

Volume II.

Site Visit and Consultation Summaries:

1. Staff Summaries of April 3-4, 1997 Consultations on Structuring, Organizing and Managing an Effective Immigration System.
2. National Visa Center Site Visit, March 1997.
3. Dallas Site Visit, January 1997.
4. Los Angeles Site Visit, December 1996.
5. Prosecutorial Discretion Consultation, September 1996.

Additional Background Information:

6. Excerpt from "Immigration-The Beleaguered Bureaucracy," Milton D. Morris.
7. "The Federal Immigration Bureaucracy: The Achilles Heel of Immigration Reform," Daniel W. Sutherland.
8. Summary of INS Commissioner Priorities 1997.
9. Excerpt from "Budgeting for Performance: Strategy, Flexibility, and Accountability to Meet a Demanding Mission," National Academy of Public Administration, 1997.
10. Letter on INS implementation of NAPA recommendations
11. Excerpts from Government Performance and Results Act
12. GAO Report, Customs Service and INS, Dual Management Structure for Border Inspections Should Be Ended, June 1993.
13. Unauthorized Migration: An Economic Development Response, Report of the Commission for the Study of International Migration and Cooperative Economic Development, 1990, p. 27-32.
14. Section VII - Administrative Issues from Select Commission on Immigration and Refugee Policy Final Report, 1981.
15. Excerpts from "Whom We Shall Welcome," The Report on the President's Commission on Immigration and Naturalization, 1953.

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Divider Title: 1

**STRUCTURING, ORGANIZING, AND MANAGING AN EFFECTIVE
IMMIGRATION SYSTEM CONSULTATION:
WHAT REFORMS ARE NEEDED?**

Staff Summary

April 3, 1997, Washington, DC

Commissioners Present: Lawrence Fuchs, Chair, Harold Ezell, Robert C. Hill, Warren R. Leiden, Bruce Morrison

Staff Present: Susan Martin, Andrew Schoenholtz, David Levy, Patricia Dunn, Gregg Beyer, Brett Endres

Participants:

Alex Aleinikoff, Former Executive Associate Commissioner, INS

Diego Asencio, Former Chair, Commission for the Study of International Migration & Cooperative Economic Development

James Blume, Assistant Director, Audit Operations Group/Justice, GAO

Roger "Buck" Brandemuehl, Former Chief, U.S. Border Patrol

Barry Kefauver, Former Executive Director, Bureau of Consular Affairs

Albert J. Kliman, Senior Research Associate, National Academy of Public Administration Panel on INS

Michael Lempres, Former Executive Associate Commissioner, INS

Milton Morris, Senior Vice President, Joint Center for Political and Economic Studies

Ruth Anne Myers, Former INS District Director, Phoenix, Arizona

Peter K. Nune, Former U.S. Attorney and Assistant Secretary of the Treasury for Law Enforcement

Joaquin F. Otero, Former Deputy Under Secretary of Labor for International Labor Affairs

Daniel W. Sutherland, Legal Scholar, Center for Equal Opportunity

The Chair opened the meeting by explaining that the Commission is looking at the issue of immigration management, organization, and structure in the federal government. The Commission looks to the participants to provide guidance on

optimum structure and/or improvements to the current system. Most participants are former Executive Branch officials with numerous years of government service; others have done reports examining the Executive Branch agencies and have made recommendations of their own.

Former INS General Counsel, Alex Aleinikoff warned the Commission not to recommend changes in the structure of the immigration system just for the sake of making changes and/or to make the agencies seem neater and better organized. The current system looks like an odd structure for a reason; it is actually quite workable. In terms of the service versus enforcement functions of INS, INS Officers perform both functions simultaneously and splitting them is hard to conceptualize. The perception of enforcement dominating service at INS results from the large amount of resources and attention enforcement receives. Poor service is due to a lack of culture, training, and resources.

With the recent additional resources allocated to INS and the mounting demands on the service for accountability and management, he said a mix of management analysts need to be brought in as part of the INS culture. Although many of the systems problems relate to management rather than structure, major organization reform is justified. As there is no high place in the Administration to address immigration policy development, policies that are formulated tend to be reactive and crisis driven. Aleinikoff recommended establishment of a Cabinet-Level Department of Migration to provide needed skills and, most importantly, high level policy rank.

Policy Leadership

INS is not the proper place to make immigration policy; rather, a high-level central locus where major issues of immigration policy can be debated, discussed, and decided is needed. Wherever the final location of immigration policymaking, it should consider demographic effects as a whole and the effect of certain immigration situations on the rest of the country. Immigration policy has not received the attention it needs; for most of the involved agencies outside of INS, policies have

been only reactive, not proactive. While many participants agreed that a higher level locus for policymaking is needed, they differ on where that should be.

Department. One recommendation was for a Cabinet-level Department with a Secretary rank to direct all the functions of the INS, the Visa Office and the Department of State [DOS], and labor certification from the Department of Labor [DOL]. This Department would have both a Secretary and Deputy Secretary thinking about immigration issues. An Assistant Attorney General for Immigration or an Associate Attorney General are not high enough ranking to do what needs to be done on immigration. The present rank of the INS Commissioner is comparable to that of an Assistant Secretary.

Presidential Advisor. A special advisor or advisory group to the President was also suggested. An Immigration Czar, much like the Drug Czar, was briefly considered. The purpose would be to raise immigration as a highly visible issue requiring presidential attention and to have a seat at the table during important meetings with the other Cabinet Secretaries. A high level advisor would elevate the issue and convey leadership (or at least give the appearance of executive concern) within the White House and to the Congress.

Enhancement of the Domestic Policy Council [DPC] role. The DPC already has responsibility for interagency coordination on immigration policy. Some participants expressed concern that placing immigration policy development responsibility in the White House would make it overly subject to political pressure. Others responded that the President must make the final decision on immigration policy issues and that building a capacity within the Executive Office of the President for analysis of immigration would ensure the receipt of better information on which to base those decisions.

Service/Enforcement Split

Participants held two differing views on splitting the service and enforcement functions: (1) they should remain in the same agency, but with a clear split within that agency; (2) they should be totally split into two different agencies. Though these

issues were discussed briefly, no one seemed to have a clear idea or recommendation on how this should be accomplished.

Border Management Agency

The topic of a border management agency that would combine the enforcement functions of INS Inspections, the Border Patrol, and U.S. Customs into a single agency also arose. Although this proposal has been consistently recommended since the 1930s, it still has not been implemented, perhaps because of the jurisdictional division of the Congressional Appropriations Committee and Subcommittees overseeing DOJ and the Department of the Treasury.

Bureau of Immigration and Border Control

A Bureau of Immigration and Border Control also was suggested. Its single mission would be immigration control and would have three sectors: administration, services, and enforcement. The Bureau's Director would report directly to the Attorney General. The directors of administration, services, and enforcement also would have direct line authority. This differs from the present system in that service and enforcement would be split within the Bureau and reporting would be to a higher level in the Department of Justice [DOJ]. As in the FBI, the Director of the Bureau would be appointed for a fixed term that exceeded four years.

Congressional and Political Will

It was mentioned that many very good recommendations have come from previous Commissions on immigration, but that Congress "did not have the stomach to do what was necessary." Participants felt the Commission could go either of two ways: (1) submit a report that had recommendations for a "perfect world" scenario that Congress would have no plans to implement and would sit on a shelf with many other reports; or (2) submit recommendations that would make incremental changes, not "big picture" reforms.

Other Issues

A few other problems or issues were identified and discussed at the meeting.

Mission Overload. Some participants mentioned that INS currently has too many high priority items on their list and not enough time and resources to accomplish them all. The participants would prefer to see only three things listed as top priorities, not the current much-longer list.

Detention. Detention constitutes a large portion of the INS budget and many of the participants suggested that INS is not set up for long-term detention of aliens. The Bureau of Prisons [BOP] and the U.S. Marshals have their own systems to deal with detention within the DOJ. INS has neither the ability nor the knowledge to implement long-term detention. The BOP and U.S. Marshals detain criminals, whereas, those that violate the immigration laws, which are fundamentally civil in nature, are not criminals. There are, however, an increasing number of detained aliens who have been convicted of a crime. If the INS did not have to concern itself with running detention facilities, but instead could detain aliens run by another entity, it could do a better job.

Conclusions

The Chair asked participants to list three management and structural issues they would like to see changed or implemented. The recommendations fell into three areas.

Management

- Flood INS with managers from the outside who are not immigration experts but who have the management skills necessary to run an agency effectively.

- Give Regional Directors a greater role in developing priorities, goals, and expectations, and develop a program evaluation capability to ensure that programs are moving towards and meeting these goals.
- Perform quality assurance checks and provide for a system of feedback into to ensure that what has been done not only has been finished but that it also has been done properly.
- Have managers and policymakers identify and be held accountable for management goals.
- Pilot test privatization at INS, including detention models and more fee collection for services.
- Improve communication between headquarters and the field in terms of management meetings, training for field officers, budget accountability, and ensure that the requested and authorized resources get to the field in a more timely manner.
- Correct overlaps and eliminate redundancies in which two agencies are performing essentially the same function.

Policy

- Separate service and enforcement functions within INS, keeping the two within the same agency but consolidating the functions of each.
- Consolidate enforcement functions of the Border Patrol, Inspections, and Customs to control illegal migration.
- Have detention handled by some other agency and only monitored by INS rather than having INS detain aliens for the long-term.

- Streamline and reform the agencies involved in immigration so that each would have an internal office or person responsible for policymaking.

Structure

- Have policy development made at a higher level to address DOS, DOL, and DOJ issues.
- Continue the priority process (which INS has done successfully in the last few years) in setting objectives and goals and fulfilling them.
- Develop an employee identification system so that the employment magnet is not pulling people here that our system is trying to keep out.

MANAGEMENT TEAM CONSULTATION: Staff Summary
April 4, 1997, Washington, DC

Commission Members Present: Lawrence Fuchs (presiding), Harold Ezell, Robert Hill, Warren Leiden, Bruce Morrison

Staff Present: Susan Martin, Andy Schoenholtz, Gregg Beyer, Pat Dunn, Brett Endres, David Levy

Participants:

Stephen R. Colgate, Assistant Attorney General for Administration

Donna Hamilton, Deputy Assistant Secretary of State for Visa Services

Seth Harris, Deputy Assistant Secretary of Labor for Policy

John B. McGowan, Passenger Process Owner, Office of Field Operations, Customs Service

Doris Meissner, Commissioner of INS

Steve Mertens, Senior Program Examiner, OMB

Anthony C. Moscato, Director, Executive Office for Immigration Review

Phyllis Oakley, Assistant Secretary of State for Population, Refugees, and Migration

Gerri Ratliff, Counsel to the Deputy Attorney General

Mary Ryan, Assistant Secretary of State for Consular Affairs

Steve Warnath, Senior Policy Analyst, Domestic Policy Council

Seth Waxman, Acting Deputy Attorney General

Vice Chair Fuchs convened the consultation, welcomed participants, and outlined the discussion ground rules.

INS Commissioner Meissner

Policy development has worked quite well in the last several years. Three crucial arenas demonstrate success within existing structures: the more than doubling of the INS budget in the last three/four years, with continuing growth; the handling of

emergency migrations, such as Cuba and Haiti; and, the overall commitment and effort that has gone into managing the immigration system.

Separating border enforcement activities from the rest of immigration enforcement would be difficult because:

- INS is now linking its border enforcement efforts internally and beginning to share intelligence and understanding both of what the major entry routes are and how they connect to employment and employers;
- Separation would constitute a return to a more fragmented system when INS and the Customs Service are now at a point where there is essential parity in resources, resulting in the development of true port management in the busiest port of entry, San Ysidro;
- These functions are mutually reinforcing, for example: an effective asylum system requires eliminating the abuses in the system, which means focusing on enforcement; in naturalization, the greatest weakness is the ability to fingerprint and get criminal records in an effective and timely manner.

While, at the present time there is no basis for fundamental restructuring, one area in which improvements are called for is the way in which the international dimensions of migration management and the domestic dimensions intersect. Smuggling and law enforcement pressures require global activity to achieve truly effective border control. There is a need for a substantial overseas law enforcement presence. Much additional work remains to be done in joint planning and outcomes and performance effectiveness.

Integration of databases between INS and other agencies shows great promise: it is becoming acutely important in employer verification and in cooperative efforts with the Social Security Administration.

Assistant Secretary Mary Ryan

The budget and planning process is very complex and there are numerous disconnects. Planning is difficult when one doesn't know how much money will be available from year to year. Immigration needs additional funding (also mentioned by Commissioner Meissner).

After the World Trade Center bombing, Congress recognized the need for additional consular services resources and authorized a machine-readable visa fee. Every visa issuing post now is automated. There is a direct tie-in to the classified lookout system at each such post.

The Bureau of Consular Affairs is working to develop better strategic plans. Interagency efforts to deter illegal immigration, identify criminals and terrorists, and combat fraud figure very prominently in these draft strategic plans. The Government Performance and Results Act [GPRÁ] is driving these efforts and it will also lead to further integration of the budget and planning processes.

Organizational changes are not necessary; more can be gained by actively supporting the growing integration of INS and the Department of State [DOS] operations through increased coordination. DOS is strongly against any transfer from DOS of the visa function, which involves a lot more than just denying entrance to ineligible aliens; the manner in which the visa function is performed has a decided effect on our relations with other nations. The proposed travel of individual aliens to the U.S. relates to foreign as well as domestic policy, including situations involving terrorist organizations and drug traffickers. As international movement of peoples increases in importance in our bilateral and multilateral relations, the impact of visa operations on our foreign policy will be even greater. DOS has officers trained and experienced in the operation and policy aspects of immigration as it relates to foreign policy. Further, transfer of the visa function would eliminate a source of talent because the officers now doing consular work would not transfer to an agency that only does immigration.

Deputy Assistant Secretary of Labor Seth Harris

The problems with the employment-based immigration systems are problems of conflicting policy goals, different policy objectives, and different levels of political influence among interest groups in our political economy. The goals are not matched by systems intended to meet those goals. In the nonimmigrant system, which purports to satisfy short-term skill-based shortages, there is no labor market test to determine whether such shortages exist. Problems in the permanent employment-based system that were pointed out in the recent Department of Labor [DOL] Inspector General's report cannot be addressed by moving boxes around within the government. Creation of an Assistant Secretary of Labor for Immigration would not cause these problems to go away.

Consolidating worksite enforcement in a single agency would not solve the problems. While there is a tension between the DOL roles of enforcing worker protections and of cooperating with INS, there are conflicts between the DOL enforcement and service functions and whether DOL is serving them to get the desired outcome. Does DOL serve the customer's goal, depending how the customer is defined? Does DOL serve its policy goals? The question that should be asked, both from the perspective of the employer and the immigrant, is: Is this the most efficient way of having a foreign worker admitted to the U.S.?

Discussion

At the conclusion of the three presentations, one Commissioner observed that there was an overwhelming disconnect between current and former executive branch officials' perception of structural problems in the immigration system. The current incumbents stated that there are essentially no problems; in contrast the previous day's consultants pointed out numerous problems. Participants replied that there are problems, but they questioned the extent to which these problems are structural.

Selection of Immigrants and Nonimmigrants

The Commission asked if apparent redundancies in the adjudication of immigration benefits could be reduced. One Commissioner pointed out that DOL, INS, and DOS are involved in the selection of temporary and foreign workers and that USIA has responsibility for temporary exchange visitors who work in the U.S.

A participant noted that the double-check system (DOS and INS) used in issuing visas is very useful and important; going to a single agency issuance would lose this safeguard. Another said that the principal employment-based immigration problems are not management or structural, but are statutory, policy, and political problems that involve competing policy objectives. Moving boxes or consolidating functions does not necessarily solve problems. The goal should be how to save the customer and the government money and still get the same or better policy results.

A Commissioner asked if reform in this area was hampered by DOL declaration that the nonimmigrant, H-1B, and labor certification process policy level is illegitimate. He said that DOL should have a role, but that role is difficult to define when the agency itself doesn't think the program is legitimate. A participant argued that for four years DOL has been pushing a legislative agenda to reform the permanent program, but the nonimmigrant program, which is a feeder system into the permanent program, must also be reformed.

In the meantime, DOL is doing the best job it can with shrinking resources. DOL relies on the State Employment Security Agencies [SESAs] that took a deep funding cut. Eliminating the SESA role may not make sense as the SESAs may be better positioned to do a local labor market test and determine if recruitment has been done.

