provision granting legalization to pending 1987/88 applicants and LIFA

Dear President Clinton:

As you know, I have served as a long time supporter and fundraiser for the Democratic Party, and I look forward to meeting with you again this coming Thursday in Los Angeles, California. As you also know, I dedicate a large amount of my time to understanding and expressing the concerns of Indian Americans living in the United States.

I have for several years followed the situation of the 1987 amnesty applicants who despite numerous court victories in the CSS v. Reno and LULAC v. Reno nationwide class action cases, have not yet had any of their applications processed by the Administration and continue to reside here in legal limbo. This has caused untold hardship to hundreds of thousands of families and failing to legalize them is clearly not in the national interest.

Likely, about two hundred thousand Asian families, including tens of thousands of Indian families, may finally be legalized under a provisions passed by Congress in the appropriation bill for Commerce, Justice, and State.

As both an organizer for the Democratic party and a lawyer specializing in Immigration law I can state without reservation that the number of Immigrants legalized under the Congressional proposal for legalization will likely be four to five times higher than the number of immigrants who would ever apply for registry with a 1986 cut-off date. The reasons for this are obvious. Registry is not a confidential program and those denied the benefits are ordered to depart the country.

If they do not, removal proceedings against them are initiated. There is absolutely no disagreement among experts in immigration policy, that the threat of deportation dramatically decreases number of immigrants who apply for benefits program. Furthermore, registry is left to the discretion of local INS officials with no form of appeal.

While the existing class of legalization applicants comprises approximately 400,000, approximately 200,000 family members who arrived before 1989 would also benefit under Congress' provision, and could all be legalized within a year and a half. Under registry, we doubt 100,000 people will apply and qualify over the next ten years.

During the last registry program, also requiring 14 years of residence, about 100,000 people applied over the next ten years from 1987-1996. Some argue erroneously that more people did not apply because they qualified for amnesty under the 1986 IRCA. Of those who qualified under IRCA's amnesty program, the vast majority and probably more than 98% of all applicants under IRCA's amnesty, arrived in the United States after 1972 and were not eligible for registry.

We strongly urge you to propose an amendment to Congress' amnesty provision waiving the five-year requirement of permanent resident status which applies to the amnesty applicants. Had these applicants been processed legally by the INS during the 1987-88-application period, they would have qualified for citizenship five or six years ago. A complete remedy should allow them to fully integrate politically, economically, and socially into this great country.

It is therefore clear to us that the national interest would be better served by supporting the proposal to provide a full, complete, and prompt remedy for the amnesty class. Of course, we also support the important amendments proposed in the Latino Immigrant Fairness Act.

Very truly yours,

Paresh A. Shah

Paresh A. Shah

cc: Democratic Leadership

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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FACSIMILE TRANSMITTAL SHEET

TO: Maria Echaveste, Deputy Chief of Staff	FROM: Stanley Mark, Esq
COMPANY: White House	DATE: 10/31/00
FAX NUMBER: (202)456-6218	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	

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ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 HUDSON STREET, 12th FL, NEW YORK, NY 10013-2815 212 966-5932 FAX 212 966-4303

October 30, 2000

President Bill Clinton
Attention: John Podesta, Maria Echaveste
Facsimile 202-456-2883

Senator Orrin G. Hatch
Attention: Sharon Prost
Facsimile 202-224-9102

Dear President Clinton and Senator Hatch

The Asian American Legal Defense and Education Fund (AALDEF) is a non-profit public interest law office that represents thousands of Asian American immigrants. AALDEF uses litigation, community education, and policy advocacy to advance the voting rights, labor and employment rights, immigrant rights, and civil rights of Asian Americans. AALDEF also represents victims of anti-Asian violence and police brutality.

AALDEF supports the Latino and Immigrant Fairness Act (LIFA) which would revive §245 (i) of the Immigration and Nationality Act and would restore relief allowing immigrants already entitled to lawful permanent residency to remain in the United States while adjusting their status to process their "green card". LIFA would also provide parity for Haitians and Central Americans and legalization for amnesty applicants. These amendments would help make our immigration laws more humane by keeping families together and allowing undocumented workers to legalize their status - an important step in overcoming exploitation at the workplace.

AALDEF also supports the legalization provision of the Legal Immigration Family Equity Act (LIFEA) to correct a glaring injustice for thousands of Asian and Latino legalization applicants who were in effect denied legalization under the Immigration and Control Act of 1986 despite prevailing in court several times. Repeated appeals by the Immigration and Naturalization Service and the enactment of § 377 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) have long delayed their legalization. This provision would allow thousands of immigrants from all over the world to finally have their pending legalization claims decided. More than 100, 000 Asian immigrants may be entitled to this proposed relief; many have been here for almost twenty years and now have families with U.S. citizen children. AALDEF urges the Attorney General to publicize this remedy with Asian and Spanish language media and to contract with non-profit organizations which can assist with legalization as was done under IRCA during 1987-88.

Yours truly,

Stanley Mark

Stanley Mark, Esq.
Program Director

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 30, 199

STATEMENT OF THE PRESIDENT

I have signed into law tonight H.R. 3610, a fiscal 1997 omnibus appropriations and immigration reform bill.

This bill is good for America, and I am pleased that my Administration could fashion it with Congress on a bipartisan basis. I moves us further toward our goal of a balanced budget while protecting our values and priorities -- educating our children, providing a clean environment, fighting crime, protecting our families from drugs, and combating terrorism.

The bill restores substantial sums for education and training, fully paid for in my balanced budget plan and furthering my agenda of life-long education to help Americans acquire the skills they need to get good jobs in the new global economy.

It provides the funds through which Head Start can serve an additional 50,000 disadvantaged young children; fulfills my request for the Goals 2000 education reform program to help states raise their academic standards; increases funding for the Safe and Drug-Free School program, helping states educate children to reduce violence and drug abuse; and fulfills my request for the largest Pell Grant college scholarship awards in history, expanding the number of middle- and low-income students who receive aid by 126,000 -- to 3.8 million.

For the environment, the bill provides funds to support the Environmental Protection Agency's early implementation of two major new environmental laws that I signed this summer -- the Safe Drinking Water Act, and the Pesticide and Food Safety Law. At the same time, the bill does not contain any of the riders that would have been harmful to the environment.

