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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

HUI FENG; LAW OFFICES OF FENG & ASSOCIATES P.C.,

Defendants.

CASE NO. 2:15-CV-09420-CBM-SS

NOTICE OF REQUEST AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS HUI FENG AND LAW OFFICES OF FENG & ASSOCIATES P.C.'S MOTION FOR JUDGMENT ON THE PLEADINGS

[Filed concurrently with Memorandum of Points and Authorities and [Proposed] Order]

Date: July 26, 2016
Time: 10:00 a.m.
Crtrm.: 2

Assigned to Hon. Consuelo B. Marshall

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 201 and supporting case law, Defendants Hui Feng and Law Offices of Feng & Associates P.C. ("Feng Parties"), by and through their attorneys of record, hereby request that the Court take judicial notice of the below-listed documents in connection with its consideration of Defendants' Motion for Judgment on the Pleadings, noticed for hearing on July 26, 2016 at 10:00 a.m.

The following documents are subject to this Request:

I. LEGISLATIVE HISTORY

A. Attached hereto as Exhibit A is a true and correct copy of the Senate Judiciary Committee Report accompanying S. 358, at S. Rep. 101-55, 101st Cong., 1st Sess. (June 19, 1989).

B. Attached hereto as Exhibit B is a true and correct copy of the Congressional Record for the Immigration Act of 1990, at 135 Cong. Rec. S7748, 1989 WL 192567 (daily ed. July 12, 1989).

C. Attached hereto as Exhibit C is a true and correct copy of the "Statement By President George Bush Upon Signing S.358," at 1990 U.S.C.C.A.N. 6801-1 (Nov. 29, 1990).

II. ADMINISTRATIVE MATERIALS

D. Attached hereto as Exhibit D is a true and correct copy of an administrative decision: Administrative Appeals Office, U.S. Department of Justice, Board of Immigration Appeals, *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998).

E. Attached hereto as Exhibit E is a true and correct copy of an administrative report: U.S. State Department Report of the Visa Office, Table V (Part 3), "Immigrants Visas Issued and Adjustments of Status," available online at: https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2014AnnualReport/FY14AnnualReport-TableV-PartIII.pdf.

F. Attached hereto as Exhibit F is a true and correct copy of an administrative policy memorandum: U.S. Citizenship and Immigration Services, "EB-5 Adjudications Policy," PM-602-0083 (May 30, 2013), available online at: https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Approved%20as%20final%205-30-13).pdf.

G. Attached hereto as Exhibit G is a true and correct of an administrative press release: U.S. Citizenship and Immigration Services and Securities and Exchange Commission, "Investor Alert – Investment Scams Exploit Immigrant Investor Program" (Oct. 1, 2013), available at: https://www.uscis.gov/news/alerts/investor-alert-investment-scams-exploit-immigrant-investor-program (last accessed June 2, 2016).

H. Attached hereto as Exhibit H is a true and correct copy of an administrative press release: Securities and Exchange Commission, Press Release, "SEC Charges Unregistered Brokers in EB-5 Immigrant Investor Program," S.E.C. 15-127, 2015 WL 3857267 (June 23, 2015), available online at: https://www.sec.gov/news/pressrelease/2015-127.html (last accessed May 26, 2016).

I. Attached hereto as Exhibit I is a true and correct copy of an administrative website: U.S. Citizenship and Immigration Services, "Immigrant Investor Regional Centers," available at: https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers (last accessed on June 2, 2016).

J. Attached hereto as Exhibit J is a true and correct copy of an administrative release: *In re Ireeco et al.*, S.E.C. Release No. 75268, 2015 WL 3862865 (June 23, 2015).

K. Attached hereto as Exhibit K is a true and correct copy of an administrative release: *In re Bernstein*, S.E.C. Release No. 76570, 2015 WL 8001128 (Dec. 7, 2015).

L. Attached hereto as Exhibit L is a true and correct copy of an administrative release: *In re Kaye*, S.E.C. Release No. 76571, 2015 WL 8001130 (Dec. 7, 2015).

M. Attached hereto as Exhibit M is a true and correct copy of an administrative release: *In re Yoo*, S.E.C. Release No. 77459, 2016 WL 1179271 (Mar. 28, 2016).

N. Attached hereto as Exhibit N is a true and correct copy of an administrative release: *In re Khorrami*, S.E.C. Release No. 76572, 2015 WL 8001131 (Dec. 7, 2015).

O. Attached hereto as Exhibit O is a true and correct copy of an administrative release: *In re Manesh et al.*, S.E.C. Release No. 76573, 2015 WL 8001133 (Dec. 7, 2015).

P. Attached hereto as Exhibit P is a true and correct copy of an administrative release: *In re Bander et al., PLLC*, S.E.C. Release No. 76569, 2015 WL 8001126 (Dec. 7, 2015).

Q. Attached hereto as Exhibit Q is a true and correct copy of an administrative release: *In re Azarmehr et al.*, S.E.C. Release No. 76568, 2015 WL 8001125 (Dec. 7, 2015).

R. Attached hereto as Exhibit R is a true and correct copy of an administrative release: *In the Matter of Kefei Wang*, S.E.C. Release No. 76574, 2015 WL 8001135 (Dec. 7, 2015).

III. NEWS ARTICLES

S. Attached hereto as Exhibit S is a true and correct of a magazine article: Eric Posner, "Citizenship for Sale," *Slate* (May 13, 2015), available at: http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/05/eb_5_visa_program_for_immigrant_investors_this_path_to_citizenship_is_a.html

T. Attached hereto as Exhibit T is a true and correct copy of a newspaper article: Editorial Board, "For sale: U.S. citizenship, $500,000 to $1 million," *Los*

Angeles Times (Nov. 29, 2015), available at: http://www.latimes.com/opinion/editorials/la-ed-adv-investor-visas-20151127-story.html

U. Attached hereto as Exhibit U is a true and correct copy of a magazine article: Alana Samuels, "Should Congress Let Wealthy Foreigners Buy Green Cards?" *The Atlantic* (Sept. 21, 2015), available at: http://www.theatlantic.com/business/archive/2015/09/should-congress-let-wealthy-foreigners-buy-citizenship/406432/

V. Attached hereto as Exhibit V is a true and correct copy of a newspaper article: Sanjay Bhatt, "Money from investor visas floods U.S., but doesn't reach targeted poor areas," *The Seattle Times* (March 7, 2015), available online at http://www.seattletimes.com/business/real-estate/money-from-investor-visas-floods-us-doesnt-reach-poor-areas-meant-to-benefit/

W. Attached hereto as Exhibit W is a true and correct copy of a newspaper article: Lornet Turnbull, "Wealthy immigrants can invest way to visas," *The Seattle Times* (December 10, 2011), available online at http://www.seattletimes.com/seattle-news/wealthy-immigrants-can-invest-way-to-visas/ (applicant stating "for us this was not a business opportunity, it's an immigration opportunity").

V. DISCUSSION

In deciding a motion for judgment on the pleadings, the court may take judicial notice of matters of public record. *See Spy Optic, Inc. v. Alibaba.Com, Inc.*, No. CV1500659-BRO, 2015 WL 7303763, at *5 (C.D. Cal. Sept. 28, 2015) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)). Such matters of public record include all of the foregoing categories of documents, as follows:

Legislative History (Exs. A-C). Federal courts routinely take judicial notice of the legislative history of federal statutes. *See Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); *Gonzales v. Marriott Int'l, Inc.*, No. CV1503301MMM, 2015 WL 6821303, at *3 (C.D. Cal. Nov. 4, 2015).

Administrative Materials (Exs. D-R). Courts take judicial notice of the existence of records and reports of administrative bodies, *Mack v. South Bay Beer Distributors*, 798 F.2d 1279, 1282 (9th Cir. 1986), as well as other governmental agency materials such as press releases or website contents. *See, e.g.*, *Vesta Corp. v. Amdocs Mgmt. Ltd.*, 129 F. Supp. 3d 1012, 1021 (D. Or. 2015) (taking judicial notice of existence of SEC filings, press releases, and contents of a website); *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 545 F. Supp. 2d 845, 847 (E.D. Ark. 2008), *aff'd*, 559 F.3d 772 (8th Cir. 2009) (taking judicial notice of SEC releases published in Federal Register); *In re Homestore.com. Inc. Sec. Litig.*, 347 F. Supp. 2d 814, 816–17 (C.D. Cal. 2004) (stating that court can take judicial notice of press releases); *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015) (taking judicial notice of business entity profiles on California Secretary of State website) (collecting cases); *Daniels–Hall v. National Education Assoc.*, 629 F.3d 992, 999 (9th Cir. 2010) (taking judicial notice of information on the websites of two school districts because they were government entities).

News Articles (Exs. S-W). Courts routinely take judicial notice of news articles to "indicate what was in the public realm at the time." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (taking judicial notice of newspaper articles about two paintings allegedly looted by Nazis); *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999) (taking judicial notice that market was aware of information in newspaper articles in fraud-on-the-market case); *McCrary v. Elations Co., LLC*, No. 13–00242–JGB, 2014 WL 1779243, at *1 n. 3 (C.D. Cal. Jan 13, 2014) (taking judicial notice of internet articles, a Wikipedia entry, and journal articles as an indication of what information was in public realm).

For the foregoing reasons, the Feng Parties respectfully request the Court to take judicial notice of the above-listed documents in deciding the motion for judgment on the pleadings.

DATED: June 7, 2016

Ariel A. Neuman
David H. Chao
Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.

By: /s/ Ariel A. Neuman
Ariel A. Neuman
Attorneys for Defendants Hui Feng and Law Offices of Feng & Associates P.C.

EXHIBIT A

Calendar No. 130

101ST CONGRESS, 1st Session | SENATE | REPORT 101-55

IMMIGRATION ACT OF 1989

JUNE 19 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 358]

The Committee on the Judiciary, to which was referred the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States and the naturalization process, favorably reports the bill in the nature of a substitute and recommends that the bill as amended do pass.

CONTENTS

29-010

I. PURPOSE

1. IMMIGRANT VISA REFORM

The purpose of the committee bill is to reform our current system for admitting immigrants so that it more faithfully serves the national interest, by increasing flexibility and by creating the opportunity to immigrate for persons from nations which are short-changed by current law. The provisions of this bill will accomplish these objectives while maintaining the priority we have traditionally given to those with family connections in the United States, and without departing from the principles of equity and fairness established in the 1965 act reforms.

The committee bill will create two separate immigrant-visa "preference systems": one for close family members, another for "independent" immigrants. This two-track system was suggested by the Select Commission on Immigration and Refugee Policy, and it was part of both S. 358 and S. 448. At least 55,000 visas will be added to the independent category, and they will be available to users of the present immigration system and to earlier sources of immigration to the United States. Because the lion's share of the visas would still be reserved for the family members of recent immigrants, and because visas will be available to persons from every country in the world, the intent of the 1965 reforms is followed.

By redressing some of the imbalances in immigration which have inadvertantly developed in recent years, we will open our doors again to those who no longer have family connections in the United States. By placing more emphasis on the particular skills and qualities that immigrants possess, the bill will bring our present immigration policy more in line with the national interest. The committee estimates, for example, that many countries which send only a few hundred immigrants per year to the United States may eventually receive a much fairer share of our available immigrant visas. The overall benefit of immigration to our country will increase, because a larger proportion of immigrants will be subject to labor market and skills tests.

As outlined below, the committee bill follows the 1981 recommendations of the Select Commission on Immigration and Refugee Policy, which laid the basis for the 1986 Immigration Reform and Contol Act. That bill dealt primarily with the control of illegal immigration. It did not, however, address the other half of the Select Commission's recommendations for needed reforms of our legal immigration system.

The key features of the committee bill are the following:

First, it establihshes a national level of immigration within which all new permanent entrants would be counted, except refugees and asylees, who would continue to be admitted under the provisions of the Refugee Act of 1980. The level is set at 600,000 for the first 3 years (106,000 higher than the 1988 level)

to allow for the new point system, increased preference, visas, and growth in the category of immediate relatives of U.S. citizens). Within that level, the bill distributes the additional family connection visas to give greater priority to the closest family members.

Second, the bill creates a new category for "independent immigrants." Visas would be available for those with skills that are in short supply in the United States, and for those from nations who hae been unable to use the current system because they have no family connections in this country. This is accomplished by retaining the current preferences for persons of exceptional ability and skilled workers, and by adding at least 54,000 visas. The bill allocates the additional 54,000 numbers in the independent category according to a "point system," similar to systems currently used in Australia and Canada.

Third, the bill assures a regular review of the immigration system will be undertaken by requiring the administration to report every year on the basic social and economic effects of immigration on our country, by requiring the administration as well as an independent congressional commission, to consider, and, if appropriate, to recommend changes in the national level of immigration every 3 years, and by allowing Congress to accept or reject such proposed modifications under expedited parliamentary procedures.

The committee believes the time has come for Congress to take up where it left off in 1986 and address the unfinished agenda of immigration—the reform of our legal immigration system.

The committee bill is a balanced attempt to serve the national interest; it preserves the immigration opportunities for those who have close family connections in this country; it stimulates immigration from the earlier sources of immigration to our country that have contributed so much to America in the past; and it promotes the entry of those who are selected specifically for their ability to contribute their needed skills and talents to the development of our country. This reform will both continue and strengthen one of the oldest and most enduring themes in our Nation's history—America's immigrant heritage.

2. ADMINISTRATIVE NATURALIZATION

In addition to much-needed immigrant visa reform, the bill also addresses growing backlogs in the naturalization area. Under current law, naturalization is awarded only in judicial proceedings. While most judges take seriously the responsibility to naturalize qualified applicants in a timely manner, certain courts have allowed acute backlogs of up to 2 years to accumulate.

The committee bill permits naturalization to be conducted under an administrative, rather than judicial, process as a way of relieving courts of the naturalization burden. The committee bill makes no changes to the naturalization requirements.

Furthermore, in a provision proposed in the last Congress by Senator Daniel K. Inouye of Hawaii, the committee bill corrects a

long-standing omission by naturalizing certain Filipino veterans of World War II who fought in the U.S. Armed Forces.

II. Summary of Bill's Provisions

1. GENERAL PROVISIONS

Establishes a national level of immigration for all immigration categories. The level for the first 3 years will be 600,000, which reflects current flow, plus an additional 110,000 numbers.

Under this overall level, 480,000 numbers would be reserved for the first 3 years for family immigration, and 120,000 would be for the new "independent" category.

Admission of refugees remains governed by the Refugee Act of 1980 which requires annual consultations and limits.

Separates the family preferences system from a new "independent" category and creates a point system for 54,000 new visas. Under the new bill, the family preferences will no longer compete with the job-related "independent" preferences.

Higher priority for visas under the family preference system is given to the closest family members of citizens and permanent residents.

Assures a regular review of our immigration system by requiring the administration and a specially created independent commission to report every year on the effects of immigration on our country, by requiring them to recommend changes in the national level of immigration every 3 years, and by allowing Congress to accept or reject such modifications under expedited parliamentary procedures.

2. REFORM OF FAMILY PREFERENCES

Maintains unrestricted admission of the immediate family of U.S. citizens.

Increases the number of family preference visas, from 216,000 per year to 260,000 per year.

Allocates a higher percentage of family connection visa numbers to spouses and children of legal permanent residents (57 percent compared to 26 percent today). This will deal with the heavy backlog that exists today in this preference (for some countries, the wait is 7 to 9 years) and allow for the anticipated increase as legalized residents begin to petition for their families.

Limits the preferences for adult sons and daughters of legal permanent residents to unmarried children for whom the petition has been filed before their 26th birthday.

The preference for brothers and sisters of U.S. citizens is retained both in number of visas and definition.

Nearly all of the above changes were recommended by the Select Commission on Immigration and Refugee Policy.

3. INDEPENDENT IMMIGRANTS

The existing preferences for professionals, persons of exceptional merit, and persons with needed skills are combined with the new 54,000 nonpreference numbers to create an "independent" system of 120,000 visas annually.

The additional 54,000 visas are for applicants who qualify on the basis of the new point system. This selected immigrant category does not require individual labor certification, which has been a major obstacle to "independent" immigrants until now.

More visa numbers become available to "independent" immigrants who do not have family connections in the United States necessary to qualify under the current family preferences. Under current law, 90 percent of current immigrant flows are family related; only 10 percent reflect "new seed", nonfamily migration.

Establishes an employment generating investor visa requiring at least $1 million in new capital that will generate employment for at least 10 Americans or legal residents. Up to 4,800 conditional entry visas are made available annually, requiring that the investor return to the INS in 2 years to adjust his status to permanent resident alien. This will be done only if the investment continues to create employment for the requisite number of American workers, otherwise the investor is subject to deportation.

The new "point system" for the 54,000 additional selected immigrant visas be administered under a system established by regulations, but based upon the following categories and points:

4. ADMINISTRATIVE NATURALIZATION

Confers naturalization authority upon the Attorney General, rather than the courts.

Permits persons with naturalization petitions already filed to chose between judicial and administrative naturalization.

Authorizes the naturalization of certain Filipino World War II veterans of the U.S. Armed Forces.

POINT SYSTEM

	Maximum points	Percent of total
Criteria:		
Age: 10 points for age 21 to 35, 5 points for age 36–45	10	13
Education· 10 points for high schools, 10 points for bachelor's degree, 5 points for graduate degree	25	33
Occupational demand	20	27
Occupational training or work experience	20	27
Total	75	100

Note.—Minimum ponts needed to apply 45

COMPARISON OF VISA NUMBERS, UNDER CURRENT LAW AND S. 358

[Based on fiscal year 1988 data]

	Current law	S. 358—compromise bill	Changes in definitions
National level of immigration	none	600,000 total; 480,000 family, 120,000 independent.	
I. Family preferences:			
Immediate relatives (spouses and minor children of U.S citizens; outside preference system).	no limit	no limit (220,000 entered in fiscal year 1988).	Same.
1st preference (unmarried adult sons and daughters of U.S. citizens).	54,000	24,200 (9 percent) [2]	Do.

COMPARISON OF VISA NUMBERS, UNDER CURRENT LAW AND S. 358—Continued

[Based on fiscal year 1988 data]

	Current law	S. 358—compromise bill	Changes in definitions
2d preference (spouses and unmarried sons and daughters of permanent residents).	70,200	148,000 (57 percent)	Petition for unmarried child must be filed before child's 26th birthday
4th preference (married sons and daughters of U.S. citizens).	27,000	23,000 (9 percent)	Same.
5th preference (brothers and sisters of adult U.S. citizens).	64,800	64,800 (25 percent)	Do.
Total—family preferences	216,000	480,000	
II. Independent:			
Special immigrants (ministers of religion, etc.).	no limit	6,000 (5 percent) [2]	Do.
3d preference (professionals and exceptional ability).	27,000	27,600 (23 percent)	Advanced degree or exceptional ability require.
6th preference (skilled and unskilled workers).	27,000	27,600 (23 percent)	Limited to only skilled workers.
Employment generating investors	none	4,800 (4 percent)	New.
Selected immigrants	do	54,000 (45 percent)	New, administer according to new point system.
Total—independent	54,000	120,000	

[1] Percent of visa numbers going to each category after numbers reserved for immediate relatives of U.S. Citizens.
[2] Percent going to each category of independent visas.

III. Basis for Committee Bill

In addition to the general purposes outlined above for this legislation—namely, to reform the legal preference system and to promote nonfamily, "new used" immigration—the committee bill also addresses several other needed reforms.

1. ESTABLISHING A NATIONAL LEVEL OF IMMIGRATION

The committee bill contains a national level of immigration of 600,000 per year, excluding refugees. This level is approximately 105,000 persons (or 21 percent) higher than the level of immigration in 1988.

The committee believes it is important that the United States know how many immigrants will immigrate in each coming year. This knowledge will allow our country to make estimates of our future population size, demographic profile, housing and social service needs, and other projections that are essential to any government that plans for the near future. Most other industrialized, immigrant-accepting countries in the world set national levels of immigration.

Malcolm Lovell, former Under Secretary of Labor, testified before the Subcommittee on Immigration and Refugee Affairs during the 100th Congress that a specific national level of immigration,

> In the same way as a household budget, can be an important disciplining device in policymaking, forcing us to determine our priorities thoughtfully and to make our choices consistent with the nation's overall highest interest within agreed limits.

Some concern has been expressed that the establishment of a national level may have the unintended consequence of severely restricting immigration under the family preferences. This concern was heightened by testimony by the General Accounting Office in March which predicted that by 1988–99 "family preference immigration could drop to zero" under the committee bill.

However, the proposal does not set a rigid level of immigration. In addition to being 21 percent above present levels of immigration, it allows the President and Congress to adjust the level every 3 years under expedited procedures. Changes in immigration levels, when necessary, should be facilitated. In establishing the national level, it is clearly not the committee's intent that it be used as a device for arbitrarily restricting immigration. The national level mechanism merely ensures that increases and adjustments are by deliberate action, and not the unchecked growth that characterizes current law.

In addition, contrary to the committee bill of the 100th Congress, the current measure establishes a congressional commission to review national immigration needs. This commission is to present its findings and recommendations after 3 years, thus coinciding with the President's first 3-year review. In this way, Congress will have at its disposal during its first triennial review not only the views of the administration, but also the finding of its own commission, to assist in determining adjustments which may be warranted at that time.

While the commission established by the bill is not permanent in nature, the committee will consider extending it beyond its 3 year term if further close review of the impact of this legislation by an independent commission is warranted in later years.

2. EXPEDITING REUNION OF CLOSE FAMILY

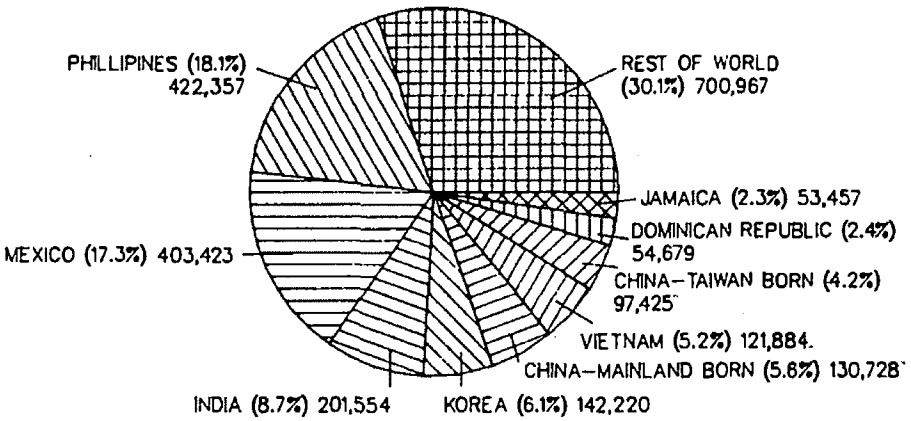
The committee bill increases 2d preference visas from the 70,200 available annually under current law to 148,000. As second preference involves the immigration of the spouses and children of permanent residents—the reunification of the nuclear family—the committee believes the doubling of this category is justified. In recent years, backlogs have been growing worldwide in this preference for immediate family members of residents, and will likely continue to grow unless additional visas are made available. The new demand will come, in part, through the family reunification needs of those now being legalized under the Immigration Reform and Control Act of 1986. Most immigration experts anticipate that by 1990, there will be a growing demand for 2d preference visas.

The committee bill maintains the current eligibility requirements for, and number of visas available under, the fifth preference. The fifth preference permits U.S. citizens to petition for their adult brothers and sisters, irrespective of their marital status. By maintaining current law, the committee is consistent with the 1981 Seclect Commission's recommendations to retain the eligibility of siblings regardless of marital status and not reduce available visas.

As originally drafted, S. 358 would have reduced these visas by 20 percent for 3 years and 67 percent thereafter and would have limited eligibility to never married brothers and sisters. Retention of the fifth preference is an integral part of the compromise contained in the committee bill.

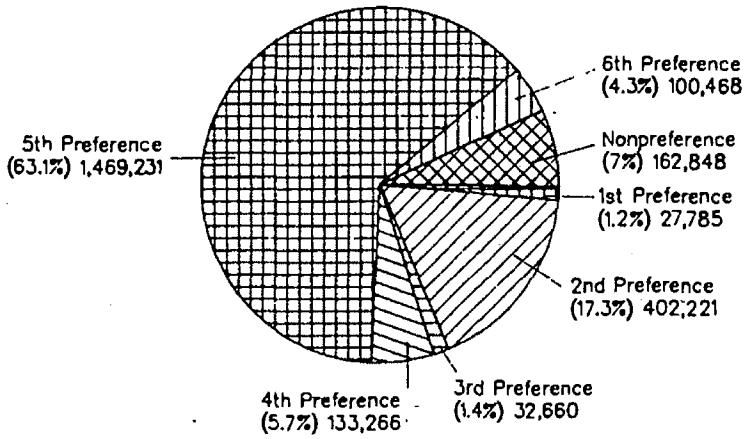
IMMIGRANT WAITING LIST

By Area of Chargeability; January, 1989



IMMIGRANT WAITING LIST

By Visa Category; January, 1989



3. PROMOTING MORE EQUAL ACCESS TO IMMIGRATION SYSTEM

A further purpose of the committee bill is to open the immigration system to those now virtually excluded. Currently the vast majority—some 85 percent—of U.S. immigration comes from Latin America and Asia, from countries where there still exist immediate family ties with U.S. citizens and legal permanent residents. Countries whose citizens no longer have close relatives in the United States have little opportunity to even come close to the per-country ceiling in preference categories.

The new, "independent" ctegory of 54,000 visas, distributed on the point system, would be a step in equalizing access to immigrant visas and to opening new opportunities for immigrants without family connections in the United States.

The creation of the new "independent" category does not limit the opportunitites for individuals already seeking immigrant visas. For these individuals, it provides an alternative path to legal entry based on their job skills, experience and education rather than strictly on family connections. The committee considered and specifically deleted granting additional points based upon the English language ability of the alien.

In promoting more equal access, the points distribution under this new visa category is developed with the national interest in mind. The highest allocation of points (20 each) are for occupations in demand in the United States and for applicants with specific occupational training and work experience. Lower points (10 each) are accorded to high school or college degrees and working age. The lowest points category (5 points) is assigned to a graduate degree.

In so doing, the committee bill not only expands immigration opportunities to those not currently enjoying them, but also ensures that those who immigrate under this category will likely possess skills which the Department of Labor determines to be in short supply.

4. ENSURING CONTINUED EMPLOYMENT-RELATED VISAS

In addition to the contributions to the labor force by the new points system, the committee bill continues the current immigration levels for existing employment-related visas (i.e., the third and sixth preferences of current law) at approximately 27,000 visas for each of the two categories. Overall independent visas under the bill total 120,000 annually (including investors and other special immigrants), an increase over current law of 66,000 visas annually.

IV. IMMIGRATION POLICY AND THE NATIONAL INTEREST

The committee intends that the national interest be a factor considered when revising our immigration laws. Indeed, when the Select Commission on Immigration and Refugee Policy issued its final report in 1981, it entitled it: "U.S. Immigration Policy and the National Interest." This theme is continues in this legislation.

Father Hesburgh, in his introduction to the Select Commission's Final Report, wrote the following:

> To the question: Is immigration in the U.S. national interest?, the Select Commission gives a strong but qualified yes. A strong yes because we believe there are many benefits which immigrants bring to U.S. society; a qualified yes because we believe there are limits on the ability of this country to absorb large numbers of immigrants effectively.

The proposed legislation follows these principles faithfully.

The committee bill endorses the Select Commission's "strong yes" by adding 100,000 visas to the present annual level of legal immigration to the United States. This is in addition to the current level of permanent immigration, which is as great as the permanent immigration allowed by all other countries of the world, combined. We should not fail to recognize the generosity of U.S. immigration policy—historical, current, and as proposed by this legislation.

The legislation endorses the Select Commission's "qualified yes" by recognizing that there are certain limits to our Nation's ability to effectively absorb immigrants. For the first time, a national level of immigration is established. The executive branch will be required to review the social and economic effects of immigration on the Nation, and then may make proposals for the revision of this national level every 3 years. Congress may then approve or disapprove of any revision in expedited procedures. This process will ensure that factors in the national interest relative to the formation of immigration policy will be considered, and that Congress will make an informed determination on the national level of immigration at least every 3 years.

The committee has also focused on the national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise, and by reserving immigration rights for the closest family members of recent immigrants, by providing for immigration opportunities for persons from a larger number of countries, and by establishing a national level of immigration that is periodically reviewed. It intends that this standard, that of the national interest, be the one considered for this and all future revisions of U.S. immigration law.

V. History of Current Legislation

Few legislative proposals have had greater scrutiny or consideration than the immigration reforms contained in the pending legislation. For more than a decade, reforming the system by which we select an admit immigrants has been the subject of interagency task forces, special commissions, and lengthy debate in Congress. The pending legislation reflects this study and deliberation, and it represents a genuine consensus on what needs to be done.

1. SELECT COMMISSION AND 1986 REFORMS

Both the Ford and Carter administrations advanced proposals for immigration reform. In 1978, Congress recognized the urgent need for a comprehensive review of immigration law and policy—regarding illegal immigration as well as legal immigration—and established the Select Commission on Immigration and Refugee Policy,

chaired by the Reverend Theodore Hesburgh. The Select Commission submitted its final report to the Congress on March 1, 1981, after 2 years of substantive hearings and studies, and a distinguished record of deliberation.

The structure of the pending legislation finds its origins in the 1981 recommendations of the Select Commission, including, for example:

The separation of two types of immigrants (family and independent) into distinct admissions categories;

The creation of a new area of general immigration within the independent category, such as the proposed "point system"; and

The continuation of family reunion as a major element of immigration.

These recommendations were adopted by near unanimous vote of the Commission and reflect a broad agreement on the reforms proposed in the committee's bill.

The Select Commission's far-reaching recommendations became the basis for other subsequent immigration reform initiatives. President Reagan used the Commission's proposals to form his administration's immigration reform strategy in 1981. And comprehensive immigration reform bills were introduced in the 97th, 98th, and, finally, the 99th Congresses, all reflecting the Select Commission's work.