Data Sharing

Participants pointed to the greatly improved sharing of data during the past few years as a way of making the diffused immigration system work efficiently. The DataShare program in which INS and DOS share information on visa applications

and approvals, adjustments of status, entry to the U.S., and other immigration data involves consular posts, the National Visa Center, INS Regions, and ports of entry. DataShare provides current immigration information on individuals to those who need it. As required by the National Performance Review, DataShare helps reduce redundancies and makes for more effective use of resources. At present, 80 percent of the immigrant visas issued by DOS are in the DataShare system under which the information is directly transferred to INS.

Three direct and immediate benefits of data sharing are more accurate data, more timely data, and lower costs. While it is more expensive initially, it pays off in the long run.

A system to go directly from the granting of citizenship to the production of a passport without going through a separate passport application, was described as another way to bridge agency responsibilities. There is similar potential at the beginning of the process to link immigrant visas and the issuance of green cards, which can be connected with the issuance of social security cards.

Policy Development

The Commission asked how to get sustained policy development, particularly on legal immigration policies, in the absence of a compelling crisis. A participant reported that in the last few years, policy development on legal immigration did not occur in the way some people wished because it was determined that the focus would be on illegal immigration. Another reported that in 1994 and 1995 there were interagency working groups that addressed issues such as border management, legal immigration, and benefits. He said that the Administration did not ignore legal immigration issues but made fighting illegal immigration its priority.

Commissioners asked about the appearance that DOL was advocating fundamental statutory changes in the employment-based system on its own without the support of the Administration. Participants stated that DOL was advocating the Administration's position and outlined all of the steps that occurred in developing a consensus Administration position, including meetings with the Domestic Policy Council

[DPC] and appropriate Cabinet officials. The steps included the development of recommendations through channels within DOL. There was a meeting involving Secretary of Labor Reich, Carol Rasco, and Doris Meissner that included a discussion of the CIR recommendations. There was a principals-level meeting, and those views were incorporated into letters sent by the Administration to the Congress. DOL views were arrived at in conjunction with the DPC and INS. The Chief of Staff was consulted and he met with cabinet secretaries, the head of National Economic Council [NEC] and the head of DPC. The conclusion was that the DOL never took any action that did not constitute an Administration consensus.

Internal Reorganization of INS

One participant recommended an internal reorganization of INS to clarify organizational lines of communications and responsibilities. He said there was a problem with communications between the field and headquarters. INS has a proposal in the works to address some changes needed as the result of the reorganization done two years ago. Additional management and policy analyst staff at INS headquarters was also recommended.

Domestic Policy Council

Recommendations were made to strengthen the Domestic Policy Council, using the National Security Council [NSC] as a model. NSC has interagency working groups with staff to develop the issues being considered. Initial discussions and comments are then provided to Deputies Committee for its consideration which, in turn frames the issues and structures options for the Principals Committee consisting of Cabinet members and the National Security Advisor. This group then recommends appropriate action to the President. The NSC model has worked well for decision-making on issues that cut across agency lines.

One participant noted that immigration presents a mixture of domestic and foreign policy issues, requiring the cooperation between DPC and NSC on cross-cutting issues. Another said that it would be helpful to increase staff at DPC to enable it to

perform the consultative functions performed by the NSC, but that there is a question of whether additional funds could be available and, if available, whether they would be assigned to DPC.

Department of Justice

Participants were asked about a proposal for some type of superstructure at DOJ to serve as coordinator between INS, EOIR, Office of Immigration Litigation, and to intersect with the FBI and other agencies. A DOJ representative said the Office of the Deputy Attorney General serves this function. The importance of immigration requires it to have a place in DOJ very close to the Attorney General. Another participant said that the current structure at DOJ has improved coordination significantly. At the Attorney General's biweekly meeting on immigration there is high level representation from the appropriate parts of DOJ to bring all pertinent views to the table.

The larger problem is coordination with other agencies. A participant suggested that core law enforcement criminal justice functions be consolidated within DOJ. This would include ATF, Customs Service, and others. Another participant pointed out that the Customs Service also has responsibilities to collect custom duties. This taxation responsibility is different from law enforcement functions.

Worksite Enforcement

Questions were raised about involvement of both DOJ and DOL in enforcement of employer sanctions. A Commissioner asked if there wasn't a better way to handle employer sanctions enforcement than the current system of four agencies, INS, Office of the Special Counsel, Wage and Hour, and the Office of Federal Contract Compliance Programs [OFCCP]. DOL has been wary of too great a participation in immigration-related activities. Most employment law enforcement is complaint-driven, and if complainants expect to be deported as a result of their complaint, there is a great disincentive to complain about exploitation.

To the extent workers view DOL as immigration enforcers, it will have a detrimental effect on low wage enforcement. A Commissioner pointed out that without an effective worksite enforcement system, there is no effective illegal alien prevention program. Moreover, as employers who hire illegal aliens are more likely to violate other labor standards, the DOL has a vested interest in reducing illegal migration. Hence, while employer sanctions can be seen as a U.S. worker protection and a labor standard, DOL has never accepted employer sanctions as such.

In the absence of consolidation of responsibility, better data sharing would help reduce duplication of effort. One participant recommended greater information sharing between INS and DOL on specific employers who violate immigration and/or wage laws. He said that it is difficult, however, as INS and DOL do not use the same database.

Border Management

Commissioners asked for comments on two suggestions with respect to the border patrol: creation of a separate border management agency including Customs; and consolidation of border enforcement (the border patrol and deputies) within INS. One participant argued strongly for integration within INS, such as an office of border management or border enforcement including both the border patrol and inspections. A Commissioner asked if the division of Border Patrol as a separate office or agency within INS is still logical or whether INS is moving away from that. It isn't logical for purposes of an effective border control strategy, but is logical for historical and other reasons occupationally and personnel-based reasons and because it is a uniformed activity requiring the carrying of firearms.

The Commission asked if the Border Patrol differed from Investigations in its responsibilities. The respondent equated the border patrol to police on the beat and investigators to detectives. A Commissioner observed that the Commission was trying to get at the integration of the enforcement mission by clarifying distinctive responsibilities and roles, with everyone striving to reach the same goal, whether it was border management or removals. Another Commissioner noted that in the past ports of entry have not had a high priority—except for the last few years when

they've gotten a lot more resources. He said they need to be a part of enforcement, not examinations.

Removals

One of the gaping needs of interior enforcement is the removal of the hundreds of thousands of aliens under final deportation orders. Removal needs to be made a priority, an observation that garnered considerable support. One participant said that it does no good to do enhanced worksite enforcement and apprehensions without carrying the cases through to the removal stage. She said that it is important to get the systems and resources aligned so that those who are picked up in the first place have a very high probability of ultimately being removed. She said that the process is getting better, but the removal capacity is not yet where it should be.

Detention

A Commissioner pointed out that the FBI and other law enforcement agencies do not detain those whom they apprehend. The U.S. Marshals Service has responsibility for pretrial detention and the Bureau of Prisons for postconviction detention. According to one respondent, INS is very uncomfortable with long-term detention that grows out of asylum and the appellate process. INS does not want to be in the long-term detention business because it involves factors that are not within its area of expertise. However, with reform of the asylum system and expedited exclusion, there should be a reduction in long-term detention. Asked why detention couldn't be performed by the Marshals Service or another agency that deals with detention of nonconvicted individuals, a DOJ representative stated that in response to a Congressional request in the DOJ 1997 appropriations bill, a detention planning committee, which includes INS, the U.S. Marshals Service, Bureau of Prisons, U.S. Attorneys, and EOIR, is undertaking a study. Approximately 20 percent of INS resources now are devoted to detention.

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Divider Title: 2

**Meeting with National Visa Center Managers, Portsmouth, N.H.
March 7, 1997**

Commissioner Present:

Robert C. Hill

Staff Present:

Andrew Schoenholtz, Deputy Executive Director
James Halmo, Senior Policy Analyst

Participants:

Josefina L. Papendick, Center Director
John Kuschner, Administrative Officer, NVC and the National Passport Center
Sherry Dollar, Project Manager, Statistica
George Taylor, Systems Manager, Statistica
Jerry Rice, Visa Processing Supervisor, Case Processing, Statistica
Andrew Hayden, Visa Processing Supervisor, Public Inquiry, Statistica
Susan Merfeld, Visa Processing Supervisor, Case Processing, Statistica
Shirley Martin, Federal Bureau of Investigation [FBI]

The National Visa Center Director provided an overview of the Center's origins and the visa functions over which it currently has responsibility -- immigrant visas petitions and the annual diversity program. The Center was formally opened in April 1994, as a successor to the Transitional Immigrant Visa Processing Center [TIVPC] which had been established in October 1991 to cope with the major increase in immigrant visa cases resulting from the Immigration Act of 1990.

Immigrant Visa Petition Processing. The Center has formal responsibility to maintain non-current immigrant visa petitions until they become current and are processed by INS adjudicators or State Department consular officers. Two and a half million immigrant visa petitions (representing four million petition beneficiaries) are currently housed at the facility. The Center receives 8-10,000 cases weekly from INS (including family-sponsored, employment-based, special immigrant, adoption, and following-to-join cases of asylees and refugees) under what it terms 'global processing.' Monthly qualifying dates are received from the Visa Office, feed into the Center's computer system, and petitions falling within the qualifying dates are processed initially to determine if the petition beneficiaries wish to adjust status in the U.S. under Section 245(i) of the INA. Since the start of the adjustment program in December 1994, out of a possible 260,000 cases, 117,000 principal beneficiaries have stated that they will adjust status in the

U.S., 99,000 have not responded to the Center's inquiry, 26,000 stated they will process their applications overseas, and 24,000 stated that they had already adjusted status. INS can adjust status without the formal petition, using solely the notification of petition approval. The NVC has been unable to determine why the Service has not requested the return of the actual immigrant visa petitions for those persons who have adjusted status in the U.S. The Section 245(i) program sunsets as of September 30, 1997.

Those petition beneficiaries desiring visa processing overseas are advised in writing of documents required for visa processing and the petitions themselves are forwarded abroad. The petitions together with computer tapes containing the formal data necessary for immigrant visa processing are mailed normally weekly to the embassies and consulates designated to process the petitions. 20,000 to 25,000 cases are processed monthly and sent to overseas posts.

Data Share Program. The State Department, the INS, and the Customs Service participate in an ongoing Data Share Program to reduce clerical keystroking by personnel from all agencies and to speed up the sharing of information. The NVC receives electronically the information keyed into the INS database system on approved immigrant visa petitions from the four INS Service Centers. The information is later confirmed upon receipt of the actual petitions and additional information (not required by INS with its contractors) is keyed into the NVC immigrant visa petition database. The petition information is subsequently transferred weekly on current cases to overseas posts by electronic mail, for those on-line, and by computer diskette for those without direct electronic mail capability. At the same time, the computer information is sent to the U.S. Customs Service's Treasury Enforcement Communication System [TECS] port-of-entry database. TECS is the primary database system in the federal government's Interagency Border Inspection System [IBIS]. Currently fifteen overseas posts are on-line to transmit to the NVC the data on immigrant visas automatically upon issuance by consular officers. The NVC's telecommunication system then automatically transfers the issuance data to the TECS database system to match up with the previously stored immigrant petition information. The goal is to have issuance data arrive electronically in TECS within forty-five minutes of immigrant visa issuance. This time frame is significant for ports of entry near Ciudad Juarez, the closest of the fifteen participating foreign service posts to the U.S. border. When an immigrant arrives at a port of entry, INS personnel will be able to query the TECS database system and process the immigrant's application for entry. The entry data will subsequently be sent to the Service's immigrant card facility for issuance of alien registration cards.

Diversity Immigration Programs. The Center is currently running two diversity programs -- DV-97 and DV-98-- in accordance with the program established by the Immigration Act of 1990. 55,000 permanent resident visas are to be made available annually on a random selection basis and apportioned among the world's six geographic regions, with the largest numbers of visas going to regions with lower rates of immigration to the U.S. A summary of the NVC's role in the latest diversity program is enclosed. It was noted that the mailing-in period for the DV-98 program had just ended the day before the Commission's visit. 6,779,000 applications had been received. Once the sorting of envelopes by geographic region and the assignment of numbers to

each properly submitted envelope have been completed, a computer generated random selection of 100,000 envelopes will be made. These will be pulled, opened, applications reviewed for consistency with the formal parameters of the program, and formal notifications of the winners will be mailed starting in June, including 'packet three' information listing the documents to be presented at time of formal visa interview. The goal is to start formal interviewing of the DV-98 lottery winners no later than December 1997. According to the NVC, the vast majority of current diversity immigrants come from abroad. In the initial phases of the program, it was thought that many diversity immigrants were already in the U.S.

While the NVC can disqualify applications for not meeting the parameters established by regulation (e.g. signed application, attachment of a photograph, a return address, etc.), it does not make determinations on visa eligibility. That is left to the Department's consular officers and Service's adjudicators to determine. According to NVC personnel, significant fraud has been found overseas by consular officers wherein the applicants do not meet either the educational (high school diploma) or work experience requirements of the statute. The comparison of the photographs attached to the DV application with the applicant during the formal interview should reduce instances of identification fraud. It was also noted that most consular officers adjudicating diversity visa applications are not convinced as to the necessity of such an immigration program.

Special Canadian Processing. As part of a pilot program, the NVC is processing all applications for immigrant visas on behalf of the U.S. Consulate General at Montreal, Canada up to the point of final interview. Beginning in May 1996 all immigrant visa processing in Canada has been centralized at one foreign service post. The NVC requests all documents required by regulation to be presented at the time of formal interview, schedules the date of the formal interview on behalf of the Consulate General, and forwards the formal packet of completed immigrant visa applications forms, supporting documents, and the approved immigrant visa petitions. Based on any 'hits' from the computer lookout system, the NVC also runs all security name check functions on behalf of the Consulate General Montreal, requests security advisory opinions, if necessary, of the Department and the intelligence and law enforcement community for any applicant whose name comes up during the mandatory computer review of the automated lookout system, prior to forwarding the entire immigrant file to Montreal. Fingerprint cards are taken by a contract operation in Canada (persons must present appropriate photo identification), which sends completed fingerprint cards with photos attached directly to the FBI for processing. The results are sent directly to the NVC by the FBI and included in the file forwarded to Montreal.

The goal of the special Canadian project has been to provide a predictable process for all persons applying for legal immigration and to reduce the number of instances wherein applicants fail to show up with all their required documentation (and thereby the number of refusals under Section 221(g) of the INA). The review of the substance of the documents and the decision to grant or to deny the immigrant visa still remains with the interviewing consular officer. The project has reduced the workload at the U.S. consular operations in Canada by twenty-five percent.

Public Inquiries. The NVC handles more than one thousand telephone inquiries daily. A Microlog telephone answering system is used to provide general information on a variety of visa subjects. If the recorded messages do not provide all the information needed by a caller, one of seven information specialists (language qualified in various languages, including one specialist who can competently respond to callers in ten different languages) will deal with the inquiries. The specialists access the NVC database to provide the current status of all cases. According to the contract with Statistica, calls requiring the personal attention of a specialist should be answered within three minutes.

FBI Assistance. In order to improve the response time for FBI electronic name check from overseas embassies and consulates, an FBI official works on site at the NVC. She has direct computer access to the NCIC database and can receive fax copies of fingerprints from the database system to compare with those mailed or faxed to NVC from overseas posts. This has facilitated inquiries from consular officers about the possible match of applicants to lookout records. Additionally, since February 1995, 168 'hits' have been discovered through the NCIC system matching immigrant visa applicants with the records of persons who have outstanding arrest warrants. In most instances, the immigrant visas were issued (since the applicants had still not been convicted in a court of law and thus were not necessarily then ineligible for an immigrant visa) and the FBI arrested the individuals upon arrival at U.S. ports-of-entry.

Facilities. The NVC is physically located in the commissary building of the former Pease Air Force Base. The State Department did not have to pay for the structure, but did invest three million dollars to renovate the building for usable office space. The result is an attractive federal office building.