For law enforcement, the bill ensures that my program to put 100,000 more police on the streets of America's communities by the year 2000 proceeds on schedule; with this bill, we will have provided fundin for 64,000 of the 100,000 that I called for at the start of my Administration. The bill also increases funds for Justice Department law enforcement programs, for the FBI's crime-fighting efforts, and for new Federal prisons.

As I had urged, the bill also extends the Brady Bill to ensure that those who commit domestic violence cannot purchase guns, rejecting efforts to weaken that proposal.

I am pleased that the bill provides $1.4 billion in funding to address my requests for anti-drug programs. It doubles funding for Dru Courts; increases funds for drug interdiction efforts by the Defense, Transportation, and Treasury departments; and provides the resources to expand the Drug Enforcement Administration's domestic efforts along the Southwest border and elsewhere.

For counter-terrorism, the bill funds my request for over $1.1 billion to fight terrorism and to improve aviation security and safety. It enables the Justice and Treasury Departments to better investigate and prosecute terrorist acts, and it provides funds to implement the recommendations of Vice President Gore's Commission on Aviation Safety and Security and the Federal Aviation Administration's recent 90-day safety review. These funds will enable us to hire 300 more aviation security personnel, deploy new explosive detection teams, and buy high-technology bomb detection equipment to screen luggage.

This bill also includes landmark immigration reform legislation that reinforces the efforts we have made over the last three years to combat illegal immigration. It strengthens the rule of law by cracking down on illegal immigration at the border, in the workplace, and in the criminal justice system -- without punishing those living in the United States legally, or allowing children to be kept out of schools and sent into the streets.

The bill also provides needed resources to respond to fires in the western part of the nation and to the devastation brought by Hurricanes Fran and Hortense.

I am disappointed that one of my priorities -- a ban on physician "gag rules" -- was not included in the bill. Several States have passe similar legislation to ensure that doctors have the freedom to inform their patients of the full range of medical treatment options, and Congress should have reached agreement on this measure.

Nevertheless, this bill is good for America, and I am pleased to sign it.

-30-30-30-

Irene Bueno
10/19/2000 03:29:36 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc:

Subject: Dates under Original NACARA

Nicaragurans and Cubans only had to be in the US before 12/1/1995.

Salvadorans - Not apprended after 12/19/90 and entered US on or before 9/19/90 and registered for benefits under ABC class or TPS on our before 10/ 31/91 or filed for asylum on or before 4/1/90.

Guatalemans - Not apprended after 12/19/90 and entered US on or before 10/1/90 and registered for benefits under ABC class on our before 12/ 31/91 or filed for asylum on or before 4/1/90.

Haitians - had to file for aslyum by 12/31/95 or parolled in the US as of 12/31/95

Summary of Provisions in the "Hatch Proposal"

NEW TEMPORARY STATUS FOR SPOUSES AND MINOR CHILDREN OF GREEN CARD HOLDERS: The New "V" Visa

The Hatch Proposal creates a new temporary visa, a "V" visa, that would allow the spouses and minor children of lawful permanent residents ("green card" holders) who are waiting their turn in the visa quota backlog line, to enter the United States and be granted work authorization. (Currently they are prohibited from getting a visitor visa because they are intending immigrants). In order to qualify, a green card petition must already have been filed with the INS on behalf of the spouse or child as of the date of enactment of the law, and the application must have been pending for at least 3 years. Spouses and minor children of green card holders who have been unlawfully present in the United States will be eligible to obtain the V visa. Spouse and children of green card holders who are currently in the United States illegally may apply to "adjust status" to the new V category. These individuals may subsequently apply to adjust status to permanent residence based on their sponsor's petition, by paying a $1000 fee, as long as they were physically present in the United States between July 1 and October 1, 2000.

<u>Analysis:</u>

Limited Availability – The "V" visa is only available to family members for whom an application has been filed as of the date of enactment. Future applicants will not be eligible. Further, it is only available to spouses and minor children of legal permanent residents (the Family 2A category) who have been in the backlog for three years. It is unavailable to other immediate family members including the spouses and children of U.S. citizens, the unmarried sons and daughters of U.S. citizens (Family 1st category) and unmarried sons and daughters (21 years of age and older) of legal permanent residents (Family 2B category), many of whom "aged-out" of the spouses and minor children category because of processing delays. Married sons and daughters (Family 3 rd category) and brothers and sisters of citizens (Family 4 th category) also are not covered. This measure thus is no substitute for Section 245(i), which offers relief to all who would be eligible to adjust based on a family or employment relationship.

Benefits offered to a Narrow Class for a Limited Period of Time: The "V" visa also would protect people from deportation, grant work authorization, and would allow adjustment for certain spouses and minor children who reside in this country and who are out of status. These benefits, directed to people who are out of status, is granted only to certain spouses and minor children of legal permanent residents: others are not granted this benefit which goes beyond that which is offered by a restored Section 245(i). Section 245(i) grants eligible people the ability to adjust when they become eligible, but grants no legal status until then. Further, it appears that this benefit is available only to those certain spouses and minor children who are in this country from July 1, 2000 to October 1, 2000 – an attempt, we believe, to narrow further the people eligible for this benefit.

NEW TEMPORARY STATUS FOR SPOUSES AND CHILDREN OF U.S. CITIZENS

The bill expands the use of the "K" temporary visa, which currently allows fiancées of U.S. citizens to enter the United States for the purposes of getting married, to spouses of U.S. citizens (who were married abroad and are awaiting approval of their green card applications) and their minor children. The measure also would provide K visa holders with work authorization. Because of backlogs and delays in INS processing of visa petitions for the spouses of U.S. citizens, foreign nationals who marry U.S. citizens abroad often must be separated from their new spouse for months until their green card application is processed and a visa is issued. Current law prohibits these spouses from entering the United States during this period, because they are intending immigrants.