In the Senate, under the leadership of Senator Simpson, then chairman of the Subcommittee on Immigration and Refugee Policy from 1981–86, dozens of hearings were held on the Select Commission's recommendations and the Senate's omnibus immigration reform bills. The hearings and the bills introduced in those Congresses addressed the need for reform of laws related to illegal and legal immigration. At the same time, similar proposals were considered in the House of Representatives under the leadership of Judiciary Committee Chairman Peter Rodino and Representative Romano Mazzoli, chairman of the House Subcommittee on Immigration, Refugees and International Law.

In the 97th Congress alone, the Senate subcommittee held no fewer than 16 hearings and 5 consultations on immigration reform. Many of these dealt solely and specifically with the need to deal with our legal immigration system. And 7 days of hearings in the 98th and 99th Congresses also covered legal immigration issues.

However, in the end, Congress opted to limit the scope of the reform legislation only to problems of illegal immigration. Not dealt with in the landmark Immigration Reform and Control Act of 1986 were issues addressed by the Select Commission on Immigration and Refugee Policy related to much-needed reform of legal immigration.

2. LEGISLATION IN 100TH CONGRESS

With illegal immigration reforms and controls firmly in place, the Subcommittee on Immigration and Refugee Affairs, under the chairmanship of Senator Kennedy, returned its attention to legal immigration questions. On August 6, 1987, Senator Kennedy introduced S. 1611; the subcommittee held two hearings on this bill, on

October 23, 1987, and December 11, 1987. The December 11 hearing was also devoted to a review of Senator Simpson's proposals in this area, which he subsequently introduced on February 4, 1988, in S. 2050.

On February 4, 1988, at a meeting of the Judiciary Committee, Senator Kennedy and Senator Simpson announced that they had been working over the previous weeks to fashion a compromise bill.

That compromise bill, S. 2104, was favorably reported by the Judiciary Committee and the full Senate considered and adopted it on March 15, 1988, by a vote of 88 to 4. However, no action was taken in the House of Representatives.

3. PENDING LEGISLATION IN 101ST CONGRESS

Resuming the effort to move forward on these longstanding proposals for immigration reform, Senators Kennedy and Simpson reintroduced again the Immigration Act of 1989 (S. 358) on February 7, 1989, upon which a further subcommittee hearing was conducted on March 3rd, along with the immigration proposals contained in S. 448, a bill introduced by Senator Simon. This subcommittee acted to report both bills to the full committee for final action and compromise.

After several weeks of intensive consultation, the members of the Immigration Subcommittee agreed to fashion a compromise immigration bill that reflected a compromise agreement on what needs to be done to start the process of reforming our system of admitting legal immigrants to the United States. On June 8, 1989, at the Judiciary Committee meeting, Senators Kennedy, Simpson, and Simon offered an amendment in the nature of a substitute to S. 358, which was adopted by a recorded vote of 12 to 2. During the course of the committee's consideration an amendment offered by Senator Simon, to delete English language ability as a criterium to be considered in the new independent immigration "point system" was adopted by a vote of 12 to 2 and the required points were adjusted accordingly.

VI. SECTION-BY-SECTION ANALYSIS

Title I—Immigration Act of 1989

SECTION 101: SHORT TITLE; REFERENCES IN ACT

The short title is "Immigration Act of 1988"; references are to the Immigration and Nationality Act.

SECTION 102: NATIONAL LEVEL OF LEGAL IMMIGRATION

Subsection (a) establishes a national level of immigration—600,000 per year—and describes the categories of immigrants that are included within that national level.

Four hundred and eighty thousand visas per year are provided for immediate relatives of U.S. citizens and family connection (preference) immigrants. This figure represents an increase in the current level of family-connected immigration with additional visas for growth in immediate relatives.

There is no numerical limitation or restriction on the admission of immediate relatives of U.S. citizens, which take precedence over

the other family connection visas. The immediate relative admissions are subtracted from the 480,000 visas to determine the level of family preference immigration.

In addition, 120,000 visas per year are provided solely for independent preference immigrants. In short, the total level of legal immigration is set at 600,000 per year divided into the separate tracks for family-connection immigrants (480,000) and independent immigrants (120,000), at least for the first 3 fiscal years.

This subsection also requires the Attorney General, in consultation with the Departments of State, Labor, Housing and Urban Development and HHS, and the Environmental Protection Administration, to prepare and submit to the President and the Congress an annual report on the social, economic, and environmental impacts of immigration. In addition, beginning 3 years after the date of enactment, and at 3-year intervals thereafter, the President will submit to Congress a determination to maintain, lower, or raise the numerical levels set for family connection immigration and independent immigration. If the President's determination contains an increase or decrease in the national level of immigration of 5 percent or less, then the determination takes effect unless Congress objects within 5 months. Special procedures are established to expedite consideration of any objection. If the proposed increase or decrease in the national level is greater than 5 percent, Congress must act affirmatively to approve the proposal. Similar special procedures are available for this approval.

Subsection (b) of section 2 sets an annual limitation on preference immigrants from each foreign state. That limitation is no more than 7 percent per country of the number of visas available in the family connection preference category worldwide, and 7 percent of the number of visas available in the independent category, worldwide. In the family connection category, if "immediate relative" immigration from any single foreign state exceeds either the per country limitation (described above) or its level in the previous fiscal year (whichever figure is higher), the amount of any such increase in admissions of immediate relatives (but no more than half of that state's limitation) is subtracted from the family preference visas allotted to that foreign state.

SECTION 103: PREFERENCE SYSTEM FOR ADMISSION OF IMMIGRATANTS

Subsection (a) of amended section 203 changes the percentages for allocation of family connection visas and redefines the beneficiaries of two of the preferences. The following categories are recognized, in the following order, with visa number measured as a percentage of the total number allowed for family connection immigrants under section 2:

(1) Unmarried adult sons and daughters of U.S. citizens, 9 percent;

(2) spouses and unmarried sons and unmarried daughters (under age 26 of permanent resident aliens and pending petitions of unmarried sons and daughters over 25, 52 percent, plus unused visas from the previous category;

(3) married sons and daughters of U.S. citizens, 10 percent plus unused visas from the previous two categories; and

(4) brothers and sisters of adult U.S. citizens, 25 percent, plus unused visas from the previous three categories.

Subsection (b) of amended section 203 creates a separate preference system for independent immigrants. The following categories are created, in the following order, with available visa numbers measured as a percentage of the numerical limit on independent immigrants (120,000 for the first 3 years, and 150,000 each year thereafter):

(1) Special immigrants, 5 percent;

(2) aliens of exceptional ability or members of the professions of holding advanced degrees, 23 percent;

(3) skilled workers for which qualified workers are not available in the United States, and members of the professions holding bachelor's degrees, 23 percent;

(4) aliens who have invested, or are actively in the process of investing, at least $1 million in a new commercial enterprise which will create at least 10 U.S. jobs, up to 4 percent; and

(5) selected immigrants, admitted without requirement of labor certification or U.S. job offer, and chosen on the basis of a point system. Visa numbers not used in the first four categories of independent immigrants go the fifth category.

The point system gives consideration to aliens with the following skills or attributes;

(1) Desirable age (21-44);

(2) education (high school, bachelor's degree, graduate degree);

(3) work in an occupation where an increase in demand for workers has occurred, and where the supply of U.S. workers will not meet that demand; and

(4) specific work experience or training in such an occupation. Of a possible 75 points, 45 would be required to qualify to resister.

Under subsection (c) of amended section 203 derivative status is granted to spouses and children of all the catetgories of independent immigrants indicated above except selected immigrants.

Subsection (d) of amended section 203 continues the current chronological order of consideration for all visa categories except selected immigrants. In the category of selected immigrants 20 percent of the visas available will go to registrants scoring 65 points or more; the remaining 80 percent of the visas will be drawn from all registrants scoring 45 points or more. If there are more qualified applicants than visas available for selected immigrants then the selected immigrants will be chosen on a random basis from among the qualifying applicants.

Subsection (f) of amended section 203 provides for the termination of registration for an alien who fails to apply for an immigrant visa within 1 year of its availability, unless the alien provides that failure to apply was due to circumstances beyond his control. This subsection also repeals provisions for visas under section 203(a)(7) (non-preference visas)

Subsection (b) of section 103 establishes changes in petitioning procedures and provides for the filing of a notice of continuing intent to be admitted to the United States in the 2 fiscal years previous to the fiscal year in which the immigrant visa becomes avail-

able. Provisions are made for the filing of a petition for special immigrant category with the Attorney General, with the exception of immigrants who are former employees of the U.S. Government abroad who have been recommended for special immigrant status. The latter, if notificed of an approved recommendations, would file with the Secretary of State. This subsection also authorizes the Secretary of State to establish regulations for the filing of applications for selected immigrant status. The place of filing may be designated to inside the United States, but the applicant must be physically outside the United States at the moment of application. The Secretary fo State may designate an application period for the filing of selected immigrant petitions and after such period may issue visas for selected immigrants for the next 2 fiscal years. Mis-representation in applicants for selected immigrant status is deemed a violation of section 212(a)(19). This subsection also establishes the "unmarried" sons or daughters of permanent residents who enter under the provisions of the second preference may not subsequently petition for spouses whom they married and later divorced prior to gaining the benefits of this preference.

Subsection (c) of section 103 revises section 212(a)(14) to exclude certain classes of immigrants unless the Secretary of Labor certifies that there are not sufficient qualified workers available in the United States and that employment of the alien will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may substitute for that "national standard" a "regional" certification that there are not sufficient workers who are able, willing, qualified, and available at the time and at the place where the alien is to perform the skilled labor. The Secretary of Labor may use the labor market information without regard to specific job opportunity, but if the determination is adverse the Secretary of Labor shall make a job specific certification if the employer submits evidence that such specific certification would result in a different determination. This subsection also calls for a study of the labor certification process in 1992 to determine whether the changes in the laws have resulted in a more simplified and expeditious processing labor certifications.

SECTION 104: DETERRING IMMIGRATION-RELATED ENTREPRENEURSHIP FRAUD

Section 104 establishes a 2-year conditional basis for permanent resident status for those aliens and their dependents who receive the benefits of the employment-generating investor visa. The section outlines procedures to be followed in making as determination on the status of the alien based on the alien's having complied with the requirements of the status.

SECTION 105: MISCELLANEOUS AND TECHNICAL CHANGES

Section 105 makes miscellaneous, conforming, and technical changes to the Immigration and Nationality Act.

SECTION 106: USER FEES

Section 106 directs the Secretary of State to provide for a schedule of fees for the processing of visa petitions which are sufficient to cover the State Department's administrative expenses.

Section 106 also provides for user fees for the processing of selected immigrant visas. In addition, a fund of up to $20 million is credited to the Department of State from fees collected by consular officers to pay the expenses of research and development of visa and passport functions.

SECTION 107: COMMISSION ON LEGAL IMMIGRATION REFORM

Section 107 establishes a nine-member commission effective February 1, 1991, with a chairman appointed by the President, two members each appointed by the Speaker of the House, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader.

The Commission is to transmit its final report to the President and the Congress no later than February 1, 1994. The report shall consider family reunification requirements, the impact of immigration on the economy, and order factors.

SECTION 108: EFFECTIVE DATES AND TRANSITION

This section makes the effective date of the bill October 1, 1990. It shall apply to all visas issued beginning with fiscal year 1991.

Title II—Naturalization Amendments of 1989

SECTION 201: SHORT TITLE; REFERENCES IN TITLE

The short title is "Naturalization Amendments of 1989"; references are to the Immigration and Nationality Act.

SECTION 202: ADMINISTRATIVE NATURALIZATION

This section gives the Attorney General the sole authority to naturalize persons as citizens of the United States. In the event of a denial of naturalization by the Attorney General, review is provided by the Board of Immigration Appeals. Decisions of the board are reviewable *de novo* by U.S. district courts.

SECTION 203: SUBSTITUTING 3 MONTHS RESIDENCE IN INS DISTRICT OR STATE FOR 6 MONTHS RESIDENCE IN A STATE

This section is a technical amendment to require residence within the State or immigration service district for 3 months.

SECTION 204: PUBLIC EDUCATION REGARDING NATURALIZATION BENEFITS

Section 204 directs the Attorney General to broadly disseminate information regrading naturalization and authorizes the Attorney General to make grants to community and other groups for such purposes. $1 million is authorized to carry out this section.

SECTION 205: NATURALIZATION OF NATIVES OF THE PHILIPPINES THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR II

This section exempts certain Filipino war veterans only from the geographic and residency requirements of section 329 of the Immigration and Nationality Act. The exempted veterans are those who served honorably in the U.S. Armed Forces during the period between September 1, 1939, and December 31, 1946.

SECTON 206: CONFORMING AMENDMENTS

This section includes conforming amendments

SECTION 207: EFFECTIVE DATES AND SAVINGS PROVISIONS

No new court petitions are permitted after "first day after the fourth month beginning after the date of enactment." Other changes made by this act are effective upon enactment.

Section 207 also permits persons with pending petitions to have such petitions considered either by a court or by the Attorney General.

VII. Committee Intent

Although this is not an exclusive statement of the committee's legislative intent, the following addresses aspects of the legislation which the committee wishes to discuss in detail:

SECTION 102: NATIONAL LEVEL OF IMMIGRATION

The worldwide level of family connection immigration is set at 480,000 persons per year. Refugees and asylees are not included in this level. Immediate relatives of U.S. Citizens continue not to be subject to numerical limitation, and thus their annual immigration may exceed 480,000 per year (the present number of immediate relatives is approximately 220,000 per year). However, the number of immediate relatives immigrating in a fiscal year is subtracted from 480,000 to determine how many family-connection preference immigrants (described in amended section 203(a) will be admitted in the following fiscal year. The committee wishes to emphasize that preference system visas under amended section 203(a) will only be available after the subtraction has been performed.

The worldwide level of independent immigration is set at 120,000 per year. This level of independent immigration is not affected by the level of immediate relative or other family connection immigration. Immigrant visa distribution under amended section 201(c) and section 201(d) will be interdependent only when the maximum number of visas in either 201(c) or 210(d) are not actually issued in a fiscal year. In that case, the difference between the maximum number allowed and the number actually issued in one section may be allocated for use by the other subsection.

Amended section 201(e) provides for a triennial review of the numerical levels described in amended section 201(c)(1)(A) and 201(d)(1)(A). This provision is intended to ensure that the administration and Congress regularly consider, and when necessary revise, the levels of immigration to this country. The committee di-

rects the executive branch to consider the factors described in paragraphs 201(e)(1) (A), (B), (C), and (D) when seeking to revise the numerical levels, and to justify any proposed revision based on those factors.

Section 202 is amended to revise the current method by which maximum levels of immigration are set for individual countries. Each country may receive up to 7 percent of the total preference visas available for family connection immigration, and up to 7 percent of the total visas available for independent immigration. However, a country's unused visas in one category may not be transferred to accommodate excess demand in the other category. In addition, amended sections 202(a)(2)(C) and 202(a)(3)(B) are intended to deal with hypothetical situations when future worldwide visa demand may not equal the number of visas available. In every other circumstance, the current per-country limtiations apply.

SECTION 103. IMMIGRANT PREFERENCE SYSTEM

The family connection preference system, described in amended section 203(a), reflects the committee's recognition that, as there are only a finite number of visas available for immigrants with family connections, our first obligation is to the closest family members. Thus, the previous preference system is revised to increase the percentage of visas allocated to the spouses and unmarried sons and daughters (under 26 years of age) of permanent resident aliens.

The committee's goal in adopting a distinct category of nonfamily immigration is to make more flexible the standards geared to our changing economy to increase the number of admissible immigrants.

However, these adjustments are intended to be incorporated into the Immigration and Nationality Act (INA) in a manner that respects the longstanding principle that "one of [the United States immigration law's] great purposes was to protect American labor against the influx of foreign labor." (*Karnuth* v. *United States,* 279 U.S. 231, 243 (1929)). Consistent with that principle, the added number of immigrants is held to a level that the United States labor market should be able to absorb. Within that limit, given the choice, the committee has concluded that it is better that work for which the United States requires entrants from abroad be done by persons with the full rights of permanent residents, a long-term commitment to the country, and the opportunity be become citizens.

These liberalizing changes should go far toward meeting the legitimate business needs of American employers and by so doing will result in a substantial reduction in the number of nonimmigrant visas otherwise warranted under the labor certification standards of the INA.

In order for the committee's purposes to be realized, it is important, too, that the provisions of the INA governing both immigrant and nonimmigrant visas be administered in a manner that pays scrupulous regard to the immigration law's labor protection principles. In this regard, the committee emphasizes that this bill contains in its revision of INA section 203(b)(2)(C) language explaining

that "[i]n determining whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability."

This provision does not make a novel point but is rather a specific declaration of what has been Congress' intent in the "exceptional ability" phrase in the existing third preference and its counterpart language in the nonimmigrant visa provision of the INA. As this language makes plain, these phrases refer to persons who are particularly qualified in their callings, not simply to persons who have callings. The committee, in expanding the number of admissible nonfamily immigrants, is proceeding on the clear understanding that the counterpart temporary visa provision is to be administered in harmony with the new section 203(b)(2) preference immigration category.

For example, the committee has taken note of, and relied upon, the reasoning of *Bricklayers and Allied Craftsmen* v. *Meese,* 616 F. Supp. 1387 (N.D. Cal. 1985), with regard to the proper scope of the B temporary visa category. At issue in that case was the issuance of B-1 "temporary visitor for business" visas to laborers coming to United States temporarily to masonry work. The government provision of the INA, section 101(a)(15)(B) authorizes visas for aliens "(other than one coming for the purpose * * * of performing skilled or unskilled labor * * *) * * * who is visiting the United States temporarily for business * * *" The INS claimed justification for the visas in an agency operations instruction that allowed B-1 classification for persons coming to this country "to install, service or repair commercial or industrial equipment or machinery purchased from a company outside the United States * * *" The court pointed out that "section 101(a)(15)(B) and 101(a)(15)(H)(ii) of the Act were intended to restrict the influx of aliens seeking to perform skilled or unskilled labor in the United States." The court there concluded that the operations instruction "is inconsistent with both the language and the legislative intent [of the two provisions cited just above]" and thus "contravenes the act." (*Bricklayers* 616 F. Supp. at 1398, 1401, 1403.) the committee's actions in expanding immigration rest on this understanding of the narrow scope of the B. temporary visa category, and, consequently, the narrow scope of any implementing operations, instructions, or regulations.

Amended section 203(b)(2) refers to members of the professions holding "advanced degrees." The committee intends that an advanced degree be a degree received which requires initial completion of a 4-year course of undergraduate study, followed by at least one academic year of graduate study, and which is normally referred to as a master's degree.

Amended section 203(b)(3) provides visas for: (1) Qualified immigrants who are capable, at the time of petitioning, of performing labor (requiring at least 2 years training or experience) for which qualified U.S. workers are not available, and (2) qualified immigrants who are members of the professions and hold bachelor's degrees. The committee wishes to clarify that the 2-year training or

experience requirement applies to the position for which certification is sought, and to the alien at the time of petitioning. The committee further wishes to clarify that an alien who holds a bachelor's degree, and who is not a member of the profession, may receive a visa provided that he meets all the other equirements of amended sections 203(b)(3)(A)(i) and 203(b)(3)(B).

Amended section 203(b)(4) is intended to create new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals. The committee endorses the present investor requirements as described in 22 CFR 40.7(a)(14), note 1.3 (except for the investment amount and number of individuals to be employed, and except for note 1.3-6). The term "benefit the U.S. economy" may be used to assess the comparative value to the U.S. economy of the proposed new commercial enterprise. The creation of the requisite number of U.S. jobs need not occur immediately upon immigration of the alien entrepreneur, but the job creation should be completed within a reasonable time—in most cases not longer than 6 months after the alien's admission. Finally, the committee intends that processing of an individual visa not continue under this section if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs).

Amended section 203(b)(5) provides a number of visas to be distributed based on a point selection system. The committee emphasizes that a qualifying score on a visa application in this category only entitles an alien to have his or her application considered for random selection during 2 fiscal years. Such a score in no way entitles the alien to an immigrant visa. The committee also intends that the Department of Labor develop lists of occupations which are experiencing or will likely experience increased labor demand, occupations which are experiencing or will likely experience a shortage of U.S. workers, and a list of hours worked or time spent in particular occupations which would qualify an alien to receive point under the "training and work experience" category (section 203(b)(5)(v)). The term "increased demand" in section 203(b)(5)(B)(iv)(I) means demand for labor only, without regard to the supply of labor.

Amended section 212(a)(14) describes the standard upon which labor certifications for visas under sections 203(b) (2) and (3) must be conducted. The "national" U.S. worker availability standard is the preferred standard, but the Department of Labor, in its discretion, may use the alternate "regional" standard outlined in the second sentence of section 212(a)(14) if this would promote efficiency or otherwise be justified. Additionally, in the case of an employer requesting an individual labor certification after an adverse decision, the "evidence" he or she must submit should be sufficient to establish the reasonable possibility that individual labor certification would be led to a different result.

SECTION 104: DETERRING ENTREPRENEURSHIP FUND

This section imposes a 2-year conditional status on all aliens, and their dependents, who are issued immigrant visas based on job cre-

ation and investment described in section 203(b)(4). The committee intends, by this section, to encourage all aliens receiving visas in this section to continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained.

SECTION 106: USER FEES

The committee recognizes that the point selection system under section 203(b)(5) will create additional administrative burdens for the Department of State and intends that such system require user fees that will offset the administrative or other costs. Pursuant to subsection (b) of section 6, the fees collected should be returned, in an amount commensurate with the additional costs, to the State Department for the purposes of administering the system.

SECTION 107: COMMISSION ON LEGAL IMMIGRATION REFORM

Section 107(c) of the committee bill describes the specific issues that the Commission should consider. In section 107(c)(1) "priority of family preferences visas" refers to the system of immigration preferences in the family-connection preference system (new INA section 203(a)). The committee intends that the Commission consider whether, under this system, closer family members (for example, under new section 203(a)(2)) should be kept waiting for visas while more distant family members (for example, under new section 203(a)(4)) are being granted admission to the United States.

In section 107(c)(3), the term "natural resources" is meant to be read in a very broad fashion, including but not limited to, air, water, land, fossil fuels, and plant and animal life.

In section 107(c) the committee specifically intends for the Commission to examine "the impact [of] the establishment of a worldwide ceiling . . . upon the availability . . . of family preference visas." In giving the Commission this specific charge, the committee is mindful of the testimony of the General Accounting Office which concluded that "family preference immigration could drop to zero" under the bill by the year 1999. The committee desires that continued attention be placed on that concern by the Commission.

VIII. Committee Action

On June 8, 1989, with a quorum present, by a vote of 12 to 2, ordered the bill to be favorably reported with an amendment in the way of a substitute offered by Senator Kennedy and Senator Simpson and an amendment offered by Senator Simon which was adopted by a 12 to 2 vote.

Recorded votes:

1. Simon amendment to delete English language as a points category for selected immigrants:

YEAS (12)	NAYS (2)
Biden	Thurmond
Kennedy	Simpson
Metzenbaum	
DeConcini	
Leahy	

Heflin
Simon
Kohl
Hatch
Grassley
Specter
Humphrey

2. To favorably report the bill, as amended:

YEAS (12)	NAYS (2)
Biden	DeConcini
Kennedy	Hatch
Metzenbaum	
Leahy	
Heflin	
Simon	
Kohl	
Thurmond	
Simpson	
Grassley	
Specter	
Humphrey	

IX. CBO Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 16, 1989.

Hon. Joseph R. Biden,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estmate on S. 358, a bill which would amend the Immigration and Nationality Act to revise the current legal immigration system and provide for administrative naturalizaton, as ordered reported by the Senate Committee on the Judiciary on June 8, 1989.

Should the Committee so desire, we would be pleased to provide further details.

Sincerely,

Robert D. Reischauer, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 358.
2. Bill title: A bill to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary on June 8, 1989.
4. Bill purpose: Title I of the bill revises the current system which governs the legal entry of immigrants into the United States. Specifically, it sets the national level of immigration at 600,000 per year which represents the issuance of approximately

110,000 additional visas over current levels. It continues to give preference to applicants with close family ties within the United States, while at the same time creating a new method of awarding visas to persons with no family connections within the United States. Under this new method called a "point system", immigrants would first be rated according to characteristics such as age, education, and job skills. Those who are rated above a certain level would be eligible for visas which would be awarded according to a random drawing conducted by the State Department. Title I also authorizes funds for a commission to review the impact of the provisions contained in Title I.

Title II of S. 358 would amend the Immigration and Nationality Act to empower the Immigration and Naturalization Service (INS) to issue the final determination on applications for U.S. citizenship and to administer the oath of citizenship. Under current law, the INS reviews all applications for naturalization and makes a recommendation to the U.S. District Courts, who then makes the final decision and administers the oath of citizenship. Under this bill, the INS would make a final decision; the applicant would then have the option of being sworn in by a judge or by an INS official designated by the Attorney General.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Revenues:					
Estimated revenues	0	30	10	30	10
Estimated reclassification of revenues as offsetting collections	0	−20	−20	−20	−20
Net revenue effect	0	10	−10	10	−10
Offsetting collections, estimated outlays	0	−20	−20	−20	−20
Amounts subject to appropriations action (function 150):					
Estimated authorization level	0	20	20	20	20
Estimated outlays	0	17	19	20	20
Net outlay effect	0	−3	−1	0	0
Net deficit effect	0	−13	9	−10	10

In addition to the budget impact shown in the table, CBO estimates that enactment of Title II could result in savings to the federal government up to $2 million annually; however such savings might be offset in future years by a corresponding reduction in fees, and would result in outlay reductions only if appropriations were correspondingly reduced.

BASIS FOR ESTIMATE

Title I

Section 106 of the bill gives the State Department the authority to charge new fees which would cover the cost of implementing the new point system. These fees are expected to be classified as revenues. Other new revenues shown in the table is irregular because of the way the point system is expected to be administered. Every two years, a new pool of applicants will be registered for the

random drawing. Because of the high demand for the new visas, it is expected that most immigrants will register for the random drawing in the first years of every two-year period. Revenues from new fees are therefore expected to be higher in the first year than in the second year of each period.

Receipts from visa fees are currently deposited into the Treasury as miscellaneous receipts and thus are not specifically assigned to the State Department. In order to reimburse the State Department for added costs, Section 106 also authorizes an annual transfer of up to $20 million of visa fees to a State Department account. This transfer is intended to cover the State Department's cost of implementing the new point system and issuing the new visas, but will cover cost for other visas and passport related functions as well. Under current law these fees are classified as revenues, but under the bill they would be classified as offsetting collections. The estimated offsetting collections shown in the table are the result of the transfer of funds from the Treasury.

Section 107 of the bill authorizes such sums as necessary for a commission to review and evaluate the impact of the amendments made by Title I. The cost of this commission, including personnel and non-personnel expenses, is estimated to be approximately $400,000 per year. This estimated cost is slightly lower than the current costs of a similar commission created by the Immigration Reform and Control Act of 1986.

Though the bill specifies an effective date of October 1, 1990 for most provisions of Title I, the estimate assumes enactment of the legislation by October 1, 1989. Beginning in fiscal year 1991, the estimate also assumes an annual appropriation of $20 million from the transferred funds to offset costs incurred by the State Department. Outlays are estimated using historical spendout rates.

Title II

The INS and the Judiciary could realize savings of up to $2 million annually if Title II of this bill were enacted. Such savings could result from the elimination of some redundancy in the current naturalization process. In future years, however, the INS could adjust the fees collected for naturalization to reflect the lower cost of the program.

CBO estimates that the INS could save $500,000 to $1 million annually, and that the Judiciary could save roughly $1 million annually, which would result in outlays savings if appropriations are correspondingly reduced. These savings would be the result of a simplifications of the final stages of the naturalization process. The district courts perform many administrative functions in the current process, many of which duplicate work done by the INS. Title II of S. 358 would eliminate much of this duplications by shifting responsibility from the courts to the Attorney General. The range of savings shown for the INS includes additional expenditures for securing facilities for the naturalization ceremony. The estimated savings for the Judiciary include an assumption that one-third of the applicants would choose to receive the naturalization oath from a judge.

We cannot project whether these savings would lead to any future adjustment in the fees that the INS collects for processing

citizenship applications. These fees, which are intended to cover the costs of the program, are set through regulation and reviewed every two years; the next review is scheduled to occur in 1991. The INS does not currently include the expenses incurred by the courts when setting the fees.

6. Estimated Cost of State and Local governments: Under Title II, state and local governments would incur some costs if this bill were enacted because applicants could choose to receive the oath of citizenship from state or local court judges. We do not expect such costs to be significant, since most applicants are likely to be sworn in at federal facilities.

7. Estimate Comparison: None.

8. Previous CBO cost estimate: None.

9. Estimate prepared by: Kent Christensen, 226-2840; Michael Sieverts, 226-2860; and Mark Booth, 226-2680.

10. Estimate approved by: Charles Seagrave (for James L. Blum, Assistant Director for Budget Analysis.)

X. Regulatory Impact Statement

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impact that will result from the committee bill will come with the implementation of the new "selected immigrants" category, the revision of the labor certification process provided in section 103(c), and such additional regulations as the Attorney General may require to implement the administrative naturalization procedures under title II. Otherwise, the committee bill simply reforms existing regulations and procedures without adding to them.

XI. Changes in Existing Law

In compliance with paragraph (12) of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 358 are as follows: Existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman.

IMMIGRATION AND NATIONALITY ACT

As Amended through January 1, 1989

(Act of June 27, 1952; 66 Stat. 163; 8 U.S.C. 1101 et seq.)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act" [8 U.S.C. 1101, note].

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* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. [8 U.S.C. 1101] (a) * * *

(36) The term "State" includes [except as used in section 310(a) of title III] the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

* * * * * * *

(b) As used in title I and II—

(1) The "child" means an unmarried person under twenty-one years of age who is—

* * * * * * *

(F) child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section [201(b),] *201(b)(2)(A)(i),* who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole of surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child thereafter, by virtue of such parentage, be accorded any rights, privilege, or status under this Act.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

[NUMERICAL LIMITATIONS

[SEC. 201. [8 U.S.C. 1151] (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided*, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) of section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.