Clinton Presidential Records Digital Records Marker

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DRAFT

Dallas District Office Summary
January 21, 1997

Commissioners Present:

Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C. Hill, Commissioner
Warren R. Leiden, Commissioner
Nelson Merced, Commissioner

Staff Present:

Andrew Schoenholtz, Deputy Executive Director
Gregg Beyer, Senior Policy Analyst
Patricia Dunn, Senior Policy Analyst
Brett Endres, Policy Analyst
James Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst
LaVita Strickland, Legislative Analyst

Participants:

Arthur Strapp	District Director
Jorge Eisermann	Deputy District Director
Lynn Ligon	Executive Assistant
James Reynolds	District Counsel
Victor Johnston	Officer in Charge, Oklahoma City
Barbara Baker	Court Administrator, EOIR

Assistant District Directors

Sharon Clarke Management
Kim Odgen Benefits (including Inspections, Records, & Information)
John Ramirez Detention and Deportation
Neil Jacobs Investigations

The Chair opened the meeting by explaining that the Commission had just visited the Western Regional Office of INS and the Los Angeles District Office and we wanted to see the Central Region and the Dallas District Office for a comparison. She explained that the Commission was interested in the day to day operations, communication and relationship between the District, the Region, and Headquarters.

Dallas District

The Dallas district is one of the largest districts and encompasses much of the state of Texas and parts of Oklahoma with a population of approximately 11 million. Within the District first line supervision for all programs and managers goes through the deputy director to the district director. The divisional programs are for Management, Benefits, Detention & Deportation, and Investigations.

Management

The Management division is relatively small with an annual budget of \$1 million for the district. They pointed out that during recent increases in resources at INS, operations divisions were given a majority of the resources and assistance; the staffing and budget of management has remained basically the same.

Benefits

The Benefits division, which includes Inspection, has grown over the past few years, however their workload has grown at a rate much higher than the staffing levels. They currently have 136 staff positions (64 in Adjudication and Naturalization, 56 at the Airport, and 15 in Records and Information) with a budget of almost \$2 million. Last year they inspected 1.5 million people at the Dallas/Ft. Worth Airport. Approximately 2/3 were citizens and 1/3 aliens, of which 2000 were refused admission and 200 were referred for exclusion. The Naturalization workload has grown enormously. In 1994 approximately 5000 applications were received per month. As of last month 40,000 applications were pending.

Detention & Deportation

The Dallas D&D unit is composed of 65 employees and covers a jurisdiction of 123 counties in Texas and has a sub-office for all of Oklahoma. The docket for the Dallas District is 18,000 cases (both detained and non-detained). Detention beds are utilized at Service Processing Centers [SPC's] in El Paso and Port Isabel, contract facilities in Houston and Laredo, and the Federal Detention Center in Oakdale. Additionally there are 5 BOP federal facilities within the Dallas district and one contract facility that also house criminal aliens. We were also told that 3 deportation offices are committed to an active abscondee team to get orders and effectuate removal of non-detained aliens. They estimate that they successfully complete 30 of these cases per month.

Investigations

Investigations activities are separated into 6 teams at the Dallas district. Two employer sanctions units, and one unit each for criminal aliens, anti-smuggling, Dallas county jail, and probation/parole. The Investigations team is highest in the Central Region and third nationally in

case completions.

New Legislation

The question was raised on how the District is ready to handle the legislation enacted in 1996, that will go into effect on April 1, 1997. The participants responded that they were apprehensive based on a review of statute and interim regulations. They feel the changes are the most dramatic the agency has faced, even more than IRCA in 1986. Though some of the programs, such as inspections, may be ready, the others that inspections might impact are not. For example, if inspections identifies more people to be detained, Detention and Deportation does not have the bed space to hold them.

Courts

The District Counsels Office has 6 attorneys and 3 clerks to handle the docket of cases. There are 3 full time Immigration Judges and one Judge who splits his time between Dallas and Houston. Video teleconferencing is being used in non-contested cases with no relief available. (See Site Visit report to Immigration Court)

Issues

Organizational Structure

The Commissioners raised the question of whether the organizational structure was working here because of the concerns that were expressed in the Western Region and asked for suggestions for improving the system if problems existed. Participants suggested that there is a lack of communication between "the two sides of the house" Programs and Field Operations at Headquarters, and things would be better organized if they were under one command. This would make reporting lines more direct. One participant commented that the military has a lot to offer in the chain of command concept.

The other main issue that came up was the idea of splitting the enforcement and service functions of INS. There were strong feelings on both sides of whether they could stay together (under certain circumstances), or should be split apart. One suggestion of how they could be kept together included combining Inspections with the Border Patrol.

A related problem has to do with the career paths at INS, which have provided an ongoing in-house morale problem. For many people in both Service and Enforcement there is no clear career path that they can take up to management positions. It is also difficult to cross-over from one side to the other during their career, and training of managers has not been available. (However, see other summary on INS Leadership Center which began training last year) A further complaint that Service side employees raise is that employees working in INS enforcement are given better opportunities and benefits. Examples are that enforcement

personnel are able to be paid overtime, generally are at a higher civil service grade and have law enforcement retirement plans, while the service side employees do not.

Budget

On the budget process, they felt that they had little to no input on the appropriations that they received. Their feeling was that Headquarters did not ask them what it was they needed to do their job, but rather simply gave them something to do their job.

On user fee accounts, they estimated that they only received 23 cents on the dollar for what was collected by the fees for use by the services. Most of the funds go to the Service Center operations. The District feels that more of the fee revenue should be used to facilitate the service that the applicant is actually paying for.

Hiring

Concerns were raised over hiring practices and the fact that program directors could not be hired at the field level but rather had to be hired by Headquarters for work in the District. Approval at Headquarters was often slow or denied without proper reasoning. The District also felt that since they would be working with the individual they would know better than Headquarters who would fit in at the District.

Concern was also expressed about the usage of temporary positions. They are hard to fill since people want real jobs with real benefits. Once hired these persons continue to look for permanent positions elsewhere. No career-track exists for temporary hires. It was argued at Headquarters that much of the work being performed was temporary in nature and would be performed subsequently at the Service Centers. However it was also stated that the same argument has been heard for the last 10 years.

A last concern that was raised was the use of contractors. Contracting work was not being done at the district office at this time because they felt there was a lack accountability for contractors. Concerns were that contractors only do what is written in the contract and contracts are not written specific enough for any decision making or adjudicating. Most of their work is further reviewed anyway. A suggestion was raised that contractors might be used in bag and baggage cases but was rejected because of the certain way detained aliens needed to be handled and the requirements of investigations.

**Meeting with INS Central Region Office Managers, Dallas, Texas
January 21, 1997**

Commissioners Present:

Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C. Hill, Commissioner
Warren R. Leiden, Commissioner
Nelson Merced, Commissioner
Bruce Morrison, Commissioner

Staff Present:

Andrew Schoenholtz, Deputy Executive Director
Gregg Beyer, Senior Policy Analyst
Patricia Dunn, Senior Policy Analyst
Brett Endres, Policy Analyst
James Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst
Carolyn Piccotti, Senior Policy Analyst
LaVita Strickland, Legislative Analyst

Participants:

Dwayne Peterson, Deputy Regional Director
Curtis Aljets, Associate Regional Director
James Cole, Special Assistant to the Regional Director
David Aguilar, Assistant Regional Director, Border Patrol
James Bailey, Assistant Regional Director, Intelligence
Gail David, Assistant Regional Director, Detention and Deportation
Brian Joyce, Acting Assistant Regional Director, Investigations
Homer McCain, Assistant Regional Director, Inspections
David Roark, Assistant Regional Director, Adjudication, Nationality and Records
Keith Roemeling, Director, Planning, Analysis and Evaluation
Tomas Zuniga, Acting Assistant Director, Congressional and Public Affairs
Barbara Blessing, Director, INS Administrative Center

The Chair, after opening the January 21, 1997 meeting by noting the Commission's history, stated that the Commission was looking for a free exchange of ideas and information on the work performed by the Regional Office, how it was being accomplished, and what more might be needed to accomplish what should be done. She emphasized that no comments made by the

participants would be attributed to them in any formal reports prepared by the Commission.

The Deputy Regional Director, acting on behalf of his immediate supervisor, welcomed the Commissioners and laid out briefly the role of the Regional Office which has a staff of some 60 employees, relatively the same staffing level as 11 years ago. Each of the department heads addressed the responsibilities of their units and their current activities. Most noted that they perform principally support and liaison responsibilities between the field (seven district offices) and headquarters and do not exercise direct line authority over the respective district operations. On the Inspections side, for example, it was noted that the Region (covering 18 States) has responsibility for 81 ports of entry (including three preclearance in Canada) and for providing the resources (funding, personnel, and equipment) for the field operations to do its job. The Assistant Director also monitors the work performance of the districts for the Regional Director. The Regional Inspections Office communicates with headquarters (with such communication equally divided between Field Operations and Programs) on resource allocation issues. On the Intelligence side, it was noted that, with a small staff of three, the Regional Office has produced 4,000 intelligence reports, many analyzing the southwest border situation. This has been accomplished without borrowing resources from other units. The Assistant Director stated that current budget allocations may deal with the current situation but may not take into account the projected movement of aliens into the U.S. over the next five years. He also noted that INS still is not considered a part of the intelligence community as defined by a 1949 executive order (which was last updated in 1994).

Organizational Structure. While each of the participants briefly outlined the staffing pattern of their operations, subsequent discussion focused on INS headquarters and the Central Region's relationship to it. The participating officers viewed themselves as intermediaries between headquarters and the field. Should there be, for example, a major law enforcement exercise, the regional officers try to ensure that all components of the field operations are notified and involved. As one participant noted, there is a communications gap between field operations and programs at headquarters and the region tries to fill that gap, acting as an ombudsman for the field.

The Executive Associate Commissioner [EAC] level at headquarters was referred to as a four headed monster. Although Field Operations has direct line authority to the Regional Offices, communications and taskings to the Region can come from any of the four EAC offices. It was stated that multiple taskings from different EAC offices (even though they may not have line authority) and short time fuses have negatively impacted the discipline expected of the functional process.

Participants proposed that the Regional Offices report to the Deputy Commissioner as had occurred previously. One participant noted that Headquarters senior managers did not want to consider such a proposal. "There is an underlying concern that the regional directors will get too strong." However, the regional participants considered the EAC just another level of

management with a large attendant staff. If the old system was to be criticized, the participants felt it was not the organizational structure itself which was to blame but, rather, the lack of performance by the headquarters incumbents who, at the time, were to be managers responsible and accountable for their actions. "It is a performance issue, not a structural one." "Management of personnel at the top was the problem." It was noted that total quality management [TQM] was installed previously as a method to bring more accountability into the Service. This called for a simple structure. However, according to one participant, no vestige of TQM exists today in the organization.

According to the participants, Field Operations and Programs used to be the same entity. However, the Program element was created and moved away from the chain of command. The Program Office was designed to work on developing programmatic functions and to then hand off responsibility for implementation to Field Operations. However, according to one participant, 98 percent of the Service's resources falls under the EAC for Field Operations and only 2 percent is shared by the other three EACs. The Service employee wondered aloud if that was the best management structure.

The participants complained that the Service had been studied to death -- far too many studies had been carried out with no action resulting from the formal reviews. "They came down and said the system is not broken, but change it anyway." (INS Dallas to provide at least summary copies of the previous internal studies for the CIR Commissioners to read.)

Border Patrol. The Assistant Director for the Border Patrol, who is new to the Region, stated that he spends a great deal of time supporting and listening to the field's concerns. He noted that attempted illegal crossing within the Central Region have increased significantly, surpassing the totals from the Western Region. The Brownsville area has become a primary focus over the past months of those desiring to enter illegally. He communicates daily with the Region's seven Sector Chiefs and their deputies on operational matters and is involved extensively in the preplanning of special operations. He felt that communications with headquarters had improved markedly since his arrival to Dallas. While he has general oversight responsibility, he stated that he does not have direct line authority over the seven Sector Chiefs in the Central Region (five on the southern and two on the northern border).

(Note: Subsequent to the meeting, the Assistant Director stated that the Region's seven Sector Chiefs report to the Regional Director who is responsible for writing their individual annual civil service performance reports. The Assistant Regional Director provides input to the final written review. He also has authority and budgetary control for some matters over the Sectors, as delegated by the Regional Director, particularly on special operations which require close coordination of various offices at the regional level. The District Offices are involved more in service operations and are not involved in border patrol operations, with the exception of detention and deportation functions where coordination is necessarily close. As a staff person, the Assistant Director's input into the budget process was termed as being limited. He noted that the

FY 97 budget allocated many personnel resources down to the station level. For example, 52 new positions were assigned directly to the Del Rio Station, even though the Sector Chief felt he should have some discretionary control over the stationing of personnel assigned to him. Headquarters concluded that the detailed assignment decision, a departure from the past, was in keeping with congressional intent. As regards physical resources, the Regional Director does have discretionary authority to move equipment around the Region.)

Budget. The participants stated that the Services's budget is influenced significantly by user fees. Taxpayers and those paying the user fees expect to receive improved service as a result of the surcharges. However, it was noted that most of the funds collected are not returned to the source. The Central Region receives 23 cents on every dollar collected locally through user fees. Complaints have been received that those paying user fees are not getting their money's worth of service.

It was also stated that the Service has received substantial funding over the past couple of years and may be growing faster than can be planned for adequately. It takes almost one year to hire, train, and properly bring a new employee on board. The modular approach was recommended, wherein all of the support required for new employees (physical equipment, support services, etc.) would be considered budget wise as part of a total package when adding personnel to the Service's payroll. Not to do so was considered mismanaged growth. It was felt that the Service was moving in this direction, particularly with regard to the Border Patrol, but that more needed to be done. (Some special equipment and vehicles necessary to carry out the Border Patrol's mission were considered lacking.)

In response to a question about the top-down budget approach, it was opined that all of the budget information currently provided to headquarters may be a waste of time since the budget currently seems to be based solely on increases and decreases of percentage allocation to ongoing activities. The purpose for some activities is not examined. However, it was opined that if a management by objective approach should be adopted, a number of current structural arrangements within the Service would be questioned.

The participants felt that the Regional Offices do not have much input into the budget process; additionally, they must wait almost until the third quarter of the fiscal year before obtaining a final budget calculation on what can be expended for the year. The participants stated that the Central Region cannot be proactive unless it has control of its own resources.

Detention and Removal Issues. Increasing the number of aliens actually removed from the U.S. is one of the Commissioner's primary goals for FY 97. The implementation of this goal necessarily impacts the ongoing issues of privatization of some detention services as well as expanded agreements with local detention facilities. Mexican aliens stay on the average 3-10 days before being removed to Mexico; non-Mexican aliens stay on the average 7-45 days. As of

December 1996, there were 120 'lifers,' aliens who are subject to mandatory detention and may not be released for statutory reasons, and for whom travel documents have not yet been forthcoming. Most had committed aggravated felonies after entry to the U.S. (Non-Mariel Cubans, Vietnamese, and persons from the former Soviet Union comprise the majority of such 'lifers'. Problems were also cited in obtaining travel documents for detained Nigerians.)

According to the participants, another problem impacting on the Region's ability to remove aliens is the lack of an adequate number of vehicles. Additionally, it was noted that there continues to exist an ongoing need to train personnel. Although training is advocated by managers, the participants noted the difficulty in balancing training and the time expended on training against the dilemma of accomplishing necessary work.

Funding for FY 96 permitted 2,000 beds and this has been increased to 3,100 for FY 97. The level of actual bed space in the Central Region has not yet reached the level for which funding has been appropriated, since time is required to actually both increase and improve the holding facilities. The Assistant Director for Detention and Deportation provided the Commissioners with a detailed overview of the number of beds available in the Region and the current status at the various facilities for increasing these numbers. It was stated that the Region, while focusing on increasing the quantity of bed space, is also upgrading the quality of its facilities for housing aliens to be detained and subsequently removed from the U.S. The Region has five major facilities for which it has contract oversight and it also has intra governmental agreements with local jails for detention and related services (food, laundry, etc.). However, with regard to new projected detention space, the Assistant Director stated that there exists some degree of disagreement between using an expanded intra governmental agreement versus contract operations. She was not certain how the Service will conduct an analysis of its actual needs. This comes at a time when the new detention requirements of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996 will greatly impact the region. In her estimation, very few aliens will not be subject to detention under the new law. However, at this point, it is not possible to guess what will be the actual detention requirements.

The Chair expressed her appreciation for comments made by the participants and welcomed any additional written comments that they might wish to make.