Analysis:

Will not provide sought after relief: The provision requires the U.S. citizen spouse to file a K visa petition with the INS in the United States in order to obtain the temporary visa for their foreign spouse. Since the U.S. spouse must have already filed an immigrant visa petition *before* filing the K visa petition, this is a duplication of effort. In addition, in many areas of the country, INS processing of K visa petitions is as slow or slower than immediate relative visa petitions. Further, in order to be issued a K visa, fiancées must currently undergo full medical examinations and complete all necessary paperwork for their eventual green card. This provision may actually *increase* the time of separation of a U.S. citizen and their spouse and stepchildren. A preferable remedy would be to allow the receipt for filing of an immigrant visa petition to be adequate for issuance of a K visa to a foreign spouse, and to grant work authorization upon admission.

Will not provide relief for spouses of U.S. citizens who are already in the country: Because of the absence of 245(i), a foreign national who is married to a U.S. citizen but who entered the country illegally cannot obtain permanent residence without leaving the country and being separated from their spouse for three or ten years. This provision will do nothing for families in this plight.

ADJUSTMENT OF STATUS FOR LATE LEGALIZATION APPLICANTS

The Hatch Proposal amnesty proposal modifies some provisions of the 1986 amnesty (Section 245A of the INA) and provides an opportunity to apply for this relief only to those people who were part of certain class action lawsuits against the INS for their improper handling of the 1986 amnesty program. This amnesty proposal also waives the eradication of judicial review (IIRAIRA Section 377) for eligible applicants; allows applicants to apply directly for permanent, rather than temporary, residence; allows people abroad to apply for such adjustment; and grants work authorization, permission to travel, and a stay of deportation.

Analysis

Remedies Not Provided to All Harmed by INS Errors: This proposal does not provide remedies to everyone who was harmed by the INS' mishandling of the 1986 amnesty. It provides relief only to those people who filed for membership in two very specific class action lawsuits (CSS v. Reno and LULAC v. INS). It would provide no relief for people who were harmed by INS in the same manner as these class members, but who never heard of these lawsuits and therefore never filed for membership in those class action suits. It also would provide no protection for people who signed up for other class action lawsuits that were just as successful and arguably more meritorious because the class members actually filed for amnesty on time (cases like Proyecto San Pablo; IAP; or Zambrano).

No Relief Provided to Spouses and Minor Children: The Hatch proposal also does not provide relief to the spouses and minor children of the late legalization applicants who have been waiting for years for permanent residency. This omission stands in contrast to 1990 IMMACT law that included a family unity proposal for the 1982 amnesty applicants. However, because the late legalization applicants never got permanent residency, they were never allowed to apply for their family members to receive permanent residency. If the INS had adjudicated the applications properly, the applicants and their family would be permanent residents by now. By this omission, the Hatch proposal offers no procedure by which family members of applicants can adjust.

Cumbersome Process Creates Barriers to Adjustment: In addition, because the Hatch proposal maintains the same cumbersome process as was used in the 1986 legalization program, some of the same problems that occurred then are more than likely to occur now, especially because resources available then will not be available under the Hatch proposal. For instance, while the Hatch proposal mandates that applicants must understand basic civics and be able to speak, write, and read ordinary English, there no longer are the federally funded classes that applicants can attend to meet these requirements.

Does Not Replace Updating the Registry Date to 1986: Moreover, the Hatch amnesty does not take the place of the registry date update to 1986 that would benefit a greater number of deserving people. Such an update would allow applicants and most applicants' family members to apply for permanent residency directly. Since changing the registry date to 1986 would allow ANYONE who has continuously resided in the U.S. since that date to apply for permanent residency, the only late legalization class members who could not apply for registry are those who permanently moved back to their country of origin for sometime between 1982 and today. It also would allow deserving immigrants who came to this country between 1982-1986 to adjust.

WHAT THIS PROPOSAL LACKS

The Hatch proposal does not restore Section 245(i) or implement NACARA parity.

Section 245(i) would allow eligible people to adjust their status in the U.S . A provision of immigration law, Section 245(i), allowed people living here to pay a $1,000 fee and adjust their status. Since Section 245(i) was grandfathered in 1998, INS backlogs have skyrocketed, families have been separated, businesses have lost valuable employees, and eligible people must leave the country (often for years) in order to adjust. This provision is a pro-family and pro-business measure that would provide millions of dollars in additional funding (about $200 million in a recent fiscal year) to reduce INS backlogs, at no cost to taxpayers and would eliminate roadblocks in the way of people becoming legal. It has bipartisan support. Especially given that the "V" visa allows the immediate family members of permanent residents to be forgiven for their unlawful entry, Section 245(i) needs to be restored to at least grant a lesser benefit to U.S. citizens' immediate relatives and other family members as well as the valued employees of U.S. employees.

NACARA Parity would correct flawed 1997 and 1998 legislation that failed to address unequal treatment of legitimate refugees from Central America and Haiti. America routinely has passed nation-based legislation and should not, just days before the end of this session of Congress, decide that such an approach is flawed. Thus, while refugees from certain Central American and Caribbean countries now are eligible to become permanent residents, current law does not help others in similar circumstances. Congress needs to act again and pass the Central American and Haitian Adjustment Act that would ensure that refugees from El Salvador, Guatemala, Honduras and Haiti have the same opportunity as their brothers and sisters covered by NACARA.

date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for assistance under a State program funded under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsecι ; (a)(5) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable coι odities, as defined in regulations by the Secretary of Agriculture.

210A DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

SEC. 210A. [8 U.S.C. 1161] [SEC. 210A was repealed by Sec. 219(ee)(1) of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416, 108 Stat. 4319, Oct. 25, 1994); it would appear that this amendment was effective as of November 29, 1990 (namely as if included in the enactment of the Immigration Act of 1990), under Sec. 219(dd) of Pub. L. 103-416.]

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

211 DOCUMENTARY REQUIREMENTS

SEC. 211. [8 U.S.C. 1181]

(a) DOCUMENTS REQUIRED; ADMISSION UNDER QUOTAS BEFORE JUNE 30, 1968.—Except as provided in subsection (b) and subsection (c) no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) READMISSION WITHOUT REQUIRED DOCUMENTS; ATTORNEY GENERAL'S DISCRETION.—Notwithstanding the provisions of section 212(a)(7)(A) of this Act in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 101(a)(27)(A), who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a ort, immigrant visa, reentry permit or other documentation.