[(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be submitted as such, without regard to the numerical limitations in this Act.]

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family connection immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(2) independent immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in

any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—The following aliens are not subject to the worldwide levels or numerical limitations of subsection (a):

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(b).

(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

(D) Aliens provided permanent resident status under section 249.

(2)(A)(i) Aliens who are immediate relatives. For purposes of this clause, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent resident during a temporary visit abroad.

(C) Aliens who are admitted under section 207(c) pursuant to a numerical limitation established under section 207(a) and aliens who are granted asylum under section 208.

(c) WORLDWIDE LEVEL OF FAMILY CONNECTION IMMIGRANTS.—(1) The worldwide level of family connection immigrants under this subsection for a fiscal year is equal to—

(A) $480,000 minus

(B) the number computer under paragraph (2), plus

(C) the number (if any) computed under paragraph (3).

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraph (A) and (B) of subsection (b)(2) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1992) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(2) (relating to independent immigrants) during the previous fiscal year and the number of visas issued under that subsection during the year.

(d) WORLDWIDE LEVEL OF INDEPENDENT IMMIGRANTS.—(1) The worldwide level on independent immigrants under this subsection for a fiscal year is equal to—

(A) $120,000 plus

(B) the number computed under paragraph (2).

(2) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1992) is the difference (if any) between the maximum number of visas which may be issued under subsection (a)(1) (relating to family connection immigrants) during the pre-

vious fiscal year and the number of visas issued under that subsection during that year.

(e) REPORT ON, AND REVISION OF, WORLDWIDE LEVEL OF IMMIGRATION.—(1) In January before the beginning of fiscal year 1993 (and before each succeeding fiscal year thereafter), the Attorney General, in consultation with the Secretary of Labor, the Secretary of State, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Administration, and the Secretary of Housing and Urban Development, shall prepare and transmit to the President and to the Judiciary Committees of the Senate and of the House of Representatives a report discussing the effect of immigration on the United States. The report shall consider—

(A) the requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members;

(B) the impact of immigration on labor needs, employment, and other economic and domestic conditions in the United States;

(C) the impact of immigration with respect to demographic and fertility rates and resources and environmental factors; and

(D) the impact of immigration on the foreign policy and national security interests of the United States.

The report for fiscal year 1994 (and each third fiscal year thereafter) shall include a discussion, based upon such consideration, of the need (if any) to revise the number specified in subsection (c)(1)(A) or the number specified in subsection (d)(1)(A) for the 3-fiscal year period beginning with the first fiscal year following transmittal of the report. Beginning with fiscal year 1993, and every three fiscal years thereafter, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall hold hearings on the findings of the latest such report.

(2) In March before the beginning of fiscal year 1994 (and of each third fiscal year thereafter), the President shall, after considering the corresponding report transmitted under paragraph (1) and after soliciting the views of members of the Committees on the Judiciary of the House of Representatives and of the Senate, determine whether or not the number specified in subsection (C)(1)(A) or the number specified in subsection (d)(1)(A) should be changed for the 3-fiscal year period beginning with the next following fiscal year, and, if so, which number should apply instead of the number specified in the respective subsection for the fiscal years of that period. The President shall transmit such determination to the Congress by not later than March 31 before the fiscal year involved and shall deliver such determination to both Houses of Congress on the same day and while each House is in session.

(3)(A) Notwithstanding the provisions of subsections (c)(1)(A) and (d)(1)(A), if the number transmitted in a determination of the President with respect to subsection (C)(1)(A) or subsection (d)(1)(A) for the fiscal years of a 3-fiscal year period—

(i) is not less than 95 percent, nor more than 105 percent, of the number specified in that respective subsection, unless the Congress by not later than August 31 following the date of the transmittal, enacts a joint resolution the substance of which disapproves the change with repsect to the number for that re-

spective subsection for the fiscal years of that 3-fiscal year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period; and

(ii) is less than 95 percent, or more than 105 percent, of the number specified in that respective subsection, if the Congress, by not later than August 31 following the date of the transmittal, enacts a joint resolution that substance of which approves the change with respect to the number specified in that respective subsection for the fiscal years of that 3-year period, the number so transmitted shall take effect and apply, instead of the number specified in that respective subsection, during that period.

(B) For purposes of this paragraph, a number transmitted by the President under paragraph (2) which takes effect and applies under this paragraph with respect to subsection (c)(1)(A) or (d)(1)(A) with respect to a fiscal year or fiscal years shall be deemed to be the number specified in that same subsection for that period, except that the number for the latest fiscal year shall be deemed to be the number specified in that same subsection thereafter unless changed pursuant to this subsection.

(4) Paragraphs (5), (6), and (7) are enacted—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each respective House, but applicable only with respect to the procedure to be followed in the case of joint resolutions described in paragraph (5), and supersede the other rules only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(5) For purposes of this subsection, the term "joint resolution", with respect to a change in number transmitted by the President under paragraph (2) for a fiscal year or years, in the case described—

(A) in paragraph (3)(A), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(A) of section 201 of the Immigration and Nationality Act, disapproves the change proposed by the President in the number specified under subsection of that section for fiscal year (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriatedly; or

(B) in paragraph (3)(B), means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That Congress, pursuant to subsection (e)(3)(B) of section 201 of the Immigration and Nationality Act, approves the change proposed by the President in the number specified under subsection of that section for fiscal years (or years) transmitted to the Congress by the President on ", the blank spaces therein to be filled appropriately.

(6)(A) No later than the first day of session following the day on which a determination is transmitted to the House of Representatives and to the Senate under paragraph (2), which determination provides for a change in a number specified in subsection (c)(1)(A) or (d)(1)(A) for a fiscal year, a joint resolution (as defined in paragraph (5)) with respect to each such change shall be introduced (by request) in each House by the chairman of the Committee on the Judiciary of that House, or by a Member or Members of the House designated by such chairman.

(B)(i) Each joint resolution introduced in a House shall be referred to the Committee on the Judiciary of the respective House. The committees shall make their recommendations to the respective House not later than June 15 following the date of introduction.

(ii) If the Committee has not reported such a joint resolution with respect to a change by such date, it is in order to move to discharge the Committee from further consideration of the joint resolution, except that no motion to discharge shall be in order after the Committee has reported a joint resolution with respect to the same change.

(iii) A motion to discharge under clause (ii) may be made only by a Member favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, in the Senate by the majority leader and the minority leader or their designees and in the House of Representatives by the chairman of the Committee on the Judiciary and the ranking minority member of such committee or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C)(i) When the Committee has reported, or been discharged from consideration of, a joint resolution, a motion to proceed to the consideration of the joint resolution shall be highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(ii) Debate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided in the Senate between, and controlled by, the majority leader and the minority leader or their designees and to be equally divided in the House of Representatives between individuals following and individuals opposing the joint resolution. A motion further to limit debate and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which a joint resolution is passed or rejected shall not be in order.

(iii) Immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate

if requested in accordance with the rules of the appropriate House, the vote on final passage of the joint resolution shall occur.

(iv) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(D) If, prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same change transmitted by the President in a number specified under a subsection for a fiscal year, then—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. [8 U.S.C. 1152] [(a) No person] *(a)(1) Except as specifically provided in paragraph (2) and in section 101(a)(27), 201(b)(2)(A)(i), and 203, no person* shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence[, except as specifically provided in section 101(a)(27), section 201(b) *201(b)(2)(A)(i)*, and section 203. *Provided,* That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year. *And provided further,* That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.]

(2)(A) Subject to subparagraphs (B) and (C), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (c) of section 201 (relating to family connection immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in that fiscal year.

(B) If for fiscal year 1991 or a succeeding fiscal year the number of aliens described in subparagraph (A) or (B) of section 201(b)(2) (relating to immediate relatives and similar individuals) who are natives of a particular foreign state or dependent area and who are issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the fiscal year exceeds the greater of—

(i) the numerical level computed under in subparagraph (A) for that state for that fiscal year, or

(ii) the level of such immigration of natives of that foreign state in fiscal year 1989 or fiscal year 1990 (whichever is greater),

then the numerical level applicable to that foreign state or dependent area in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess, except that such reduction shall not exceed one-half of the numerical level otherwise provided without regard to this subparagraph.

(C) If, because of the application of subparagraph (A) with respect to one or more foreign states, the number of visas available under section 201(c) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(3)(A) Subject to subparagraph (B), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsection (d) of section 201 (relating to independent immigrants) in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsection in the fiscal year.

(B) If, because of the application of subparagraph (A) with respect to one or more foreign states or dependent areas, the number of visas available under section 201(d) for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, subparagraph (A) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(b) Each independent country, self-governing dominion, mandated territory and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* when approved by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached [the numerical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached [the nu-

merical limitation set forth in the proviso to subsection (a) of this section] *a numerical level established under subsection (a)* for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; [and] (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, [other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section 201(b),] *other than an alien described in section 201(b)(2)(A)(i),* shall be chargeable for the purpose of the limitation set forth in [section 202(a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any fiscal year.] *subsection (a)(1), to the foreign state.*

(d) In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change, issue appropriate instructions to all diplomatic and consular offices.

[(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the

married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

Whenever the maximum number of visas have been made available under subsection (a) to natives of any single foreign state or to any dependent area, then in the next following fiscal year a number of visas, not to exceed the number specified in subsection (a)(2) for a foreign state or a dependent area, as the case maybe shall be made available and allocated for such state or such area for the same classes of aliens described in, and the same percentages specified in, paragraphs (1) through (4) of section 203(a).

ALLOCATION OF IMMIGRANT VISAS

[SEC. 203. [8 U.S.C. 1153] (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be alloted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs

(1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a Untied States citizen or lawfully resident alien unless (A) a valid home-study has been proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provide,* That no natural parent or prior adoptive parent of any such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1)(A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraphs (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.

[(b) In considering applications for immigrant visas under subsection (a) or consideration shall be given to applicants in the order in which the classes of which they are members are listed in subsection (a).

[(c) Immigrant visas issued pursuant to paragraphs (1) through (6) of subsection (a) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

[(d) Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a prefer-

ence status under paragraphs (1) through (6) of subsection (a), or to a special immigrants status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b). In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a Untied States citzien as specified in section 201(b) or to be entitled to preference immigrant status paragraphs (1) through (6) of subsection (a), the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

[(e) For the purpose of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.]

ALLOCATION OF IMMIGRANT VISA

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY CONNECTION IMMIGRANTS.—Aliens subject to the world-wide level specified in section 201(c) for family connection immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 9 percent of such worldwide level, plus any visas not required for the class specified in paragraph (4).

(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are—

(A) the spouses of aliens lawfully admitted for permanent residence, or

(B) the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence, if the sons or daughters—

(i) are under 26 years of age as of the date of the petition for such preference, or

(ii)(I) as of the date of the enactment of the Immigration Act of 1989, had a petition filed on their behalf for preference status under section 203(a)(2) (as in effect on such date) by reason of such relationship and such petition was subsequently approved, and

(II) continue to qualify under the terms of section 203(a)(2) of this Act as in effect on the day before such date, shall be allocated visas in a number not to exceed

57 percent of such worldwide level, plus any visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 9 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 25 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (2) or (3).

(b) PREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for independent immigrants in a fiscal year shall be allocated visas as follows:

(1) SPECIAL IMMIGRANTS.—Visas shall be made available, in a number not to exceed 5 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof).

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level to qualified immigrants who are members of the professions holding advanced degrees or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(C) In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) SKILLED WORKERS.—(A) Visas shall be made available next, in a number not to exceed 23 percent of such worldwide level, to the following two classes of aliens:

(i) Qualified immigrants who are capable, at the time of petitioning, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Qualified immigrants who hold bachelor's degrees and who are members of the professions.

(B) An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14).

(4) EMPLOYMENT CREATION.—Visas shall be made available next, in a number not to exceed 4 percent of such worldwide level, to any qualified immigrant who is seeking to enter the United States for the purpose of engaging in a new commercial enterprise which the alien has established and in which such alien has invested or, is actively in the process of investing, capital, in an amount not less than $1,000,000, and which will benefit the United States economy and create fulltime employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence (other than the spouse, sons, or daughters of such immigrant). The Attorney General, in consultation which the Secretary of Labor and the Secretary of State, may prescribe regulations increasing the dollar amount of the investment necessary for the issuance of a visa under this paragraph.

(5) SELECTED IMMIGRANTS.—(A) Visas authorized in any fiscal year under section 201(d), less those required for issuance to the classes specified in paragraphs (1), (2), (3), and (4), shall be made available to qualified immigrants who attain a score of not less than 45 points based on the point assessment system described in subparagraph (B).

(B) The point assessment system referred to in subparagraph (A) shall accord points based on criteria as follows:

(i) AGE (10 POINTS).—For an alien who (as of the first day of the fiscal year involved) is—

(I) not less than 21 years of age or more than 35 years of age, 10 points; or

(II) not less than 36 years of age or more than 44 years of age, 5 points.

(ii) EDUCATION (25 POINTS).—For an alien who (as of the first day of the first year involved)—

(I) has completed successfully grade school through high school or its educational equivalent (as determined by the Secretary of Education), 10 points;

(II) has been awarded a bachelor's degree or its equivalent (as determined by the Secretary of Education), 10 additional points; and

(III) has been awarded a graduate degree, an additional number of points (up to 5 additional points) to be determined by the Secretary of Education based on the level of the degree.

(iii) OCCUPATIONAL DEMAND (20 POINTS).—For an alien who is in an occupation for which the Secretary of Labor determines (before the fiscal year involved)—

(I) there will be increased demand in the United States for individuals in the occupation in the succeeding fiscal year, 10 points, and

(II) there is at present or there will be a future shortage of individuals in the United States to meet the

need in the occupation in the United States in the succeeding fiscal year, 5 or 10 points.

(iv) OCCUPATIONAL TRAINING AND WORK EXPERIENCE (20 POINTS).—To the extent the alien has training, work experience, or both, in the occupation described in clause (iv), 10 or 20 points, such points multiplied by the number of points awarded under clause (iv) divided by 20.

(C) The point assessment system described in subparagraph (B) shall be established by regulation by the Secretary of State in consultation with the Attorney General, the Secretary of Labor, and the Secretary of Education.

(c) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b) (except for subsection (b)(5)) be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

(d) ORDER OF CONSIDERATION.—(1) Immigrant visas made available under subsection (a) or (b) (other than paragraph (5)) or under section 201(a)(3) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D), with the Secretary of State) as provided in section 204(a).

(2) Of the immigrant visa numbers made available under subsection (b)(5) (relating to selected immigrants) in a fiscal year—

(A) 20 percent of such numbers shall be issued to eligible qualified immigrants who attain a score of at least 85 points on the assessment system described in subsection (b)(5)(B) with respect to petitions filed for the fiscal year involved, to be chosen in the random order described in clause (B); and

(B) 80 percent of such numbers shall be issued to eligible qualified immigrants with a qualifying score on such system strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(e) PRESUMPTION.—Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 101(a)(27), or section 201(b)(2), until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described. In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(1) or in subsection (a) or (b) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

(f) LISTS.—For purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a) and (b), and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall

terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of his availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such vias that such failure to apply was due to circumstances beyond his control.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. [8 U.S.C. 1154] [(a)(1) Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 203(a), or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2), or any alien desiring to be classified as a preference immigrant under section 203(a)(3) (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 203(a)(6), may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.] *(a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classificaton by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.*

(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification. An alien may be classified as an alien described in paragraphs (2), (3), or (4) of section 203(a) with respect to a specific fiscal year on the basis of a petition filed in a previous fiscal year only if the alien has filed with the Attorney General a notice of continuing intent to be admitted to the United States as an immigrant under such section within the 2 fiscal years immediately previous to the specific fiscal year involved.

(C)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(1) (or any person on behalf of such an alien) (relating to special immigrants) may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(D) Any alien desiring to be classified under section 203(b)(2) (or any person on behalf of such an alien) (relating to professionals)

may file a petition with the Attorney General for such classification.

(E) Any person desiring and intending to employ within the United States an alien entitled to classification under paragraph (2) or (3) of section 203(b) (relating to professionals and skilled workers) may file a petition with the Attorney General for such classification.

(F) Any alien desiring to be classified under section 203(b)(4) (relating to employment creation) may file a petition with the Secretary of State for such classification.

(G)(i) Any alien desiring to be provided an immigrant visa under section 203(b)(5) (relating to selected immigrants) may file a petition at the place and time determined by the Secretary of State by regulation. While the place of filing may be designated inside the United States, the petitioner shall be physically outside the United States when submitting the petition. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State may designate a period for the filing of petitions with respect to visas which may be issued under section 203(b)(5) during either of the next two fiscal years beginning after the close of such period.

(II) Aliens who qualify, through random selection, for a visa under section 203(b)(5) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of state shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition or registration under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(iv) The petition under this subparagraph shall include a certification in writing at the time of filing a petition that all information contained within the petition is true and correct to the best of the petitioner's knowledge and that any willful misrepresentation of the facts or statements included in the petition shall be deemed a violation of section 212(a)(19).

(v) On or after October 1, 1990, an alien who—

(A) Previous to being admitted as, or otherwise provided the status of, an alien lawfully admitted for permanent residence was married to an individual, and

(B) is so admitted, or provided such status, as a child or as the unmarried son or unmarried daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence,

may not file a petition under this section on behalf of any alien to whom the alien was married previous to being so admitted or provided such status.

[*(2)***]***(5)*(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, had been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the

United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

* * * * * * *

(b) After an investigation of the facts in each cae, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section [203(a) (3) or (6),] *section 203(b)(3),* the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in [section 201(b)] *section 201(b)(2)(A)(i)* or is eligible for [a preference status under section 203(a),] *preference under subsection (a), or (b) of section 203* approve the petition *(and, in the case described in section 203(b)(5), specify the point score on the assessment system)* and forward one copy thereof to the Department of State. [The Secretary of State] *Subject to section 203(b)(5), the Secretary of State* shall then authorize the consular officer concerned to grant the preference status.

* * * * * * *

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as a [preference immigrant under section 203(a)] *immigrant under subsection (a), (b), or (c) of section 203* of as an immediate relative under [section 201(b)] *Section 201(f)* if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

[(f) the provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

[(g)](*f*)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4) *(as in effect before the date of the enactment of the Immigration Act of 1989),* as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

* * * * * * *

[(h)](*g*) Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status of [preference status] *status under section 203(a)(2)* described in section

245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OR INADMISSIBILITY

SEC. 212. [8 U.S.C. 1182] (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) * * *

* * * * * * *

[(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified [39] to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);]

(14) Aliens seeking to enter the United States to perform skilled labor unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the positions in which the aliens will be employed; and (B) the employment of aliens in such positions will not adversely affect the wages and working conditions of workers in the United States. The Secretary of Labor may, in his discretion, substitute for the determination and certification described by the preceding sentence a determination and certification that there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled labor. In making either determination under this paragraph, the Secretary of Labor may use labor market information without regard to the specific job opportunity for which certification is requested, but if such determination is adverse, the Secretary of Labor shall make a certification with regard to the specific job opportunity if the employer submits evidence that such specific certification would result in a different determination. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens

under this paragraph shall apply to immigrants seeking admission under paragraph (2) or (3) of section 203(b), except that this paragraph shall not apply to any alien for whom a waiver has been granted under section 203(b)(2)(B),

* * * * * * *

(32) Aliens who are graduates of a medical school not accredited by a body or bodies approved for the purposes by the Commissioner of Education (regardless of whether such school of medicine is in the United States) and are coming to the United States principally to perform services as members of the medical profession, except such aliens who have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare) and who are competent in oral and written English. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section [203(a) (3) and (6) and to nonpreference immigrant aliens described in section 203(a)(7).] *203(b) (2), (3), and (5).* For the purposes of this paragraph, an alien who is a graduate of a medicial school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State of that date:

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CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216 [8 U.S.C. 1186a] (a) * * *

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(g) DEFINITIONS.—In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section [201(b)] *201(b)(2)(A)(i)* as the spouse of a citizen of the United States.

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VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217 [8 U.S.C. 1187] (a) * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

SEC. 218. (a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1)), spouse, and child (as defined in subsection (f)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) NOTICE OF REQUIREMENTS—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, spouse, or child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the Attorney General shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsection (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the establishment of the commercial enterprise was intended solely as a means of evading the immigration laws of the United States;

(B)(i) a commercial enterprise was not established by the alien;

(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

(iii) the alien was not sustaining the actions described in clause (A) or (B) throughout the period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 203(b)(4),

then the Attorney General shall so notify the alien involved and, subject to paragraph (2) shall terminate the permanent resident status of the alien involved as of the date of the determination.

(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien entrepreneur, spouse, or child to be removed—

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2), a

petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien entrepreneur appears at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, spouse, or child as of the date of the determination.

(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the

burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

(A) a commercial enterprise was established by the alien;

(B) the alien invested or was actively in the process of investing the requisite capital; and

(C) the alien sustained the actions described in clauses (A) and (B) throughout the period of the alien's residence in the United States.

(2) PERIOD FOR FILING PETITION.—

(A) 90 DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such case as may be appropriate.

(e) TREATMENT OF PERIOD FOR PURPOSE OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) DEFINITIONS.—In this section:

(1) The term "alien entrepreneur" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(4).

(2) The term "spouse" and the term "child" mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, or an alien entrepreneur.

* * * * * * *

APPLICATIONS FOR VISAS

SEC. 222. [8 U.S.C. 1202] (a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the immigrant shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living, then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; whether or not he intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section [201(b)] *210(b)(2)(A)(i)* or a preference or special immigrant, the facts on which he bases such claim; whether or not he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) * * *

* * * * * * *

(9)(A) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status, (B) or is an alien with permanent resident

status on a conditional basis under section 216 and has such status terminated under such section[;], *or (C) is an alien with permanent resident status on a conditional basis under section 218 and has such status terminated under such section;*

* * * * * * *

SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. [8 U.S.C. 1254] (a) * * *

* * * * * * *

(d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the cancellation of deportation of such alien is made, and unless the alien is an immediate relative within the meaning of section [201(b)] *201(b)(2)(A)(i)* the Secretary of State shall reduce by one the number of immigrant visas authorized to be issued under section [201(a) or 202(a)] *201(c) or 202(a)(2)(A)* for the fiscal year then current.

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. [U.S.C. 1255] (a) * * *

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 202(e) of [203(a)] *203* within the class to which the alien is chargeable for the fiscal year then current.

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* or a special immigrant described in section 101(a)(27)(H)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continously a legal status since entry into the United States, or (3) any alien admitted in transit without visa under section 212(d)(4)(C); or [(5)] *(4)* an alien (other than an immediate relative as defined in section [201(b)] *201(b)(2)(A)(i)* who was admitted an a nonimmigrant visitor without a visa under section 212(l) or section 217[.], *or (5) an alien who is applying for adjustment of status to preference staus under section 203(b)(5).*

* * * * * * *

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 218.

* * * * * * *

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. [8 U.S.C. 1325] (a) * * *

* * * * * * *

(c) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

* * * * * * *

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. [8 U.S.C. 1356] * * *

(q) VISA FEES FOR IMMIGRANTS.—The Secretary of State shall provide for a schedule of fees to be charged for the filing of a petition for any and all immigrant categories under sections 201(a)(3), 201(b)(2)(A)(i), and 203 (a) and (b). The fees established under this subsection shall be sufficient to cover administrative and other expenses incurred in connection with the processing of petitions for any and all immigrant categories filed under sections 201(a)(3), 201(b)(2)(A)(i), and 203 (a) and (b).

(r) CREDITABLE FEES.—Notwithstanding sections 1 and 2 of the Act of June 4, 1920, as amended (41 Stat. 750; 22 U.S.C. 214) or any other provision of law, up to $20,000,000 in fees collected by consular officers for issuance of visas and for execution of applications for visas shall be credited to a Department of State account which shall be available only for the payment of the expenses of research, development, equipment, and automation of visa and passport functions, including related software. Each fiscal year thereafter additional amounts of such consular fees may be credited to such account, except that not more than $20,000,000 of such fees may be available for such purposes in any one fiscal year.

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

JURISDICTION TO NATURALIZE

SEC. 310. [8 U.S.C. 1421] (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District courts of the United States now existing, or which may hereafter be established by Congress in any State, District Court of the United States for the District of Columbia and for Puerto Rico, the District Court of the Virgin Islands of the United States, and the District Court of Guam; also all

courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts, except as otherwise specifically provided for in this title.

[(b) A person who petitions for naturalization in any State court having naturalization jurisdiction may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

[(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Attorney General with such blank forms as may be required in naturalization proceedings.

[(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title, and not otherwise.]

NATURALIZATION AUTHORITY

SEC. 310. (a) AUTHORITY IN ATTORNEY GENERAL.—The original authority to naturalize persons as citizens of the United States is conferred solely upon the Attorney General.

(b) ADMINISTRATION OF OATHS.—An applicant for naturalization may choose to have the oath of allegiance under section 337(a) administered by the Attorney General or by any district court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts specified in this subsection to administer the oath of allegiance shall extend only to persons resident within the respective jurisdiction of such courts.

(c) APPEAL TO BIA; JUDICIAL REVIEW.—(1) A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may seek review of such denial before the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations). The decision of such Board is reviewable by the United States district court for the district in which such person resides. Such review of the district court shall be de novo, and the district court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.

(2) The district court shall issue an order authorizing the naturalization of a person in accordance with this title only after determining, upon review of the denial of that person's application for naturalization, that such denial was wrongfully made as a matter of fact or of law.

(d) SOLE PROCEDURE.—A person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title and not otherwise.

* * * * * * *

SEC. 313 (8 U.S.C. 1424). * * *

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the [petition] *application* for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, nothwithstanding that at the time the [petition] *application* is filed he may not be included within such classes.

* * * * * * *

SEC. 316. [8 U.S.C. 1427] (a) No person, except as otherwise provided in this title, shall be naturalized, unless such [petitioner,] *applicant* (1) immediately preceding the date of filing his [petition] *application* for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his [petition] *application* has been physically present therein for periods totaling at least half of that time, [and who has resided within the State in which the petitioner filed the petition for at least six months] *and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months,* (2) has resided continuously within the United States from the date of the [petition] *application* up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the [petition] *application* for nauturalization, or during the period between the date of filing the [petition] *application* and the [date of final hearing,] *date of any hearing under section 336(a)* shall break the continuity of such residence, unless the [petitioner] *applicant* shall establish to the satisfaction of [the court] *the Attorney General* that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the [petition] *application* for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is

owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

(c) The granting of the benefits of subsection (b) of this section shall not relieve the [petitioner] *applicant* from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing [a petition] *an application* for naturalization.

(d) No finding by the Attorney General that the [petitioner] *applicant* is not deportable shall be accepted as conclusive evidence of good moral character.

(e) In determining whether the [petitioner] *applicant* has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in section (a) of this section [the court] *the Attorney General* shall not be limited to the [petitioner's] *applicant's* conduct during the five years preceding the filing of the [petition,] *application,* but may take into consideration as a basis for such determination the [petitioner's] *applicant's* conduct and acts at any time prior to that period.

[(f) Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the is a

member or affiliate are pending under section 13 or 14 of the Subversive Activities Control Act of 1950.]

(f)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that [a petitioner] *an applicant* otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the [petitioner] *applicant* may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 313 of this Act, and no residence [within the jurisdiction of the court] *within a particular State or district of the Service in the United States* shall be required: *Provided,* That the [petitioner] *applicant* has continuously resided in the United States for at least one year prior to naturalization: *Provided further,* That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of paragraph 243(h)(2) of this Act.

(g) * * *

(2) [A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner.] *An applicant for naturalization under this subsection may be administered the oath of allegiance under section 337(a) by any district court of the United States, without regard to the residence of the applicant.*

* * * * * * *

TEMPORARY ABSENCE OF PERSONS PERFORMING RELIGIOUS DUTIES

SEC. 317. [8 U.S.C. 1428] Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization have a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing [a petition] *an application* for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General [and the naturalization court] that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF

SEC. 318. [8 U.S.C. 1429] Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no [petition] *application* for naturalization shall be [finally heard by a naturalization court] *considered by the Attorney General* if there is pending against the [petitioner] *applicant* a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided,* That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way [upon the naturalization court] *upon the Attorney General* with respect to the question of whether such person has established his eligibility for naturalization as required by this title.

* * * * * * *

MARRIED PERSONS AND EMPLOYEES OF CERTAIN NONPROFIT ORGANIZATIONS

SEC. 319. [8 U.S.C. 1430] (a) Any person whose spouse is a citizen of the United States may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his [petition] *application* for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his [petition] *application* has been living in marital union with the citizen spouse, who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and [has resided within the State in which he filed his [petition] *application* for at least six months] *has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months* .

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and

commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the [naturalization court] *Attorney General* in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his [petition] *application* for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the [naturalization court] *Attorney General* in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this title except that no prior residence or specified period of physical presence within the United States or any State or [within the jurisdiction of the court] *district of the Service in the United States* or proof thereof, shall be required.

(d) Any person who is the surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, may be naturalized upon compliance with all the requirements of this title except that no prior residence or specified physical presence within the United States, or [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* shall be required.

* * * * * * *

CHILD BORN OUTSIDE OF UNITED STATES; NATURALIZATION ON PETITION OF CITIZEN PARENT; REQUIREMENTS AND EXEMPTIONS

SEC. 322. [8 U.S.C. 1433] (a) A child born outside of the United States, one or both of whose parents is at the time of [petitioning] *applying* for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if un-

married and under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of section 313, 314, 315, or 318 of this Act, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the [petition] *application* of such citizen parent, upon compliance with all the provisions of this title, except that no particular period of residence or physical presence in the United States shall be required. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

* * * * * * *

(c) In the case of an adopted child (1) who is in the United States at the time of naturalization, and (2) one of whose adoptive parents (A) petitions for naturalization of the child under this section, (B) meets the criteria of clauses (A), (B), and (C) of section 319(b)(1), and (C) declares before the [naturalization court] *the Attorney General* in good faith an intention to take up residence within the United States immediately upon the termination of the employment described in section 319(b)(1)(B), no specified period of residence [within the jurisdiction of the naturalization court] *within a State or a district of the Service in the United States* or proof thereof shall be required.