DRAFT

**Meeting with INS Administrative Center Officials, Dallas, Texas
January 21, 1997**

Commissioners Present:

Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C. Hill, Commissioner
Warren R. Leiden, Commissioner
Nelson Merced, Commissioner
Bruce Morrison, Commissioner

Staff Present:

Andrew Schoenholtz, Deputy Executive Director
Gregg Beyer, Senior Policy Analyst
James Halmo, Senior Policy Analyst
LaVita Strickland, Policy Analyst

Participants:

Barbara Blessing, Director and various senior Center staff members

Reorganization. The meeting with the Administrative Center Director and her key staff was a continuation of the earlier meeting with the Regional Office managers. The Center Director stated that the last battle in the current reorganization effort by the Service involves the authority over the Administrative Centers. As of October 1996, for example, the Administrative Center in Dallas no longer has administrative responsibilities over part of the southeastern section of the U.S., a situation to which the Eastern Regional Director had objected (since administrative functions for the region were divided between the administrative centers in Vermont and Texas). By April of this year the Administrative Centers are to be under the direction of the Regional Directors rather than reporting to Washington headquarters. This is in keeping with the 1995 Justice Management Division's formal recommendations. However, realistically, July 1 may be the earliest according to the Center Director and, for ease of financial transfer, Oct 1 (coinciding with the beginning of the fiscal year) makes more logical sense since DOJ and OMB must still give final approval to the transfer of responsibilities.

The Center Director stated that the regional managers will be happier controlling the administrative side of the operations. What functions have to be performed with some regional office and what functions do not require a regional centralized operations? The Center Director

opined that none of the administrative functions to be transferred to the control of the regions needed to be transferred. In fact, she said, in order to facilitate the Regional Directors' accountability for getting their job done, more centralization of the administrative functions could be accomplished. Part of the current debate on reorganization within the service involves the establishment of a new consolidated finance center, to be located either at Dallas, TX or Burlington, VT. In the hiring initiative, for example, one Center can ensure security background checks are done, personal suitability is reviewed, etc. After starting up its personnel operations, the Twins Cities operation in Minnesota has been very efficient in bringing on board personnel through an expedited hiring process. She added that the Service needs to look more at long range planning; there are too many little boxes and more uniformity throughout the Service is called for. She also noted that some INS functions -- asylum and the Service Centers -- do not report to the regions but to headquarters.

Staffing. The Center Director likened the Administrative Center to the combination of a bank, mortgage company, maintenance firm, and hiring agency -- a very diverse operation. She noted that there has never been more than 600 persons total in the Service's administrative centers. However, as the size of the Central Region's structure to be supported administratively has grown, from 4,000 to 6,200 personnel, staffing for the administrative support function has remained the same. In 1992 the Dallas Administrative Center had 65 employees; it now has 47 on the staff. The participants noted that it is most difficult to continue operating in a holding pattern; headquarters needs to reach a final decision on implementing the reorganization plan. No new permanent hiring at the Administrative Centers is permitted pending the new realignment. Unfortunately, this has resulted in far too many positions being filled on a temporary basis. Half of the staff of 47 are temporary hires. "Every temp is looking for a job." While there is some disagreement on the desirability of actually transferring the Administrative Centers to the Regional Offices, some administrative personnel believe this is the only way to end the hiring freeze for Center personnel and to obtain additional personnel resources. They felt any decision was better than no decision and continued limbo. It was also opined that policy development on personnel matters was being carried out on an ad hoc basis at headquarters. It was stated that it is difficult for senior players to focus on personnel policy when they are involved actively in too many daily operational issues.

Budget. The Region has a budget of some 50-60 million dollars while the Administrative Center's budget is less than half a million. The Center Director stated that the Service needs to take a stronger look at the modular approach in the budget process. Thus, for example, if a soldier is added to the military ranks, he would need a vest, a weapon, a vehicle, etc. These items would have to be budgeted for; the same should be true when adding more personnel to the Service. She mentioned that enforcement, detention and deportation, and the trial attorneys are already using this budgetary approach. The Center Director noted, however, that much more needs to be done within the Service in expanding on this type of budgetary approach and even to expand it to include modular support for all activities within priority functions such as

naturalization, removals, asylum, and worksite enforcement.

Operating Procedures. Formal operating procedures are contained in the Administrative Manual, which is in need of major revision. However, the employees' union will not pass on it. It was opined that, looking at past practices, the revisions should have been done piecemeal rather than as one major revision. This would have permitted by now the adoption of a significant number of noncontentious revisions.

Draft

Staff Report on January 22 Meeting With INS Leadership Development Center Director

Participants

Jennifer R. Lee, Director of the INS Leadership Development Center
CIR Staff: Pat Dunn, Brett Endres, David Levy, and Carolyn Piccotti

The meeting opened with introductions and an explanation of the Commission's mandate and purpose in requesting the meeting. Ms. Lee welcomed us to the Center and provided us with a tour of the facility.

History of Center

Ms. Lee said that the Center was established as the national training center for INS managers and supervisors. The Center opened in the middle of fiscal year 1996. The impetus for the Center came from INS' recent rapid growth. Ms. Lee said that prior to the establishment of the Center, supervisory training was spotty. Many INS supervisors and managers had gone years without any training. Indeed, prior to the opening of the Center, there were over 600 supervisors who had never been trained. Now each supervisors must attend the training during the first year as a supervisor/manager. In the first six months of operation, 861 INS managers and supervisors completed one-week training classes. In order to participate in the Center's training, one must already be a supervisor or manager.

Organization and Staff

The Center's staff of nine is supervised by Director Lee who reports to the INS Director of Training in Headquarters. The training function is organizationally under the EAC for Management.

Development of Curriculum

The course curriculum was developed by Director Lee prior to the opening of the Center. Consultations were held with various levels of INS management, focus groups and a citizens advisory panel. All courses were developed by staff in the Dallas Leadership Development Center. The same curriculum is used for all participants, but additional specialized training, i.e. in labor relations, is added if needed.

Current Course Curriculum

The Center currently offers: basic supervision; advanced supervision; basic management; advanced management; balanced leadership; and impact leadership. Kepner-Tregoe problem solving classes have also been scheduled to begin in February 1997. All classes are conducted by one staff member and one contract consultant. All INS supervisors receive the same training regardless of what part of the agency they work in. There are modules in the courses to address specialized needs. For each class, students are selected from various organizational areas, i.e. enforcement, benefits etc. Ms. Lee said that there has been good feedback on mixing the students in this manner. Each of the basic supervisory classes also has an experienced INS supervisor as a mentor. The Center's classes have been accredited by the Council of Education, with students receiving three semester hours credit. Evaluation of the courses is done through subsequent feedback from participants, their peers, supervisors and subordinates.

Regional Training

Ms. Lee said that some training is done on the Regional and District level, however, she does not have any information on training given at those levels.

Although the Center's training classes have been open only to INS personnel, Ms. Lee indicated that expanding their services to include other Department of Justice agencies may be a future consideration.

Attached is some background and statistics on those who have completed Leadership Development Center courses.

THE LEADERSHIP DEVELOPMENT CENTER

214-350-2998

In the six months of FY 1996 that the new INS Leadership Development Center was open, it graduated 861 students from its series of five supervisory and managerial courses. They have seventy classes planned for FY 1997 which are filling up fast! The class descriptions are listed below and the schedule for the next few months is on the reverse.

Basic Supervision- This class must be taken by all supervisors within the first year of appointment to a supervisory position. Subjects included are diversity, preventing sexual harassment, labor relations, discipline, performance counseling, communication, motivating others, customer civil rights, delegating, developing effective teams, motivating others and stress management.

Advanced Supervision- This is offered for people who have been supervisors for one year or more and serves as a refresher. It includes creating an open/honest workplace, negotiating, resolving conflicts, public speaking, administering leave, dealing with the media, handling anger and managing the stress of change.

Basic Management- This course, designed for mid-level managers, covers self-awareness, value systems, creating a vision, coaching, managing resources, disciplinary actions, MSPB processes, the federal budget process and giving/receiving feedback.

Advanced Management- This is designed for employees who have been managers for a number of years. The class focuses on stewardship. Stewardship of self, resources, change, teams and systems. In addition, participants learn practical techniques for dealing with stress, examining weaknesses in systems or processes, interviewing job candidates and being



Leadership Development Center
Immigration & Naturalization Service

interviewed, dealing with sexual harassment, group decision making, managing time and building a budget.

Balanced Leadership- This is a new course in FY 1997 for top level managers. Its focus is on integrity, ethics, diversity, strategic thinking, developing your subordinates to be tomorrow's leaders, managing meetings and practical strategies to promote excellent staff work. The class is extremely interactive and promotes the concept of students learning from each other through discussion and readings.

Impact Leadership- Another course option for top level managers. The course includes personal values, organizational values, team building, video presentations, and a study of the phases of organizations. In addition, the participants complete several assessment instruments prior to the class which are discussed with them individually by a psychologist during the class.

Kepner-Tregoe Problem Solving- This course on problem analysis and decision making is recommended for all supervisors and analysts who have a need to develop their process skills to help clarify problems and sort out priorities in complex issues. It has been offered a number of times in INS during the last two years but is a new course offering for the Leadership Development Center.

Basic Supervision	Advanced Supervision	Basic Management
March 3-7	March 3-7	February 10-14
March 24-28	March 17-21	March 10-14
April 7-11	April 7-11	April 14-18
April 28-May 2	May 5-9	April 21-25
May 12-16	May 19-23	May 5-9
June 23-27	June 16-20	June 2-6
Advanced Management	Balanced Leadership	Impact Leadership
January 27-31	March 10-14	June 9-13
February 24-28	April 21-25	September 22-26
March 17-21	June 2-6	
April 14-18	July 21-25	
June 16-20		

Kepner-Tregoe Problem Solving: February 19-21 and May 28-30.

**REPORT OF ALUMNI
LEADERSHIP DEVELOPMENT CENTER
STUDENTS BY JOB SERIES
THROUGH 09/30/96**

<u>Job Series</u>	<u>Total Number</u>
Security Officers	4
Personnelists	14
Training Officers	1
EEO Officers	2
Administrative Officers	19
Supervisory Clerks	13
Supervisory Mail and File	5
Supervisory Secretaries	3
Supervisory Computer Specialists	8
Supervisory Management Analysts	25
Supervisory Telecommunications	1
Supervisory Budget and Finance	14
Supervisory Electronic Technicians	7
Supervisory Attorneys	23
Supervisory Asylum Officers	34
Supervisory Paralegals	4
Supervisory Applications Clerks	21
Supervisory Public Affairs	2
Supervisory Procurement	8
Supervisory Printing Officers	1
Supervisory Food Service	3
Supervisory Immigration Inspectors/Examiners	298
Supervisory Detention Enforcement Officers	53
Officers In Charge	1
Supervisory Special Agents	95
Supervisory Border Patrol Agents	196
Supervisory Border Patrol Support	6
TOTAL STUDENTS	861

**REPORT OF ALUMNI
LEADERSHIP DEVELOPMENT CENTER
THROUGH 09/30/96**

<u>HQ/Region</u>	<u>Duty Location</u>	<u>Total Number Of Alumni</u>
Headquarters	Glyneo BP	10
	Glyneo (Other)	17
	Headquarters	70
Total Headquarters		97
Service Centers	Northern SC	9
	Texas SC	13
	Vermont SC	11
	California SC	1
Total Service Centers		34
Asylum Offices	Arlington	4
	Chicago	2
	Houston	2
	Los Angeles	8
	Miami	8
	Newark	6
	New York City	9
	San Francisco	2
Total Asylum Offices		41
Central Region	Admin Cntr., Dallas	10
	Admin Cntr., Twin Cities	4
	Chicago District Office	9
	Central Regional Office	10
	Dallas DO	22
	Denver DO	9
	Del Rio BPSH	9
	El Paso DO	38
	El Paso BPSH	17
	Grand Forks BPSH	5
Harlingen DO	26	

<u>HQ/Region</u>	<u>Duty Location</u>	<u>Total Number of Alumni</u>
Central Region	Houston DO	13
	Havre BPSH	4
	Kansas City DO	8
	Laredo BPSH	33
	Marfa BPSH	10
	McAllen BPSH	17
	Omaha DO	2
	San Antonio DO	30
	St. Paul DO	6
Total Central Region		282
Eastern Region	Admin Cntr., Burlington	7
	Atlanta DO	9
	Baltimore DO	5
	Boston DO	5
	Buffalo DO	5
	Cleveland DO	9
	Detroit BO	9
	Eastern Regional Office	8
	Houlton BPSH	4
	Miami DO	33
	Miami BPSH	8
	Newark DO	7
	New Orleans BPSH	5
	New Orleans DO	7
	New York City DO	40
	Philadelphia DO	4
	Portland DO	6
	Ramey BPSH	3
	San Juan DO	4
Swanton BPSH	3	
Washington DO	5	
Total Eastern Region		186

<u>HQ/Region</u>	<u>Duty Location</u>	<u>Total Number of Alumni</u>
Foreign Offices	Mexico City DO	2
	Rome DO	1
Total Foreign Offices		3
Western Region	Admin Cntr., Laguna Nigeli	6
	Anchorage DO	3
	Blaine BPSH	3
	El Centro BPSH	7
	Honolulu DO	12
	Los Angeles DO	23
	Phoenix DO	9
	Portland DO	7
	San Diego BPSH	58
	Seattle DO	4
	San Francisco DO	14
	San Diego DO	45
	Spokane BPSH	2
	Tucson BPSH	14
	Western Regional Office	4
Yuma BPSH	7	
Total Western Region		218
TOTAL EMPLOYEES		861

DRAFT

Staff Report on January 22 Dallas Meeting with DOL Regional Inspector General and ALC Certifying Officer

Participants

Charlene Giles, USDOL Regional Alien Labor Certifying Officer
Richard Lowe, USDOL Assistant Regional Inspector General for Audit
John Riggs, USDOL Regional Inspector General for Audit

Commissioners Participating

Chair Hufstedler, Commissioners Hill, Leiden, Merced and Morrison

Staff Participating

Andy Schoenholtz, Gregg Beyer, Pat Dunn, Brett Endres, Jim Halmo, David Levy, and Carolyn Piccotti

The meeting opened with introductions and an explanation of the Commission's mandate and purpose in requesting this meeting. Mr. Riggs made a presentation detailing his office's findings in a nationwide audit of DOL's foreign labor certification programs. Mr. Riggs stated that in 1993 the cost of these programs was \$50 million, of which \$45 million were grants to the States.

Audit Presentation

Audit Objectives

To determine whether DOL is effectively administering the employment-based labor certification and H-1B temporary Labor Condition Application programs and to determine the impact the programs have on employers and U.S. workers.

Subobjectives

1. What are the impact and costs of the certification process on employers and U.S. workers?
2. Are U.S. workers being protected by DOL regulations and policies?
3. Do employers have the required documentation for the permanent and LCA applications?
4. How long did the aliens work for the employers and under what circumstances?

Scope and Methodology

The audit consisted of a nationwide statistical sample of the certification system including recruitment. The fieldwork included ETA Regional Offices ; INS Service Centers at Lincoln, Laguna Nigel and St. Albans; State Employment Security Agencies (SESA) in 16 States; and employers' business locations in those 16 States. On-site visits to employers' business were conducted where records were examined and interviews conducted.

Audit Period

Samples of permanent applications and LCAs selected for audit were chosen from applications that were approved in the ETA Regional Offices during the period 10/1/92 through 9/30/93. With respect to SESA job orders filed for permanent applications, SESA applicant referrals to the job openings, and SESA placements relating to these referrals, the 6-month period 7/1/94 through 12/31/94 was used. This period was used because of the possibility that information may not have been available on the SESA computer system for the earlier audit period.

Sampling Plan

The universe used included 24,403 permanent applications and 62,188 LCAs approved by ETA during FY 1993. In order for the sampling unit to be selected, INS had to have approved a petition for the job for which the application was submitted. A question was raised as to the status of petitions that were denied or those that were withdrawn after submission. Mr. Riggs said that it had been determined that these cases would be excluded from the audit. Further, for the permanent program, the alien must have already adjusted to permanent resident status. One of the problems noted by Mr. Riggs is that there is no tie in between INS and DOL records with respect to the H-1B program. In the permanent system, records can be cross-checked. The actual sample size consisted of 600 cases involving permanent employment and 720 LCA. The States selected for sampling were:

<u>Permanent and LCAs</u>		<u>LCAs only</u>	<u>Permanent only</u>
Wisconsin	New Jersey	Missouri	Washington
Texas	New York	Minnesota	North Carolina
Massachusetts	California	Georgia	Indiana
Pennsylvania	Florida	Connecticut	Illinois

Audit Results

The audit report reflected the following conclusions with respect to the **Permanent Labor Program**:

1. The required labor market test is not designed to survey the labor pool available at the time the alien actually adjusts to permanent resident status.
2. Despite a costly, time-consuming recruitment process, the required labor market test did not result in the hiring of U.S. workers over foreign labor.
3. Virtually all aliens (99%) who eventually obtained permanent resident status were in the U.S. at the time of application; three-quarters were already working for the petitioning employer.
4. Eleven percent of the PLC aliens never worked for the sponsoring employer after adjusting to permanent status. Of those who worked for the employer after adjusting status, one-third left employment within 1 year of adjusting status.