(c) NONAPPLICABLITY TO ALIENS ADMITTED AS REFUGEES.—The provisions of subsection (a) shall not apply to an alien whom the Attorney General admits to the United States under section 207.

212 GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. [8 U.S.C. 1182]

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

(ii)[45] who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

[45] Clause (ii) added by IIRIRA § 341(a)(2). Effective "with respect to applications for immigrant visas or for adjustment of filed after September 30, 1996." IIRIRA § 341(c).

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved

moral turpitude, for which the aggregate sentences to confinement[46] were 5 years or more is inadmissible.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

ally imposed" were deleted after this word by IIRIRA § 322(a)(2)(B). The change applies to "convictions and efore, on, or after the date of the enactment of this Act. Subparagraphs (B) and (C) of section 240(c)(3) of the ationality Act, as inserted by section 304(a)(3) of [IIRIRA], shall apply to proving such convictions."

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) TERRORIST ACTIVITIES—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity,

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iii)),

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity,[47]

[47] Added by § 342 of IIRIRA, effective "on the date of the enactment of [IIRIRA] and shall apply to incitement regardless of when it occurs."

(IV) is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 219, or

(V) is a member of a foreign terrorist organization, as designated by the Secretary under section 219, which the alien knows or should have known is a terrorist organization,[48]

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive or firearm (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "engage in terrorist activity" means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

55 of IIRIRA added "which the alien knows or should have known is a terrorist organization" to this clause which was in by § 411(1)(C) of AEDPA.

(I) The preparation or planning of a terrorist activity.

(II) The gathering of information on potential targets for terrorist activity.

(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or[49] identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe committed or plans to commit a terrorist activity.

(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity.

(iv) REPRESENTATIVE DEFINED.—As used in this paragraph, the term 'representative' includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose entry or prop activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) EXCEPTION FOR OFFICIALS.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable[50] or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) EXCEPTION FOR OTHER ALIENS.—An alien, not described in clause (ii), shall not be excludable[51] or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

[49] Section 342 of IIRIRA added "documentation or", effective "on the date of the enactment of [IIRIRA] and shall apply to incitement regardless of when it occurs."

[50] *Sic.* Should be "inadmissible".

[51] *Sic.* Should be "inadmissible".

(iv) NOTIFICATION OF DETERMINATIONS.—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.—

(i) IN GENERAL.—Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) PARTICIPANTS IN NAZI PERSECUTIONS OR GENOCIDE.—

(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) PARTICIPATION IN GENOCIDE.—Any alien who engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible.

(4) PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.[52]

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—(i) In determining whether an alien is inadmissible[53] under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa issued under section 201(b)(2) or 203(a) is inadmissible[54] under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

(II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or

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[52] Section 308(d)(1)(C) of IIRIRA changed the term "is excludable" to "is inadmissible". Section 531 of IIRIRA rewrites the entire paragraph using the term "is excludable". It is unclear which will prevail in final text. The amendments made by § 531 of IIRIRA "shall apply to applications submitted on or after such date, not earlier than 30 days and not later than 60 days after the date the Attorney General promulgates under section 551(c)(2) of [IIRIRA] a standard form for an affidavit of support, as the Attorney General shall specify, but subparagraphs (C) and (D) of section 212(a)(4) of the Immigration and Nationality Act, as so amended, shall not apply to applications with respect to which an official interview with an immigration officer was conducted before effective date."

[53] Section 308(d)(1)(C) of IIRIRA changed the term "is excludable" to "is inadmissible".

[54] *Id.*

(ii) the person petitioning for the alien's admission (including any additional sponsor required under section 213A(f)) has executed an affidavit of support described in section 213A with respect to such alien.

(D) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii)[55] PROFESSIONAL ATHLETES.—

(I) IN GENERAL.—A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for certification.

(II) PROFESSIONAL ATHLETE DEFINED.—For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional

[55] Added by § 624 of IIRIRA.

sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member is regularly engage; or

(bb) any minor league that is affiliated with such an association.

(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I II of the National Board of Medical Examiners if the alien was fully permanently licensed to practice medicine in a State on January 9, 1978, was practicing medicine in a State on that date.

(C)[56] UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—Any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible[57] unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type;

(III) are authentic and, in the of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination,

[56] Added by section 343 of IIRIRA.

[57] Section 308(d)(1)(A) of IIRIRA substituted "is inadmissible" for "is excludable" whenever appearing in paragraphs (1)-(5); therefore, although section 343 of IIRIRA uses the term "excludable", section 308(d)(1)(A) makes this additional change.

the alien passed such a test, or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) APPLICATION OF GROUNDS.—The grounds of inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b) [1153].

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A)[58] ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) IN GENERAL.—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) [1154],

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) FAILURE TO ATTEND REMOVAL PROCEEDING.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who
seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

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aragraphs (A) and (B) of section 212(a)(6) amended by § 301(c) (1)of IIRIRA. Section 301(c)(2) of IIRIRA provides: ITION FOR BATTERED SPOUSE OR CHILD PROVISION.—The requirements of subclauses (II) and (III) of section 5)(A)(ii) of the Immigration and Nationality Act, as inserted by paragraph (1), shall not apply to an alien who demonstrates alien first arrived in the United States before the title III-A effective date (described in section 309(a))." *See* Appendix A for -A" effective date provisions.

(C) MISREPRESENTATION.—

(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) FALSELY CLAIMING CITIZENSHIP.—Any alien who falsely represents, or has falsely represented, himself or herself to be citizen of the United States for any purpose or benefit under this Act (including section 274A [1324a]) or any other Federal or State law is inadmissible.[59][60]

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

(D) STOWAWAYS.—Any alien who is a stowaway is inadmissible.

(E) SMUGGLERS.—

(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(11).

(F)[61] SUBJECT OF CIVIL PENALTY.—

(i) IN GENERAL.—An alien who is the subject of a f order for violation of section 274C [1324c] is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

(G)[62] STUDENT VISA ABUSERS.—An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) [1101] and who violates a term or condition of such status under section 214(l) [1184] is inadmissible[63] until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

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[59] Section 308(d)(1)(C) of IIRIRA changed the term "is excludable" to "is inadmissible".