[SEC. 323. Repealed.]

FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP

SEC. 324. [8 U.S.C. 1435] (a) Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act of such person other than by marriage be naturalized upon compliance with all requirements of this title, except—

(1) no period of residence or specified period of physical presence within the United States or within the State *or district of the Service in the United States* where the petition is filed shall be required; *and*

(2) the [petition] *application* need not set forth that it is the intention of the [petitioned] *applicant* to reside permanently within the United States.

[(3) the petition application may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

[(4) the petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.]

Such person, or any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, shall have, from and after her naturalization, the status of a

native-born or naturalized citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(b) No person who is otherwise eligible for naturalization in accordance with the provisions of subsection (a) of this section shall be naturalized unless such person shall establish to the satisfaction of the [naturalization court] *Attorney General* that she has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for a period of not less than five years immediately preceding the date of filing [a petition] *an application* for naturalization and up to the time of admission to citizenship, and unless she has resided continuously in the United States since the date of her marriage, has been lawfully admitted for permanent residence prior to filing her [petition] *application* for naturalization.

(c)(1) A woman who was a citizen of the United States at birth and (A) who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, or by her marriage on or after such date to an alien ineligible to citizenship, (B) whose marriage to such alien shall have terminated subsequent to January 12, 1941, and (C) who has not acquired by an affirmative act other than by marriage any other nationality, shall, from and after taking the oath of allegiance required by section 337 of this title, be a citizen of the United States and have the status of a citizen of the United States by birth, without filing [a petition] *an application* for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before [the judge or clerk of a naturalization court.] *the Attorney General or the judge or clerk of a court described in section 310(b).*

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, [or naturalization court] *court, or the Attorney General* and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, [or naturalization court] *court, or the Attorney General* shall be delivered to such woman at the cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.

NATIONALS BUT NOT CITIZENS OF THE UNITED STATES; RESIDENCE WITHIN OUTLYING POSSESSIONS

SEC. 325. [8 U.S.C. 1436] A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified, may, if he becomes a resident of any State, be naturalized upon compliance with the applicable requirements of this title, except that in [petitions] *applications* for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of this title shall include residence and physical presence within any of the outlying possessions of the United States.

RESIDENT PHILIPPINE CITIZENS EXCEPTED FROM CERTAIN REQUIREMENTS

SEC. 326. [8 U.S.C. 1437] Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) entered the United States prior to May 1, 1934, and (3) has since such entry, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of [petitioning] *applying* for naturalization under this title.

FORMER UNITED STATES CITIZENS LOSING CITIZENSHIP BY ENTERING THE ARMED FORCES OF FOREIGN COUNTRIES DURING WORLD WAR II

SEC. 327. [8 U.S.C. 1438] (a) Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of title III, of this Act, except section 316(a), and except as otherwise provided in subsection (b), be naturalized by taking before [any naturalization court specified in section 310(a) of this title] *the Attorney General or before a court described in section 310(b)* the oath required by section 337 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice *and by the Attorney General to the Secretary of State.*

* * * * * * *

NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES

SEC. 328. [8 U.S.C. 1439] (a) A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating three years, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's [petition] *application* in the United States for at least five years, and in the State *in the United States or district of the Service* in which the [petition] *application* for naturalization is filed for at least [six] *three*

months, and without having been physically present in the United States for any specified period, if such [petition] *application* is filed while the [petitioner] *applicant* is still in the service or within six months after the termination of such service.

(b) A person filing [a petition] *an application* under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) no residence [within the jurisdiction of the court] *within a State or district of the Service in the United States* shall be required;

* * * * * * *

(c) In the case such [petitioner's] *applicant's* service was not continuous, the [petitioner's] *applicant's* residence in the United States and State *or district of the Service in the United States*, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such [petition] *application* between the periods of [petitioner's] *applicant's* service in the Armed Forces, shall be alleged in the [petition] *application* filed under the provisions of subsection (a) of this section, and proved at [the final hearing] *any hearing* thereon. Such allegation and proof shall also be made as to any period between the termination of [petitioner's] *applicant's* service and the filing of the petition for naturalization.

(d) The [petitioner] *applicant* shall comply with the requirements of section 316(a) of this title, if the termination of such service has been more than six months preceding the date of filing such [petition] *application* shall be considered as residence and physical presence within the United States.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 316(a).

* * * * * * *

SEC. 329. [8 U.S.C. 1440] (a) [Any] *Except as provided in subsection (e), any* person who, while an alien or a noncitizen national of the United States has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if sep-

arated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, America Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) A person filing [a petition] *an application* under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331;

(2) no period of residence or specified period of physical presence within the United States or any State *or district of the Service in the United States* shall be required; and

[(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; and]

[(4)] *(3)* service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions.

* * * * * * *

(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and

such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

(d) Paragraphs (1) and (2) of subsection (a) shall not apply to the naturalization of any person—

(1) who was born in the Philippines or who was otherwise a noncitizen national of the United States residing in the Philippines before the service described in paragraph (2);

(2) who served honorably in an active-duty status in the military, air, or naval forces of the United States at any time during the period beginning September 1, 1939, and ending December 31, 1946;

(3) who is otherwise eligible for naturalization under this section; and

(4) who applies for naturalization not later than one year after the date of enactment of the Naturalization Amendments of 1989.

* * * * * * *

CONSTRUCTIVE RESIDENCE THROUGH SERVICE ON CERTAIN UNITED STATES VESSELS

SEC. 330. [8 U.S.C. 1441] Any periods of time during all of which a person who was previously lawfully admitted for permanent residence has served honorably or with good conduct, in any capacity other than as a member of the Armed Forces of the United States, (A) on board a vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or (B) on board a vessel whose home port is in the United States, and (i) which is registered under the laws of the United States, or (ii) the full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States, shall be deemed residence and physical presence within the United States within the meaning of section 316(a) of this title, if such service occurred within five years immediately preceding the date such person shall file [a petition] *an application* for naturalization. Service on vessels described in clause (A) of this subsection shall be proved by duly authenticated copies of the records of the executive departments or agency having custody of records of such service. Service on vessels described in clause (B) of this subsection may be proved by certificates from the masters of such vessels.

ALIEN ENEMIES; NATURALIZATION UNDER SPECIFIED CONDITIONS AND PROCEDURE

SEC. 331. [8 U.S.C. 1442] (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's [petition] *application* for naturalization shall be pending at the beginning of the

state of war and the [petitioner] *applicant* is otherwise entitled to admission to citizenship.

(b) An alien embraced within this section shall not have his [petition] *application* for naturalization [called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General's objection to such final hearing shall cause the petition to be continued] *considered or heard except after 90 days' notice to the Attorney General regarding the application, and the Attorney General's objection to such consideration shall cause the application to be continued* from time to time for so long as the Attorney General may require.

(c) The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have [a petition] *an application* for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this title, and thereupon such alien shall have the privilege of filing [a petition] *an application* for naturalization.

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. [Notwithstanding the provisions of section 405(b), this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date.]

(e) Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien.

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PROCEDURAL AND ADMINISTRATIVE PROVISIONS; EXECUTIVE FUNCTIONS

SEC. 332. [8 U.S.C. 1443] (a) The Attorney General shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship [for the purpose of making appropriate recommendations to the naturalization courts. Such examination, in the discretion of the Attorney General, and under such rules and regulations as may be prescribed by him, may be conducted before or after the applicant has filed his petition for naturalization.].

* * * * * * *

(g) The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of

persons seeking to comply with requirements under the immigration and nationality laws. Such studio shall be under the supervision of the Attorney General.

(h) The Attorney General shall broadly disseminate information respecting the benefits which persons may receive under this title and the requirements to obtain such benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations, and the Attorney General is authorized to make grants to, and enter into contracts with, such organizations for such purposes.

* * * * * * *

SEC. 333. [8 U.S.C. 1444] (a) Three identical photographs of the *applicant* shall be signed by and furnished by each [petitioner] *applicant* for naturalization or citizenship. One of such photographs shall be affixed by the [clerk of the court] *Attorney General* to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

* * * * * * *

[PETITION FOR NATURALIZATION; DECLARATION OF INTENTION]

APPLICATION FOR NATURALIZATION; DECLARATION OF INTENTION

SEC. 334. [8 U.S.C. 1445] (a) An applicant for naturalization shall make and file [in the office of the clerk of a naturalization court] *with the Attorney General* in duplicate, a sworn [petition] *application* in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, which [petition] *application* shall be on a form prescribed by the Attorney General and shall include averments of all facts which in the opinion of the Attorney General may be material the applicant's naturalization, and required to be proved [upon the hearing of such petition.] *under this title.*

(b) No person shall file a valid [petition] *application* for naturalization unless [(1)] he shall have attained the age of eighteen years [and (2) he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General]. An application [for petition] for naturalization by an alien shall contain an averment of lawful admission for permanent residence.

[(c) Petitions for naturalization may be made and filed during the term time or vacation of the naturalization court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court.

[(d) If the applicant for naturalization is prevented by sickness or other disability from presenting himself in the office of the clerk to make the petition required by subsection (a) such applicant may make such petition at such other place as may be designated by the clerk of court or by such clerk's authorized deputy.

[(e) Before a petition at such other place as may be made outside of the office of the clerk of the court, pursuant to subsection (d) above, or before a final hearing on a petition may be held or the

oath of allegiance administered outside of open court, pursuant to sections 336(a) and 337(c) respectively of this title, the court must satisfy itself that the illness or other disability is sufficiently serious to prevent appearance in the office of the clerk of court and is of a permanent nature, or of a nature which so incapacitates the person as to prevent him from personally appearing in the office of the clerk of court or in court as otherwise required by law.]

(c) Hearings under section 336(a) on applications for naturalization shall be held at regular intervals, to be fixed by the Attorney General.

(d) Except as provided in subsection (e), an application for naturalization shall be filed in person in an office of the Attorney General.

(e) A person may file an application for naturalization other than in an office of the Attorney General, and an oath of allegiance may be administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which—

(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.

(f) [Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe.] *An alien who has attained the age of 18 years of age and who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General.* Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing [a petition] *an application* for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this or any other Act.

[INVESTIGATION OF PETITIONERS; PRELIMINARY EXAMINATIONS ON PETITIONS]

INVESTIGATION OF APPLICANTS; EXAMINATION OF APPLICATIONS

SEC. 335. [8 U.S.C. 1446] (a) [At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 336(a)] *Before a person may be naturalized* an employee of the Service, or of the United States designated by the Attorney

General, shall conduct a personal investigation of the person [petitioning] *applying* for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of is [petition] *application* for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) The Attorney General shall designate employees of the Service to conduct [preliminary] examinations upon [petitions] *applications* for naturalization [to any naturalization court and to make recommendations thereon to such court]. For such purposes any such employee so designated is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any [petitioner] *applicant* for naturalization, to administer oaths, including the oath of the [petitioner] *applicant* for naturalization, and to require by subpoena the attendance and testimony of witnesses, including [petitioner] *applicant* before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of [any court exercising naturalization jurisdiction as specified in section 310 of this title] *any district court of the United States*; and any such court may, in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the [preliminary] examination authorized by this subsection shall be admissible as evidence in any [final hearing conducted by a naturalization court designated in section 310 of this title] *hearing conducted by an immigration officer under section 336(a).*

(c) The record of the [preliminary] examination upon any [petition] *application* for naturalization may, in the discretion of the Attorney General, be transmitted to the Attorney General and the [recommendation] *determination* with respect thereto of the employee designated to conduct such [preliminary] examination shall when made also be transmitted to the Attorney General.

[(d) The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefor. In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court. The recommendations of such employee and of the Attorney General shall be accompanied by duplicate lists containing the names of the

petitioners, classified according to the character of the recommendations, and signed by such employee or the Attorney General, as the case may be. The judge to whom such recommendations are submitted shall, if he approves such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of each such list shall thereafter be filed permanently of record in such court and the duplicate of each such list shall be sent by the clerk of such court to the Attorney General.]

(d) The employee designated to conduct any such examination shall submit to the Attorney General a determination as to whether the application be granted, denied, or continued, with reasons therefor.

[(e) After the petition for naturalization has been filed in the office of the clerk of court, the petitioner shall not be permitted to withdraw his petition, except with the consent of the Attorney General. In cases where the Attorney General does not consent to withdrawal of the petition, the court shall determine the petition on its merits and enter a final order accordingly. In cases where the petitioner fails to prosecute his petition, the petition shall be decided upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.]

(e) After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General. In cases where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

[(f)(1) A petitioner for naturalization who removes from the jurisdiction of the court in which his petition for naturalization is pending may, at any time thereafter, make application to the court for transfer of the petition to a naturalization court exercising jurisdiction over the petitioner's place of residence, or to any other naturalization court if the petition was not required to be filed in a naturalization court exercising jurisdiction over the petitioner's place of residence: *Provided,* That such transfer shall not be made without the consent of the Attorney General, and of the court to which the petition is transferred.

[(2) Where transfer of the petition is authorized the clerk of court in which the petition was filed shall forward a certified copy of the petition and the original record in the case to the clerk of court to which the petition is transferred, and proceedings on the petition shall thereafter continue as though the petition had originally been filed in the court to which transferred.]

(f) An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer,

the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.

[FINAL HEARING IN OPEN COURT UPON PETITIONS FOR NATURALIZATION; FINAL ORDER UNDER THE HAND OF THE COURT ENTERED UPON RECORD; EXAMINATION OF PETITIONER BEFORE THE COURT

[Sec. 336. [8 U.S.C. 1447] (a) Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record for that purpose, and upon such final hearing of such petition the petitioner, except as provided in subsection (b) of this section, shall be examined under oath before the court and in the presence of the court. If the petitioner is prevented by sickness or other disability from being in open court for the final hearing upon a petition for naturalization, such final hearing may be had before a judge or judges of the court at such place as may be designated by the court.

[(b) The requirement of subsection (a) of this section for the examination of the petitioner under oath before the court and in the presence of the court shall not apply in any case where an employee designated under section 335(b) has conducted the preliminary examination authorized by subsection (b) of section 335; except, that the court may, in its discretion, and shall upon demand of the petitioner, require the examination of the petitioner under oath before the court and in the presence of the court.]

HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

(a) If, after an examination under section 335, an application for naturalization is denied or continued, the applicant may request a hearing before and immigration officer.

(b) Where there has been a failure to make a determination under section 335 on an application or a failure to have a hearing under subsection (a) on a denial or continuance of an application, the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations) may, in its discretion, and shall, at the request of the applicant in extraordinary circumstances, require such a determination or hearing.

* * * * * * *

(c) The Attorney General shall have the right to appear before any [court] *immigration officer* in any naturalization proceedings for the purpose of cross-examining the [petitioner] *application* and the witnesses produced in support of the [petition] *applicant* concerning any matter touching or in any way affecting the [petitioner's] *applicant's* right to admission to citizenship, and shall have the right to call witnesses, including the [petitioner] *applicant* produce evidence, and be heard in opposition to, or in favor of, the granting of any [petition] *application* in naturalization proceedings.

(d) The [clerk of the court shall, if the petitioner requests it at the time of the filing the petition for naturalization,] *immigration officer shall, if the applicant requests it at the time of filing the re-*

quest for the hearing, issue a subpena for the witnesses named by such [petitioner] *applicant* to appear upon the day set for the [final] hearing, but in case such witnesses cannot be produced upon the [final] hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. *Such subpenas may be enforced in the same manner as subpenas under section 335(b) may be enforced.*

(e) It shall be lawful at the time and as part of the [naturalization of any person] *administration by a court of the oath of allegiance under section 337(a)* for the court, in its discretion, upon the bona fide prayer of the [petitioner] *applicant* [included in the petition for naturalization of such persons], *included in a appropriate petition to the court,* to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

OATH OF RENUNCIATION AND ALLEGIANCE

SEC. 337. [8 U.S.C. 1448] (a) A person who has [petitioned] *applied* for naturalization shall, in order to be and before being admitted to citizenship, take [in open court] *in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b),* an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the [petitioner] *applicant* was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be required to take an oath containing the substance of clauses (1) through (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the [naturalization court] *Attorney General* that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clauses (5)(B) and (5)(C), and a person who shows by clear and convincing evidence to the satisfaction of the [naturalization court] *Attorney General* that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clause (5)(C). The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 322 of this title the [naturalization court] *Attorney General* may

waive the taking of the oath if in the opinion of [the court] *the Attorney General* the child is unable to understand its meaning.

(b) In case the person [petitioning] *applying* for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the [petitioner] *applicant* shall in addition to complying with the requirements of subsection (a) of this section, make under oath [in open court in the court in which the petition for naturalization is made], *in the same public ceremony in which the oath of allegiance is administered,* an express renunciation of such title or order of nobility, and such renunciation shall be recorded [in the court] as a part of such proceedings.

(c) If the [petitioner] *applicant* is prevented by sickness or other disability from [being in open court,] *attending a public ceremony,* the oath required to be taken by subsection (a) of this section may be taken [before a judge of the court at such place as may be designated by the court.] *at such place as the Attorney General may designate under section 334(e).*

(d) The Attorney General shall prescribe rules and procedures to ensure that the public ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are in keeping with the dignity of the occasion.

CERTIFICATE OF NATURALIZATION; CONTENTS

SEC. 338. [8 U.S.C. 1449] A person admitted to citizenship [by a naturalization court] in conformity with the provisions of this title shall be entitled upon such admission to receive from [the clerk of such court] *the Attorney General* a certificate of naturalization, which shall contain substantially the following information: Number of [petition] *application* for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; [title, venue and location of the naturalization court;] *location of the district office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance,* statement that [the court] *the Attorney General* having found that the [petitioner] *applicant* intends to reside permanently in the United States, except in cases falling within the provisions of section 324(a) of this title, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted as a citizen of the United States of America, thereupon ordered that the [petitioner] *applicant* be admitted as a citizen of the United States of America; attestation [of the clerk of the naturalization court; and seal of the court], *of an immigration officer; and the seal of the Department of Justice.*

[FUNCTIONS AND DUTIES OF CLERKS

[SEC. 339. [8 U.S.C. 1450] (a) It shall be the duty of the clerk of each and every naturalization court to forward to the Attorney General a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was

filed, and to forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

[(b) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such a court to citizenship a certificate of naturalization and to forward to the Attorney General within thrity days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Attorney General within thirty days after the close of the month in which such certificate was issued.

[(c) It shall be the duty of the clerk of each and every naturalization court to report to the Attorney General, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

[(d) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General, and shall account to the Attorney General for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

[(e) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in choronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of such court, all declarations of intention and petitions for naturalization.]

FUNCTIONS AND DUTIES OF CLERKS AND RECORDS OF DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZATION

SEC. 339. (a) The clerk or each court that administers oaths of allegiance under section 337 shall—

(1) issue to each person to whom such an oath is administered a document evidencing that such an oath was administered.

(2) forward to the Attorney General information concerning each person to whom such an oath is administered by the court, within 30 days after the close of the month in which the oath was administered,

(3) make and keep on file evidence for each such document issued, and

(4) forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of the court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively num-

bered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.

REVOCATION OF NATURALIZATION

SEC. 340. [8 U.S.C. 1451] (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings [in any court specified in subsection (a) of section 310 of this title] *in any district court of the United States,* * * *

* * * * * * *

FISCAL PROVISIONS

SEC. 344. [8 U.S.C. 1455] (a) [The clerk of court] *The Attorney General* shall charge, collect, and account for fees prescribed by the Attorney General pursuant to section 9701 of title 31, United States Code for the following:

(1) Making, filing, and docketing [a petition] *an application* for naturalization, including the [final] hearing on such [petition] *application* if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by [the naturalization court] *the Attorney General.*

* * * * * * *

[(c) The clerk of any naturalization court specified in subsection (a) of section 310 (except the courts specified in subsection (d) of this section) shall account for and pay over to the Attorney General one-half of all fees up to the sum of $40,000, and all fees in excess of $40,000, collected by any such clerk in naturalization proceedings in any fiscal year.

[(d) The clerk of any United States district court (except in the District Court of the Virgin Islands of the United States and in the District Court of Guam) shall acount for and pay over to the Attorney General all fees collected by any such clerk in naturalization proceedings: *Provided, however*, That the clerk of the District Court of the Virgin Islands of the United States and of the District Court of Guam shall report but shall not be required to pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings.

[(e) The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such respective clerks in their quarterly accounts which they are hereby required to render to the Attorney General within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Attorney General.

[(f) The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this title upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.]

[(g)] *(c)* All fees collected by the Attorney General[, and all fees paid over to the Attorney General by clerks of courts under the provisions of this title] shall be deposited by the Attorney General

in the Treasury of the United States except that all fees collected by the Attorney General, on or after October 1, 1988, under the provisions of this subchapter, shall be deposited in the "Immigration Examinations Fee Account" in the Treasury of the United States established pursuant to the provisions of sections 286 (m), (n), (o), and (p): *Provided, however,* That all fees received by the Attorney General [or by the clerks of the courts] from applicants residing in the Virgin Islands of the United States, and in Guam, under this title, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

[h] *(d)* During the time when the United States is at war [no clerk of a United States court shall] *the Attorney General may not* charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing [a petition] *an application* for naturalization or issuing a certificate of naturalization upon admission to citizenship [and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Attorney General as in the case of other reports required of clerks of courts by this title].

[i] *(e)* In addition to the other fees required by this title, the [petitioner] *applicant* for naturalization shall, upon the filing of a petition *an application* for naturalization, deposit with and pay to the [clerk of court] *Attorney General* a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such [petitioner] *applicant* may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same [from the clerk] *from the Attorney General* the customary and usual witness fees from the moneys which the [petitioner] *applicant* shall have paid to [such clerk] *the Attorney General* for such purpose, and the residue, if any, shall be returned [by the clerk] *by the Attorney General* to the [petitioner] *applicant*.

[SEC. 345. Repealed.]

* * * * * * *

ADMISSIBILITY IN EVIDENCE OF TESTIMONY AS TO STATEMENTS VOLUNTARILY MADE TO OFFICERS OR EMPLOYEES IN THE COURSE OF THEIR OFFICIAL DUTIES

SEC. 348. [8 U.S.C. 1459] (a) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 339 [(a)] (b), or (c), such clerk of court shall forfeit and pay to the United States the sum of $25 in each and every case in which such violation or omission occurs and the amount of such forfeiture may be recovered by the United States in a civil action against such clerk.

[(b) If a clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (d) of section 339, such clerk of court shall be liable to the United States in the sum of $50, to be

recovered in a civil action, for each and every such certificate not properly accounted for or returned.]

* * * * * * *

SEC. 404. [8 U.S.C. 1101, note] (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (other than chapter 2 of title IV).

(b) There are authorized to be appropriated to an immigration emergency fund, to be established in the Treasury, $35,000,000 to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

(c) Of the amounts authorized to be appropriated by section 404 to carry out this Act for a fiscal year, $1,000,000 shall be available only to carry out section 332(h) for such fiscal year.

* * * * * * *

INTERNAL REVENUE CODE OF 1986

(Public Law 99-514)

* * * * * * *

Section 3304(a) * * *

* * * * * * *

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 212(d)(5) of the Immigration and Nationality Act).

* * * * * * *

SOCIAL SECURITY ACT

* * * * * * *

Section 1614 (42 U.S.C. 1382)

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence

or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of [section 203(a)(7) or] section 1182(d)(5) of Title 8).

* * * * * * *

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1982

(Public Law 97-271)

* * * * * * *

"ADJUSTMENT OF IMMIGRATION STATUS

"SEC. 2. (a) the status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

* * * * * * *

"(c) * * *

* * * * * * *

"(4) For purposes of this subsection, the terms 'second preference petition', 'fourth preference petition', 'fifth preference petition', and 'immediate relative petition' mean, in the case of an alien, a petition filed under section 204(a) of the Act [section 1154(a) of this title] to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 203(a)(4), 203(a)(5), or 201(b), respectively, of the Act [section 1153(a)(2) 1153(a)(4), 1153(a)(5), or 1151(b) of this title] *(as in effect before October 1, 1989) or by reason of the relationship described in section 203(a)(2)(B), 203(a)(3), or 201(b)(2)(A)(i), respectively, of such Act (as in effect on or after such date).*

* * * * * * *

TITLE 18, UNITED STATES CODE

SEC. 1429. PENALTIES FOR NEGLECT OR REFUSAL TO ANSWER SUBPENA.

Any person who has been subpenaed under the provisions of subsection (d) of section 336 of the Immigration and Nationality Act to appear at the final hearing of [a petition] *an application* for naturalization, and who shall neglect or refuse to so appear and to testify, if the power of such person to do so shall be fined not more than $5,000 or imprisoned not more than five years, or both.

XII. ADDITIONAL VIEWS OF MR. SIMPSON

I voted to favorably report S. 358 to the full Senate, but I have serious concerns over two issues raised by the committee version of the bill: (1) the fifth preference, and (2) English language ability as a criterion for admission under the "point system."

Fifth Preference

I agreed to the committee substitute amendment (which restored the fifth preference to its status in current law) in order to reach a compromise with my committee colleagues. However, I have grave concerns that this amendment sets poor immigration policy and is not in the national interest.

In the ideal world, the United States would accept every person who wished to immigrate to our country and who would not otherwise be excludable. However, it is a simple fact that demand for immigrant visas exceeds—by geometric proportions—the number of immigrants that the American public will accept. This situation requires Congress to make the tough but necessary decision of what types of immigrants we should admit. Many scholars argue that we should give priority to close family members and skilled workers. I agree with those scholars.

The fifth preference allows adult U.S. citizens to petition for their brothers and sisters (and their immediate family). In effect, we allocate 65,000 visas per year to the brothers, sisters, brothers-in-law, sisters-in-law, nieces and nephews of U.S. citizens. I believe this is not a wise use of visas when closer family members (i.e., spouses and children) and skilled immigrants or immigrants needed by our economy are waiting in line—sometimes for years—to enter our country.

I am not anti-family or anti-immigrant. S. 358 as introduced would have reserved 75 percent of all permanent visas for immigrants with a family connection here, and I have voted today for an increase in immigration levels of 21 percent over current flows. In the past I was the principal sponsor of a program that gave amnesty to over 2 million previously illegal aliens. However, generosity should not be blind or naive. We must recognize that, when immigrant visas are limited, we must distribute them wisely so that they best serve the national interest. I strongly believe that awarding family visas to more distant family members (such as those in the fifth preference) makes no sense when closer family members (such as those in the second preference) wait in line for a visa.

There has been criticism of the bill that passed the Senate last year by Asian and Hispanic groups because that bill narrowed the fifth preference. What does the restoration of the fifth preference do for these groups? It gives new applicants under the fifth preference the right to join 1.4 million other persons waiting in line for a

visa in this category. It gives new applicants the right to wait at least 22 years for a fifth preference visa. While the American public may tolerate some immigration increases, I doubt it would swallow the clearing of a 1.4 million person backlog—particularly when that backlog would inevitably emerge again, because of the tremendous demand in this category.

Even with the previous bill's narrowing of the fifth preference, Asian and Latin American immigrants would have continued to supply approximately the same number of immigrants that they supply today, i.e,, 85 percent of present legal immigration. How such a bill could be interpreted as unfavorable to Asians or Latin Americans is beyond me.

The fifth preference should be de-emphasized so that we may give proper priority to closer family members, skilled workers, and other immigrants that our labor market needs. I deeply regret that the committee bill does not recognize this principle.

English Language Ability

S. 358 expands the number of "independent immigrants" who would enter the United States either because of a job-offer from a U.S. employer or because they possess certain skills and qualities that would serve our economy and country well. The skills that would have been recognized for the 55,000 visas awarded to those aliens who are *not* employer-sponsored were: (1) age, (2) education levels, (3) English language skills, (4) occupational skills in short supply in the U.S., and (5) additional experience or training in a needed occupation.

An amendment at committee deleted English language ability from the list of skills which would be considered when admitting immigrants under the "point system." I voted against this amendment in committee, and I trust that English language ability will be reinserted on the Senate floor.

Nearly every study indicates that immigrants with English language skills contribute to our labor market more effectively and more immediately. The Department of Labor's report, "Workforce 2000," predicted that any labor shortages in the next decades will come in the skilled occupations, where English language ability, education, and computational skills will be essential. The point system attempts to address this prospect, by granting 55,000 visas to persons with the skills and qualities that our Nation is likely to need in the coming years.

While I do not believe that English language ability should be a sole or controlling factor when admitting point system immigrants, I do believe it is an important variable in determining immigrant success and performance, and that it should be considered when choosing independent immigrants.

I emphasize that, under S. 358, 91 percent of all immigrants would not benefit from knowing English, nor suffer from not knowing English. Thus, family-connection immigrants and employer-sponsored immigrants would not be included in the class of immigrants for whom English language ability is recognized. However, for the 55,000 persons under the point system who will enter with-

out a family tie or a job waiting for them, English language ability will serve them, and us as a nation, quite well.

Some have criticized this proposal as a departure from our "Nation's tradition" of not requiring an immigrant to have particular skills before he or she enters the country. However, our immigration laws moved away from this "skills-neutral" approach decades ago. For example, for years we have admitted aliens who, at the time of application for a visa, possess advanced academic degrees or who otherwise demonstrate "exceptional merit and ability." This is as it should be: we must allow visas to be granted to people who would serve our country well. English language skill is simply another skill that immigrants might possess that would serve our country well, and recognizing such skill would not be a departure from the immigration law of the past 40 years.

I understand the sympathy that many of my colleagues have for the immigration policy of 100 years ago—when most immigrants truly entered with nothing other than a burning desire to become good Americans. In response, I would refer to the advice of another American who embodies the essence of our Nation, Abraham Lincoln: "As our case is new, so we must think anew and act anew. We must disenthrall ourselves. . ."