With respect to the **Labor Condition Application (LCA) Program** the primary conclusions were:

1. The LCA program is being stretched beyond its intent of providing employers with access to the best and brightest in specialty occupations (a term used by some advocates) to make the employers competitive in the global economy.
2. There is no certainty that U.S. workers' wages are protected by the LCA program's requirement that employers pay aliens the higher of the prevailing wage or actual wage paid to their employees who are similarly employed. (In seventy-five percent of the cases the employer could not adequately document, as required, that the LCA wage was the correct wage. Also, some were paid as independent contractors.)

Additional Statistical Results

1. On average, aliens will not become a permanent resident for approximately 1 1/2 years after the employer files the alien labor certification application.
2. U.S. workers were hired in .02 percent of the referrals made by the SESA's in response to job orders under the permanent labor certification program. (Five placements out of 28,682 applicants referred to 10,631 job orders.)

Recommendations of the Inspector General

1. Elimination of DOL's Permanent Labor Certification and Labor Condition Application programs as they currently exist.
2. Establishment of a new program to fulfill Congress' intent, at the same time correcting the deficiencies identified in the audit.

3. If DOL has a role in the redesigned program, ensure DOL's costs are fully recovered by charging user fees to the employers who benefit from the programs.

Audit Follow-up

Commissioner Morrison asked what DOL was doing with the audit findings.

Ms. Giles said that she had been coordinator of a Departmental Task Force established to redesign the system. That project had been canceled after extensive work had been done, but, prior to the issuance of recommendations. She said that ETA was currently engaged in a reengineering of the system, largely as a result of the Inspector General's report. Some Congressional staff, including Senator Kennedy's office, have been briefed on the audit.

Effective 10/21/96, a General Administration Letter was issued to the SESAs with the intent of increasing the efficiency of the system. Among the items addressed were unduly restrictive job requirements, reduction in recruitment requests, notice of findings extensions, and limited review processing. For permanent labor certifications, employers will be required to document that the job existed and was previously filled at the same requirements before the alien was hired.

Ms. Giles that the new procedures will greatly expedite the SESA processing, and initially create a huge workload for DOL. Eventually, the entire process should be greatly expedited. She said that there should be a great reduction in the referral of U.S. workers to sham jobs. Through training and bi-weekly conference calls DOL is attempting to increase consistency throughout the Regions.

Ms. Giles also said that DOL is now requesting SESAs to screen job applicants strictly against job orders. Previously, the SESA had more flexibility in accepting experience in lieu of education.

H-1B Program

In discussing the H-1B program Ms. Giles pointed out that DOL has no authority to reject applications except for obvious inaccuracies. She said that they were now looking more closely at wage rates to see if the rate being paid obviously inaccurate.

Commissioner Morrison asked if an LCA can be rejected for an occupation that is obviously not a specialty occupation. Ms. Giles said that she had no authority to reject an LCA for that reason.

In response to a question, Mr. Riggs said that two of the biggest issues with respect to H-1B is the need to strengthen the definition of specialty occupation and to make H-1B employment project specific. The positions should be truly temporary and in addition to the firm's actual permanent positions.

Permanent Program Issues

In response to a question, Mr. Riggs said that, in his opinion, the biggest issues in the permanent employment system were:

1. The current labor market test is a waste.
2. The system is alien rather than employer driven.
3. There is a short-term attachment to sponsoring employers after adjustment of status.

4. Anecdotal information indicates that the “best and the brightest” argument used by some advocates in pressing for an international labor market test is not sustained by the facts.

Ms. Hufstedler asked Mr. Riggs if the skill levels of those who adjusted to permanent status had been examined in the audit. Mr. Riggs said they had not, but that information could be extracted from the data.

Additionally, he said, it appears that whatever regulatory efforts were instituted, employers will find a way to bring on board the person they want to hire, who is usually already filling the job. It was argued that there must be a labor market test before the alien is brought on board.

General Recommendations

Mr. Riggs said that to make the system legitimate, real recruitment must take place before the alien is on board.

Ms. Giles said that regulations need to be completely rewritten. She has been told that such a revision of the regulations is not likely. She said that ETA gives no importance to this program and little resources. This would have to change.

Commissioner Morrison commented that the number of jobs involved in these programs is not really big, and that this is not a major problem when compared to family-based immigration.

Commissioner Hill asked Ms. Giles the following questions for later response because of time constraints:

1. Has the Region suffered from dramatic cutbacks in funding for the SESAs?
2. Could DOL assume the functions of the SESA if the SESA role was eliminated?
3. Could DOL take over the INS role in employment-based petitions?

United States Commission on Immigration Reform

Dallas site visit: Management Team Staff Summary Report
Working Lunch with Private Practitioners
January 22, 1997

Commissioners Present: Shirley M. Hufstedler, Chair
Robert C. Hill, Commissioner
Nelson Merced, Commissioner
Bruce Morrison, Commissioner
Richard Estrada, Commissioner

Practitioners: Richard Fernandez, Esquire, Fernandez & Fernandez
Richard A. Gump, Esquire, Law Offices of Richard A. Gump, Jr.
Elise Healy, Esquire, Tidwell Swaim & Associates, P.C.
Michelle Saenz-Rodriguez, Esquire, private firm
Vanna Slaughter, Accredited Representative, Catholic Charities
Paul Zoltan, Esquire, Proyecto Adelante

Staff Present: Andy Schoenholtz, Deputy Executive Director
Gregg Beyer, Senior Policy Analyst
Patricia Dunn, Senior Policy Analyst
Brett Endres, Policy Analyst
James Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst

Following initial introductions by the Commissioners, staff, and the practitioners, the CIR's deputy executive director explained that over the course of the next several months, the CIR would be submitting two reports to Congress. The first, dealing with refugees, would be issued sometime this Spring. The second and final report, focusing in part on issues relating to the management and organization of agencies and offices charged with administering the immigration laws, will be issued in September. It was explained that the Commissioners were in Dallas to examine management-related issues. In conjunction with this examination, the Commissioners were interested in learning the practitioners' general observations regarding the agencies before which they practice, i.e., INS, EOIR, and DOL, in Dallas and in the region, and regarding their experiences vis-a-vis accessibility to and communications with agency personnel.

- **Access and Communication:** Ms. Slaughter observed that access and communication with the INS have greatly improved under the administration of INS Commissioner Doris Meissner. Whereas in the past Ms. Slaughter experienced a lack of cooperation on the part of the INS, this no longer is the case. Over the last 3 to 4 years, she has found the INS to provide better service and greater collaboration with Catholic Charities and the private bar in general. She also pointed out that she can now find someone to talk to and deal with on the issues of concern to her clients. Ms. Slaughter attributes these changes to Commissioner Meissner. According to Ms. Slaughter, the message that the INS is to be “customer oriented” is resonating in the field.

Ms. Saenz-Rodriguez, however, indicated that she did not share Ms. Slaughter’s experience. Ms. Saenz-Rodriguez stated that she “never got an answer” from the District Office and generally found the agency and its personnel difficult to deal with even on the simplest of matters. She explained that the smaller the firm an attorney is associated with, in her case a 2-member firm, the less exposure one has. As such, small firm practitioners find it difficult to get anything accomplished before the INS District Office. This, however, is not her experience with either the Texas Service Center or before the Immigration Court. In contrast to her experiences with the District Office, she found the Immigration Court to be very helpful and accommodating, notwithstanding the very limited size of its staff and resources.

To illustrate the lack of communication with the local District Office, Ms. Saenz-Rodriguez related one example. She explained that the District Director and the local chapter of AILA had apparently entered a binding agreement governing the filing of multiple completed applications at the District Office. According to Ms. Saenz-Rodriguez, notwithstanding the binding nature of this agreement on the entirety of the local bar, the agreement itself was never generally published or communicated by the District Director to the local practitioners, including herself. To the extent such agreements were being entered into, Ms. Saenz-Rodriguez believed that such agreements should be communicated by the District Director. This example precipitated a discussion, without any resolution, as to whether such agreements constitute “rulemaking,” and whether a District Director has the authority to enter into them. Staff subsequently contacted the District Director about this process; the attached memorandum provides information gleaned from that discussion.

Mr. Gump stated that communication was the biggest problem in the INS. In his 24 years of practice he has had frequent dealings with other federal agencies including DOL and the Department of State, but the most difficult agency to deal with is the INS. In his view, the INS is not customer-service driven whether that customer be the alien himself, the attorney bar, or pro bono organizations. At the same time, Mr. Gump observed that things are better than they were many years ago. Today, he finds many professionals at the INS; however, their responsibilities are many and their time is limited. Nevertheless, in his view, the INS can and should do a better job in communicating with the public it is supposed to serve. Commissioner Hill asked if communications with other agencies were better. Mr. Gump said that in the Dallas region, communications with the DOL had been good, but that recent downsizing has hurt.

- **Separation of Benefits and Enforcement Functions of INS:** Ms. Healy observed that with the advent of greater processing of applications for benefits at the Regional Service Centers, it appeared, at least from a practical standpoint, that the INS was moving toward a separation of its enforcement and benefits roles. In her view, this represented a “sensible” approach. She noted that the Service Centers, some of which were better than others (with the Texas Service Center ranked among the better ones), could more efficiently and expeditiously process large numbers of benefit applications. In response to Commissioner Merced’s request for examples of Service Center successes, Ms. Healy cited the Service Centers’ more efficient handling of H-1B applications, visa petitions, and applications for adjustment of status.

Mr. Gump opined that the INS should be divided into two agencies, one responsible for benefits, the other for enforcement. He explained that the benefit and enforcement roles are as different as night and day. Each side of the INS has enormous responsibilities and should be separated out.

On the other hand, Mr. Fernandez saw great problems with dividing the INS. In his view, there already was a serious problem of communication within the INS on a whole host of issues. Further separation or subdivision of the INS would only serve to exacerbate this already serious communications problem.

Labor Certification System: Commissioner Hill asked for suggestions to fix the labor certification system. Mr. Gump said that as a national policy we need to determine who and what we want. We do not have a mechanism regarding new and emerging jobs. He would “open it up” and let business decide whom they needed, so long as they paid the appropriate wages. Commissioner Estrada asked if this would create problems such as additional workers driving down wages. Ms. Healy said that DOL should talk to employers about shortages in certain occupations. Mr. Gump indicated that he is also concerned about the DOL’s new procedures designed to speed up the application process. He is seriously concerned that while some applications would be processed in a streamlined fashion, the system may actually slow down the processing of new emerging jobs.

Comments on the New Immigration Laws Passed in 1996: Mr. Fernandez explained that in his view, the family unity tenet underpinning our immigration laws “took quite a hit” under the new legislation, as is evidenced in the provisions severely limiting (if not in effect eliminating) 212(c) waivers and suspension of deportation. Furthermore, the broadening of the list of crimes qualifying as aggravated felonies will place more long-time residents in jeopardy of deportation and being separated from their families. Indeed, he is already seeing this in operation in his practice. Under the old law, an Immigration Judge could, as a matter of discretion, give long-time residents a “second chance” if the circumstances warranted it, notwithstanding the existence of an aggravated felony conviction. The new laws, however, take this discretion away by precluding such relief as a matter of law, regardless of an alien’s special or compelling circumstances. Moreover, if deported, the alien is banned for life. Mr. Fernandez believes that in many cases, not only are the crimes committed not “aggravated” in nature, but that the immigration-related consequences of the offenses and new grounds of deportability are far worse than the underlying infractions.

Mr. Zoltan echoed these concerns in the attached article submitted at the luncheon which was published in the Dallas Morning News, Sunday, January 19, 1997. In addition to discussing the elimination of section 212(c) waivers for lawful permanent residents convicted of an aggravated felony, he points out that Congress also revised the law governing what constitutes a "conviction" for purposes of the immigration laws. Now, aliens who have been granted "deferred adjudication" under state law will be considered to have been convicted of the underlying offenses. Mr. Zoltan alleged that deportation officers were in the process of revisiting legal immigrants' files to see who might now be deported for having accepted "deferred adjudication." Mr. Gump suggested that the new law could be misused because a much broader range of conduct has now been criminalized and the INS has been given extensive new resources.

Finally, Mr. Zoltan raised concerns about the new Act's and proposed regulation's emphasis on detention. Although the new laws envision increased detention, in his view there are insufficient detention facilities to fulfill this mandate. Moreover, he stated that the immigration laws appear to be marginalizing the role of the immigration courts. For example, if an alien requests voluntary departure before he goes before an immigration judge, the INS can grant him up to 120 days to depart voluntarily. However, if voluntary departure is requested before an immigration judge, he may only be granted up to 60 days and, if granted, the alien must post a departure bond. It is Mr. Zoltan's understanding is that no such bond need be posted if the alien is granted voluntary departure administratively by the Service. Such provisions have a chilling effect on the exercise of an alien's right to be heard before an impartial judge.

Following the meeting, Mr. Zoltan sent the attached letter regarding possible effects of the new laws on asylum.

Attachments (3)

Note for the File

28 January 1997

To: Andrew I. Schoenholtz, Deputy Director
From: Gregg A. Beyer^{GB}, Senior Policy Analyst (INS)
Re: INS Dallas District Office Policies and Procedures

As you will recall, during the Commissioners' 22 January meeting in Dallas, Texas with some private immigration lawyers and representatives of some non-governmental immigration-related organizations (NGOs), a question arose concerning some of the policies and procedures currently in place at the INS Dallas District Office. At this meeting, there was considerable discussion in particular about the INS policies on accepting, reviewing and receipting newly-filed applications. I called Arthur Strapp, District Director of the INS Dallas District Office, to obtain further information on these policies.

Mr Strapp explained that, due primarily to insufficient numbers of INS Information Officers (and now, of INS Cashiers), long lines of applicants and/or their representatives queued each day in order to personally file their applications. At the time of filing, each application was reviewed for completeness by the INS Information Officer/Cashier, and if complete, it was accepted, the fees received, and given an appointment for interview. If the application were incomplete, the application would be returned for completion, and no fee would be accepted and no filing date would be given. In order to keep the lines moving, the Dallas District Office limited each visitor to filing only one application at a time. Family groups are considered as "one filing."

This policy led some practitioners, especially from AILA, to complain that they needed a way to file more applications more quickly than under the then-current policies and procedures. Therefore, the following new procedures were worked out between INS and AILA, and publicized to AILA members (and others) via liaison meetings with AILA and word of mouth in the attorney community.

Under this arrangement, the INS District Office agreed with AILA to establish certain days as "attorney filing days" wherein it would accept multiple filings of attorney represented cases -- up to five at any one time. Because a careful on-the-spot review of these multiple filings would be time-consuming, they further agreed to accept them from the attorneys without review. The District Office would assume the applications were complete, accept the fees, and provide the attorney with an interview date. Filings were limited to adjustment of status and concurrently-filed subsidiary applications only. In turn, the AILA practitioners said they would accept responsibility for filing only complete applications, and if they made a mistake in completeness, they agreed to have their already-accepted "complete" application denied -- and the original filing date canceled. In such cases, they would then have to refile the application and repay the fees, along with any applicable penalties.

According to the INS Dallas District Office, this is a "gentleman's agreement" without specific regulatory authority. Mr Strapp went on to state that if AILA or other attorneys come to feel that they cannot accept the agreement as outlined, then the INS District Office will cancel the special attorney filing days and these procedures. This would then result in a return to the system outlined in paragraph two above.

'Second Chance' is no chance for immigrants



**PAUL
ZOLTAN**

George Orwell would be proud. Recently, when the Immigration and Naturalization Service began rounding up and deporting legal permanent residents with criminal records, it called its effort "Operation Second Chance."

A second chance for whom?

Not for any immigrant, surely. Pulled from their beds in nighttime raids and shipped to jails to await perfunctory deportation hearings, they haven't been given a single chance. Indeed, many of them may be innocent.

The irony is especially trenchant for me. Last year, I helped to found an agency called "Second Chance" (or *Nueva Oportunidad* in Spanish). As a lawyer and immigrant advocate, I had hoped to provide advice and counsel to long-term permanent residents facing deportation.