[60] Added by § 344(a) of IIRIRA, effective for "representations made on or after the date of enactment of [IIRIRA]."

[61] Amended by § 345 of IIRIRA, effective on the date of enactment of IIRIRA.

[62] Added by § 346 of IIRIRA, effective for "aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the [INA] after the end of the 60-day period beginning on the date of enactment of [IIRIRA], including aliens whose status as such a nonimmigrant is extended after the end of such period."

[63] Section 308(d)(1)(C) of IIRIRA changed the term "is excludable" to "is inadmissible".

(7) DOCUMENTATION REQUIREMENTS.—

(A) IMMIGRANTS.—

(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

(B) NONIMMIGRANTS.—

(i) IN GENERAL.—Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).

(iv) VISA WAIVER PILOT PROGRAM.—For authority to waive the requirement of clause (i) under a pilot program, see section 217.

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9)[64] ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) [1225] or at the end of proceedings under section 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in c (i) who—

(I) has been ordered removed under section 240 [1229a] or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.—Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B)[65] ALIENS UNLAWFULLY PRESENT.—

(i) IN GENERAL.—Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)[66] [1254]) prior to the commencement of proceedings under section 235(b)(1) or section 240 [1229a], and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the

[64] Added by § 301(b)(1) of IIRIRA. *See* Appendix A for effective date and transition provisions.

[65] Section 301(b)(3) of IIRIRA provides: "In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States." *See* Appendix A for title III-A effective date provisions.

[66] *Sic.* Should reference 240B [1229c].

Attorney General or is present in the United States without being admitted or paroled.

(iii) EXCEPTIONS.—

(I) MINORS.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section 208 [1158] shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990[67] shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) WAIVER.—The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a

L. No. 101-649, 104 Stat. 4978 (November 29, 1990).

decision or action by the Attorney General regarding a waiver under this cl se.

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) IN GENERAL.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1) [1225], section 240 [1229a], or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(10[68]) MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) GUARDIAN REQUIRED TO ACCOMPANY HELPLESS ALIEN.—Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c) [1222], and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i), is inadmissible.[69]

(C) INTERNATIONAL CHILD ABDUCTION.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) EXCEPTION.—Clause (i) shall not apply so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction.

(D)[70] UNLAWFUL VOTERS.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible[71].

[68] Former paragraph (9) redesignated as paragraph (10) by § 301(b) of IIRIRA.

[69] Amended by § 308(c)(2) of IIRIRA.

[70] Added by § 347 of IIRIRA, applies to "voting occurring before, on, or after the date of enactment of [IIRIRA]."

[71] Section 308(d)(1)(C) of IIRIRA changed the term "is excludable" to "is inadmissible" in this paragraph.

(E)[72] FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) NOTICES OF DENIALS.—(1) Subject to paragraphs (2) and (3) if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible[73] or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

(c)[74] Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b). This subsection shall not apply to an alien who is deportable by reason of having committed any criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D) [1227], or any offense covered by section 241(a)(2)(A)(ii) [1227] for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i) [1227].

(d) TEMPORARY ADMISSION OF NONIMMIGRANTS.—

(1) The Attorney General shall determine whether a ground for inadmissibility[75] exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

(2) repealed;

(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and (3)(E) of such subsection), may, after approval by the Attorney General of a

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[72] Added by § 352 of IIRIRA, effective for "individuals who renounce United States citizenship on and after the date of the enactment of [IIRIRA].

[73] The phrase "or ineligible for entry" is presumed to be struck from this sentence by IIRIRA § 308(d)(1)(F) but this section incorrectly attempts to strike the phrase in subsection "(b)(2)" which was redesignated by section 412 of AEDPA.

[74] Section 212(c) was repealed by section 304(b) of IIRIRA, effective on the title III-A effective date. Section 306(d) of IIRIRA, however, makes an amendment to AEDPA § 440(d) which in turn amends former INA § 212(c). The section as amended is shown here because it will be in effect during the transition period and for cases that fall under IIRIRA § 309(c). *See* Appendix A.

[75] Section 308(d)(1)(D) of IIRIRA substitutes "inadmissibility" for "exclusion."

recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under subsection (a) (other paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and (3)(E) of such subsection), who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly

(A) on the basis of unforeseen emergency in individual cases, or

(B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or

(C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c) [1228].

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f) [1184], in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207 [1157].

(6) repealed;

(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) [1231] of this Act.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

(9) repealed;

(10) repealed;

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for

permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof),[76] if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was[77] the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12)[78] The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b) [1181], and

(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) [1181] or under section 203(a) [1153],

if no previous civil money penalty was imposed against the alien under section 274C [1324c] and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(e) EDUCATIONAL VISITOR STATUS; FOREIGN RESIDENCE REQUIREMENT; WAIVER.—No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose .cipation in the program for which he came to the United States was financed in whole or in directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had gnated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an

[76] Comma inserted by § 671(e) of IIRIRA.

[77] IIRIRA § 351 added the clarifying phrase "an individual who was at the time of such action was" both here and in section 237(a)(1)(E)(iii). Effective "for waivers filed before, on, or after the date of the enactment of [IIRIRA], but shall not apply to such an application for which a final determination has been made as of the date of the enactment of [IIRIRA]."

[78] Added by section 345(a)(2) of IIRIRA.

interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(k): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) SUSPENSION OF ENTRY OR IMPOSITION OF RESTRICTIONS BY PRESIDENT.—Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.[79]

(g)[80] BOND AND CONDITIONS FOR ADMISSION OF ALIEN INADMISSIBLE ON HEALTH RELATED GROUNDS.—The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2)[81] subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

[79] Added by § 124 of IIRIRA. (Regulations under this section must be issued, in proposed form, not later than 90 days after enactment of IIRIRA.)

[80] Amended substantially by § 341(b) of IIRIRA, effective with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996.

[81] The last sentence of paragraph (1) and all of paragraphs (2) and (3) of this subsection were added by IIRIRA § 341(b).