The case is new, today. We are no longer a Nation of unsettled frontiers, but an industrialized Nation that is facing strong challenges to provide large numbers of workers who can perform in an increasingly services-based economy. We must disenthrall ourselves—and allow English language skills to be considered when we admit the 9 percent of our immigrants who enter without family or U.S.-employer connections.

ALAN K. SIMPSON.

XIII. MINORITY VIEWS OF MESSRS. HATCH AND DECONCINI

The compromise embodied in the substitute to S. 358 adopted by the committee contains a number of positive features. We are pleased that the current language for the fifth preference, for brothers and sisters of U.S. citizens, has been retained. The original S. 358 would have limited this category to never married brothers and sisters. We believe the creation of the new seed/independent immigration category under a point system is a worthy provision. The bill approved by the committee deletes points for English language ability in this new category under the point system. We supported this deletion. We believe that people should learn the English language once they arrive in the United States and before they are granted the privilege of American citizenship. We do not believe, however, that English speaking ability should provide an independent advantage to any person seeking to come to this land of opportunity from around the world.

We believe, however, that important concerns remain to be addressed.

S. 358 Is a Serious Threat to the Family Preference System

Under current law there is no cap on the number of immediate relatives of U.S. citizens who can immigrate to the United States each year. "Immediate relatives of U.S. citizens" are their minor children, spouses, and parents of citizens over 21. In addition, 216,000 visas are allotted to other family connected immigrants in the following preference categories:

Unmarried adult sons and daughters of U.S. citizens;

Spouses, unmarried sons and daughters of permanent resident aliens;[1]

Married sons and daughters of U.S. citizens;

Brothers and sisters of adult U.S. citizens.

Moreover, the visas allocated to these four family connection preferences are not offset by the number of immediate relative immigrants.

Under the committee bill, the number of family connection preference visas will equal 480,000 minus the number of immediate family relatives who enter the country.[2] These immediate relatives remain able to enter the country without numerical limitation under the committee bill, as provided in current law.

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[1] The committee bill limits the preference for unmarried sons and daughters to those who have petitioned for a visa before the age of 26.

[2] The committee bill also provides that unused visas in the independent immigrant category will be added to the number of family connection preference visas. It is uncertain, however, if not unlikely, that this provision will result in any such addition. The sponsors of the bill appear to assume that there will be no such unused visas.

Accordingly, as the number of immediate family relative immigrants increases, the opportunity for family reunification under the family connection preference categories is reduced. Indeed, immigration of immediate relatives is expected to grow during the next decade. The General Accounting Office estimated on April 4, 1989, that under S. 358 as originally introduced, family preference immigration during 1990 to 1999 would drop from 2,160,000 under current law to 1,213,133—a drop of nearly 1 million.

Moreover, the GAO also testified on March 3, 1989, about S. 358 as originally introduced. GAO said that, as a result of the offset of the immediate relatives against the family preference immigration categories, "family preference immigration could drop to zero" by 1998–99.

We understand that the committee bill provides a somewhat larger number of visas available for family connection preference immigrants than S. 358, as introduced. Thus, GAO's estimates would need some adjustment. But even under the committee bill, the future availability of the family preference categories is in doubt because of expected growth in the immediate family relative category.

We realize the committee bill contains an expedited mechanism for increasing the level of legal immigration, starting in 1994, but there is no guarantee of any such increase. In that year, and every 3 years thereafter, the President may recommend an increase—or decrease—in the family connection preference figure. If the increase or decrease is 5 percent or less, it goes into effect unless Congress disapproves it. A recommendation of an increase—or decrease—of more than 5 percent must be approved by Congress before it becomes effective. Thus, there is no guarantee of any increase in the future, if the visas available to the four family connection preferences are reduced because of the offset of immediate family relatives.

In our view, immigration reform should permit at least modest increases in family preference immigration. These long-standing categories permit family reunification. Current law permits 216,000 immigrants in these preferences. We understand the committee bill will result in an initial increase to 260,000.[3] But as the number of immediate family relatives increases, the number of visas available to those in the four family connection preferences categories decreases. Thus, the offset could undermine not only the increase of 44,000 in the family connection preferences, but actually reduce the visas available to below the number available under current law, and eventually eliminate the family preference system altogether. This would work a profound change in our immigration system. Thus, while the committee bill on its face will cause a modest, initial increase in family connection preference immigration, it contains the seeds of its serious decline or virtual elimination.

We believe legal immigration reform legislation should retain the current law's commitment to family reunification. The family

[3] This figure, provided by the members of the Immigration Subcommittee, is derived by offsetting the appoximately 220,000 immediate family relatives who entered the country in the preceding year, against the 480,000 figure.

reunification system reflects traditional American values. We believe the offset of immediate family immigration against family connection preference immigration is undesirable. We should not pit immediate family immigration against family connection preference immigration.

At a minimum, Congress should assure that the visas available to family connection preference immigrants do not fall below the number available under current law, 216,000. This can be achieved by a compromise approach. Under such an approach, both the cap on family connection preference immigration and the offset of immediate family relatives could be retained. The number of family connection preference visas, however, would be guaranteed never to drop below 216,000 in any year. Only by providing such a floor for family connection preference immigration, which merely reflects the number of visas available today, will we be certain to preserve fully the integrity of the family preference system.

ORRIN G. HATCH.
DENNIS DECONCINI.

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EXHIBIT B

United States General Accounting Office

GAO Congressional Record, 101st Congress, Senate

Bill	Date	Page(s)
S.358	July 12, 1989 (92)	S7748-7798

Action:

Immigration Act of 1989: Senate continued consideration of S. 358, to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, with a committee amendment in the nature of a substitute, taking action on further amendments proposed thereto, as follows:

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Adopted:

(1) Murkowski Amendment No. 241, to establish a task force to assess the specific needs and status of citizens of the People's Republic of China who were admitted under non-immigrant visas to the United States.

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(2) Gorton Modified Amendment No. 242, to grant permanent residence status to certain non-immigrant nationals of the People's Republic of China.

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(3) Kennedy (for Moynihan) Amendment No. 243, to require the Attorney General, in consultation with the Secretary of State, to provide a report to Congress on U.S. immigration policy toward Burmese students.

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(4) By 61 yeas to 38 nays (Vote No. 107), Chafee Amendment No. 244, to provide temporary stay of deportation for certain eligible immigrants.

Page S7760

(5) Humphrey Amendment No. 245, to continue to permit, after October 1, 1989, the immigration of certain adopted children.

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(6) Lautenberg Amendment No. 247, to require the Secretary of Labor to identify labor shortages and develop a plan to reduce such shortages.

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(7) By 62 yeas to 36 nays (Vote No. 109), Hatch/DeConcini Amendment No. 238, to prevent the reduction of family preference immigration below the level set in current law.

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(8) Levin Amendment No. 248, to instruct the Commission on Legal Immigration Reform to review the impact of per country immigration levels.

Page S7795

Rejected:

(1) By 27 yeas to 71 nays (Vote No. 106), Helms/Shelby Amendment No. 240, in the nature of a substitute.

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(2) By 43 yeas to 56 nays (Vote No. 108), Bumpers Amendment No. 246, to strike out the employment creation visa category.

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A unanimous consent agreement was reached providing for the further consideration of the bill and certain amendments to be proposed thereto.

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Senate will continue consideration of the bill and amendments proposed thereto on Thursday, July 13.

THE IMMIGRATION ACT OF 1989

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 358, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Helms Amendment No. 240, in the nature of a substitute.

The PRESIDING OFFICER. The Chair wishes to announce that under the previous order a vote on or in relation to the Helms amendment, amendment No. 240, is to occur at 11:30 this morning, with the time for debate between now and 11:30 to be equally divided and controlled by Senator HELMS and Senator KENNEDY.

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, under the agreement reached last evening, Senator HELMS was entitled to a full 60 minutes of debate on his amendment, 30 minutes last night and 30 minutes this morning. The various speakers in the morning hour extended beyond the allotted time, which means that Senator HELMS would not receive the full 60 minutes to which he is entitled on his amendment.

I have also discussed with Senator HELMS the Foreign Relations Committee wanting to complete action on the foreign assistance authorization bill.

Accordingly, Mr. President, I ask unanimous consent that the time agreement with respect to the disposition of the Helms amendment be reinstated at this point and that the Foreign Relations Committee be authorized to meet during today's session for the purpose of reporting the foreign assistance authorization bill.

Mr. SYMMS. I object.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object.

Mr. SYMMS. I object.

I have been requested by another Republican colleague to object to the Foreign Relations Committee meeting, and I object.

Did the Senator have two requests in one?

Mr. MITCHELL. Yes, I did.

Mr. SYMMS. I object to the Foreign Relations Committee part of that.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Well, it is a single request.

Mr. SYMMS. I object.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 30 minutes of debate on the Helms amendment, to be equally divided between Senator KENNEDY and Senator HELMS; that the vote on the Helms amendment occur at 12:40 p.m.; that following the completion of the 30 minutes' debate, the amendment be set aside and another amendment be in order for consideration at that time; and that the vote on the Helms amendment may be on or in relation to the Helms amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object, and I shall not object.

The PRESIDING OFFICER. The Senator reserves the right to object.

Mr. HELMS. I have no objection.

The PRESIDING OFFICER. Hearing no objection, the unanimous-consent request is agreed to.

AMENDMENT NO. 240

The PRESIDING OFFICER. Who yields time on the amendment of the Senator from North Carolina?

Mr. KENNEDY. Mr. President, last evening both my colleague, Senator SIMPSON, and I gave a response to the amendment of the Senator from North Carolina and we are prepared to debate this issue further. But that was by and large our opinion about why this amendment should not be adopted.

I reserve the remainder of my time or I will suggest the absence of a quorum, the time to be equally divided.

Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized for 5 minutes.

Mr. SIMON. Mr. President, I have great respect for my colleague from North Carolina, who is one of the hardest working Members of this body. But once in a while my friend from North Carolina is wrong on an amendment, and this happens to be one of those occasions where I think he is wrong.

I think he is wrong for two reasons. One is I think we should continue the fifth preference for brothers and sisters to be able to join families. It is a very, very fundamental question, whether family unification should continue to be a priority. And part of what we structured here between Senator KENNEDY, Senator SIMPSON, and myself, three of us who were members of the Immigration Subcommittee, was a compromise, and as all compromises, it can fall apart; and if the Helms amendment were to be adopted, it would fall apart.

If there is great merit to the Helms amendment, then, obviously it should be adopted, but I would urge our colleagues on both sides to listen carefully to those of us who serve on that Immigration Subcommittee before voting on this amendment.

Second, and this is a fundamental, philosophical question: Do we give preference to those who speak English when they come into this country?

We discussed this in great detail in the Senate Judiciary Committee. My amendment to knock out the English preference carried by a 12-to-2 vote. And it was one of those rare occasions when you really had a fundamental philosophical discussion. I remember very well Senator SPECTER saying: "My parents came over, they could not speak English." I remember Senator LEAHY saying that his grandfather who came over from Italy, and he could not speak English, became the largest employer in his community in Vermont.

As I look through this list of Members of the Senate, the rollcall that was just given to me, I am sure I am skipping a great many, but there are a great many Members who would not be here in the U.S. Senate today if we had had an English language preference.

I am probably like a lot of people here; I have never checked out my roots real carefully. At one time I tried to get my daughter to do it. But I know that I am some kind of a mixture of English, German, and Danish. Two-thirds of those with my predecessors could not have come to this country.

As we look down the list of Members of the Senate: Senator BENTSEN, Danish by background. That would have been excluded. Senator BOSCHWITZ, Senator COHEN, Senator D'AMATO, Senator DASCHLE, Senator DECONCINI, Senator DOMENICI, Senator DURENBERGER, Senator HEINZ, Senator INOUYE, Senator KASSEBAUM, Senator KOHL, Senator LAUTENBERG, Senator LEVIN, Senator LIEBERMAN, Senator MATSUNAGA, Senator METZENBAUM, Senator MIKULSKI, Senator MURKOWSKI, Senator RIEGLE, Senator SARBANES—and I am sure many others. Because even those who have names that are English or Irish sounding frequently have forebears who were of some other national background.

It would be the first time in the Nation's history that we would give preference to those who speak English. My guess, in the galleries here right now, Mr. President, that a substantial number of the people in the galleries have names indicating that when their parents and grandparents came over, that they did not speak English.

I do not think we ought to be going in that direction. My hope is that we will reject the amendment offered by my friend from North Carolina, Senator HELMS, and that we follow the traditions that we have followed in the past.

So I would urge a no vote on the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. Mr. President, what is the status of the allocation of time?

The PRESIDING OFFICER. The Senator from North Carolina has 15 minutes remaining. The Senator from Massachusetts has 10 minutes remaining.

Mr. HELMS. Go ahead.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, just briefly, with relation to what my friend from Illinois has said, and indeed when we get into this issue of English language—and that is all that Senator SIMON was addressing himself to—that is a very emotional thing, obviously. It is something that stirs our patriotism. Every one of us is a relative of immigrants. I cannot give you the roots of all of mine, but there were some unique characters of various ethnic groups, some awfully good people and some awfully bad people. That is the way that works, too.

But I think we ought to keep that separate. We will deal with that later. Because I think I, or someone, will be putting in an amendment with regard to English language being only one of several requirements under the point system. In a very limited way are we discussing that. Ninety-one percent of the people under this bill need speak no English at all, and they will be admitted to the United States. That is something that has to be heard in this debate, and I am going to come up with it each time it does come up. We are not becoming mean-spirited or pinched or driven. That is not our nature.

But the people who have succeeded in the United States have succeeded because, often, they came here and were involved in total immersion in English and knew nothing? We are going to leave people to float on that basis under this bill in any version, except perhaps Mr. HELMS', where only 9 percent of the people in this legislation are going to be asked to have that as one of the qualifications for 55,000 numbers under the point system. No one else is going to be required to know English in any form; period. And, unfortunately, they will be the ones who in a new computerized society will suffer the most.

I do not see what service we perform for people under a point system when we ask about their age and their skills and their qualifications and leave English out of it and think that they can succeed in a highly skilled, mechanical, computerized service society. I think that is a mistake, for Americans to believe on some basis that that is some gratutitious thing we do for them, some helpful thing.

That is a separate matter. I hope we can keep it separate. I am willing to stick with my bargain every foot of the way. We will have a separate debate on the English language portion dealing with only 9 percent of the numbers in this bill and that being one of only five requirements. I think it is something we should not just overthrow on the basis that somehow it has to do with our heritage or the Statue of Liberty or whatever it is. It is not an appropriate way, in my mind, to address the issue.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I require.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS].

Mr. HELMS. First off, Mr. President, let me pay my respects to the distinguished assistant minority leader, Mr. SIMPSON. He is always objective, and he is always fair. he has just stated my response to my friend and neighbor in the Dirksen Building, Senator SIMON. He has made the case splendidly. I hope we will follow his sound advice.

Mr. President, I failed to mention yesterday that the distinguished Senator from Alabama [Mr. SHELBY] is a principal cosponsor of this amendment. I ask unanimous consent that it thus be shown and that hereinafter this amendment shall be known as the Helms-Shelby amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, the question before the Senate is simple: What is in the best interest of America? That is a question that we often ignore at our own peril.

This idea of what is in the best interest of America was expressed by Lyndon Johnson during his 1964 State of the Union Address. Paraphrasing John F. Kennedy, Mr. Johnson stated that we should be less concerned with setting immigration policy based on what country you come from, and ask instead, "What can you do for your country?"

Mr. President, I agree with that statement. That is the reason this amendment is pending.

We must develop an immigration policy that is in the best interest of America, America as a whole, not a policy based primarily on the desire of some citizens to be reunited with distant relatives or relatives by marriage. The pending Helms-Shelby amendment is developed to help America, to help us reunit American families with their closest relatives and to help American businesses meet future labor shortage. That is what this amendment is all about.

The current immigration system is based primarily on family reunification. More than 90 percent of visas go to relatives of immigrants. Many of these visas, however, are for distant relatives—brothers in law, nieces, nephews, and so on. Obviously, this causes a tremendous chain migration problem. In fact, the backlog for these visas, called fifth preference visas, is so large that many relatives wiat in line for more than 20 years to get one.

As one columnist recently stated, we should not confuse family reunification with family reunions.

Both the Senator form Massachusetts and the Senator from Wyoming have criticized the definition of the fifth preference. In additional views to the committee bill, Senator SIMPSON said:

> The fifth preference should be deemphasized so that we may give priority to closer family members, skilled workers and other immigrants that our labor market needs. I deeply regret that the committee bill does not recognize this principle.

The Senator from Massachusetts has criticized the system for creating an illusory and false hope of family reunification. That is because relatives of some citizens wait in line for up to 20 years to enter the country. This is unfair and unwise. That is why the 1988 Kennedy-Simpson immigration bill contained a limited definition of the fifth preference, just like the pending Helms-Shelby amendment. A limited definition will help reunite American families.

The Senate is on record 3 times, in 1982, 1983, and 1988, as favoring a limited definition or complete elimination of this fifth preference.

Mr. President, the pending Helms-Shelby amendment addresses the needs of America in a second way. It increases the availability of skill-based business visas. That is to say, people who can contribute to the productivity of America.

America needs a policy that encourages skilled workers and people with exceptional abilities to come to our country. Unfortunately, our current system discourages them from immigrating beacuse there is a 1- to 3-year wait for skills-based, business-related visas under the third or sixth preference.

As a result, American companies have difficulty recruiting highly skilled workers who have crucial knowledge of international markets and pioneer research. If a business has a need for skilled workers, and those workers cannot be found in this country, the business loses its competitive edge by having to wait up to 3 years to meet its labor needs. How do we expect America to remain competitive if our companies, who often face labor shortages in this country, can't recruit the best talent and top notch researchers from abroad?

Mr. President, the Helms-Shelby amendment is good for America because it increases the availability of skill-based, business-related visas.

The Senator from Massachusetts [Mr. KENNEDY] pointed out last night that I was one of four Senators who voted against the 1988 bill. He was right about that, and I did so for a number of reasons.

First, the 1988 bill did nothing whatsoever to increase the skill-based, business-related visas. But in the pending Helms-Shelby amendment, we provide an increase of 37,200 of these visas.

Second, the 1988 bill had a mechanism that automatically increased the national level by up to 5 percent upon the President's recommendation and without an affirmative vote by the Congress of the United States. The Helms-Shelby amendment drops this very unwise delegation of congressional authority to the executive.

Finally, I was opposed to the national level of 590,000 provided by the 1988 bill. The fact that the Helms-Shelby amendment provides a national level of 600,000 indicates that I have gone as far as I can to develop an amendment that genuinely helps America. Lyndon Johnson was right when he paraphrased John Kennedy about doing something for America, and that is what this amendment will do.

In summary, Mr. President, let me reiterate the major points of the Helms-Shelby amendment. First, this amendment limits the definition of the fifth preference, without reducing the number of fifth preference visas. Frankly, I agree with Senator SIMPSON—I would prefer to eliminate the fifth preference entirely.

Second, this amendment increases the business visas without increasing the overall national level. Third, we retain the power of Congress to set immigration policy instead of allowing any President, whoever he may be, to usurp that authority.

The current bill allows for an automatic increase of up to five percent in the level of immigration upon the President's recommendation.

Finally, the Helms-Shelby amendment retains the points for English language that were included in the point system in the original version of the bill.

I urge my colleagues to vote for the pending Helms-Shelby amendment and the best interest of America.

I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 9½ minutes remaining.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

Mr. President, as I said last evening, I want to commend the Senator from North Carolina for the amendment which he has brought to the Senate, although I oppose it, as the Senator from wyoming does. He proposes an amendment with a national ceiling of 600,000. That is what we support. The position he illuminated on the floor last evening and today is a far different position from where he was last year when he was one of four Senators who voted against a bill which remains

the basic core package before the U.S. Senator today.

The compromise bill which we recommend follows along the recommendations of the 1981 Select Commission which made recommendations which the Senate has accepted and adopted in the 1986 legislation, and the principal sponsor was the Senator from Wyoming [Mr. SIMPSON]. That was half of their recommendations.

They also made a series of recommendations dealing with the legal immigration policy. By and large the bill before us incorporates most of those recommendations, although we have made some adjustments and changes on the basis of various proposals that have been made before our subcommittee.

But, Mr. President, the Senator from North Carolina says he wants greater attention to skills. We have provided greater priority to skills in the third and sixth preference as well as the new independent category. We have not gone all the way that the Senator from North Carolina might like to go with his amendment, although we feel we have addressed that issue—a balance between family reunificiation and new skills, a lot more attention on new skills, but we also retain the historic priority that this Nation has placed on immigration policy and that is in the reunificiation of families.

We have had diversity in our committee about how that best can be done. Should preference be given to small children or should we consider the extended family, the larger family. We have debated and discussed that matter, and we find, Mr. President, or at least I am convinced that those individuals who are going to be most impacted by immigration policy strongly support the concept that is built into the fifth preference. I think that is a matter open to debate and discussion. But we have made a cut on that.

So, Mr. President, I do feel, with all due respect to the observations of the Senator from North Carolina, that our bill already represents an appropriate balance between, one, the reunificiation of families, which has always been a priority of our immigration policy, and two, a more significant emphasis on individuals who can make a contribution to this country in terms of additional skills. That is basically the legislation which is before us.

As we mentioned before, there are areas which I would, if I was fashioning the legislation, fashion it somwhat differently. The Senator from Wyoming has indicated he would do the same. But I have no hesitancy in recommending this bill. It is a sound proposal and it deserves support.

So I hope that our colleagues will vote in opposition to the Helms amendment. I think the compromise bill which is before the Senate is a more worthwhile, valuable, and justifiable immigration policy.

Mr. President, I am prepared to either reserve the remainder of my time or to suggest the absence of a quorum, the time evenly divided.

The PRESIDING OFFICER. The Chair seeks direction from the Senator from Massachusetts and the Senator from North Carolina. The Senator from North Carolina has 4½ minutes remaining, the Senator from Massachusetts has 5½ minutes remaining. Does either wish to yield time at this time?

Mr. HELMS. Mr. President, let me give another summary of what the Helms-Shelby amendment does and what it does not do. I want to underline and emphasize as greatly as I can, that it is time to do something for America.

First, we need a legal immigration policy that serves America and encourage skilled people to come to our country. If you want to do something for America, you should vote for the Helms-Shelby amendment.

The Helms-Shelby amendment increases business visas by the 37,200 without increasing the cap. The skilled-based visas now account for only 10 percent of all visas. I am sure every Senator is hearing pleas for more skill-based immigrants from business and industry in his or her State.

Second, the Helms-Shelby amendment gives points for English language ability in the point system.

Third, the Helms-Shelby amendment does not—does not—reduce the number of fifth preference visas during the first 3 years. After the third year, the number is reduced by 20,000, but this will leave almost 45,000, which is twice as much as provided in last year's Kennedy-Simpson bill. Furthermore, the Senate voted in 1982 to eliminate this fifth preference completely.

In 1988, last year, the Senate voted by 88 to 4 to limit the number of fifth preference visas to 22,000. The Helms-Shelby amendment now pending is more generous than both of those bills. So as Senator SIMPSON said, there is nothing mean spirited about the American people, and there is nothing mean spirited about efforts to try to come up with immigration legislation that will be beneficial to America.

I close as I began. Lyndon Johnson was exactly right when he said that our immigration policy should be based on what is best for America. I submit, Mr. President, that the pending Helms-Shelby amendment is better for America than the underlying bill.

I yield the floor. I reserve what little time I may have remaining.

The PRESIDING OFFICER. All time of the Senator from North Carolina has expired.

Mr. HELMS. I thank the Chair.

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator has 5½ minutes.

Mr. KENNEDY. I yield to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, let me very briefly respond to my friend from North Carolina saying we are in agreement that immigration policy ought to be based on what is best for America. That is given. That is fundamental. But the question is how do you best serve this country in immigration policy? We do not need sweeping changes in immigration policy because one person abuses it in New York. I do not know anything about the case that he cited but there are other ways of dealing with that. But if you take a look at who is winning national merit scholarships, who the young people are who are coming up at the very top of their class frequently these days, frequently it is Asian young people, people who were brought in under family preference, and people who would be excluded frequently if you had that English language preference.

I hope my colleagues will join Senator KENNEDY and Senator SIMON in voting against the Helms amendment.

Mr. SHELBY. Mr. President, it is with great pleasure that I join the distinguished senior Senator from North Carolina in offering this amendment to the immigration bill presently being considered by the Senate. I want to make it clear that this amendment does not reduce the national level of 600,000 contained in the Kennedy-Simpson bill. The Helms-Shelby amendment would increase immigration in the independent category and would hold the overall level of family based immigration levels at current levels. The Helms-Shelby amendment would increase the present third and sixth preferences in excess of 35,000. I strongly believe that one of the objectives of our immigration policy should be to increase the number of immigrants who would come into this country because of greater skills. This is in our national interest.

The Helms-Shelby amendment would also retain the points for English language that were included in the point system in the original version of the bill. I also strongly believe that this is in our national interest. This is not a perfect amendment, but I submit that it does provide a more reasoned and superior balance than that contained in the Kennedy-Simpson bill. I urge my colleagues to support the Helms-Shelby amendment which will make the legislation before us a better product.

Mr. KENNEDY. Mr. President, we are moving to the end of the debate and discussion. I will just point out to the Members what, in effect, the Senator from North Carolina basically does. After the 3 years, he reduces the fifth preference by 20,000. He increases the third preference from the 27,000 to 46,000. This is the change. That is 20,000 for higher skills but he

reduces the selected immigrants which is the point system which are the more highly skilled by 14,000.

So with this marvelous presentation about what is good and what is not good is basically moving some numbers around with the requirement that the Senate consider immigration policy 3 years from now, and penalizing those families which want to be reunified.

We all understand the long lines that exist in terms of certain countries. We are not able to address that as completely as some of us would like. But nonetheless, Mr. President, I believe that our proposal is a significant improvement over the one that is being offered by the Senator from North Carolina. And I hope at the appropriate time that it would be rejected.

Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back and, therefore, all time has expired.

Under the previous order, the Helms amendment, amendment No. 240, is to be set aside with a vote to occur in relationship to the amendment at 12:40 p.m.

Mr. KENNEDY. Mr. President, we are open for further amendments.

The PRESIDING OFFICER. The pending question is the committee substitute to the bill.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, to try to give the Members some idea of the way we are proceeding, we hope we can address some of the concerns of Senator GORTON and certain of those of Senator MURKOWSKI prior to the time of the 12:40 vote. After that vote, we are hopeful that we can recognize the Senator from Pennsylvania [Mr. SPECTER] who will be at the Hastings hearing. Perhaps we can deal with his amendment prior to the resumption of that hearing around 1 o'clock today. He is to start the debate and discussion on it. Then it is our hope that around 2 we will address the amendment of the Senator from Arkansas [Mr. BUMPERS]; and then following that, the amendment of the Senator from Utah [Senator HATCH]; and then there will be the amendment of the Senator from Wyoming at some time right after.

Those, by and large, are the amendments which we have in hand. If there are Members that have other amendments, we hope that they will contact us. I know the Senator from New York [Senator MOYNIHAN] has an amendment dealing with Burmese students. So we are moving along, and we have been working with our colleagues. We are glad to either debate the legislation or consider those amendments, and a number of amendments are being worked out; but I hope that if there are those who do have amendments, that they will come to the floor and offer those amendments, so that we can deal with them and permit the Senate to move on to some other important business.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. I thank my good colleague for reviewing that. Apparently, Senator GRAMM has an amendment and perhaps Senator ARMSTRONG. I am not aware of the content.

So at least we know generally, and perhaps, as the Senator and I have discussed, at some time during the day, we will try to seek a unanimous-consent agreement that we close off any further amendments, because certainly people have been well aware that this bill was at the desk. So we certainly should have that ability, and I will notify my colleagues on this side of the aisle to please advise me of any amendments on this bill, preferably at the next rollcall vote, and we will be prepared then to include the time. I believe Senator CHAFEE may have an amendment. Then we can begin to set our agenda. I thank my colleague.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, the distinguished comanager of the bill, Senator SIMPSON, and I have been working on an amendment that I had, and I wish to work with him further on that. Is there intention to have a quorum call now? If so, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

AMENDMENT NO. 241

Mr. MURKOWSKI. Mr. President, I send an amendment to the desk in the form of a sense-of-the-Senate resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], proposes an amendment numbered 241.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following new section:

SEC. . TASK FORCE ON STUDENTS FROM THE PEOPLE'S REPUBLIC OF CHINA IN THE UNITED STATES—

(1) ESTABLISHMENT.—It is the sense of the Senate that the President shall establish a task force to be known as the Task Force on Certain Nationals of the People's Republic of China in the United States (hereafter in this section referred to as the "Task Force"), composed of the Secretary of State (or his designee), who shall be the chair of the Task Force and representatives of other relevant agencies, as determined by the Secretary of State.

(2) DUTIES AND RESPONSIBILITIES.—The Task Force shall carry out the following duties and responsibilities:

(A) Taking into consideration the situation in the People's Republic of China, the Task Force shall assess the specific needs and status of citizens of the People's Republic of China who were admitted under nonimmigrant visas to the United States.

(B) The Task Force shall formulate and recommend to the Congress and the President policies and programs to address the needs determined under subparagraph (A).

(C) The Task Force shall establish directly or indirectly a clearinghouse to provide those Chinese citizens described in subparagraph (A) and United States Institutions of higher education with appropriate information including—

(i) public and private sources of financial assistance available to such citizens:

(ii) information and assistance regarding visas and immigration status; and

(iii) such other information as the Task Force considers feasible and appropriate.

(3) REPORTS.—(A) Not later than 60 days after the date of enactment of this Act, the President shall submit to the Congress a report on the status and work of the Task Force.

(B) Not later than May 1, 1990, and every 90 days after the establishment of such Task Force, the President shall submit to the appropriate committees of the Congress a report prepared by the Task Force, which shall include—

(i) recommendations under paragraph (2)(B); and

(ii) a comprehensive summary of the programs and activities of the Task Force.