The immigration laws then in effect permitted a legal resident to request a pardon, or "waiver," from deportation if he or she had lawfully resided in the United States for more than seven years.

Federal immigration judges were empowered to grant the waivers under compelling circumstances — typically, when the person had an otherwise spotless criminal record and was the primary breadwinner for children who were U.S. citizens.

But in April, the Anti-Terrorism Act did away with such second chances. From then on, any immigrant convicted of certain crimes would be deported — without regard to his or her personal history, family ties or length of residence.

So it was for "Bob," admitted to the United States more than 20 years ago and now awaiting deportation to Vietnam for a single conviction of marijuana

The list of crimes that now require automatic, lifetime banishment is so long that it includes many offenses that most states treat as misdemeanors.

possession.

He doesn't speak Vietnamese (he was 2 when he left), and he leaves behind two children and a wife. Worse, Bob will be forbidden to return to the United States in his lifetime. His toddling children never may know their father.

Many more will follow Bob, despite having served their time, despite the families that depend upon them and despite any sense of proportion or justice.

The list of crimes that now require automatic, lifetime banishment is so long that it includes many offenses that most states treat as misdemeanors.

Concerned that some "criminal aliens" might escape even this wide net, Congress revised the immigration laws again in September. The lawmakers agreed that an immigrant doesn't have to be actually convicted of a crime in order to be deported as an aggravated felon. Henceforth, anyone granted "deferred adjudication" is to be considered convicted for purposes of deportation.

Many of them may be innocent.

Anyone who has been through Dallas traffic courts can attest that there are plenty of good reasons for not vigorously contesting your guilt: For starters, lawyers cost a lot, and you never can be certain of the outcome of any trial. Offered a face-saving alternative to conviction that is mostly free of hassles, we take it. Why else would we take defensive driving?

In criminal cases, deferred adjudication is roughly

equivalent to taking a defensive driving course: You don't make a fuss about your innocence, and the prosecuting attorney lets you off with a slap on the wrist.

If I had to guess, I would suppose that most of those who accept deferred adjudication are guilty of the crime for which they have been accused. But since when do we punish those who are only *probably* guilty? As parents, we may have done it once or twice, but it certainly isn't what we expect of our courts — especially when the penalty is permanent deportation.

The Immigration and Naturalization Service's ironically titled Operation Second Chance plunges into this blur between accusation and guilt.

Right now, deportation officers are taking a second look at legal immigrants' files to see who might be deported for having accepted deferred adjudication in a criminal case.

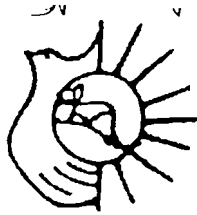
Beginning with the most awful-sounding accusations — sexual crimes, especially — Operation Second Chance is dispatching agency officials to the homes of these residents for nighttime arrests and subsequent detention.

In the following weeks, the immigrants will be summoned for hearings in which neither justice nor guilt is germane. Each will be deported. None may return.

The author of the latest immigration bill boasted that it contained "the rack and thumbscrews" for criminal aliens. For many lifelong legal residents, the analogy holds. Deportation is as awful for them as exile might be for anyone reading this column.

Punishing the probably-guilty may pass for justice for some places, but not in America. Operation Second Chance needs a second look.

Paul S. Zoltan is executive director of Nueva Oportunidad, a nonprofit agency that helps immigrants and their families.



Proyecto Adelante

P.O. Box 223641 Dallas, TX 75222 (214) 741-2151 FAX (214)741-2150

January 30, 1997

Andy Shoenholtz, Deputy Director
U.S. Commission on Immigration Reform
2430 E Street NW, South Building
Washington, D.C. 20037

Re: Asylum provisions of IIRIRA

Dear Mr. Shoenholtz:

At the close of last week's luncheon meeting, you invited my written comments on particular provisions in the asylum law and proposed regulations. This letter comes in brief answer to that request.

Apropos of asylum, the three provisions in the new law that most trouble me pertain to expedited removal (IIRIRA §302), detention (IIRIRA §305), and asylum eligibility (IIRIRA §604).

- **Expedited removal:** This provision is certain to result in the return of refugees to the hands of their persecutors; through careful regulation the INS may only limit the number of potentially lethal errors.

My certainty comes, in part, of my experience with Somalis who apply affirmatively for asylum with the Houston asylum office. All our 48 Somali clients who are (or recently were) in deportation proceedings have been referred from the Houston Asylum Office. Each was denied because an Asylum Officer found (a) she or he had failed to show past persecution "on account of" one of the five protected statutory grounds, and (b) the applicant's fear of returning was not "well founded".

Of the more than twenty cases subsequently tried before the immigration judges, nearly all have won asylum; only *one* was denied for the reasons articulated in Houston.

No formal feedback lets the Houston Asylum Office know that their decisions are routinely overridden by the immigration judges (who sometimes view the referral notices as risible). Without such a mechanism for review, most of these trained

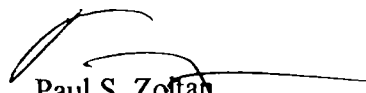
officers would probably deem these asylum applicants to have no "substantial possibility" of winning asylum (i.e. "credible fear")--though ultimately most do.

To limit tragic errors in a system stripped of effective judicial review, the implementing regulations pertaining to expedited removal (8 CFR §3.42) should be revised to mandate the following:

1. Persons entering the U.S. with false or insufficient documentation who come from countries with bad human rights records should be *presumed* to wish to ask for asylum; none should be denied even a perfunctory "credible fear" adjudication because they never said the magic word "asylum".
 2. "Credible fear" interviews must be conducted in an attorney's presence whenever possible by sensitive officers trained to give the applicant the benefit of any doubt. Quality control should be facilitated by the maintenance of precise records and the establishment of a formal review process--preferably by a non-governmental agency.
- **Detention:** As I indicated at our luncheon, the Justice Department must revise its regulations to ensure that, at the termination of the "transition period" designated by the Attorney General (IIRIRA §303), respondents who show up for their removal hearings do not face automatic detention if their applications for relief are denied by the immigration judge. Unless the immigration courts are deemed off-limits to arresting officers--at least in non-criminal cases--respondents will be strongly discouraged from attending their hearings. Those who do show up are effectively compelled to lodge pro forma appeals merely to postpone the finality of a judge's order of removal.
 - **Asylum ineligibility:** 8 CFR §208 needs further revision to limit the injustice that will result of IIRIRA's one-year time limit on applying for asylum. Countless circumstances may prevent a refugee from applying for asylum within a year of entry. Indeed, a study conducted by the Lawyers Committee for Human Rights in 1996 found that only 38% of 200 randomly selected bona fide asylum applicants had applied within a year of entry. Unless regulations broaden the definition of "extraordinary circumstances" which might excuse late I-589 filings, IIRIRA will prevent great numbers of refugees from even applying for asylum.

Thank you for soliciting my views. I hope you will distribute this letter among the Commissioners.

Sincerely,


Paul S. Zoffan
Legal Services Director

United States Commission on Immigration Reform

Dallas site visit: Management Team Staff Summary Report
Visit to the Dallas Immigration Court

Date: January 22, 1997

Staff Present: Patricia Dunn, Senior Policy Analyst
Brett Endres, Policy Analyst
James Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst

The purpose of the visit to the Immigration Court was to observe deportation hearings being conducted by video from a prison. Upon arrival, the Immigration Judge was in the process of conducting "in person" hearings which had been re-set from a previous calendar for a variety of reasons. In one hearing, the court ruled that the lawful permanent resident respondent was now statutorily ineligible to apply for a waiver under section 212(c) of the Immigration and Nationality Act in light of the provisions of the 1996 Antiterrorism Act, notwithstanding the fact that the alien was in fact eligible for such relief during his previous hearing before the Immigration Judge. As such, the court was precluded from considering the length of the alien's residence, family ties in the United States, hardship claim, or other personal circumstances. Inasmuch as this alien was statutorily ineligible for relief, no purpose would be served by scheduling another hearing on the merits his request for relief and/or any actual application he might be interested in filing.

In an exchange with CIR staff following the conclusion of these hearings, the Immigration Judge indicated that he was on the "front line" in terms of deciding legal questions arising under the new legislation. To the extent that he does not have the time to research arising legal questions, he relies on counsel to brief the issues for decision. Judge Rogers indicated that EOIR headquarters had scheduled a series of training sessions for Immigration Judges to be conducted over the course of the next few weeks. Generally speaking, he has had a great deal of independence as a judge, an arrangement that is to his liking. He prefers to be left alone, as is the practice now, than to be overly directed by EOIR management.

Judge Rogers praised the local attorney bar and described aliens in the Dallas area as "quite fortunate" to have such representation available to them. As for the court's relationship with the INS, Judge Rogers indicated that he had a "great" relationship with the District Director to whose attention he has brought sympathetic cases about which the Immigration Court could do nothing. Another illustration of this cooperative spirit is that the Immigration Court agreed to make Saturday hearing time available for any hearings necessitated by an INS worksite raid to be conducted the next week.

On the other hand, the court's relationship with the District Counsel was characterized as "not good." In Judge Rogers' view, although individual Service attorneys were interested in fundamental fairness in cases, this was not always true of their supervisors, including the District Counsel. In Judge Rogers' opinion, the District Counsel was a very smart lawyer, but not a very good manager and this results in a poorly run office. He did not state the basis of his opinion in this regard.

Regarding the conduct of hearings by video, Judge Rogers explained that he came to employ this hearing option reluctantly. He initially saw many problems with conducting hearings via video (maintaining control over the courtroom, maintaining proper courtroom demeanor and respect for the court by the alien, etc.) However, he finds that these have proved to be non-issues. At present, the video hearings are used only in master calendar hearings, or in hearings in which there is no contest as to excludability, deportability, removability, or eligibility for relief. It is rare, if ever, that credibility is ever at issue in such cases inasmuch as the issues presented for decision are uncontested.

The video option is not presently used for merits hearings, and there are no plans to change this. Judge Rogers did, however, indicate that many in the private bar appear to like the video hearing option and see other uses for it, *i.e.*, allowing witnesses from outside the court's jurisdiction to testify without having to incur travel expenses; getting a speedier hearing date, etc. Should an attorney request the video hearing option for a merits hearing, Judge Rogers indicated he would be inclined to proceed on this basis. In any event, Judge Rogers has become a video hearing convert and has found that in all material respects such hearings are no different from those conducted in person. He, along with the attorneys practicing before him, prefer the video hearings to those conducted telephonically.

As for the video hearing itself, the direction of the camera is controlled by the Immigration Judge on a machine sitting on the court's bench. The judge can zoom in for a close up shot. For example, in the hearing we observed, the Immigration Judge zoomed in on both the trial attorney and the interpreter as they were introduced for the record. Like other hearing formats, an interpreter is present in the courtroom and provides translation/interpretation services for the alien, as needed.

Video hearings are presently being utilized by at least three immigration courts: Dallas, Baltimore, and Oakdale, La, with additional sites to be added soon in Chicago and Philadelphia.

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Divider Title: 4

**Meeting with INS Western Region Office Managers, Laguna Niguel, California
December 4, 1996**

Participants

Mike Flynn, Deputy Regional Director
Carolyn Muzyka, Associate Regional Director
Dayva Stewart, Executive Director

Jim Booe, Assistant Regional Director, Adjudications
Chuck Brinkman, Acting Assistant Regional Director, Investigations
Gloria Leong, Assistant Regional Director, Inspections
Toni Looney, Assistant Regional Director, Detention & Deportation
Mike Nicely, Assistant Regional Director, Border Patrol
David Whitt, Assistant Regional Director, Intelligence
Virginia Kice, Director, Congressional and Public Affairs
Pat King, Director, Planning and Analysis
Bill Pritchard, Director, Resource Management

Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C. Hill, Commissioner
Warren R. Leiden, Commissioner

Andy Schoenholtz, Deputy Director
Jim Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst
Carolyn Piccotti, Senior Policy Analyst

The Commissioners opened the December 4, 1996 meeting by emphasizing that they were looking for a forthright discussion of the work of the regional office, and that the purpose of the trip was not to find errors or blame others for certain operations, but to become better acquainted with the Service's management so that it could provide assistance, if possible. In particular, the Commissioners would be looking for the field perspective on the INS management structure and the pluses and minuses that now exists with the current organizational scheme. It was emphasized that no comments made by the participants would be attributed to them in any formal reports prepared by the Commission.

The Commissioners met initially with the Deputy Regional Director, the Associate Regional Director, and the Office's Executive Director. They were subsequently joined by the various assistant directors assigned to the regional office. The Regional Director was unavoidably

delayed and did not meet with the Commissioners. All of the participants expressed variations of similar views on problems associated with the current organizational structure, the budgetary planning process, and information flows up and down the chain of command. The management heads of the regional office noted that they have been under constant review both internally and externally. They noted that, previously, the Service was not expected to deliver. Support and resources were constantly lacking. Now, however, with an annual budget that has grown from one billion dollars three years ago to approximately three and a half billion dollars, the challenge for INS is to deliver. The Western Region has a budget of 581 million, although it has the lion's share of the Service's immigration workload.

Organizational Structure. The July 1994 INS reorganization, which provided for the return of a regional director management level, is still considered incomplete. Previously, seventy-two district directors reported to one person in the Washington headquarters. The regional directors, under a previous regional structure which existed in the 1980's, had no budgetary control, no guidance, no resources. According to the participants, it was considered a poor structure. There was no span of control. Now the regional staff have more control; there exists greater uniformity in the field offices. However, there exists a need for more definition in the region. 'The devil's in the details.' According to the participants, all of the regions need to have clearer lines of communications with INS headquarters.

The participants felt that the new INS structure was set up to fail and not to work. According to the participants, the District Directors do not necessarily appear to oppose a major role for the regional structure. However, they perceive that there is no need for the EAC management level (with four Executive Associate Commissioners reporting to the Deputy Commissioner -- responsible for Programs; Field Operations; Policy and Planning; and Management) created by the 1994 reorganization. The view was expressed that the Regional Directors should report directly to the Deputy Commissioner. The participants felt the INS Commissioner is not getting all the information she needs to properly make decisions.

The INS headquarters operations has two major units -- Field Operations and Programs -- which appear to do ostensibly the same thing. Field Operations was created from scratch with 25 employees. The Program side, however, remained intact with some 500 employees. It has no program elements (with the exception of the four Service Centers which fall operationally under the Benefits Division.) (The term - Programs - may be a misnomer.) Field Operations has been given line authority over the regions, however, the program side seem to continue operating as before. The Program Office has the all the technical expertise; thus, the regional and district offices tend to call the Program Office for advise, rather than direct their technical questions to the Field Operations staff. Additionally, it was noted that the small Field Operations staff at headquarters continues to be flooded with requirements from Policy and Planning. It was also stated that because of the size difference alone, Field Operations is overwhelmed by Programs.

The organizational structure at headquarters calls for a consensus of view. It was noted that the region frequently sees operating memoranda signed by two or more people. This has a history or

legacy of peer-to-peer consensus at the headquarters operation. According to the participants, decision memos seem to bounce around from Executive Associate Commissioner to another Executive Associate Commissioner [EAC], and never see the light of day. Given this operational structure, decisions on any issue can be revisited again and again. The regional managers argued that this bifurcation of responsibilities must end; a simpler structure is called for.

It was noted that the Headquarters Policy and Planning office should set the battle plan, and then turn it over to Field Operations or Programs to implement the organization's goals; but, that does not occur. Field Operations and Programs can frequently disagree on a course of action.

As regards adjudications, it was noted that the four Service Centers do not report to Field Operations but to Programs in Washington. However, the Service Centers must coordinate with the local offices around the U.S. for the scheduling of appointments to adjudicate various petitions. The local field offices are run by the District Directors who report to Field Operations; however, the Service Centers, which provide the adjudicative workload to the local field offices, report to Programs in Washington. (The four Service Center Directors report directly to the Assistant Commissioner heading up the Benefits Division.) The participants argued that there should exist just one reporting chain of command as well as control of resources through that same chain of command. In reviewing the 'Citizenship U.S.A.' program, for example, the participants also found it difficult to identify who was in charge; the role of the various offices was complicated and confused. One EAC controlled a part of the process and another EAC controlled other elements. Policy calls had to be resolved at the Deputy Commissioner level; however, the participants stated that there was strong reluctance to push decision making to that level for resolution.

One participant noted that a perception exists in some quarters at INS headquarters that the regional level is redundant and that decision making should flow from headquarters directly to the district level. However, it was noted that with the large increase in staffing at INS headquarters, too many people are giving orders to the field, and they not playing by the established rules. 'There are too many masters.'