(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).—The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.[82]

(i)[83] ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.—

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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[82] This last sentence was added by § 348 of IIRIRA, effective "on the date of enactment of [IIRIRA] and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date." IIRIRA § 308(g)(10) offers the following amendment to INA § 212(h): "(10) MISCELLANEOUS CROSS-REFERENCE CORRECTIONS FOR NEWLY ADDED PROVISIONS.—(A) Section 212(h), as amended by section 301(h) of this division, is amended by striking "section 212(c)" and inserting "paragraphs (1) and (2) of section 240A(a)". The amendment makes no sense since there is no section 301(h) in IIRIRA nor is the referenced text in section 212(h) of the INA.

[83] Subsection rewritten by IIRIRA § 349.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j) LIMITATION ON IMMIGRATION OF FOREIGN MEDICAL GRADUATES.—

(1) The additional requirements referred to in section 101(a)(15)(J) for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B) Before making such agreement, the accredited school has been satisfied that the alien

(i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or

(ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services),

(II) has competency in oral and written English,

(III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination w the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).

(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or

(II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) The Director of the United States Information Agency annually shall tr nit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, the status of such alien in that program.

(k) Attorney General's Discretion To Admit Otherwise Inadmissible Aliens ossess Immigrant Visas.—Any alien, inadmissible from the United States under ph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if se admissible, be admitted in the discretion of the Attorney General if the Attorney General ied that inadmissibility was not known to, and could not have been ascertained by the of reasonable diligence by, the immigrant before the time of departure of the vessel or from the last port outside the United States and outside foreign contiguous territory or, in

the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

(l) Guam; Waiver Of Requirements For Nonimmigrant Visitors; Conditions Of Waiver; Acceptance Of Funds From Guam.—

(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State and the Secretary of the Interior, after consultation with the Governor of Guam, jointly determine that—

(A) an adequate arrival and departure control system has been developed on Guam, and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) An Alien May Not Be Provided A Waiver Under This Subsection Unless The Alien Has Waived Any Right—

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien. (3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the Government of Guam such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(a), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Ca ;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(a) is an attestation as to the following:

(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Notwithstanding the previous sentence, a facility that lays off a registered nurse other than a staff nurse still meets clause (i) if, in its attestation under this subparagraph, the facility has attested that it will not replace the nurse with a nonimmigrant described in section 101(a)(15)(H)(i)(a) (either through promotion or otherwise) for a period of 1 year after the date of the lay off. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of this subsection. In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.

(B) For purposes of subparagraph (A)(iv)(I), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv)(I). Nothing herein shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petiti ; for nonimmigrants under section 101(a)(15)(H)(i)(a) and, for ı such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable to believe that a facility fails to meet conditions attested to.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least 1 year for nurses to be employed by the facility.

(v) In addition to the sanctions provided under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(3) The Secretary of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individuals concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.

(4) The period of admission of an alien under section 101(a)(15)(H)(i)(a) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).

(5) For purposes of this subsection and section 101(a)(15)(H)(i)(a), the term "facility" includes an employer who employs registered nurses in a home setting.

(n)(1) No alien may be admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application, and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) within 7 days of the date of the filing of the application.

(2)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

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

(C) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a misrepresentation of material fact in an application—

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

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

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(o)[84] *An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—*

(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(2) The alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.

213 Admission Of Certain Aliens On Giving Bond

SEC. 213. [8 U.S.C. 1183] An alien inadmissible under paragraph (4) of section 212(a) [1182] may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A [1183])[85] upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge, irrespective of whether a demand for payment of public expenses has been made.

[84] This provision was sunset on October 1, 1997, by operation of § 506(c) of Public Law 103-317; 108 Stat. 1766 (1994), as amended by § 111(b) of Public Law 105-119, 111 Stat. 2440 (1997).

[85] Parenthetical added by IIRIRA § 564(f).

213A Requirements For Sponsor's Affidavit Of Support[86]

SEC. 213A. [8 U.S.C. 1183a] (a) ENFORCEABILITY.—

(1) TERMS OF AFFIDAVIT.—No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable[87] as a public charge under section 212(a)(4) [1182] unless such affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State) or by any other entity that provides any tested public benefit (as defined in subsection (e) of this section), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2) of this section.

(2) PERIOD OF ENFORCEABILITY.—An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) TERMINATION OF PERIOD OF ENFORCEABILITY UPON COMPLETION OF REQUIRED PERIOD OF EMPLOYMENT, ETC.—

(A) IN GENERAL.—An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [1613 of title 8]) during any period.

(B) QUALIFYING QUARTERS.—For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act an alien shall be credited with—

(i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] worked by a parent of such alien while the alien was under age 18, and

[86] Added by § 551 of IIRIRA, effective date set forth by subsection (c) of § 551 which provides:

"(c) EFFECTIVE DATE OF 1996 AMENDMENTS; PROMULGATION OF FORM—

(1) IN GENERAL.—The amendments made by this section [enacting this section, amending sections 1631 and 1632 [of title 8], and repealing provisions set out in a note under this section] shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under paragraph (2).

(2) PROMULGATION OF FORM.—Not later than 90 days after the date of the enactment of this Act [September 30, 1996], the Attorney General, in consultation with the heads of other appropriate agencies, shall promulgate a standard form for an affidavit of support consistent with the provisions of section 213A of the Immigration and Nationality Act, as amended by subsection (a)."

[87] *Sic.* Should be "inadmissible".

THE WHITE HOUSE

WASHINGTON

October 26, 2000

Dear Mr. Leader:

I am writing to raise my serious concerns with the FY 2001 Commerce, Justice, and State appropriations bill that was filed this morning as part of the FY 2001 District of Columbia conference report. Although neither my Administration nor virtually any Member of Congress has had an opportunity to review this bill, it is our understanding that it fails to adequately address a number of high-priority issues that the Administration has previously brought to your attention. Therefore, I have no choice but to veto this bill.

It is our understanding that this bill fails to redress several injustices in our immigration system as called for by the Latino and Immigrant Fairness Act. Those provisions would help normalize the immigration status of individuals and their families who have been living for many years in the United States, and, as such, would restore fairness and equity to our immigration laws. Current Republican proposals would not help most of the people who need relief and would perpetuate the current patchwork of contradictory and unfair immigration policies.