(4) TERMINATION.—The Task Force shall cease to exist 2 years after the date of enactment of this Act.

Mr. MURKOWSKI. Mr. President, the purpose of the amendment specifically is to establish a task force to assess the changing needs of Chinese citizens who have entered the United States on a nonimmigrant visa. The provision creates a task force to formulate and recommend to Congress and the President additional actions that may be needed as a consequence of the changing needs of the Chinese students in the United States as our relationship with the People's Republic of China unfolds.

It would basically establish a clearinghouse for students to obtain information relative to public and private financial assistance sources and information and assistance regarding visas, immigration status, et cetera.

The task force would be required to submit a report to the President within 60 days regarding the status of the work of the task force in their

oversight responsibilities; by May of 1990, and every 90 days thereafter, the task force will submit a report to Congress and the administration detailing actions that may need to be taken and summarizing programs and activities of the task force.

The task force would have a termination date 2 years after enactment and I might add that this is language that is similar to what is in the House bill. This amendment would however be, a sense-of-the-Senate amendment on the pending bill.

In conclusion, Mr. President, the situation in China is very fluid. It is important that we base future decisions regarding efforts to help Chinese students in our country on solid information as the situation in the People's Republic of China evolves.

I have cleared this, I believe, satisfactorily with the managers of the bill, Senator KENNEDY and Senator SIMPSON. I ask their support at this time.

Mr. KENNEDY. Mr. President, I commend the Senator from Alaska for bringing this matter to our attention. There are ample precedents for this kind of action. I would certainly hope that not only do we get a sense of the Senate, but it would be a sense of the administration as well.

As the Senator probably remembers, at the time that we had the original Indochinese refugee crisis in 1975, a similar task force was developed under Julia Taft at that time in the Ford administration. It was very, very effective in terms of responding to the kinds of issues which the Senator has mentioned.

I think that that kind of a coordinated effort brought together within the administration would be something that would serve those young people here who in many instances have had their lives disrupted and are at a very critical period of their lives in terms of making decisions and would need information to be made available to them that could be extremely useful.

So I commend the Senator for the amendment and urge my colleagues to support it. I am sure they will. I think it is very worthwhile.

I want to give him the assurance that members of the Subcommittee on Immigration and Refugee Affairs will look forward to working very closely with that task force, reporting back to the Senate if there are things that we find that can be and should be done to help respond to their very important and significant needs of the students.

Mr. SIMPSON. Mr. President, as the comanager of the legislation, I appreciate very much working with Senator MURKOWSKI and appreciate his willingness to present this as a sense-of-the-Senate provision. It shows his caring nature and that is something we learned about the Senator from Alaska.

I think he has visited, too, with his students at the University of Alaska and other institutions, as I have done at the University of Wyoming. We have 80 Chinese students at the University of Wyoming, which is rather surprising for our population and the enrollment at the university. I met with them last weekend. A remarkable group. They are in a sensitive, sensitive area.

You know that this Government will be watching very closely what is happening in the People's Republic, how they are being dealt with, whether they have a fear of return, whether some may seek asylum. And, of course, any of those seeking asylum will be, and I think their families would be, in a rather somewhat more perilous condition in the mainland.

So we will keep in close touch. We will assess these issues. The recommendations are worthwhile. The reporting structure under the sense of the Senate is rather complete. In fact it may be burdensome, I do not know, every 90 days.

But, in any event, what we did with Senator MITCHELL's and Senator DOLE's proposal yesterday, what the House has done with their proposal last week, a week ago, and what the administration will do—an administration that is probably more aware of things in the People's Republic than any administration we have ever had because of the President himself serving as an Ambassador to the People's Republic. I think this is an acceptable step.

I assure the Senator from Alaska that in my capacity as ranking member of the Immigration and Refugee Affairs Subcommittee that I will certainly assist Senator KENNEDY and I know he will be ever alert to what it is we do on a month-by-month basis with these remarkable students that we are very pleased to have in our country and they are a resource that we must care for. I thank the Senator from Alaska for doing that.

Mr. MURKOWSKI. Mr. President, I thank my two colleagues, the Senator from Massachusetts and the Senator from Wyoming. I think that we have all experienced, particularly over the recess, the opportunity to meet with Chinese students at our respective universities. I had the opportunity to meet with several Chinese students studying at the University of Alaska in Fairbanks, University of Alaska-Anchorage, and Alaska Pacific University. I was left with a clear sense of the tremendous void they feel as far as their personal situations are concerned. Some of the students I met had just graduated, and had planned to go back to China, but now find themselves unable to go back to China. They face problems seeking employment in this country due to the status of their visas. I understand my colleague from the State of Washington has legislation to address this particular problem. Our dialog with these men and women made us aware of the responsibility we in Congress have.

Under the amendment the Secretary of State or his designee, who will be the chair of the task force, will have the responsibility of coordinating information and policy recommendations so that those some, I believe, 40,000 Chinese students can be assuranced that their interests are being taken to heart by the Congress and the administration just as we have a responsibility to the citizens of our country as well. It is the hope of this Senator that this amendment will serve that purpose to act and coordinate information accurately and timely to these students.

Mr. SIMON. Will my colleague yield?

Mr. MURKOWSKI. I am happy to yield to my friend from Illinois.

Mr. SIMON. I do not oppose your amendment, but I thought I heard the Senator from Alaska refer to this as a sense-of-the-Senate resolution.

As I read the amendment, I do not——

Mr. MURKOWSKI. The amendment has been changed to a sense of the Senate to accommodate the floor managers.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 241) was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

VOTE ON AMENDMENT NO. 240

The PRESIDING OFFICER. Under the previous order, the hour of 12:40 having arrived, the question is on agreeing to the Helms amendment, amendment No. 240, which was temporarily set aside. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. MCCAIN] is necessarily absent.

The result was announced—yeas 27, nays 71, as follows:

[Rollcall Vote No. 106 Leg.]

YEAS—27

Armstrong	Garn	Nickles
Bond	Helms	Pressler
Burns	Hollings	Roth
Byrd	Humphrey	Rudman
Coats	Kassebaum	Shelby
Cohen	Lott	Stevens
Dole	Lugar	Symms
Ford	McClure	Thurmond
Fowler	Murkowski	Wallop

NAYS—71

Adams	Bingaman	Breaux
Baucus	Boren	Bryan
Bentsen	Boschwitz	Bumpers
Biden	Bradley	Burdick

Chafee	Hatch	Mitchell
Cochran	Hatfield	Moynihan
Conrad	Heflin	Nunn
Cranston	Heinz	Packwood
D'Amato	Inouye	Pell
Danforth	Jeffords	Pryor
Daschle	Johnston	Reid
DeConcini	Kasten	Riegle
Dixon	Kennedy	Robb
Dodd	Kerrey	Rockefeller
Domenici	Kerry	Sanford
Durenberger	Kohl	Sarbanes
Exon	Lautenberg	Sasser
Glenn	Leahy	Simon
Gore	Levin	Simpson
Gorton	Lieberman	Specter
Graham	Mack	Warner
Gramm	McConnell	Wilson
Grassley	Metzenbaum	Wirth
Harkin	Mikulski	

NOT VOTING—2

Matsunaga McCain

So the amendment (No. 240) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business before the Senate is the Gorton amendment. The Senator from Washington is recognized.

AMENDMENT NO. 242

(Purpose: To grant permanent residence status to certain nonimmigrant nationals of the People's Republic of China)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself, Mr. KASTEN, Mr. DOMENICI, Mr. WILSON, Mr. COHEN, and Mr. GRAMM, proposes an amendment numbered 242.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title III of the bill, relating to the status of students from China, add the following new section:

SEC. . GRANTING PERMANENT RESIDENCE TO CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA

(a) GRANTING OF PERMANENT RESIDENCE STATUS.—(1) Subject to paragraph (a)(2), nationals of the People's Republic of China described in subsection (b) shall until June 5, 1992 be held and considered to be lawfully admitted to the United States for permanent residence for purposes of the Immigration and Nationality Act upon the payment of the required visa fees and, where applicable, upon the termination of any membership in the Communist party of the People's Republic of China and any subdivision thereof, and renunciation of communism.

(2) On or after June 5, 1990, the Attorney General, after sixty (60) days following the date that the President determines and so certifies to the Congress that conditions in the People's Republic of China permit Chinese nationals to return to that country in safety, may terminate the authority to grant the status described in this subsection (a) to any national of the People's Republic of China who has not submitted on or prior to such date of termination substantially all documentation and supporting materials as may reasonably be required by the Immigration and Naturalization Service.

(b) ELIGIBILITY.—An alien entitled to the status granted by subsection (a) is a national of the People's Republic of China—

(1) who was admitted to the United States as a nonimmigrant alien before June 5, 1989, under subparagraph (F) (relating to students), subparagraph (J) (relating to exchange visitors) or subparagraph (M) (relating to vocational students) of section 101(a)(15) of the Immigration and Nationality Act, and who held a valid visa under any such subparagraph as of that date;

(2) who has resided continuously in the United States from the date of admission until payment of the required fees, except for brief, casual and innocent absences; and

(3) who is otherwise admissible to the United States for permanent residence.

(c) APPLICATION OF EXISTING LAWS.—The provisions of this Section shall be applied notwithstanding—

(1) section 201 of the Immigration and Nationality Act (relating to numerical limitations);

(2) section 202 of that Act (relating to numerical limitations for any single foreign state);

(3) section 245 of that Act (relating to the adjustment of status of nonimmigrants to that of persons admitted for permanent residence);

(4) subparagraphs (C) and (D) of section 212(a)(28) of that Act (relating to membership in the Communist party or advocation of communism), to the extent that any national of the People's Republic of China eligible for permanent residence pursuant to this Section shall not have had significant and active involvement or participation in the Communist party of the People's Republic of China or any subdivision thereof since June 5, 1984;

(5) where applicable to nonimmigrants under section 101(a)(15)(J) of that Act, the two-year foreign residence requirement contained in section 212(e) of that Act; or

(6) any other provision of that Act.

(d) PERIOD FOR VALIDITY OF VISAS.—Notwithstanding any other provision of law, any visa which is described in paragraph (b)(1) and which is valid as of June 5, 1989, shall be deemed to be valid through the earlier of June 5, 1992, or the date the Attorney General has terminated in accordance with the provisions of this Section the authority to grant the status described in subsection (a).

(e) EMPLOYMENT AUTHORIZATION.—Any national of the People's Republic of China eligible for permanent residence pursuant to this Section shall be granted authorization to engage in employment in the United States and shall be provided with an employment authorization document or other work permit upon request.

(f) SHORT TITLE.—This Section may be referred to as the "Emergency Chinese Permanent Residence Status Adjustment Act of 1989."

Mr. GORTON. Mr. President, this amendment addresses the same subject as that covered by the previous sense-of-the-Senate resolution by the Senator from Alaska and of the leadership amendment which was agreed to yesterday. It is not in any respect designed to constitute a criticism of the Mitchell-Dole amendment, which was added to this bill yesterday, but to add on to and strengthen that proposal.

The two leaders in their amendment yesterday provided for up to a 3-year stay of any deportation aimed at classes of Chinese students in the United States. It allowed for time for Chinese students to look for and to apply for other or more suitable nonimmigrant or immigrant visas. And it allowed work authorization for those students who did apply for a change of status, though not for those who failed to do so.

My inclination is that we should go further, in the interests of the students, in the interests of encouraging democratic change in the People's Republic of China, and in the interests of the United States.

The amendment, which I have before the Senate at this point, combines the strongest features of yesterday's leadership amendment and the provisions of S. 1209, which a dozen or so of us introduced back on June 20.

First, a description. It includes the following features.

Chinese students and exchange visitors, that is to say those persons holding F, J, and M visas, are covered by the amendment. In this case, it is identical to the Mitchell-Dole amendment to this bill of yesterday.

It is, however, limited to those persons in the People's Republic of China in these categories who were in the United States on that key date, the 5th day of June, 1989. It is not open-ended and does not apply to those who have come to the United States since that date.

What it does for that group of people, who I understand number somewhere between 65,000 and 75,000, is to allow them a period of 3 years from June 5, 1989, or until 60 days after the President of the United States certifies to the Congress that it is safe for Chinese nationals here in this country to return to China, to apply for a permanent residence in the United States with the ultimate right to become citizens.

That right for permanent residence cannot be terminated any earlier than June 5, 1990, 1 year after the repression of the Chinese democratic movement in Tiananmen Square in any event, even by Presidential certification.

It also goes somewhat beyond the Mitchell-Dole amendment in creating an immediate right to work on behalf of all of these Chinese visitors if they are eligible for permanent residence, not simply in consequence of an application actually having been made.

I want to emphasize that this allows each of these Chinese students to choose whether or not to apply for permanent residence. Any of those who have concerns or fears that such an application would have adverse impacts on his or her family in China need not apply and need not change their status in any way whatsoever.

That will be a decision that each student makes for himself or herself.

This, like the Mitchell-Dole amendment, waives the 2-year foreign residence requirement for J visa holders who apply for permanent residence.

It does something else which was not covered, perhaps inadvertently, by the Mitchell-Dole amendment. It provides that mere membership in the Communist Party of the People's Republic of China—which, of course, is a membership which, particularly some of the older students hold simply as a condition of their having been able to come here at all—absent significant and active participation or involvement within the past 5 years, does not preclude a grant of permanent residence.

However, before being granted that right, any PRC national must terminate any membership in the Communist Party of the PRC and must expressly renounce communism.

As I said, the Mitchell-Dole amendment does not cover that subject at all.

What are the fundamental reasons for wishing to go beyond the leadership amendment and to make this kind of offer to these Chinese students? It seems to me that there are three important, if not overriding considerations for this type of treatment of our Chinese student visitors. The first is that they may have a degree of security, a feeling of security which not even the Mitchell-Dole amendment can actually bring them because that, still, puts deadlines on how long they can stay in the United States, as generous as those deadlines are.

If we truly wish to offer to these leading Chinese young people the opportunity to lead a democratic movement for China, outside of China, without feelings or concerns that there will be personal retribution that can be exacted against them, we need to give them a situation in which they feel secure in their presence here in the United States.

So, in order to allow some of those students at least to provide leadership for a movement for democracy in China, some permanent status offer is appropriate and necessary.

Second, Mr. President, I do not believe that there is a single Member of this body or, for that matter, of the House of Representatives of the Congress of the United States, who has not considered what sanctions may be appropriate with respect to the People's Republic of China in connection with its brutal repression of the movement for democracy in Beijing on June 5 of this year and on succeeding dates.

The administration has imposed some economic sanctions. Many Members of this body have proposed additional economic sanctions, all of which are lacking in any truly positive impact on the People's Republic of China because they simply do not have that degree of leverage over actions in the People's Republic.

In fact, most of the economic sanctions which were proposed would simply offer to other competing trading nations opportunities which the United States has at the present time. The single most effective sanction which the United States of America can take to encourage democracy in the People's Republic of China, Mr. President, is to threaten the People's Republic of China with the deprivation of the services of tens of thousands of its talented young people. That is the group of people we are talking about.

Already highly trained and educated, already highly motivated, they have come to the United States—in some cases they have been sent to the United States by a more liberal Government of the People's Republic of China—to enhance their skills in order to serve the future development of the People's Republic of China itself.

If that Government is deprived of the services of these tens of thousands of highly skilled and motivated Chinese, if it is deprived even of the service of even a percentage of them, its own economy, its own growth, its own development will suffer. If we as Members of this body are truly interested in imposing a condition, a cost on the Government of the People's Republic of China for its repressive actions, if the Members of this body are really concerned about providing a motivation to that government to liberalize to at the very least have an amnesty, to take actions which will cause those students to wish to return to the People's Republic of China and to help develop it, this is the best single step we can possibly take to encourage such a course of action.

Mr. COHEN. Will the Senator yield?

Mr. GORTON. He will.

Mr. COHEN. Mr. President, as a sponsor of one of the bills that has been introduced in the Senate to protect students from the People's Republic of China from being forced to return to their homeland, I want to express my support for the pending amendment.

Yesterday, the Senate unanimously approved an amendment offered by the leadership that addresses many of the immediate concerns of the Chinese students—the waiver of the 2-year residency requirement for "J" visa holders, allowing Chinese nationals to remain in lawful status for purposes of adjusting their status, and creating a presumption that the deferment of enforced departure will extend through June 1992. While I supported the amendment and believe it is an important first step, I also believe we need to go further in providing permanent relief to Chinese students who wish to remain in the United States.

The deferral of enforced departure is a commendable but inadequate solution for the Chinese students who fear the fate that awaits them upon their return to their native land. And, it does not send a sufficiently strong message to the Chinese Government—a message that if it continues the current repressive campaign it will not see the return of thousands of its best and brightest students, scholars, and others who may choose to remain in the United States.

The killing and wounding of thousands of Chinese students and workers, the imposition of martial law, and the ongoing nationwide roundup of prodemocracy demonstrators in the People's Republic of China are part of a brutal campaign of persecution against student leaders and others who have bravely demonstrated their peaceful commitment to democracy and human rights.

Thousands of Chinese students in the United States have spoken out and demonstrated in support of the prodemocracy forces in China. As a result, they would be in imminent danger of arrest or persecution upon their return to their native country. Humanitarian concerns require that we ensure that these individuals be permitted to remain in this country and not be forced to return to China.

The pending amendment offered by Senator GORTON will permit Chinese students to immediately apply for and be granted permanent residence status in the United States. It, therefore, achieves several important goals. Building on the relief authorized by the amendment adopted yesterday, it provides the students with a range of options that will enable them to plan their future and get on with their lives.

The amendment will also preserve the freedom of Chinese students in the United States to continue to speak out and work on behalf of prodemocracy forces in China. Chinese students across the country have been harassed and have received threatening phone calls in an attempt to silence them. A recent article in the Boston Globe describes some of the incidents. I ask unanimous consent that it be included in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. COHEN. Mr. President, unless we make a firm commitment to the students that they will be permitted to remain in the United States, the Chinese Government's campaign of harassment and threats will be able to silence the voices of democracy, not only in China, but among Chinese students in the United States.

Finally, the amendment sends an unmistakable message to Chinese authorities that their students will not be returning unless the Government adopts real and substantial reforms. Until we provide the students with permanent relief, China may be confident that, ultimately, it will get them back.

In conclusion, I urge my colleagues to vote in support of the amendment. It will insure that those who fear returning to China and wish to remain in the United States will have an opportunity to do so. To do otherwise, forcing these individuals back into the hands of the Chinese Government, would be both cruel and inhumane, and would violate our country's sacred tradition of offering protection to people persecuted in their native countries.

EXHIBIT 1

CHINESE STUDENTS HERE TELL OF THREATS

(By Mark Muro)

Five weeks after the Chinese government suppressed the pro-democracy movement, Chinese students in the Boston area say a wave of harassment and mysterious telephone calls has sent a new chill through their ranks.

Several students assert that they have been visited by diplomats fro the Chinese consulate in New York warning them to keep silent or asking the names of students who have participated in antigovernment activities.

A window was broken two weeks ago at the China Information Center at Newton's Walker Ecumenical Exchange, which has monitored events in China for the past several months. And for weeks, Chinese students have complained that they have received dozens of threatening calls and warnings not to speak, making them fearful for their futures and for their families at home.

Virtually all the students believe the Chinese government is behind the threats.

"They are watching us, they have eyes and ears here," said Jing Huang, a Harvard graduate student. He said he has given the FBI office in Boston and Somerville police tapes of five violent warnings he received on his answering machine from an anonymous caller with an Asian voice.

Pei Mingxing, another Harvard student who said he was visited recently by an official from the Chinese Consulate in New York, expressed anger at what he termed efforts by his government to silence student protest here.

"Sure, it could be crank calls, but I do not think so," he said yesterday. "The Chinese are very subtle: They don't say, 'If you appear on TV again your family will be shot.' Instead, they came into my apartment and politely said, 'You know, this could be surmised as treason.' So I am very worried."

Officials at the Chinese Consulate in New York yesterday denied they were harassing students.

Zhang Xiaoping, an education officer at the consulate, said yesterday, "so far we haven't done anything to our students. We have never sent anyone to Boston to do anything."

On Friday, Liang Jiang, vice consul, said, "there is no official order to say such things. It cannot be imagined."

The Boston episodes come in the wake of similar reports from around the country and after news reports that Chinese officials have videotaped student demonstrations in San Francisco, Los Angeles and Washington and shown up at a student dorm at the University of New York at Stony Brook inquiring after the names of activists.

State Department spokesman Richard Boucher had no comment on the student allegations at a news conference yesterday. But the Boston students have now joined others in Washington, New York and California who have reported harassment.

In Newton, Yian Liu of the China Information Center said the Center has received 20 or more calls in the past few weeks "saying things like 'Don't do too much, or you'll be killed.' "

At the Massachusetts Institute of Technology, a politically active graduate student in physics said he has avoided meeting with friends, fearing he would get them into trouble, after a consular official telephoned him last wek requesting the names of fellow student activists.

Pei said he was first visited by a Chinese official in May, before the student demonstrations in Tiananmen Square. He said the official stayed 2½ hours "politely" chastising him for the "nonsense" of predicting on TV that the government would "machine-gun the students" if they demonstrated.

He said in recent weeks he has received five or six threatening phone calls and has since changed his address, taken an unlisted phone number and ordered a postbox.

A spokesman for the FBI office in Boston had no comment on whether it was investigating Pei's complaints of harassment.

CONSUL OFFICIAL SEEKS NAMES

Another graduate student at Brandeis, who also asked not to be named, said a New York consulate official called on several students in Cambridge and Newton during the past two weeks seeking names of organizers of rallies here and in Washington.

"They wanted to know who participated," he said, "but all we said is there are many, many of us. Never would we tell them a single name."

In Somerville, Huang, a 32-year-old political scientist, said his troubles began on June 8 after he returned to the United States from China and appeared on the "MacNeil-Lehrer NewsHour" describing the crackdown.

After midnight the next night, hours after another appearance on Channel 56, a message was left on his answering machine in thickly accented English saying "Hi. Congratulations. I hope you can earn more money and be a very important guy."

Three days later, after taping another television interview, he said he received a second message in Chinese:

"Jing! Be careful. Be very careful," the caller said.

OMINOUS MESSAGES

The next night, he said, he received a similar message: "Must be very careful. Why did you do such bad things? If you continue, be careful about yourself and your family."

Later he found two more messages, including one in which the caller said: "You jerk! You jerk! We'll beat you up. Shame on you."

Huang, who played the messages last week for a Globe reporter said he is convinced the Chinese government is responsible for the calls.

Zhang of the Chinese consulate denied the charge. "So far we haven't taken any names or spoke to anyone like that," he said.

However, the students said they found little reassurance in the government denials.

Students, intelligence experts and American China-watchers alike note that fears of surveillance, name-taking, social control are well-founded regarding Chinese presence in the United States.

MANY AGENTS IN US

Just months ago, FBI and other military counterintelligence officials in Los Angeles issued a report disclosing that Chinese espionage agents had surpassed the Soviets as the most active foreign spies in California. And sources close to Chinese educational officials in New York confirm that the Chinese consulates keep a file on all 40,000 students at work in the United States, complete with computerized data on addresses and names and political activity.

Fueling fears among students and American experts alike is the widely held assumption that the Chinese government has attempted to maintain discipline among its American students by planting informers among them.

"There are always students among the others who keep tabs and report on their peers, in many cases quite secretly," said China scholar David Zweig of the Fletcher School of Diplomacy at Tufts University.

But for the students themselves, fears run beyond the educational apparatus. Said Huang: "The education people watch us, but there are other fish—spies and agents—still in the water."

Mr. GORTON. Mr. President, my amendment takes off from and builds upon the leadership of the Mitchell-Dole amendment of yesterday. That Mitchell-Dole amendment provided certain extended departure rights for Chinese students, allowed them to work under more liberalized circumstances than is the case at the present time, and all is a positive step forward with respect to some 65,000 or so Chinese students and exchange people here in the United States.

It seems to me, however, that both in the interest of democracy in China and in the interest of the United States, the selfish interest of the United States, we should go further. And put quite simply, the amendment which I have before you would grant the right to apply for permanent residence for all of these Chinese students and exchange visitors here in the United States. It does not give that permanent status automatically. It requires them to apply for it.

It also grants the right to work for all persons who are eligible to apply for this permanent residence during the period of time they would be here even under the Mitchell-Dole amendment.

I outlined two of the three goals for which I felt this amendment was needed. Very briefly, the first was to provide some form of long-term security to those Chinese students themselves who wished to be leaders in the campaign for democracy in China. At this point, and even after the adoption of the Mitchell-Dole amendment, of course any Chinese student who becomes a leader here in the United States, who speaks out, can have his or her name spoken and is threatened with the proposition that he or she may someday have to return to China and could thereafter be disciplined by the Government of the People's Republic of China.

The second and even more important reason for the passage of this amendment is that it is the most effective single sanction which we can impose on the People's Republic of China for its brutal repression of the democracy movement in Beijing on the 5th of June, and the greatest single sanction which can cause the

Chinese Government to change its mind, and at the very least to offer an amnesty to those who were involved in the democracy movement because failure to do so should my amendment become law will cost the People's Republic of China a number of thousands, perhaps even tens of thousands of its most brilliant young people. China's future, to a very considerable degree, is here in the United States right now in the persons of those citizens of the People's Republic of China who are already well educated, and who are increasing their education and their skills in various places here in the United States.

The loss of those people for the People's Republic of China will indeed be a severe loss, and even the threat of their loss will be far more effective than any economic sanction we can impose in causing some liberalization, at least some liberalization, in the People's Republic of China itself.

The third reason which I was unable to get to before the rollcall intervened is a selfish American reason. This offers the United States of America the chance to seize a foreign asset of great value to put it in personal terms, to put it in much more personal terms, the same values which these young people will have to the People's Republic of China can be put to use here in the United States. These people are highly skilled, they are highly educated, and they are highly motivated. They are highly concerned about the future of democratic institutions.

Of all of those who seek to come to the United States, this group of people rank right at the very top with respect to the skills, the tremendous skills, and the very high degree of dedication which they can provide to this country from the instant they become permanent residents.

They are true assets of the world. They are wonderful people. They are skilled people. They would make great and productive Americans.

As a consequence, Mr. President, it seems to me that the amendment which I offered on my own behalf and on behalf of a number of other Members of this body is a win-win-win situation. It is a wonderful, gracious, and human response to the plight of young people who are here in the United States from the People's Republic of China, and who care very deeply about what has gone on in their own nation. It offers us an opportunity to exert some real leverage to cause the liberalization of the present Government of the People's Republic of China, and to exactly the extent that it is effective in gaining attention on the part of the students and others, it may very well result in a long-term gain to the United States both from the perspective of those students who choose to stay here and those who, even though they go home, will be eternally grateful to the United States for our having met their deepest needs at a time in which those needs took place.

I understand, and I perfectly realize that this does not fit within the pattern of the bill which is before us at the present time, a bill which I think is very thoughtful and takes a balanced approach toward immigration to the United States. But that bill was written before Tiananmen Square, Mr. President. We have gone through one of the most extraordinary and public revolutions and repressions of the lifetimes of any of those of us who are Members of the U.S. Senate. I am convinced we can operate much more dramatically than we have, even in the leadership of yesterday, and adopt a proposal such as this one.

Mr. SIMON. Mr. President, will my colleague yield?

Mr. GORTON. I am happy to yield.

Mr. SIMON. He and I had a discussion on the floor a little bit ago to see if we could work out some kind of a compromise. I think the amendment of the Senator from Washington goes a little further than is desirable. I chatted with Senator SIMPSON and Senator KENNEDY, and if the Senator from Washington would be willing to withdraw his amendment temporarily, maybe it would let us see if we can work out something in the remainder of the day that moves in the direction we are trying to go here.

Mr. GORTON. I say to my friend, the distinguished Senator from Illinois, as I did say to him in private conversation, I am much more interested in accomplishing something for these students and for these people than I am in any publicity value for this amendment. If there is any opportunity with the Senator from Illinois, and with the two distinguished principal sponsors of the bill before us to work in this direction in a way which will be found acceptable by all concerned, I am delighted to do so.

What I would prefer to do rather than withdraw the amendment is simply to agree it be laid aside to be called up again at an appropriate time so that others may have an opportunity to speak on it, and so that I can work with the distinguished members of the Judiciary Committee toward a goal which all of us can support.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, on behalf of the comanager, I think that is an excellent suggestion, and I commend my friend from Illinois for suggesting it and my friend from Washington for hearing that proposal. I pledge in the course of this day, to see if we cannot do the language that I think will accomplish this and get awfully close to what we want to do, considering what we have done with the Mitchell-Dole proposal, the House proposal, the Murkowski proposal, and just be certain that we are not giving the most significant thing we can give to anyone in the United States, and that is permanent resident alien status and yet meet the conditions and concerns and fears of these Chinese students. I think we can do that.

I will pledge to work toward that today and certainly hold the record open and the amendment list open to assure that if we do not reach an accord, we will come right back to that position.

Mr. GORTON. Mr. President, I ask unanimous consent that the pending amendment be laid aside for whatever business may succeed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The pending question is now the committee substitute.

AMENDMENT NO. 243

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I send an amendment to the desk on behalf of the Senator from New York [Mr. MOYNIHAN] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. MOYNIHAN, proposes an amendment numbered 243.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following new section:

SEC. . REPORT TO CONGRESS ON UNITED STATES IMMIGRATION POLICY TOWARD BURMESE STUDENTS.

(a) The Attorney General, in consultation with the Secretary of State, shall report to the Committees on Foreign Relations and Judiciary within 30 days of enactment of this act on the immigration policy of the United States regarding Burmese prodemocracy protesters who have fled from the military government of Burma and are now located in border camps or inside Thailand. Specifically, the report shall include:

(1) a description of the number and location of such persons in border camps in Burma, inside Thailand, and in third countries;

(2) the number of visas and parole applications and approvals for such persons by United States authorities and precedents for increasing such visa and parole applications in such circumstances;

(3) the immigration policy of Thailand and other countries from which such persons have sought immigration assistance;

(4) the involvement of international organizations, such as the United Nations High Commission for Refugees, in meeting the residency needs of such persons; and

(5) the involvement of the United States, other countries, and international organizations in meeting the humanitarian needs of such persons.