The entire administrative structure -- budget, hiring, procurement, etc. -- reports to the EAC for Management in Washington. According to the participants, lines of authority and command are not clear. However, the people in INS make it work, regardless of the structure. The structure does not fit the problems faced by the Service. More simplicity in structure is required. Additional reorganizations on the administrative side may be necessary.

Administrative Centers. There was consensus among the participants that the regional directors should control the management structure. If the regional director does not control the management side, it is most difficult to go to him to say specifically what you wish to have accomplished on a policy basis. The District Directors control all their people, but not so at the regional level.

The Chair inquired about the few first steps that could be taken to ensure that the structure does not fail. The opinion was expressed that the persons empowered in Washington to make such decisions need to get unfiltered information from the field. The regional management staff noted first the problem of transferring control over the regional administrative centers from Washington to the regional directors. No full time positions are currently being filled since it remains unclear what the centers will do. It was thought originally that as many as 125 positions might have to be abolished, many people left or transferred out of the administrative center, and now only temporary employees can be hired. The administrative center currently faces a shortage of employees. The shift in line of command authority was to have been initiated on October 1, this changed to December 1, and it has now been put off for implementation by April 1, 1997.

Why have there been delays at headquarters? It was opined that some in the INS headquarters are not convinced that the regional structure is the way to go regardless of the Commissioner's vocal support for it. Foot dragging may be occurring, with some headquarters officials with vested interests delaying the process. If this continues, with the loss of administrative support personnel in the administrative center, all of the regions may not be properly staffed to take over the new responsibilities once the actual transfer of responsibilities occurs.

Border Patrol. The structural problems of the INS were highlighted by a discussion of the Border Patrol [BP] command structure. According to the participants, the command structure is dysfunctional from the headquarters to the field. The problem lies in no clear lines of authority. It is a process rather than a people problem. This results in poor operations. However, there exists enormous pressure to get things fixed along the southern border. The Immigration Act of 1996 gives the INS tremendous resources, and a fear exists that the Service may mismanage the southwest border strategy. The INS Commissioner is considered to be doing her best; however, the deployment of forces never seems to catch up with the policy statements. Decisions on many details (such as who on the border will get radios, automobiles, etc.) are made at the headquarters level. Border sector chiefs have no control over their staffing levels and equipment. 'The headquarters needs to do less rowing.' 'They need to steer.' Much gets lost in passage from the headquarters to the field was a constant complaint from the participants.

According to the participants, the Chief of the Border Patrol in Washington does not supervise the Border Patrol in the field. He supervises only his Washington staff. The Chief of the Border patrol reports to the Executive Associate Commissioner [EAC] for Field Operations, on a temporary basis. He had been reporting to the EAC for Programs. The entire border patrol function in INS was detailed to Field Operations in June 1995. It would normally be assumed that the EAC for Field Operations would delegate responsibility for the guidance and managerial supervision of the BP to the BP chief, but that has not occurred. The BP Chief essentially fills a staff position. He cannot direct sector chiefs to realign personnel to deal with broader problems. Border Patrol issues consume much of the Regional Director's time; he has direct line supervision over the Regional Border Patrol chief but there is no direct chain to the senior border patrol chief in Washington.

Career Paths. Previously, almost all senior positions came from the enforcement side, now you see movement up the ladder from the service side of INS. Personnel on the enforcement side tend to be graded higher in the civil service structure than those in the service side of INS. Thus, they tend to rise up to higher managerial levels. However, they have not been trained previously for more senior managerial positions; rather, they tend to be competent experts running large operations. According to the participants, a true career path is called for in the INS. Personnel should be evaluated at both the district and regional levels. Potential senior managers and leaders need to be identified. The Service needs objective criteria for selecting personnel to be moving up the chain of command. Experience should be a larger part of the input into such decisions. Courses for training managers are considered essential. The participants stated that the Leadership Development Center at Dallas (run by Jennifer Nelson Lee) has been doing a good job of starting the training process.

Communications. While the participants stated that they would prefer to see cleaner lines of command, they also noted that communication should not get bogged down in the middle at the regional level. They also noted that guidance generally has been slow in coming from the headquarters operation. The field does not yet know how to deal with various aspects of the new immigration legislation as well as the welfare reform act and the anti-terrorism legislation. The regional office has advised headquarters about the region's data base system and how operations are handled locally. The operating instructions from headquarters have to be rewritten extensively. They are working, however, with the five major task forces established to write the new regulations. Given the April 1, 1997 deadline for many of the new provisions, there will be a very short time frame to train the thousands of Service officers on the new laws, and how they should be implemented. For example, how will the Service capture the information on foreign nationals departing the U.S. in order to deal with various aspects of the new legislation? Form I-94 are currently picked up by the air carriers, given to the Service, and the information is entered into the Service's computer system. However, many I-94's are not retrieved. How will the Service deal with persons trying to reenter the U.S. when there is no record of their having departed previously?

Service and Enforcement. Can both service and enforcement exist in the same organization? The Chair noted that we have been hearing for over ten years that the two cannot be capably performed by one organization. The INS Commissioner said the INS can do it. It was noted that it is hard to wear two hats. Consistency may be more important. Adjudication of benefits is different from enforcement. Should there be a single career path or should it zigzag? The INA is a complex document. One of the Commissioners asked if another DOJ agency would be appropriate. The EOIR may be a model. Fifteen years ago the District Directors also had responsibility for the immigration courts. One of the participants stated that the District Directors overall have had responsibility for both enforcement and services; and that for some it has not been difficult for one manager to handle both sides of the issues. However, more consistency in approach may be required across the board. You have to ask the customers, the clients, according to one participant.

Budget Process. Along with the concerns expressed over the management control of resources, the participants believed that the budget process requires reworking. It was felt that over the last 2-3 years the decision-making at headquarters has been improving. The EAC for Field Operations, for example, is now consulting the field more extensively. They called it 'an evolving process' and 'a work in progress.' The priority process is generally improving, according to the participants.

A 'bottoms up' budgetary process does not exist. The participants could not say how long this 'top down' budget process had been in existence; most stated that it had existed during their tenure. It was opined that sector chiefs and district directors should provide input on resource needs based on the established headquarters policy goals to the regional offices along with cost projections. The regional offices could provide cost analysis when not available at the local level for program elements. This would permit a clearer understanding of resource needs and allocation. It could be explained easier to OMB and to the Hill. 'Currently, the process is not defensible and the product is not defensible.' It was felt that the staff in Washington should act as staff personnel without program responsibilities. It was stated that some 4,000 personnel now work at INS headquarters out of an agency total of some 21,000. (It is not clear if this cited headquarters total includes personnel assigned to the four Service Centers, which have a total of 1094 FTE positions and 1247 contract employees. Thus, the total number of personnel actually working in the Washington headquarters operation may be closer to 1600 persons.) The Western Region has some 9,000 employees, but receives only 581 million dollars out of a total budget of 3.5 billion dollars.

The Chair noted that the Commission will try to make recommendations to improve the process. Policy should always drive the budget, she noted. If you do not get in on the ground floor with resource needs, you cannot get into the budget cycle.

Removals. In addressing the issue of removals, it was noted that milestones for the numbers of removals to be attained are set by the headquarters operation with consultation either regionally or locally. The headquarters sets the level of removals to be attained in a given year. However, headquarters does not go the field first to get its views. They simply set the removal goals. It is not clear how they came to a specific projected number. 23,000 persons were removed last fiscal year from the Western Region and 53,000 is the projected goal for FY-1997. That was also perceived as a major weakness in the overall budget process by the participants.

The number of persons apprehended is frequently controlled by the numbers of beds available for detention purposes and subsequent removal. Some three years ago the region had only 400-500 beds for detainees; it now has 4,123 beds in its detention spaces region-wide. How do personnel in Deportations coordinate with Inspections? One participant stated you go back to the buddy system to see what can be done. A priority detention list exists (with terrorists and criminal aliens heading it) and it is followed by those in the Service responsible for the arrest, detention, and subsequent removal of aliens from the U.S. The region follows a 'hotel concept', wherein the regional office knows which beds are occupied, where the needs exist in various districts, and

what vacancies can be matched to new detentions.

In some instances it is difficult to remove certain nationality groups. For example, it has been difficult to remove Jamaicans with final orders under six or seven months. The State Department has been 'leaning' on the Jamaicans to be more responsive, particularly on 'bag and baggage' cases. There are large numbers of Cubans and Vietnamese, who are criminal aliens and who, by law, cannot be released except by executing a final order of deportation. It was estimated that they occupy approximately ninety percent of the dead bed space in the Region. The participants felt the Service needs to identify long term facilities to house such deportees. It would be cheaper in the long term and it would free up temporary holding space for more productive use. Again, however, the participants noted that headquarters staff does not appear to generally have field experience, and thus the headquarters may not fully understand the field needs for improving the removal system.

Fingerprint Problems. As part of the discussion of managerial issues, the Commissioners raised a question about allegations in the press that hundreds of legal permanent residents had been naturalized quickly without waiting for the results of FBI fingerprint checks. The participants responded that the allegations were not true. They noted, however, that quality assurance could have been better. The naturalization cases had been backlogged for eighteen months when fingerprints were being sent in for security checks. The process was accelerated under the Citizenship U.S.A. program, with cases being adjudicated on a post-audit basis. This brought on the allegations. Interviews were being conducted within three months of formal application. The FBI was flooded with over 1.2 million fingerprint cards as part of the process of faster adjudication. This overloaded the system and the Bureau could not meet the time frames. It has been able to reduce the backlog processing from 18 months to 6 months in response to the Service's request. The 18 month delay was the result of various factors: fewer resources as well as a large increase in naturalization requests responding to recent welfare reform legislation and the previous legalization programs. It was noted that the Service has been under a crisis management mode for a long time. Planning needs to be done on resource needs for the years 2000, 2001 in order to deal with future such problems. Policy and Planning at Headquarters needs to look at the admissions and adjustment numbers, look down that line at what that will eventually mean in naturalization, and then do some calculations on the numbers of persons needed in the Service to process naturalization requests.

The accounting firm KPMG Peat Marwick is conducting an audit of all naturalization cases since September 1995. It must report its findings within ninety days. 60,000 persons had FBI rap sheets, however the existence of a rap sheet report does not preclude someone from obtaining naturalization. The information on the rap sheet could actually be information or a report from the INS itself. The Service performed a computer name check of all of the cases. Now the individual records must be examined.

In tandem with the fingerprint question, one of the Commissioners inquired whether or not the English standard and physical presence requirements had been relaxed in order to get the

backlogs of naturalizations down. It was noted that the interviewing process was streamlined to reduce processing time. One person used to handle all of the processing steps in one case. Now the various steps are split by function. According to the participants this has not resulted in a relaxation of the standards.

The Chair expressed her appreciation for the most candid views expressed by the participants and encouraged them to make any additional written comments they desired to the Commission. She reiterated that any such statements would not be attributed personally to them.

**Meeting With Administrative Operations Managers, INS Western Regional Office,
Laguna Nigel, California
December 4, 1996**

Participants

Debra B. Hayes, Director, Administrative Center
Bill McCullough, Assistant Director, Information Resources Management Division

Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C. Hill, Commissioner
Warren R. Leiden, Commissioner

Andy Schoenholtz, Deputy Director
Jim Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst
Carolyn Piccotti, Senior Policy Analyst

The Commissioners expressed their appreciation for Ms. Hayes and her Information Resources Management Chief to meet with us on December 4 to discuss the administrative operations at the Western Region. Ms. Hayes provided a copy of the Center's Briefing Book together with a February 1996 report prepared by the Justice Management Division entitled "A Management Review of the Administrative Services in the Immigration and Naturalization Service." She stated that the DOJ report capsulized the problems associated with the administrative center system. Ms. Hayes, who has had more than twenty years federal government service (working in administrative managerial positions previously with DEA and FDA), has been in her current position for approximately eighteen months. It was emphasized that no comments made by the participants would be attributed to them in any formal reports prepared by the Commission.

Under the current INS organizational structure, the four INS administrative centers report to the Associate Commissioner for Administrative Centers who, in turn, reports to the Executive Associate Commissioner for Management. Ms. Hayes reiterated a comment made earlier in the day by the Western Regions' managers that the Administrative Center Director does not report to the Western Region Director, but to Washington Headquarters. The proposed transfer of the Administrative Centers to the Regional Directors' control has been put off a number of times. It was her view that the proposed transfer was tied up with two other senior management reorganization issues which must be formally reported to the Congress and about which some

internal debate exists. (This might include putting the Border Patrol operations permanently under Field Operations, and placing Public Affairs under the EAC for Policy and Planning.)

Ms. Hayes was not inclined to believe that the shift in oversight responsibility for the Administrative Centers would occur by April 1, 1997, as currently rescheduled. She opined that a fear still exists in the INS headquarters about the myth of 'out of control directors'. However, the fact that the Regional Directors are Civil Service personnel and not Schedule C appointees should allay such fears. However, she added that the vast majority of GS-15 personnel and above at the INS headquarters have minimal or no field experience. Thus, they tend to be highly reactive to events. She added that she had never seen a federal agency as politicized as the INS. The headquarters structure was designed for personalities and not for effective and efficient operations. She also opined that too many personal agendas at the headquarters are impeding the flow of information from the field to the Commissioner as well as information about decisions made by the Commissioner's subordinates.

Among her other comments, Ms. Hayes believes that all personnel below the GS-7 level should be under contract. Given the constant turn over of personnel filling lower graded positions, some stability personnel wise might be achieved.

Under the current formal organizational structure, if the Administrative Center Director believes that additional border patrol resources are needed or that resources should be shifted, for example from one sector to another, a formal request must be forwarded up to the Associate Commissioner for Administrative Centers (John Schroeder), to the Executive Associate Commissioner for Management (George Bohlinger), to the Deputy Commissioner (Chris Sale), down to the Executive Associate Commissioner for Field Operations (William Slattery), to the Acting Associate Commissioner for Field Operations (J. Scott Blackman), and finally to the Director of the Western Region (Gus De la Vina). A response to this formal request must then retrace the same steps back to the Western Region's Administrative Center. Informally, a telephone call or a brief office visit in the same building between the Western Regional Director and the Administrative Center Director quickly ascertains the viability of such an action. However, the formal paper trail approving such a personnel resource move can be extremely time consuming, without any guarantee of success.

Ms. Hayes believed that the incumbent in her position should report directly to the Regional Director. Thus, the Center would not have to compete with the other regions for resources. It would also shorten the decision-making time frame.

Ms. Hayes was critical of the current headquarters operations which sees itself as responsible for crisis management and which tends to service those above, but not those below. She opined that the INS headquarters does give some opportunity for the regions to identify financial and program problems. She noted that she must compete with the other three administrative centers for personnel resources. According to Ms. Hayes, she is criticized for not being a 'team player' when she notes the high degree of problems specific to the Western Region which require

additional resources.

Currently there exists a freeze on hiring permanent staff for the Administrative Center; a number of division and branch chief positions are filled by acting personnel. Ms. Hayes converted her Deputy Director position to a technician, a position which would prove more useful over the long haul. She has also bought some temporary positions to deal with the increased workload. Total accountability for a region's administrative operations without resources has not worked, in her view.

Ms. Hayes also expressed concern about the split in headquarters between Programs (which may not be the appropriate title) and Field Operations. There exists a division between those who give written instructions and write regulations (Programs) and those who carry them out (Field Operations). One set of instructions provides policy guidance and the other examines what is being done right and wrong. There exists no formal feedback mechanism from the field.

Ms. Hayes believes that the INS must deal more effectively with the allocation of resources. With the implementation of new welfare legislation, the State of California will be impacted to a greater degree than any other State. The lines of people queuing for service will only increase, the naturalization process will continue under close scrutiny (and thus slow down the process), and the headquarters operations will react to the situation rather than face the problems now through advance planning and an increase in the allocation of resources to the Western Region. She added that increased accountability (as provided for in the National Performance Review exercise) should be provided to the field in addition to necessary resources.

Staff Report on December 4 Tour of INS Service Center at Laguna Niguel

Participants

Dona L. Coultice, Service Center Director

Fujie Ohata, Deputy Director

Numerous supervisors and other personnel at various points in the tour

Commissioners Participating

Chair Hufstedler, Commissioners Ezell, Hill and Leiden

Staff Participating

Andy Schoenholtz, Jim Halmo, David Levy and Carolyn Piccotti

This portion of the visit consisted of a tour of the various components and functions of the Service Center. The facilities visited included the incoming mailroom, file maintenance areas, data entry sections, computer room, adjudication area, various product lines, and operations division. The Center employs 269 INS employees and 338 contract employees.