In addition, it is our understanding that this bill fails to provide the resources needed for the Department of Justice to let justice work its course by pursuing tobacco litigation to address the need for tobacco companies to bear responsibility for the staggering costs of tobacco-related illnesses. Congress should not block the judicial process, especially in a matter that is of supreme importance to the public health and the public interest.

This bill also fails to include hate crimes legislation that would cover crimes motivated by bias on the basis of a victim's gender, disability, or sexual orientation. Both the House and Senate have had bipartisan votes indicating their support for strong hate crimes legislation and it should become law this year.

The bill fails to address in any meaningful way the real privacy concerns about Social Security numbers raised by the Administration. Regrettably, it does not include needed protections against the inappropriate sale and display of individual citizens' social security numbers. Moreover, the bill creates loopholes that seriously undermine the goal of the legislation to protect privacy. In addition, by not reauthorizing the Violent Crime Reduction Trust Fund, the bill fails to support successful Federal efforts to protect critical law enforcement funding and reduce violent crime.

We also understand that a range of anti-environmental, anti-competitive, and other damaging riders have been under consideration and may have been added to this bill. I urge Congress to refrain from adding riders that would reward special interests at the expense of the public interest. I also urge Congress to drop the rider that would prevent the Federal Communications Commission from licensing new low-power FM radio stations to provide for a diversity of voices in communities around the country. And regrettably, Congress has attached a deeply flawed Commerce, Justice, and State bill to an otherwise signable District of Columbia bill.

I urge the Congress to complete its work by sending me acceptable bills. I regret that the bipartisan discussion to resolve these issues in this bill were abandoned. The recent passage of several other appropriations bills shows that when we work together and Congress puts progress over partisanship, we are able to deliver real results for the American people. It is long past time for Congress to do the same for the Commerce, Justice, and State bill and to produce a bill I can sign.

Sincerely,

Bill Clinton

The Honorable Richard A. Gephardt
Democratic Leader
House of Representatives
Washington, D.C. 20515

MALDEF

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
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TELECOPIER COVER SHEET

PLEASE DELIVER THE FOLLOWING FAX AT ONCE TO:

TO: MARIA ECHAVESTE

RECIPIENTS' FAX NUMBER: (202) 456-1121 **VOICE:** ______

FROM: MARISA J. DEMEO, REGIONAL COUNSEL

DATE: Thursday, October 26, 2000

PLEASE ADVISE NELLY B. VALDES AT ONCE IF THE 3 PAGE(S), INCLUDING THIS PAGE, HAVE NOT BEEN RECEIVED AT THE END OF THE TRANSMISSION. OUR REGULAR PHONE NUMBER IS (202) 293-2828, OUR FAX NUMBER IS (202) 293-2849.

NOTES: LATINO AND IMMIGRANT FAIRNESS ACT

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Houston
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Ripley House
4401 Lovejoy, Suite 28
Houston, TX 77003
Tel: 713.928.6789
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Phoenix
Program Office
202 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307-5918
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Atlanta
Census Office
3355 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404.504.7020
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October 26, 2000

Via Facsimile

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Re: Latino and Immigrant Fairness Act

Dear Mr. President:

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF) and the Hispanic community that we represent, we want to commend you for your ongoing support of the Hispanic issues raised in S. 2912, the Latino and Immigrant Fairness Act (LIFA). As you know, some partisan Republicans are floating around a draft bill called the Legal Immigration Family Equity Act (LIFEA). The language in that draft legislation is unacceptable to the Hispanic community because it does not cover the fundamental fairness issues included in LIFA.

We urge you to continue your opposition to the so-called Legal Immigration Family Equity Act (LIFEA) and again commend you on your promised veto of the Commerce, Justice and State (CJS) appropriations bill if the Latino immigration needs outlined in LIFA are not included. As you well know, the three main issues outlined below and included in LIFA, but not in LIFEA, are essential in addressing the needs of a great portion of the Hispanic community and we will continue to stand behind you as you lead these efforts.

First, nearly 500,000 residents who qualified for legalization under the 1986 Immigration Reform and Control Act (IRCA) were victims of INS error. Updating the "registry date" from 1972 to 1986 would bring justice to this "late amnesty" class and grant immigrants who have resided and worked in the U.S. for 14 years the opportunity to continue contributing to our economy.

Second, Salvadorans, Guatemalans, Hondurans, and Haitians should be offered the same opportunity to apply for permanent residence as was extended to Nicaraguans and Cubans in 1997. They left their countries under similar circumstances as Cubans and Nicaraguans, but are not allowed to adjust their status to legal resident under the same procedure as Cubans and Nicaraguans.

Finally, reinstating section 245(i) of the Immigration and Naturalization Act would prevent the separation of families by allowing the intending immigrant family members to remain in the U.S. as they finish the final stage of their applications for permanent residence.

As always, MALDEF and the Latino community are counting on your commitment and determination on these issues to guarantee three clear victories for our community and another great legacy of your presidency. Even if the CJS bill is rolled into an omnibus or "mini-omnibus" bill, we anticipate that your veto threat will still hold.

Thank you for standing up with us on this one.

Sincerely,

Antonia Hernandez

Antonia Hernandez
President and General Counsel

cc:
John Podesta – Chief of Staff
Maria Echaveste – Deputy Chief of Staff
Irene Bueno – Special Assistant to the President for Domestic Policy
Brian Barreto – Associate Director for Public Liaison

October 26, 2000

Dear Senator:

We, the undersigned organizations, request that you oppose the conference committee report to H.R. 4942, the combined Fiscal Year 2001 District of Columbia and Commerce, Justice, and State appropriations bills. The conference report soon will be considered by the full Senate.

As reported out of conference committee, H.R. 4942 does not contain several important provisions which would provide immigration relief to deserving groups who have lived in the United States for years, built equities in their local communities, and otherwise contributed to the cultural, economic, and social fabric of our nation. The provisions also would correct omissions in immigration laws passed by Congress in the last few years which have had the effect of leaving these groups at risk of deportation and separation from the U.S.-citizen or permanent resident family members.