The Attorney General shall recommend in the report any legislative changes he deems

appropriate to meet the asylum, refugee, parole, or visa status needs of such persons.

(b) As used in this section, the term "prodemocracy protesters" means those persons who have fled from the current military regime of Burma since the outbreak of prodemocracy demonstrations in Burma in 1988.

Mr. KENNEDY. Mr. President, this is an amendment by the Senator from New York, who has been deeply concerned about the condition of Burmese students, who in many instances have suffered gravely from a harsh totalitarian regime in Burma. His amendment is a sense-of-the-Senate resolution to provide for a report about the student situation there.

We have made a slight clarification, which is acceptable to the Senator from New York. We welcome very much his bringing this matter to our attention. It is, I think, a matter of very considerable concern, with a number of egregious human rights violations, both in Burma and in the neighboring countries.

We certainly, and I, as the chairman of the Refugee Committee, welcome whatever insights that might be developed by this coordinated effort. And it is the sense of the Senate to urge the administration to develop a more coordinated effort and to report to the relevant committees. I think it is a very valuable addition to the bill. I hope that the Senate will accept the amendment of the Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise today to offer an amendment to a truly historic piece of legislation, the Legal Immigration Act of 1989 (S. 358) the sponsors of which, Senators KENNEDY and SIMPSON, are due our greatest admiration. Their work in this area is nothing less than remarkable.

As we consider this legislation, we consider something of our past, of our present and of our future. We are a country of immigrants—a nation founded on the hopes and dreams of so many who aspired for greater freedom and for liberty.

It was and continues to be democracy—a personal, individual freedom unlike that found in any other nation—to which so many around the world are attracted. Our freedoms are inspirations to those oppressed. We don't need to be reminded of the Chinese students who attempted to bring to a quarter of the world's population a taste of freedom. It was crushed under the treads of tanks. We were repelled.

Democracy truly is "breaking out all over." Unfortunately, it is not always successful. Just last year, students in Burma's capital of Rangoon and in cities throughout the country took to the streets to demand the restoration of democracy in that country. One which has been governed by a repressive socialist regime for just over now 25 years.

Students marched. The army fired on them. Western diplomats, including our own most capable Ambassador Bert Levin, reported that at least 3,000 students were killed by the military, thousands more arrested.

The prodemocracy demonstrators fled to the jungle border separating Burma from Thailand seeking to join in the common purpose—of democratic change—with ethnic minorities that have been fighting the same regime for decades. Since then the situation has only worsened. A brutal civil war rages. The military has continued its attacks on the students encamped along the border. Disease—mostly malaria—has already killed many or forced others to return to an uncertain fate in Rangoon. The rest of the world has done too little to help them. Students have been refused permission to stay in Thai territory and are being arrested and repatriated to Burma. No Western government, including ours, has granted any of the students asylum as political refugees or even entry under humanitarian parole. Just today, I learned that the INS has denied humanitarian parole to Yuzana Khin, a psychology student at Rangoon University and treasurer of the All Burma Federation of Student Unions and considered a leader of the prodemocracy demonstrations which coalesced outside our Embassy in Rangoon. Indeed, she is hiding inside Thailand while being sought by both Thai and Burmese agents. And yet she has been denied humanitarian parole. We apparently will not help here.

The amendment which I offer will require the Secretary of State and the Attorney General to provide the Congress with the necessary information needed so that we might address the critical needs of these brave, indeed, heroic students who are struggling daily to overcome the oppression of the Burmese regime. I ask unanimous consent that following my remarks an aricle by Steven Erlanger and an editorial which recently appeared in the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 25, 1989]

IN JUNGLE AT THAI-BURMESE BORDER, LAST STAND FOR STUDENT PROTESTERS

(By Steven Erlanger)

NEAR THREE PAGODAS PASS, MYANMAR.—Hailed as fighters for democracy last September when they fled the Burmese military crackdown to train with insurgents along the borders, the students who remain in this unforgiving jungle near the Thai border have too little to eat and not enough medicine to treat the endemic malaria. Worse yet, there is nowhere else to go.

Events last August and September in Myanmar, formerly Burma, were similar to those in China: student-led demonstrations for democracy were crushed by soldiers shooting indiscriminately into crowds of unarmed civilians. Western diplomats say at least 3,000 Burmese died at the hands of the military.

But while Western governments offered asylum and visa extensions to Chinese, the American Embassy in Bangkok has told some Burmese students that they must first return to the capital, Yangon, formerly Rangoon, to get a passport or to apply for a visa, a suggestion the students find callous and absurd.

Western support for the students has been almost entirely rhetorical; contributions from Burmese exiles have withered; student relations with many of the ethnic insurgents, having different goals and little enough food and weapons for themselves, have soured.

As the Burmese Army presses its offensive against the insurgents, the students, most without passports, have little choice but to stay where they are. Those who return home face arrest and imprisonment; many of those who go to Thai cities and towns are being seized and deported, and Western countries have accepted none who have sought asylum as political refugees.

"This is a very critical moment for the students who remain along the border," said Ko Thant Myint-U, who has been trying to help them through Emergency Relief Burma. "Despite the fact that these are the very students who led the demonstrations for democracy America said it supported, no help has been given."

Mr. Thant Myint-U, grandson of U Thant, the late Secretary General of the United Nations, says that of the roughly 7,500 Burmese who came to the border after September to try to fight the Burmese regime, perhaps fewer than 2,000 remain. At least 80 percent have had malaria, many of them numerous times, and some have died, while malnutrition, diarrhea and pneumonia are common.

At the same time, dreams of fighting bravely alongside the ethnic insurgents for a common democratic future have largely withered in the face of political disagreements, arms shortages and a sustained Burmese military offensive against the ethnic Karen rebels, who sheltered many of the students and who have lost five border camps since mid-December.

Up to 1,000 Burmese students, many of them fleeing the fighting, are already hiding inside Thai towns like Mae Sot and the sprawling capital, Bangkok, where they face arrest, fines and deportation to a Burmese Government that promises harsh treatment.

Ko Winn Moe, a prominent student leader in the capital, came to this dank, wretched camp in the jungle near Three Pagodas Pass in late March, after some 200 students fleeing the fighting against the Karens sought refuge in Mae Sot. The Thai authorities said they had to leave by the end of March or be deported to Burmese territory held by the Government. About 100 students, sick and discouraged, returned to this country, many of them surrendering to the authorities.

MALARIA AND DEPRESSION

Mr. Winn Moe, 24 years old and a chess champion, negotiated a price for transportation here instead, in territory held by the Mons, another of the 10 or so ethnic minorities who have been fighting the Burmese Government for independence or autonomy since 1949. Unlike the Karens, who sought to control student activities and distribute any aid, Mons leaders have promised a free hand.

Lanky and cheerful, Mr. Winn Moe said that students sometimes become depressed, especially when they have malaria, and start to think of home, parents and friends, "but then they recover." In any event, he said, "to set up a working organization, it's better to be smaller, and those who remain

here now understand the reality of jungle life, and they are very committed."

Mr. Winn Moe sat on a bamboo slat shelf in a crude shelter built only 10 days ago. Behind him, fully dressed students suffering from malaria shivered under blankets as a hot, tropical rain lashed the thatch. About half the 150 students in this camp have malaria, Mr. Winn Moe said.

At an associated camp a half-hour's trudge away, Ko Aung Thu Nyein, a 24-year-old former medical student who fled the capital last October, tried to care for some 20 malarial patients in a thatch clinic. Two or three people share the few mosquito nets, he said. He gives injections of quinine and tetracycline donated by the French aid agency Doctors Without Borders, but there is never enough. Some students have had malaria 14 or 15 times, and some have cerebral malaria, which can be fatal. Mr. Aung Thu Nyein, his face glossy with sweat, said he had malaria, too.

BECOMING DISCOURAGED

There are about 160 students at this camp, Mr. Aung Thu Nyein said, though the actual figure appeared to be less than 100. In October, there were more than 2,000. The rest had become discouraged, he said, because they thought aid and supplies would come from the West. While the Mons provide some rice and a few charities provide some food, contributions from Burmese living overseas have also dwindled. "There is a lot of disappointment among the students," he said.

"During the August and September uprising, a lot of foreign countries said they supported the students and democracy," Mr. Aung Thu Nyein said. "We believed the Western countries would support us with arms and food, and that's why we came to the border. But we got no support at all, and we've been through a lot since then."

In the main Mon camp a few miles away, the Mon leader, Nai Shwe Kyin, said he was doing what he could for the students, whom he admired but who are getting hard up and disheartened." He said he expected the Burmese Army to confront the Mons after the Karens.

If the Burmese attacked, Mr. Winn Moe said, the students could not defend themselves and would flee to the nearest Thai town, Sangkhlaburi. He said he expected Thai officials, who are trying to trade with the Burmese, to be no more welcoming than those in Mae Sot.

ON EMERGENCY AID

Mr. Thant Myint-U said he hoped the United States and other countries would at least increase aid to the student camps, help prepare emergency aid and shelter should the students need to flee to Thailand, and urge the Thais to allow temporary asylum.

Most helpful, he said, would be to help students hiding in Thailand who are already seeking asylum to be given a chance to resettle in third countries as legitimate political refugees.

"The students have little left except their trust in democracy," he said. "At this point help from America can make all the difference in saving their lives."

BURMA OUT, MYANMAR IN

Burma has a new official name: Myanmar.

The change was adopted by the United Nations on Thursday. The Burmese radio said the Government had changed the country's name to Myanmar (pronounced mee-ahn-MAH) and the name of the capital from Rangoon to Yangon (pronounced yahn-KOH).

The new versions reflect contemporary usage in the Burmese language. Many place names in the native language were adapted into English during British colonial rule between 1862 and 1948.

Several United Nations members have changed their names, including Sri Lanka, which was Ceylon until 1972, and Burkina Faso, which was Upper Volta until 1984.

[From the New York Times, June 30, 1989]

BURMESE HEROES, FAITHLESS FRIENDS

In 1959, when the Burmese people were last allowed to vote freely, their soon-to-be dictator New Win remarked: "Let the country make its own choice. It will get the government it deserves." Shortly thereafter he deposed the country's choice, made himself dictator and ruled for three dismal decades, reducing a once-prosperous country to penury under a blundering military regime.

A student-led uprising last summer forced the "resignation" of Ne Win, but not of a brutish military tyranny that has made only one mark—to change Burma's name to Myanmar.

The country's people deserve better. In particular, the young leaders of last year's rebellion are owed something better from Western democracies whose values inspired their protest slogans. As The Time's Steven Erlanger has reported, some of the students fled to Thailand and sought visa extensions and asylum. There, they were reportedly told by the U.S. Embassy to return to Yangon, formerly Rangoon, to get the needed documents—absurd advice for those facing arrest.

The sequence of events in Burma, 1988, uncannily anticipated that of China, 1989. The student democracy movement elicited instant world sympathy; Congress voted a resolution condemning Burmese violence against the demonstrators. In a crackdown claiming 3,000 lives, hard-liners forced students to flee. Some went into jungles and found shelter in camps of insurgents; others sought asylum in Thai towns and cities, or applied for refuge in the West.

But the world's attention had shifted. Not a single student is known to have been accepted for asylum in the West. And in hopes of currying favor with the entrenched Burmese military, Thailand has deported those seeking shelter in its towns. About 2,000 survivors remain in border camps, and another thousand are hiding inside Thailand. These courageous students deserve a welcome from the United States as refugees.

Their cause is scarcely lost. In Yangon last week, thousands rallied to protest the regime's denunciation of a democratic opponent. It's time for Congress to adopt a fresh condemnation of Myanmar, and to urge an open door for its dissenters.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I, too, along with my friend from Massachusetts, want to commend Senator MOYNIHAN. I can say, without any reservation, that Senator MOYNIHAN, through the whole effort of legal immigration reform and illegal immigration reform, has been one of the most astute players and a great supporter of efforts of mine since I came to this place on this very complex and vexing issue.

Again, he has pointed out to us these students, Burmese students, who were involved in the Burmese prodemocracy efforts and in protesting, who have fled from the military Government of Burma and are now located in the border camps, I think in the report, and in this sense-of-the-Senate language, it is very important that we determine these things: Where they are; number and location; the number of visas and applications; the immigration policy of Thailand; and that is going to become ever increasingly important to us, especially after the Vietnamese removed themselves from Cambodia, and a whole new relationship will spring up with our friends in Thailand regarding displaced persons and refugees and economic migrants.

It is going to be a tough issue. But this one with regard to Burma is one that deserves our attention. We need to visit with our Ambassador, a very fine friend of many of us, Burt Levin, and he has remarkable insights. We want to plumb his thoughts, and he has shared those with me. That is a very important thing. It would have missed our attention, if it had not been for the Senator from New York, and I commend him.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 243) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair in his capacity as a Senator from the State of North Dakota suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, what is the present parliamentary situation? I have an amendment I would like to offer. Has the Gorton amendment been set aside?

The PRESIDING OFFICER. The pending amendment is the Gorton amendment.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Gorton amendment be set aside and my amendment be taken up and considered. I assume the managers would then like to return to the Gorton amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I have an amendment and I would be glad to enter into a time agreement with the managers. I would suggest 30 minutes, equally divided, if that is suitable to them.

Mr. KENNEDY. Mr. President, that would be entirely satisfactory to us. I ask unanimous consent that on the Chafee amendment there be 30 minutes allocated and the time to be

equally divided between the Senator from Rhode Island and the Senator from Wyoming.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I further ask unanimous consent that no amendments to the amendment be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 244

(Purpose: To provide temporary stay of deportation for certain eligible immigrants)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration. This amendment is offered on behalf of myself and Senators HATFIELD, CRANSTON, GORE, and ADAMS.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for himself, Mr. HATFIELD, Mr. CRANSTON, Mr. GORE, and Mr. ADAMS, proposes an amendment numbered 244.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 124, after line 25, add the following new section:

SEC. . ACTION WITH RESPECT TO SPOUSES AND CHILDREN OF LEGALIZED ALIENS.

(a) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN ELIGIBLE IMMIGRANTS.—

(1) IN GENERAL.—The Attorney General shall provide that in the case of an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of November 6, 1986, who has entered the United States before such date, who resides in the United States on such date, and who is not lawfully admitted for permanent residence, until the cut-off date specified in paragraph (2), the alien—

(A) may not be deported or otherwise required to depart from the United States on a ground specified in paragraph (1), (2), (5), (9), or (12) of section 241(a) of the Immigration and Nationality Act (other than so much of section 241(a)(1) of such Act as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (28), (29), or (33) of section 212(a) of such Act), and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) CUT-OFF DATE.—For purposes of paragraph (1), the "cut-off date" specified in this paragraph, in the case of an eligible immigrant who is the spouse or child of a legalized alien described in—

(A) subsection (b)(2)(A), is (i) the date the legalized alien's status is terminated under section 210(a)(3) of the Immigration and Nationality Act, or (ii) subject to paragraph (4), 90 days after the date of the notice to the legalized alien under paragraph (3) of the applicable cut-off date, whichever date is earlier;

(B) subsection (b)(2)(B), is (i) the date the legalized alien's status is terminated under section 245A(b)(2) of the Immigration and Nationality Act, or (ii) subject to paragraph (4), 90 days after the date of the notice to the legalized alien under paragraph (3) of the applicable cut-off date, whichever date is earlier; or

(C) subsection (b)(2)(C), is 90 days after the date of the notice to the legalized alien under paragraph (3) of the applicable cut-off date.

(3) NOTICE.—In the case of each legalized alien whose status has been adjusted under section 210(a)(2) or 245A(b)(1) of the Immigration and Nationality Act or under section 202 of the Immigration Reform and Control Act of 1986 and who has a spouse or unmarried child receiving benefits under paragraph (1), the Attorney General shall notify the alien of the applicable cut-off date described in paragraph (2)(B) and the need to file a petition for calssification of such spouse or child as an immediate relative to continue the benefits of paragraph (1). Such notice shall be provided as follows:

(A) If the legalized alien adjusted status to that of an alien lawfully admitted for permanent residence before the date that the definition contained in section 210(b)(2)(A)(i) of the Immigration and Nationality Act (as amended by this Act) first applies, the notice under this paragraph shall be provided as of the date that that definition first applies.

(B) If the legalized alien adjusted status to that of an alien lawfully admitted for permanent residence after the date that such definition first applies, the notice under this paragraph shall be provided at the time of granting such adjustment of status.

(4) DELAY IN CUT-OFF WHILE IMMEDIATE RELATIVE PETITION PENDING.—The cut-off date under paragraph (2)(B) with respect to an eligible immigrant shall not apply during any period in which there is pending with respect to the eligible immigrant a classification petition for immediate relative status under section 204(a) of the Immigration and Nationality Act.

(b) ELIGIBLE IMMIGRANT AND LEGALIZED ALIEN DEFINED.—In this section:

(1) The term "eligible immigrant" means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

(2) The term "legalized alien" means an alien lawfully admitted for temporary or permanent residence who was provided—

(A) temporary or permanent residence status under section 210 of the Immigration and Nationality Act,

(B) temporary or permanent residence status under section 245A of the Immigration and Nationality Act, or

(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986.

(c) APPLICATION OF DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be issued an immigrant visa under this section shall not preclude the alien from seeking such a visa under any other provision of law for which the alien may be eligible.

Mr. CHAFEE. Mr. President, this amendment corrects a lingering flaw in the Immigration Reform and Control Act of 1986 which, for simplicity, I will refer to in the future as the amnesty bill, since that is what most of us remember it as.

This amendment deals with a problem in the amnesty bill which dealt with and arose because of the threat of family separation. What my amendment would do, very simply, would be to grant a stay of deportation and work authorization to the spouses and unmarried children, minor children, of individuals who achieve legal status, and the individuals must have achieved legal status under the amnesty bill.

In order to receive this protection, the illegal spouses and the children, minor children, unmarried—that is what we are talking about—must have lived in the United States prior to November 6, 1986, which was the date that the amnesty legislation was enacted.

You can see this is a narrow piece of legislation. It deals with only spouses and unmarried minor children. It does not deal with parents and sisters and brothers and uncles and aunts. It is limited.

Furthermore, those who receive this must have been in the United States prior to November 6, 1986. So it does not include massive numbers.

My amendment would only apply, as I say, to individuals who were already here when the amnesty bill was created, but they did not qualify because probably in most instances they were not here by the cutoff date that was required under the amnesty bill. As we all remember, the cutoff date for the amnesty legislation was January 1, 1982. That is when somebody had to be in the United States to qualify for the amnesty legislation. So my legislation deals with a group that most likely—they may have been here before January 1, 1982, but that is highly unlikely. We are talking about those who came to the United States, the minor children, unmarried, and the spouses, between the period of January 1, 1982, which was the cutoff date, and November 6, 1986, when the legislation was enacted.

The amnesty bill was the product of many years of hard work and compromise. A bill was put together that passed both Houses by wide margins. In the Senate, it passed 63 to 24; in the House, it passed 238 to 173. The distinguished Republican manager of this bill today on the floor was the principal author of that legislation and provided very strong leadership and did an excellent job. I want to tip my hat to the junior Senator from Wyoming for what he did.

The provision to allow certain illegal aliens to apply for lawful temporary resident status was included for pragmatic, political and compassionate reasons. Why did we pass that legislation? We did it for pragmatic reasons, we did it for political reasons, and we did it for compassionate reasons.

What were the pragmatic reasons? The fact was that there were millions

of undocumented aliens in the United States at that time. It would be impossible to locate and deport all of them. So the conclusion was it was far better to take the situation as it existed then, let those apply for amnesty, and then change the rules for the future. Some of those changed rules were, of course, the provisions dealing with employment. Far stricter rules both on the employers and on the employees, the so-called sanctions. The first reason was a practical one. We could not do anything about those millions of illegal aliens anyway, so we might as well let them apply for citizenship and start fresh.

The political reason for amnesty was one of balance. Coupled with the amnesty provisions, as I say, were reforms. Those reforms dealt with requiring employers to check the status of those they hired, and it put sanctions on those who hired undocumented workers.

The most compelling reason for the amnesty bill, in my judgment, was that of compassion. I believe our society is best served by a generous measure of understanding when it comes to undocumented aliens in our country. So we thought the fairest and the wisest course was to set strong procedures for the future but not deport those who have been here prior to the cutoff date.

Certain people, unfortunately, fell through the cracks. Let me give you a situation from my State.

We have an individual I will call Leon, who immigrated to the United States illegally from Colombia on October 24, 1981. He how lives in Central Falls, RI. He is a meticulous man and he saved all his papers, his employment records, his rent receipts, and he had an easy time applying for the generous legalization program. In other words, he qualified for amnesty.

Leon's family, namely his wife Esther and three children ages 18, 13 and 8, were not so lucky. They arrived in the United States 22 days after the cutoff date of January 1, 1982, and thus were not eligible for amnesty.

Leon faces the excruciatingly painful decision between breaking up his family or breaking the law of his new country and keeping these individuals here illegally.

Eventually his family could benefit from the second preference relative petitions, however they would have to wait a substantial period of time, and during that period they would not be eligible to work and they would live in fear of being separated from their families through deportation.

What are the requirements on them? First, they must wait until Leon and other legalized family members become permanent residents, which would occur by October 1990. Then they would have to wait for a visa to become available.

Currently there is a 20-month waiting period for visas through the second preference. Immigration advocates fear that as new legalized individuals petition for their families the waiting period could jump from 3 to 5 years. The sole recourse for the newly legalized with undocumented family members is a family fairness policy. Let me just describe that briefly.

That was instituted by the Immigration and Naturalization Service in October of 1987. It provides nondiscretionary relief only for minor children. We are not talking about spouses. We are talking about minor children who enter the United States before November 6, 1986, both of whose parents gain legal status under the amnesty bill.

So we have taken care of a situation where both parents qualify. But I am talking about the situation where the wife, in this instance, came 22 days after the cutoff period, and her children came at the same time, and so they do not meet the family fairness doctrine that has been instituted.

As I say, in the case of single-parent families, the parent with whom the child resides must have legal status.

Others say: Well, they do not deport under this anyway. And there are very few deportations. Indeed, in a place like Chicago they are treated very leniently. So my amendment is unnecessary.

Well, I can point out other areas of the country, Albuquerque, NM, where they are treated in a harsher manner than that.

Enactment of my amendment is urgently needed so the fundamental goal of the legalization program can be realized. In my view it is a basic American value to believe that the threat of family separation is wrong; the uncertain treatment of families under the amnesty bill is contrary to our longstanding policy in the United States of family unification.

Of course, there has been an Executive order by the President, Executive Order 12606, dealing with the family. Obviously deportations would be contrary to that.

This is a modest solution, Mr. President. It is different. I offered an amendment similar to this in 1987 that was defeated, 55 to 45. But it was different. It was broader than this. That amendment would have granted legal status to the spouses and children of the legalized aliens.

There is a lot of difference between granting legal status and what my bill does. So let us tick through what it does not do.

My bill does not confer legal status on the spouse or children who benefit from this legislation.

My bill only applies to spouses and minor unmarried children.

It does not apply to the whole family of brothers and sisters and cousins and parents.

The spouses and children would lose their protection under this amendment if they fail to apply for a visa under the second preference within 90 days of becoming eligible. So there is a further restriction.

Those who benefit from this amendment will not jump ahead in the line for visas or legal status. They will not displace others who have filed application or who are waiting for their visas outside the United States.

Individuals covered by my amendment are not eligible for Federal benefits.

My amendment does not in any way tamper with the delicate amnesty compromise that we reached.

The cutoff date of November 6, 1986, ensures that no one who entered our country with the hope of benefiting from an amnesty will do so. In other words, the cutoff date still remains.

Here is a very important point. Many people believe that my legislation would act as a magnet, in other words, come one, come all: olly, olly in free. You can now qualify, a spouse or minor children, because the father or in some instances the mother qualified under the amnesty bill. That is not so. They had to have been here prior to November 6, 1986.

Mr. President, one of the arguments that will be raised is that we are treating this group differently than we are a legal alien. That is true. But the point, Mr. President, is we treated this entire group differently. That is why we did the amnesty legislation.

We treated those who came illegally differently than those who have been waiting patiently for their entrance visas from foreign countries for many years. So, yes, there was a difference in treatment. But we concluded it was the right thing to do and this is a correction, a minor correction, to that entire procedure that we followed when we passed that legislation.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2 minutes and 17 seconds.

Mr. CHAFEE. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, there is no one more spirited in cause than my friend from Rhode Island, the Senator from Rhode Island. He is a man I greatly admire and enjoy and respect. And I know the intensity with which he deals with this issue. We have talked about it. We have tried to accommodate each other on it. He is a persistent, persuasive gentleman of the first order and you cannot beat him back. He has the old wrestling instinct he picked up in college and he still will wrestle you right to the ground.

I do not know what will happen to this. I remember it is not quite the same but yet it is because it gives something that is more valuable than legal status. It gives work authorization and a stay in deportation. What more would a person want? That is all they would want if they were in the United States, is a stay of deportation

and work authorization. Forget the rest of it. They would not care what status they were in: asylee, EVD, special entrant, whatever, once they have those two things.

So I respectfully and regretfully but with spirit to match his, oppose this amendment because to me it disturbs the delicate balance of the 1986 Immigration Reform and Control Act. We have already debated the issue of legalization for illegal aliens. The Congress decided that those aliens who had lived here continuously since January 1, 1982 or before would be allowed to receive a legal status and it was not specialized, it was complete. We did not set aside little enclaves, like this amendment does, of people.

In the Judiciary Committee report we stated it very clearly. We knew this would happen. We knew exactly what would happen because of the pressures from the groups out in the United States who push this stuff along; they are insatiable. There is not a single gap we are supposed to have when we do any kind of reform. They will find something that makes it impossible.

We see the comments that the Immigration Act, the IRCA of 1986, might not be doing the job. Well, if it is not, I am ready to go back to work, just tell us what we are supposed to do to avoid the continual exploitation of people who get here in an illegal status and I am willing to pick up all the tools and machinery and go back to work.

I do not set them in this body and think about things that have gone awry. If they have gone awry, let us bring them back. We have the same people ready to do that. We said, "It is the intent of the committee"—this was during the passage of the bill—"that the families of legalized aliens will obtain no special petitioning rights by virtue of the legalization. They will be required to wait in line in the same manner as immediate family members of other new resident aliens."

Please hear that. We are here in the Chafee amendment giving an advantage that we do not give to permanent resident aliens who have been waiting to have their spouses and minor children to join them for maybe 11 years. How can you possibly give a benefit to a person who just got legalized and bring in their spouse and minor children when you do not do it for permanent resident aliens who have been here? And a permanent resident alien can have his or her spouse deported under present law, and yet this person cannot? It strains all sense.

The Senator from Rhode Island proposed the amendment before, and it has been changed slightly. That amendment was defeated. We will see what happens with it today. It does not grant this actual legal status, but, as I say, it grants the thing that is most primed. It is an attempt actually at a de facto second amnesty. I promised all my colleagues during the presentation of the immigration bill over the course of 6 to 8 years that legalization is and will be a one-time-only program. You either get in in the year or you do not make it. No other country can go on that basis where you simply say, "Well, I knew they were kidding; they will do it again." Well, we are not going to do it again, and this is the first step of doing it again.

I do intend to keep that promise to those Members who voted with this issue despite having serious reservations about a legalization program anyway. I did not like it. What are you going to do? I said there is one reason we are doing it; if you could not apprehend them coming out, what are you going to do to exit them from the country? I said I am not going to be a part of that. So we had a legalization. I am glad my colleagues went along with it.

There are probably as many people in Congress today who want to narrow the legalization program as there are those who would broaden it. As we grapple and anguish over the legalization issue, we did at least conclusively decide it, and this opens it up again. A cruel irony of this amendment—and I said it and will say it one more time, knowing how this place operates—is that it would treat the illegal immigrants more generously than we treat our current legal immigrants because under the present system, a new permanent resident alien who does not enter with his immediate members of his family might apply through the preference system for his family to immigrate. In such cases, there is a wait of 16 months for nationals in most countries and a longer wait in countries with higher visa demands. For those legal immigrants, there is no withholding of deportation if their family are present illegally. There are many Mexican nationals who return to Mexico from the United States to pick up their visas when they are issued—now hear that—thus proving they have been living in the United States without status and without protection from deportation. When their visa number comes up in Mexico City, 85 percent of them go down from the United States to pick it up. Do you think they have any fear of deportation? Of course not.

We have deported a handful of people; literally a handful. Maybe 12, maybe 5. Not more than 100 under any scenario have we ever deported. In fact, we do not even deport poeple for heinous activity because we are a very generous country.

As the newly legalized aliens receive their permanent resident status, they may apply for admission in the same manner as the legal resident aliens now do. I cannot tell you how many Americans objected during the original bill because it seemed to reward lawbreakers while penalizing those who were waiting patiently in line to immigrate legally. I opposed those arguments, and I fought for legalization.

I believe this amendment so plainly reopens all those old wounds so that the public is unlikely to see it in any other light. Without public support of the United States, any immigration policy is doomed. I fear we are undercutting exactly this support by adopting this amendment and giving a special treatment to people who are illegal aliens and whose family members were originally illegal aliens.

There is one other thing I hope people will hear in this process, this breaking up of families and deferring applicants. There have been these claims continually of the terms of the legalization program that we are breaking up families. I think there is another very valid perspective to that issue. Let me remind my colleagues that it was the illegal alien families who close to divide themselves. They chose to split up their families in this other country. If they had all come to the United States together, they would have been covered under the amnesty. They would have qualified for the legalization program together. They themselves chose to divide their families, not because of refugee status, but because of economic reasons, or others. The chose to do that. I think they then must wait, just as under our legal immigration system, allowing them to enter legally. We heard allegations that the lack of a second family amnesty in the last debate was deterring applicants for the legalization program. I know my friend from Rhode Island will remember that. He said this is deterring applicants for the legalization program, and he did it with that spirit that is Senator JOHN CHAFEE.