The Service Center receives 75-80,000 applications per month and received \$52.8 million in fees in FY 96. The Center's mail room, file room, and data entry operations are staffed by contractor personnel (Labat-Anderson), as is the computer room (Maxima Corporation). Their work is monitored by INS employees. All adjudications are performed by INS employees. The Service Center also operates an information unit which sees some 1100 walk-ins per month.

There are three Adjudications Divisions which are grouped by benefit type or "product line." The product lines consist of Business and Trade Product Line, Family Product Line and Residence, Naturalization & Status Product Line. Each of these is responsible for specific types of applications. The Center adjudicates some 800 cases per day. Because of time constraints, we were only able to briefly observe the partial adjudication of one case.

The Center currently issues 400-600 alien employment authorization cards per day. Much of this production process is done by hand. New technology will be put into operation in January 1997, which will produce 300 such cards per hour. In the future, this equipment will also process alien registration and border crossing cards. Similar equipment is already in operation at the Nebraska Service Center, and is scheduled for installation at the Vermont Service Center

The Operations Division investigates suspected cases of fraud. They have found many apartments and condos used as business addresses for L visa applicants. Some have even used motels. In the past two months, in checking applications for a 2-year extension of L-1 visas, investigators have found only one possible good business address. This was a special project looking at Chinese import/export cases. Overall, in six months, they have found an 80% fraud

rate. They work closely with the Department of State which finds, upon overseas investigation, that 90% of the cases are fraudulent..

U.S. COMMISSION ON IMMIGRATION REFORM

Los Angeles site visit: Staff Summary Report

DATE: December 6, 1996

PLACE: INS District Office

Commissioners Present: Chairwoman Hufstedler, Commissioners Leiden, Ezell and Hill

Staff Present: Executive Director Susan Martin, Deputy Director Andy Schoenholtz, Senior Policy Analysts, James Halmo, David Levy and Carolyn Piccotti

Participants:	Richard K. Rodgers	District Director
	Rosemary L. Melville	Deputy District Director
	John Salter	District Counsel
	Anne St. Denis	Director, Asylum Office
	Lola Parocua	Area Port Director
	Leonard Kovensky	A.D.D. for Detention and Deportation
	Jane E. Arellano	A.D.D. for Adjudications
	Chris Fowler	A.D.D. for Management
	John McAllister	Acting A.D.D. for Investigations
	John Brechtel	Acting Officer in Charge, Orange County
	Evelyn Diaz Brown	Court Administrator, EOIR, Los Angeles

The discussion began with an introduction by Commissioner Hill who explained that the purpose of the visit was to examine management related issues. In particular, the Commission wanted to receive information from the INS district office staff regarding their day to day operations as well as their relationship with the regional office and headquarters. Mrs. Hufstedler encouraged the participants candor by explaining that their observations would not be attributed to anyone in particular. At the outset, several of the government participants listed above were unable to attend, but sent deputies in their stead.

The participants noted that the Los Angeles County district office covers a seven county area and has jurisdiction over the largest alien population in the country. One seventh of all foreign nationals in the country reside in southern California.

Organizational Structure and Functions

The participants noted that the Los Angeles district office is divided into four general function areas: adjudications, management, deportation, and investigations. Adjudications has approximately 500-600 employees, of which 300 are temporary, to handle all adjudication functions.

Management personnel have decentralized their functions to the extent that they maintain programs with community based organizations to provide information to the public.

Deportations employs approximately 250-300 persons. They oversee approximately 600-700 detainees, including the San Pedro processing center which has a 550 bed capacity. The deportation unit has new resources allocated to "bag and baggage" operations whereby they examine the immigration court docket to track all final orders of deportation/exclusion. This program was initially targeted to apprehend failed asylum seekers. Furthermore, the district office maintains a 24 hour processing of criminal aliens who are funneled to four state prison sites. Sixty days before their release, these aliens are processed before the immigration court and receive immediate removal orders. Approximately twenty percent of the criminal population in state penitentiaries are criminal aliens, and the district office is almost 100 percent successful in removing them. Also, before a criminal alien is actually removed from the country, a second set of fingerprints is taken and forwarded to the state capitol in Sacramento to ultimately be entered into the NCIC system. The U.S. Attorney's office will prosecute aliens for unlawful re-entry upon a showing of either two felony convictions and one deportation order, or two deportation orders plus one felony conviction.

The investigations division employs 325 persons who concentrate on criminal alien apprehensions. A full time unit is maintained at the Los Angeles County jail, which generates approximately 150-200 removal orders per week. Investigations also has a fraud component which concentrates on seizing fraudulent documents. The sanctions unit works with the Department of Labor and IRS investigators to analyze the underground economy. The anti-smuggling unit has been effective in thwarting several Chinese smuggling rings, however, it remains in need of greater resources. It is estimated that this division needs an additional 25 officers to adequately cover all jails.

The inspections unit, with a staff of 225 inspectors, is stationed at Los Angeles International airport and the sea port authority. They perform approximately 15,000 to 25,000 inspections per day.

The district office is one of the sites designated by headquarters to establish an employment authorization verification program. Currently, approximately 1000 area employers are a part of the pilot program. The results have been favorably extolled by both the employees and the employers, because the initial verification occurs almost immediately. City area mayors favor the program because it has had a downward pressure on crime rates, and has forced the illegal population to shift elsewhere. The district feels that the program is quite effective. We observed a demonstration of some actual verifications being performed. A copy of the Service's report on the verification project is attached.

Naturalizations

The Los Angeles district office processes 265,000 to 300,000 applications per year, approximately one quarter of the national total.

The Budget Process

All participants complained that the budget determination process is done from the top down, that is, headquarters establishes priorities and goals without input from the regions or the field as to whether these goals are realistic or achievable. Then the region allocates funds to the districts without consultation. The district office has no specific staff for budget preparations, however, each program manager prepares quarterly budget reports which are then forwarded to the regional office. The budget reporting lines track as follows: the district office reports to the regional office who reports to the EAC for Management who reports to the Deputy Commissioner who ultimately reports to the Commissioner. The administrative centers do not report to the regional office, but directly to headquarters.

Management Structure

All participants complained that this structure is needlessly cumbersome and unresponsive to the needs of the district offices. Furthermore, the structure serves to insulate the Commissioner from vital information from the field. It was also noted that, as a further example of needless bifurcation, deputy directors have two position descriptions with two different pay scales; one for those who ascend through the ranks through the enforcement divisions, and one for those who arise through the service divisions. The participants suggested that the EAC tier be eliminated because there is no clear idea which EAC has responsibility for which functions. For example, the EAC's for programs and policy/planning often give conflicting orders, and there is duplication between operations and programs.

The participants suggested that the rationale for the present structure grew out of concern for the unrestricted authority of the regional commissioners, who, at one time, were political appointees. These individuals apparently developed a fiefdom mentality and remained unaccountable to the central office. However, this liability has been eliminated as regional directors are now career officials.

United States Commission on Immigration Reform

Los Angeles site visit: Staff Summary Report

DATE: December 5, 1996

PLACE: Hotel InterContinental at California Plaza, Los Angeles
Bradbury Room
Working Lunch with Private Practitioners
Management Team

Commissioners Present: Shirley M. Hufstedler, Chair
Harold Ezell, Commissioner
Robert C Hill, Esq., Commissioner
Warren R. Leiden, Esq., Commissioner

Staff Present: Susan F. Martin, Executive Director
Andrew Schoenholtz, Esq., Deputy Director
James Halmo, Senior Policy Analyst
David Levy, Senior Policy Analyst
Carolyn Piccotti, Esq., Senior Policy Analyst

Participants: James D. Acoba, Esq., James D. Acoba and Associates
Michele A. Buchanan, Esq., Chair (Acting), Southern California
AILA Chapter
Katherine Haight, Esq., Law Office of Bryan Cave
Ellen Ma Lee, Esq., Don and Lee Law Office
Carl Shusterman, Esq., Law Office of Carl Shusterman
Warren Winston, Esq., Davis and Winston

The participants at this session were members of the private bar who had experience in the areas of the affirmative benefits provisions of immigration law, including non-immigrant visa processing, family based immigrant visa applications, as well as asylum, and exclusion/deportation. The Commission sought their consultation on the areas of management structure in order to assess the strengths and weaknesses of the structure and offer recommendations for improvement.

The participants were unanimous in their overall recommendation that the Commission should establish general policy guidelines, rather than provide detailed, extremely specific recommendations on operating practices. For example, the participants lamented what they considered bureaucratic inefficiency in the Los Angeles district office which resulted in unusually long waiting periods for naturalizations. One participant stated that a sixteen month wait was not

unusual. The overwhelming majority of applicants are bona fide, therefore why compel everyone to wait an inordinate length of time. It was recommended that naturalizations be processed more quickly, and in the event there is a problem discovered at a later date, citizenship be revoked.

The participants recommended that a decentralized model of management be encouraged. Decision making authority should be done at the lowest possible bureaucratic level, with accountability moving upward to the highest level. They also suggested a zero based budgeting structure, with priorities established at the local level.

Several suggested greater consultation with private practitioners to implement new regulations and new provisions in the recently passed immigration laws. The participants noted that the Los Angeles district office allocates resources on a crisis management model, as opposed to anticipating needs. This could be facilitated by greater cooperation with representatives and the district office.

Those participants who number among their clients corporate and business entities stressed the need to streamline the labor certification process which now averages two years. In order for United States industry to remain competitive in an ever expanding global market, commercial enterprises need easy access to a global labor pool. Therefore, a cumbersome, costly, and time consuming labor certification process does not serve this goal. Cases which are easily approvable should move through the system quickly. The participants recommended that the INS copy the waiver program instituted by the Department of Labor for certain cases. For example, certain classes of highly skilled workers should be exempt from a labor certification process.

Also, consistency of practice within the agency is essential. Employers should know that a certain kind of form is acceptable everywhere. Minor and technical immigration transgressions should be penalized by the payment of fines and not by a blanket bar to any form of immigration benefit.

Furthermore, the participants recommended that the dictionary of occupational titles should be updated. The employer should have the final say in hiring; perhaps on a two year conditional basis with the payment of a fine if the employee is released without good cause during that period. The participants also noted that access to a foreign labor market often leads to reciprocal United States access to a foreign consumer market. All the participants noted that employers favor the electronic verification process and recommend that it be instituted nationwide.

CONCLUSIONS

In general, the participants recommended decentralization of decision making authority, increased cooperation between the private bar and the district office, zero based budgeting with priorities set at the local level, and eliminating the duplication of efforts between the three agencies responsible for nonimmigrant visa processing.

Staff Report on December 6 Los Angeles Meeting on Labor Certification System

Participants

Rebecca Marsh-Day, USDOL Regional Certifying Officer
Laurette Elsberry, Fraud Specialist, Alien Labor Certification, California Employment
Development Department (EDD)
Carolyn Frank, Program Supervisor, Alien Labor Certification Office, EDD
Juanita Johnson, Program Specialist, Alien Labor Certification Office, EDD
Esperanza Slaughter, Program Specialist, Alien labor Certification Office, EDD
Marie Quinn, Assistant Manager, Los Angeles Central Job Service Office, EDD

Commissioners Participating

Chair Hufstedler, Commissioners Hill and Leiden

Staff Participating

Susan Martin, Andy Schoenholtz, Jim Halmo, David Levy and Carolyn Piccotti

The Discussion opened with an explanation of the Commission's overall mandate, and the specific purposes of this meeting with respect to learning about the labor certification process.

Current Process

EDD representatives outlined the current application process. Job classifications that are outside the Dictionary of Occupational Titles are referred to the DOL Regional Office for resolution. If the Region cannot resolve the classification it is referred to the National Office in Washington.

In cases of restrictive requirements, if they are not removed, the case is referred to DOL. If employer justifies such requirements referral is also made to DOL. Frequently, States give employers informal extensions of time if certain time frames are not met. The use of follow-up questionnaires to job seekers referred to orders under the labor certification system used to get a 43% reply rate. Many requests for certification were denied as a result of the questionnaires. The use of the questionnaires ended on October 1 due to budget cuts. Follow-up with employers is only done sporadically.

Ms. Marsh-Day said that current trends include bringing in large numbers of accountants from the Phillippines and market research analysts with specific language requirements. In response to Commissioner Leiden's question, she said that both DOL and EDD can sort cases by occupation.

Streamlining

Ms. Marsh-Day noted that changes in the certification process which took effect on October 1, 1996 are expected to initially increase backlogs in DOL offices for the next six months while at the same time substantially reduce backlogs at the State level. This is as a result of an expediting of the State processing of labor certification applications.

In response to a question, Ms. Marsh-Day said that under the streamlined procedures, the prior recruitment requirement for expedited handling would allow use of "real world recruitment", i.e. an employer using normal recruitment methods. She said that if all goes as planned, all backlogs could end and a "clean application" could take four weeks to process at DOL after two weeks at SESA. The fast track processing only applies to clean applications, all others go to the end of the line. Currently the process takes about two years, one year each at EDD and DOL.

Currently in the Region, the denial rate for labor certification is 16%, as compared to 5% two years ago. She said that many applications are withdrawn prior to denial. She said that she hopes that the new streamlining process will increase approvals in certain areas and increase denials where there is no real job opening.

In response to a question as to the impetus for DOL's streamlining effort, Ms. Marsh-Day said that DOL's Inspector General Report on the labor certification system had provided the big push. She said that much Regional input had gone into the streamlining effort, and that the SESAs had input through their respective DOL Regions.

In addition to the October 1 changes in the labor certification process mandated by DOL, EDD is currently functionalizing its system which is expected to considerably speed up processing time. A case management program has also been developed, and a formalized employee training program has been initiated. In the near future, job applicants will be able to access job orders through the Internet. Employers will be responsible for placing the job orders and reporting back results of the search to EDD.

Budget/Resources

Ms. Marsh-Day said that while California took a cut of 30-35% in Federal funding for the labor certification program in FY 1997, other States in the Region took cuts of up to 70%. She pointed out that the entire program is Federally-funded; there are no State funds used. California thus far, is the only State to layoff workers in this program. She said that over 90% of the new labor certification applications in the Region come from California. Budget cuts have resulted in a reduction in the number of DOL employees in the Region who handle labor certification, from 20 to 15 in the past nine months. The DOL employees include nine specialists and six clerical workers.

EDD representatives reported that the State backlog is approximately 16,000 cases. The State lost 43 out of 94 employees in the Alien Labor Certification Unit this week as a result of budget cuts. The EDD Prevailing Wage Unit was cut from 27 to 17 employees.

In response to Commissioner Leiden's question as to the reason for cuts in the program, Ms. Marsh-Day said that the Employment and Training Administration's focus is primarily in job training and related matters, with labor certification not being a high priority.

Protecting U.S. Workers

Chair Hufstedler asked if the process protects U.S. workers.

Both Ms. Marsh-Day and the EDD representatives agreed that U.S. workers are not being protected. They noted that the entire process is less than public. The American public does not truly see or understand the process.

EDD representatives stated that of all the thousands of alien labor certification requests received in the past year, only three U.S. workers had been hired. They also said that in many cases, the alien pays for the required job advertising. The current system is driven by the needs of the alien, not the U.S. employer as the law was intended.

Fraud

Ms. Marsh-Day acknowledged that there is much fraud in the program. Cases of suspected fraud are referred to DOL's Inspector General or to INS. Virtually all jobs are already filled. The new streamlining measures address this by requiring that the employer show that job existed and was filled prior to the employment of the alien.

Ms. Slaughter stated that virtually all jobs for which orders are received are already filled by an alien. Many of them are "off-the-books" with no taxes being paid. EDD is looking at ways to handle this through existing regulations.

Recommendations

Ms. Slaughter recommended that employers be required to pay for the cost of making prevailing wage determinations. She said that current regulations are worthless. Many applications contain deliberate misrepresentations and fraud; the use of mail drops for fraudulent applications is far too prevalent.

Executive Director Martin asked for further suggestions. It was suggested that more of a public labor market test would legitimize the system.

In response to a question about H-1B visas, the participants agreed that the visa should not be used for permanent jobs. They noted that there is no current requirement that an H-1B position be temporary. They agreed that there should be a required recruitment process for H-1B positions similar to that of the H-2B program.