First, H.R. 4942 does not provide the nationals of El Salvador, Guatemala, Honduras, and Haiti--nations which suffered civil strife during the 1980s and early 1990s-- who arrived in the United States prior to December, 1995, the opportunity to apply for permanent resident status. In 1997, Congress provided this opportunity to Nicaraguans and Cubans and should now recognize the situations of similarly-situated groups by giving them equal treatment.

Second, H.R. 4942 fails to amend Section 249 of the Immigration and Nationality Act to update the registry date provision from 1972 to 1986, which would allow those who entered the country before January 1, 1986, to adjust to permanent residency. Updated six times by Congress since its creation in 1929, the registry date recognizes that long-term residents who have contributed to our country deserve an opportunity to become permanent residents.

Finally, the conference report excludes a Senate provision which would have restored Section 245 (i) of the INA to allow immigrants in the United States eligible for permanent residency to adjust their status in the United States. Because Congress repealed Section 245 (i) in 1997, these individuals currently must travel back to their country of origin to be processed, often at great expense and for unnecessarily long periods of time.

As a package, these provisions, which are also contained in the Latino and Immigrant Fairness Act (S. 2912), correct past government mistakes and restore a measure of justice and fairness to our immigration system. In its current form, H.R. 4942 does not include any of these important provisions. In this regard, we ask that you oppose the conference report to H.R. 4942 when it is considered by the full Senate.

Sincerely,

American Immigration Lawyers Association
League of United Latin American Citizens
National Association of Latino Elected Officials
National Council of La Raza
National Immigration Forum
U.S. Catholic Conference

October 26, 2000

Dear Representative:

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U.S. Catholic Conference

NATIONAL IMMIGRATION FORUM

THE FAX ON IMMIGRATION

A nation of immigrants....a nation of prosperity

October 26, 2000
Vol. 1, No. 38

Contact: Angela Kelley (202) 544-0004, ext. 19
1 page

"Treat Immigrants Fairly."

The Star- Ledger Editorial
October 25, 2000

Congress in 1997 gave Nicaraguans and Cubans - those who fled their countries for political reasons - special opportunity to become permanent residents here because they were fleeing Communists. But thousands of refugees from Guatemala, El Salvador, Honduras and Haiti also left their homelands to escape equally oppressive regimes and nasty civil wars during the same tumultuous period. They have been working and paying taxes but have been stuck with temporary residency status. They deserve a better shot at becoming American citizens.

Two other parts of the Latino and Immigrant Fairness Act are equally deserving of congressional support. One would update immigration law to correct mistakes made in the 1980s. Hundreds of thousands of people who should have been covered by the last general amnesty were wrongly rejected or denied the opportunity to apply. GOP hard-liners oppose this provision because it would legalize the residency of thousands of other people who arrived between 1982 and 1986. They say that would amount to a blanket amnesty that makes a mockery of our laws.

Get real. This isn't some unprecedented end run around important immigration policies. This law has been updated a number of times since 1929 to legalize the residency of those who have been in America for many years. Grandfathering those immigrants recognizes a practical reality: The Immigration and Naturalization Service is not going to spend its limited resources pursuing and deporting people who have been here 14 years or more. It properly recognizes the contributions and hard work of those who have been making their lives here, working and building families. The proposed act also would clean up another mess. Our law used to recognize that it made no sense to force immigrants - on the verge of gaining legal status - to leave America to get permission to return permanently. Two years ago, Congress failed to renew that provision. The fairness act would correct that.

The fairness act has become a part of last-minute negotiations over a government spending bill. The Clinton administration has hung tough, insisting it will veto the larger spending bill unless the immigration sections remain a part of it.

Republicans should show they really have become a party sensitive to immigrants. They should work with the Clinton administration - and New Jersey representatives who support the measure, such as Robert Menendez (D-13th Dist.) and Chris Smith (R-4th Dist.) - to make the fairness act a matter of law.

COVER

SHEET

EMBASSY OF HONDURAS FAX

WASHINGTON, DC

To: The Honorable María Echaveste

Fax #: 202.456.1907

Subject: See attached.

Date: October 26, 2000

Pages: 2, including cover sheet

For your information: Letter from Foreign Minister Roberto Flores Bermudez to Senator Orrin Hatch.

From the desk of...
Hugo Noé Pino
Ambassador
Embassy of Honduras
3007 Tilden St., NW POD-4M
Washington, DC 20008

Tel(s): 202.966.7702
Fax: 202.966.9751

EMBAJADA DE HONDURAS
WASHINGTON, D.C.

October 24, 2000

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Mr. Chairman:

As the 106th Congress comes to a close, I'd like to thank you for your efforts in the context of the discussions for the passage of the *Latino and Immigrant Fairness Act* (LIFA), which as you know aims at providing many of our nationals, access to the benefits of the 1997 *Nicaraguan Adjustment and Central American Relief Act* (NACARA), and thus allow our nationals and those of other countries, to remain permanently in the U.S. and continue to work legally, support their families, and contribute to the U.S. economy and the stability of our countries.

The NACARA Parity component of LIFA constitutes a timely and effective tool for the U.S. to address foreign policy and economic development concerns in the region. For example, remittances from the U.S. to Honduras are formidable and are helping our economy during a very difficult period, as we continue to reconstruct from the devastation caused by Hurricane Mitch. As much as 25% of Honduras' population receives a substantial part of its income in the form of remittances from abroad, mostly from family members in the U.S. Remittances from the United States to Honduras amount to US$450 million annually. This represents one of Honduras' largest sources of foreign revenue and is critical to the survival of hundreds of thousands of families.

Given the continuing disruption of living conditions in Honduras, derived from Hurricane Mitch in 1998, additional flooding in 1999, plus the slow arrival of international reconstruction funding assistance, the country is unable to absorb back more of its nationals at a time when unemployment is high and other social indicators are a cause for concerns.

United States employers from the construction sector, the hotel and restaurant industries have clearly stressed their need for these workers. By resolving the status of these immigrants today, Congress can help stabilize a workforce that employers have relied on for many years. As we understand there is a wide spread support for this initiative, both in the labor as in the private sector, and also from prominent Republican and Democratic leaders.

Mr. Chairman, I respectfully urge you to consider passage of this bill that addresses vital and urgent issues.

Sincerely,

Roberto Flores Bermúdez
Minister of Foreign Relations of Honduras