The allegation turned out to be absolutely unfounded. In 1986, the Congress estimated that 1.4 million persons would come forward under amnesty and an additional 250,000 under the Special Agriculture Workers. In fact, 1.76 million came forward during the general amnesty, and 1.3 million applied for the special status even though many applications in the SAW Program I think are maybe fraudulent and we are going to have to deal with that. Congressmen BERMAN, SCHUMER, MAZZOLI, BROOKS, FISH, SMITH, and all of will be right back in it again with the SAW Program and the RAW Program which turned into a ripoff.

There was certainly no chilling effect whatsoever that amnesty experienced based on those figures. I simply want to say how broad this amendment is. It still is broad, and here under the proposal a family member of a formerly illegal alien who enters the United States illegally 1 day before the President signed the bill on November 6, 1986, would be granted relief from deportation and would receive work authorization. All we tried to do when we started this operation was recognize persons with certain equities that long-term illegal residents had established in this country—that

is what we did—those who lived here 5 years or more. So much for equities when you get to this kind of a situation.

No such equities have been established in this country by someone who entered the country a little over 2 years ago. That cannot be. Let me specifically illustrate how broad this amendment is. Here it is: Senator CHAFEE talked about Leon and his family. I would have to inquire as to whether any of his family have been deported. We will have that information in a moment when I finish my remarks.

Let me specifically say that an illegal family alien who spent 4 years and 11 months, that is 59 months, voluntarily separating him or herself from his family in the United States may receive immigration benefits now on residing illegally in the United States for the last 31 months. Somebody will have to tell me how that really is. To me it does not have any ring of sense. It is an unsupportable result.

I believe that administrative relief is warranted for some family members. That is why we have a family fairness doctrine with the INS. Illegal children of legalized children are always kept in this country. Senator CHAFEE is right, we do not deport the illegal children of legalized parents, and the legal-illegal spouse issue is always dealt with on the basis of case by case. There is nothing wrong with that. If it is being done differently in some areas of the United States than others, we can correct that. But I do not believe that absolutely every case where one spouse is illegal must be given relief from deportation because in some cases we already deport the illegal spouses of legal immigrants in the United States.

I just do not know why we should tie the hands of the INS and prevent them from deporting everyone in this category, and they have only done 12, or 8, or 5 or 100. I do not know. It is not over 100. It is exactly in these cases where some alien families choose to separate themselves for many years. I do not believe we should now grant them some automatic immigration benefit. It should be left to the INS on a case-by-case basis. The question of relief has been debated and disposed of before. I think it is redundant, unnecessary, and it amounts to that, and it should be rejected.

May I ask how much time remains.

The PRESIDING OFFICER. The Senator has just under two minutes.

Mr. SIMPSON. I reserve the remainder of my time.

Mr. CRANSTON. Will the Senator yield time to me.

Mr. CHAFEE. Yes. The Senator from California wishes to speak. I ask unanimous consent that we might have 8 additional minutes on this side and, if the other side would like 8 minutes, that would be fine, obviously, too.

Mr. SIMPSON. Mr. President, never missing an opportunity to pick up a few extra minutes, I think I probably would yield back, but I leave that to the principal manager.

Mr. CHAFEE. How about 16 minutes equally divided, in addition. I think each of us has a couple of minutes.

The PRESIDING OFFICER. Is there objection? Without objection there will be an additional 16 minutes evenly divided.

Mr. CHAFEE. I yield 3 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 3 minutes.

Mr. CRANSTON. Mr. President, I am glad to be a cosponsor of the amendment being offered by my friend from Rhode Island and I urge my colleagues to support it also. This amendment addresses an issue which is central to the legislation which is currently before us: Family unity.

My colleagues will recall that during the 100th Congress, Senator CHAFEE and I, along with Senator SIMON and other expressed our concern about the plight of families in which one member qualified for the Legalization Program authorized by the Immigration Reform and Control Act of 1986, while other family members did not. For months we pressured the Immigration and Naturalization Service, INS, to develop an administrative remedy for such families and to assure that ineligible family members would not be deported. After considerable delay, the INS did announce a policy which it called a "family fairness" policy. We did not find that policy to be particularly fair then, and we do not find it to be fair now.

As my colleague from Rhode Island has already pointed out, the INS policy fails to address the humanitarian concerns regarding family separation. Ineligible spouses of legalization applicants are given protection from deportation only if they can prove "compelling or humanitarian" circumstances, such as serious medical problems or the presence of a handicap. Former Commissioner Nelson has explained that marriage or immediate family relationship alone would not be enough for INS to refrain from deporting an individual. With regard to children, the policy would only protect them from deportation if both of their parents qualified for legalization or, in the case of single-parent families, if they lived with the parent who qualified.

In addition to our concerns regarding the putative fairness of the INS policy, we also are concerned because the policy does not set adequate guidelines for local INS district directors to follow. Specifically, there is no clear guidance regarding which circumstances would constitute "compelling or humanitarian factors" which would protect individuals from deportation.

We argued before that these shortcomings in the INS policy on families jeopardized the success of the Legalization Program because the ineligible family members would continue to reside in the United States without the benefit of legal status or work authorization. In effect, the problems we sought to solve with the establishment of the Legalization Program would continue and we would still have a subclass of individuals livings in fear and vulnerable to exploitation.

Mr. President, in the time that has elapsed since we last raised these issues we have seen that what we thought would happen, has happened. The discretion which has been given to the local INS district directors has caused many individuals to not try and adjust their status under the INS family policy. In fact, Mr. President, these have been incidents in my home State of California which reinforce the mistrust these individuals have in the INS. I ask that the text of an article which appeared in the San Francisco Chronicle, dated May 31, 1989, entitled "INS Accused of Wrongfully Returning Teenager," be entitled in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. This article describes a situation where two sons of a man who qualified for legalization were recently deported to Mexico even through the sons apparently could have qualified for protection for deportation under the INS family policy. There is a dispute about whether the INS attempted to notify the father before summarily deporting his sons. However, this incident and another referred to in the article regarding INS efforts to deport an 8-year-old daughter of a Peruvian woman who qualified for legalization, demonstrate the need for a more humane and uniform national policy with regard to these families.

The fact is that there are many families who find themselves in the situation where one or more members of their family could not legalize their status in this country under the legalization programs, and who are also afraid to invoke the INS family policy because of the uncertainty regarding the outcome. One California organization which processes legalization applications reported that 47 percent of its caseload have family members who did not qualify for legalization. Clearly, we should do something to remedy this situation.

The amendment we are offering is a very modest measure. It merely assures these families that their family members who could not qualify for legalization will not be deported, and will be authorized to work. Under this amendment, the family members who will be benefitted would have had to have been in the United States as of the date the Immigration Reform and Control Act was enacted—November 6, 1986. Thus, this amendment would not encourage or reward any unauthorized

entry since the date this new immigration law went into effect.

Also, the persons benefitted by this amendment would have to wait in line along with others wishing to apply for family preference visas. The amendment also defines the period within which these individuals must apply for these visas. What this amendment accomplishes is that it keeps the family unit intact during this waiting period.

Mr. President, this amendment is necessary, it is reasonable, and it is a humane response to the difficult situation which many families find themselves in. I urge my colleagues to support it.

EXHIBIT 1

[From the San Francisco Chronicle, May 31, 1989]

INS ACCUSED OF WRONGFULLY DEPORTING TEENAGER

(By Edward W. Lempinen)

Immigration agents seized a 15-year-old boy in his Mission District home and deported him to Mexico earlier this month without letting him contact a lawyer or his father, who is in the country legally, attorneys charged yesterday.

The U.S. agents entered the home without a search warrant, then took Orlando Mis-Fajardo and his 24-year-old brother into custody even though their father, Santos Enrique Mis, qualified under the federal amnesty, said attorneys from two local refugee-rights offices.

At a news conference, they suggested the deportation is part of an emerging pattern of harassment by the U.S. Immigration and Naturalization Service against children as young as 8 whose parents are legal residents.

"Our guess is that this kind of deportation . . . is a subtle message to the immigrant community—people better not stay here (because) we don't want you here," said Christine Brigagliano of the Coalition for Immigrant and Refugee Rights and Services.

District Director David Ilchert adamantly denied the charges yesterday, saying the agents had permission for the search and had given the brothers a chance to contact their father. Orlando did not qualify for amnesty, he said, and therefore was sent back to Mexico where his mother lives.

FAMILY FAIRNESS POLICY

At the center of the dispute is a disagreement about the sweeping 1986 Immigration Reform and Control Act. The law does not specify what happens when parents qualify for amnesty under provisions of the law but their minor children do not.

A "family fairness policy" issued later by the INS says that children will be allowed to stay by meeting two conditions: that they entered the country before November 6, 1986, and registered with the INS, and that the mother or father in a single-parent household has been granted temporary resident status.

According to immigration attorneys at La Raza Centro Legal in the Mission District, Mis-Fajardo met those conditions, although he had not registered with the INS. But they called the deportation an "inexcusable violation" of current U.S. policy.

The law center alleges that on May 11, two INS agents went into the Mission Street home shared by the teenager, his brother Santos Tomas Mis-Fajardo and their father. The brothers contend the agents came in without a warrant or permission.

The brothers were taken into custody and separated. The attorneys allege that they repeatedly asked for permission to contact an attorney and their father, but were denied.

WAITING IN TIJUANA

Both were deported that day and now are waiting in Tijuana for permission to return to San Francisco.

"They didn't allow my sons to communicate with me (before the deportation), and I don't think that's fair," their father said through an interpreter. "I haven't done anything wrong. My sons haven't done anything wrong."

Mis, a dishwasher, said he entered the country in 1981 and has been granted "lawful temporary resident" status by the INS.

Mario Salgado director of La Raza Centro Legal, said Mis had not registered Orlando because he feared the government would deny him amnesty and deport him.

Mis and his wife have been separated since 1981, and the brothers lived with their mother in Mexico until she "abandoned" them to live with another man in 1985, the lawyers said.

But Ilchert said that Orlando did not qualify to stay because there is no proof that the parents are legally separated or divorced. Therefore, he said, Orlando is not a member of a single-parent family under federal policy.

INS WANTS PROOF

The family's attorneys have not come forth with proof of a divorce or separation, he said.

"I'm waiting for them to come forward with the story," Ilchert said. "I told them, 'If you want to try the case in the press, that's fine.' It seems like they want to talk with you (reporters) more than they want to talk with me."

Salgado said his office has appealed for help to U.S. Representatives Barbara Boxer, D-San Francisco—Marin, and Nancy Pelosi, D-San Francisco, and to Supervisor Jim Gonzalez.

Gonzalez, in an interview, called the deportation an "outrage."

In a case earlier this month, the INS was threatening to deport an 8-year-old Central Valley girl, even though her Peruvian mother had won amnesty as a special agricultural worker.

Mark Silverman, an attorney with the Immigrant Legal Resource Center in San Francisco, appealed the case and won an exemption from the INS, allowing the girl to stay until at least 1991.

The PRESIDING OFFICER (Mr. ADAMS). The time of the Senator has expired.

Who yields time?

Mr. CHAFEE. Mr. President, the junior Senator from California wished to speak on this amendment and is on his way over. I will make this bold request. I would ask for a quorum call with it not being charged to either side, just waiting a few minutes for the junior Senator from California to get here.

The PRESIDING OFFICER. That has to be in the form of a unanimous-consent request. The Chair accepts the request as such. Is there objection? The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I do not know if I will object. Many people came by our post here during the course of the last hour saying, "When is the next vote?"

Mr. CHAFEE. The next vote is going to be very shortly. Let us say we will wait for the junior Senator for 2 minutes maximum.

Mr. SIMPSON. Why not proceed to discuss the bill under the time agreement we just agreed to?

Mr. CHAFEE. That is agreeable to me, Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I should like to address some of the points the Senator from Wyoming raised. First is the family fairness doctrine of which he speaks. The trouble with the family fairness doctrine is that it is unevenly applied. It is applied one way in Illinois and it is applied another way in New Mexico.

Second, the Senator points out that very few deportations have taken place. Is it 16 or is it 20? In any case, the Senator says it is less than 100. In my judgment, each of those has been a heartrending experience for those involved. If you are 1 of the 20 or you are 1 of the 100, it is pretty real and you are not interested that you are only 1 of 100 in the Nation. You are interested in what is happening to yourself.

Furthermore, I wish to emphasize that if that is all we are deporting, what is the matter with passing the legislation? We are not having a hoard of individuals stay in the United States under this legislation. There are no extras that will come here.

Now, another point I wish to make is we have arranged a wholesale invitation, a second amnesty program. As I said before, it is not an "all-in-free situation," come one come all. There is a cutoff date. They had to be here before November 6, 1986. That is nearly 3 years ago. They did not know whether this amnesty legislation was going to pass or not. They were not rushing in to beat the deadline. They did not even know about that. All they knew was that the legislation at that time carried a cutoff date of January 1, 1982, but the most probable situation is they did not know this legislation existed anyway. They were one of the million illegal aliens who were pouring into the country.

Finally, the Senator from Wyoming quite rightfully says these illegal aliens who came in and qualified for amnesty, you are giving them a special privilege you are not giving to a legal alien who came here and now wants his wife in. That is true. That is absolutely true. But, Mr. President, it seems to me we crossed the Rubicon on that situation. We made the choice. We decided that we are going to treat this group differently. They were here. There were millions of them. We said look, for practical, for political, for compassionate reasons we cannot do anything about it. We cannot ferret everybody out who is an illegal alien

and send them home. So we said there is going to be a cutoff date for them. But I could not believe we really thoroughly thought about the spouses and minor children that might come shortly thereafter.

The PRESIDING OFFICER. The Senator from Rhode Island has 2 minutes remaining. The Senator from Wyoming has 9 minutes 4 seconds.

Mr. CHAFEE. Mr. President, I yield 2 minutes to the Senator form California.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. WILSON. Mr. President, I rise to support the Chafee amendment. What we saw was that IRCA was intended in part to bring about a program of legalization. Amnesty it was called.

People expressed wonder that it did not work. Well, there is no wonder. In a household of five people, where two were eligible and three were illegal, the three who were illegal might have been compromised by the efforts of those who were eligible for amensty to come forward.

This is ridiculous in the sense that we are talking about setting a standard that cannot be enforced in any case. There is not the ability to enforce the law. The law should not be enforced as it is being proposed by the Senator from Wyoming because in fact what we ought to do is recognize that family reunification is a just thing, that we have an unworkable situation where those who are compelled to live in the shadows face the threat of deportation whether in fact they will be deported or not. Let us recognize that they should not be and let us see to it that they can have the opportunity to work, to be productive members of society, and the provisions that have been set up for their becoming citizens are entirely reasonable. They fall within what are really almost existing preferences.

This country was built on certain values. One of those that we continue to prize today is the value of the family unit. We ought to say to people whom we have said you can stay in this country and be legal citizens that they can stay with their families, their immediate families.

Mr. President, I urge the support of this amendment.

Mr. SIMPSON. Mr. President, I yield an additional minute of my time to the Senator from California, if he wishes to conclude.

The PRESIDING OFFICER. Does the Senator from California wish to conclude?

Mr. WILSON. I thank my friend for nis generosity.

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mr. WILSON. Mr. President, I thank him for his generosity, and I think what we should recognize is that the law as it now stands has produced unintended hardship in my State and in many others. There are literally doubtless hundreds of thousands of people living in the shadows. That makes no sense. It is doing no one any good. Let them become productive, let them come out of the shadows, let them become employed, and let them in fact become citizens in due course. We are under the other provisions of this legislation giving explicit preference to the immediate relatives, and that is what we are seeking to do in this situation. For the most part it is also, I must say, and I reemphasize the fact, an unworkable situation now. We simply do not have the manpower to expend but the threat of deportation remains.

Mr. President, this is just not helpful. I suggest that the time has come for us to say if this is to be regarded as such an expansion of amnesty, then so be it. Let us do so and let us not continue with a situation that is both unworkable, inhumane, and one that does not benefit the present citizens of the United States.

I thank my friend for his generosity in according me the time.

The PRESIDING OFFICER. The time of the Senator from California has expired. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I hear the arguments presented very clearly, and I hear the comments with regard to the bill of 1986. I say to anyone who thinks, and legitimately so, that it is not working, let me always say what do you have in mind? What should we do now? I think all of us will want to work toward that. We knew what was happening when we did the original bill. We knew that the identification system was worded appropriate, but no one wanted to use a "National ID card" and so people have gimmicked that system royally. We knew that. We knew we did not want to put any burden on the employers. We knew that. We knew we did not want to discriminate against people. We knew that. We do know now that we need better identification systems, perhaps a tamperproof Social Security, whatever. There are lots of things that were discussed.

Senator MOYNIHAN was always a hard-working laborer in that area, and many others. It does not have anything to do with tattoos. It does not have anything to do with that kind of thing. That is what always enters this debate when you get into it. We need more resources. We talk about people in the shadows. There will always be people in the shadows of the United States because that is where everybody in the world wants to come. They know we are a compassionate, remarkable country, and they know that when they come nothing will happen to them.

We have only deported 23,000 people in the whole year, and some of them were real skyrockets. We hardly even take on the drug runners and deport them. Our deportation is practically nil when you consider the illegal and legal immigration into the United States. We are in the kiddie league on deportation. We certainly are in this area when we have removed only 12 people here in this situation.

It has been unevenly applied. We should correct that. I agree totally with the Senator from Rhode Island. I will help him do that. But remember that each and every person that we talk about with all this anguish made a voluntary decision to separate and split from their own families. They decide to split. The Government of the United States did not split them. They split. We seem to lose track of that. And they split, and one or both of them knew they were coming illegally to the United States. And with the way we are, it is our strength and our weakness. We have supported those people. We gave them an amnesty. That was something. It was not just willy-nilly. It was a deep-held policy statement of the United States.

It said you people who have been here for 5 years, who have established equities, you people we read about in the newspaper—and anyone can tear one of those out of any newspaper. A lot of illegals who came here illegally knew what they were doing, violated the law, and love to go to the newspapers. Then politicians tear it out and their staffs tear it out. They bring it in here and we twist the law all around one more time. That is how this place works.

I have files full of those people. Then you go into it and you find out, well, he forgot to tell them that he lied about his status. He forgot to tell them that he had been involved in a criminal activity. He forgot and now because he is a member of the chamber and he has given money for the auditorium, done all these other things, you do not dare touch him or the mailroom will break down. There are people who do that in the world. I just want to share that with you. I am not a cynic, but I am a skeptic. I certainly am. There is a lot of difference.

So you talk about the communications system. Let me tell you I have been working on this issue for 10 years; Senator KENNEDY, for 27. Ma Bell has nothing on people who want to know when to come to the United States, when we are diddling around with legislation and when we are not, and when we are talking about amnesty.

The reason we set the amnesty date where we did was because there was a surge in illegal entry the day it first became known we were considering one, an absolute press against the border. That is the way it works. I am not worried about anybody who did not get the message. They got the message. It goes out in the communication system. That is beyond comprehension. But those are things.

Family fairness should be uniformly applied. I agree with my friend. I will assist him in assuring that. I pledge that. We do not need the Chafee amendment to ensure uniform application of an existing policy. We will work with the Attorney General. I pledge to do that.

I just do not see how we should tie the hands of the INS so that no one who has entered even as recently as 1 day before the law was signed is somehow receiving this remarkable benefit. I understand the sympathy for family members. Boy, do I. I have been there.

We are always going to have these people living in the dark. You know what happens in America? The people that live in the dark get exploited. There are so many people in various States of the Union that love to use these people, and then come in here and prattle on about, you know, human rights, rights of work. Let me tell you. There are people that love and hope that every law fails so they can just continue to whoop it up, use people, pay them little or nothing, and hide them back in the woods. That is another interesting thing about this line of work.

So I think when you do this on this broad basis it is a mistake. I think it is a second amnesty. I hope we do not accept it. I think we cannot treat these people in a better way than we treat people who are here in legal status with illegal family members, and that is exactly what this would do.

I understand fully the compassion of the Senator from Rhode Island—that is a known quantity to me—and also the Senator from California who assisted me in the immigraiotn bill. And, ladies and gentlemen, the real issue is if you do not like it, what do you have in mind, and how do you really bring people out of the dark when we have a group of citizens in the United States who love to use and abuse illegal undocumented people and people in lesser status?

We even fought a war about that 120 years ago. That is what is down underneath a lot of this stuff, too, when you play with it. Nobody ever talks about the stuff that is really out there. We get pretty flowery in our work. I do, too; we are all good at it, or we would not get here, I guess. But I tell you, it is a tedious process to watch, people who gimmick the system and then run somewhere to get something done. There are many marvelous attributes of humanity, such as compassion and sympathy, and then to know that we are bringing in a lot of them who just chuckle when they go home at night and say, "Boy, we ran another whizbang on those guys," and they do.

If you can help me separate the wheat from the chaff, I am ready. It does not have anything to do with ethnicity, bigotry, or racism. It has to do with gimmickry and exploitation of our fellow man. We do it magnificently, and it is not very pretty.

The PRESIDING OFFICER. The time of the Senator from Rhode Island has expired, and the Senator from Wyoming has 7 seconds left.

Mr. SIMPSON. I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, earlier this year, I intervened with the Immigration and Naturalization Service on behalf of a Honduran woman and her three children who faced the imminent prospect of deportation. The woman's husband benefited from the recent immigration amnesty program. He arrived in the United States sometime before the amnesty program's January 1, 1982, eligibility cutoff date. But his wife followed to join him in September 1982—just 9 months too late to qualify for amnesty.

Two of their three children were born after her arrival here, making them American citizens. But when this woman was apprehended by the Immigration Service, she was placed in proceedings and deported on March 28 of this year, taking her children with her.

Mr. President, I believe that this family should have been kept together. They narrowly missed the amnesty program. The wife would eventually qualify for permanent residence based on her husband's amnesty. They had two American-citizen children. And the Immigration Service had established a policy to limit the deportation of spouses and children of amnesty recipients.

However, my office was informed that this case fell outside this so-called family fairness policy. Clearly, if that policy will not help this family, with all its equities, then the policy needs adjustment. That is what the amendment by the Senator from Rhode Island would responsibly do.

Mr. President, the experience of this Honduran family, now separated, is not an isolated incident. I have here scores of other similarly compelling examples of families who went in to the Immigration Service expecting assistance only to be immediately issued deportation notices.

But Mr. President, let the amnesty record of our country be clear. The results exceeded most of our expectations. Over 3 million productive workers and their families were brought out of the shadows and under the protection of our laws.

For this we owe a tremendous debt of gratitude to the men and women of the Immigration Service and to the volunteers and professionals of the voluntary agencies and community groups for their extraordinary efforts in making the program the success that it was.

The Immigration Service developed the family fairness policy in October 1987. And since that time, officers in the field have used this policy flexibly to keep many families together. By and large, INS officers have acted generously, approving cases even beyond the policy's guidelines.

But there are many other cases of a compelling nature which have not been viewed so generously. And that is what the Senator from Rhode Island's provision would redress today. It would not bring the Honduran family back together. But it would provide a remedy in certain cases—at least until they qualify for permanent residence.

Mr. President, 2 years ago, the Senate considered whether to expand the amnesty program to encompass relatives of amnesty recipients. That initiative was narrowly defeated.

But things have changed and the amendment before us has changed.

For one thing, we now have a record of deportation of family members—of spouses and children being taken away after we welcomed part of the family through amnesty.

Second, these deportations have been at considerable—and I believe needless—expense to the taxpayer. These are families which will eventually qualify for immigrant visas. Yet, the Immigration Service pays the airfare home for most of these families. And considerable officer time is expended on each case, costing hundreds, if not thousands, of dollars.

Finally, this is a different amendment than the one before us 2 years ago. It covers only spouses and children—not the remainder of the family—and only those who were here before the amnesty program was enacted on November 6, 1986.

In addition, unlike its predecessor, this amendment does not qualify the family members for the amnesty program. It merely stays their deportation. They are in legal limbo. And when their time comes, they must apply for—and qualify for—an immigrant visa, or face deportation.

Mr. President, it is time we took the modest step the Senator from Rhode Island is proposing, and I urge my colleagues to support his amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 107 Leg.]

YEAS—61

Adams	Bentsen	Bingaman
Baucus	Biden	Boren

Boschwitz	Gramm	Metzenbaum
Bradley	Harkin	Mikulski
Breaux	Hatfield	Moynihan
Bryan	Heflin	Packwood
Bumpers	Heinz	Pell
Burdick	Inouye	Reid
Chafee	Jeffords	Riegle
Conrad	Johnston	Robb
Cranston	Kasten	Rockefeller
D'Amato	Kennedy	Sanford
Daschle	Kerrey	Sarbanes
DeConcini	Kerry	Sasser
Dixon	Kohl	Simon
Dodd	Lautenberg	Specter
Domenici	Leahy	Stevens
Durenberger	Levin	Wilson
Glenn	Lieberman	Wirth
Gore	Mack	
Graham	McCain	

NAYS—38

Armstrong	Gorton	Nickles
Bond	Grassley	Nunn
Burns	Hatch	Pressler
Byrd	Helms	Pryor
Coats	Hollings	Roth
Cochran	Humphrey	Rudman
Cohen	Kassebaum	Shelby
Danforth	Lott	Simpson
Dole	Lugar	Symms
Exon	McClure	Thurmond
Ford	McConnell	Wallop
Fowler	Mitchell	Warner
Garn	Murkowski	

NOT VOTING—1

Matsunaga

So, the amendment (No. 244) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order so that Members can hear. Senators in the aisle, please take your seats.

Mr. CHAFEE. Mr. President, I ask unanimous consent that Senator WILSON be added as a cosponsor of that amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, I have an amendment.

The PRESIDING OFFICER. The Chair will state that the pending business is the Gorton amendment, which was set aside for the purposes of the Chafee amendment.

Mr. GORTON. Will the Senator from New Hampshire yield for one brief unanimous-consent request?

Mr. HUMPHREY. Yes.

Mr. GORTON. Mr. President, I ask unanimous consent that Senator D'AMATO be added as a cosponsor to the Gorton amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. I thank the Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I ask unanimous consent to temporarily set aside the Gorton amendment.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

AMENDMENT NO. 245

(Purpose: To amend the Immigration and Nationality Act to continue to permit, after October 1, 1989, the immigration of certain adopted children)

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] proposes an amendment numbered 245.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 109. CONTINUING PROVISION PERMITTING IMMIGRATION OF CERTAIN ADOPTED CHILDREN.

(a) IN GENERAL.—Section 101(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(2)) is amended by inserting before the period at the end the following: ", except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term 'parent' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1989, upon the expiration of the amendment made by section 210(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100-459, 102 Stat. 2203).

Mr. HUMPHREY. Mr. President, this is really a technical amendment. It has been cleared on both sides. It has been cleared with the Immigration and Naturalization Service and OMB. All parties support it. I do not really think that any discussion is necessary, unless some have questions.

Mr. KENNEDY. Mr. President, I thank the Senator from New Hampshire. The effect of this amendment is to correct an unintended consequence of the law change in 1986. In giving petitioning rights to fathers as well as to mothers, we inadvertently affected the adoption process. This restores what was the technical language which would continue the adoption process prior to that period of time. It has been cleared with the administration. We welcome the amendment and are delighted that the Senator from New Hampshire has brought this to our attention.

The PRESIDING OFFICER. Is there further debate?

Mr. HUMPHREY. Mr. President, this amendment is similar to legislation which I introduced in June along with Senators BENTSEN, HATCH, GRAHAM, and SIMON.

This amendment will make permanent a small, but important provision offered by our former colleague, Senator Chiles, to the Commerce, Justice, State appropriations bill. Unless extended, the Chiles provision will expire at the end of the present fiscal year.

The aim of this amendment is to preserve foreign adoptions. Ten thousand foreign children come to America each year to be adopted by American families. This is not a large number by INS standards, but there is no way to overestimate the importance of these children to their adoptive parents or of these parents to the children. Anyone who has worked with these parents knows how thrilled they are when their child arrives. Anyone who has met with the children who have become Americans can see how well they do, how good it was that they were allowed to come.

Since World War II, American families have developed a tradition of taking in orphans from around the world. This tradition is a credit to our country and warrants protection.

My amendment seeks to correct a problem first raised by an 1987 INS memorandum. Until that memo, authored by the acting general counsel of INS, that agency had never considered the foreign fathers of illegitimate children when clearing these children for immigration as orphans. INS presumed that these men were out of the picture, and required only the mother, it she were present, to release her child for emigration and adoption.

The 1987 memo gave putative foreign fathers a right to approve the emigration and adoption of their birth children. This change caused two dilemmas:

First, standards for compliance were unclear and possibly insurmountable. How does one find these fathers? What must one do before INS acknowledges that the father can't be found?

Second, finding the father could make the child ineligible for immigration even if the father agrees to the adoption. If one finds the father and there is also a mother, the child can't be declared an orphan because then the child would have two parents, and the Immigration and Nationality Act specifies that an orphan have no more than one parent.

These restrictions on designating a child as an orphan are significant because virtually all the foreign children adopted in this country come here as orphans, and a large percentage of these are illegitimate children. Requiring agencies and American families to track down the putative fathers would, under existing law, greatly restrict foreign adoptions.

There is no need to impair foreign adoptions to ensure reasonable rights for foreign fathers. My amendment addresses the issue by specifying that INS will not concern itself with the putative father when he has disappeared, abandoned or deserted the child. When the putative father is present, INS can require that he ap-

prove his birth child's emigration and adoption. If he does, the child can still immigrate to this country as an ophan.

This was a reasonable solution when it was adopted a year ago, and it is a reasonable solution now. I urge my colleagues to approve this amendment.

Mr. SIMPSON. Mr. President, I commend the Senator from New Hampshire, my colleague, who has been deeply involved in this type of activity since his coming here. We came here at the same time in 1978. I commend the Senator from New Hampshire. His interest in family and adoption and the rights of parents is well known to us all. I commend him for this amendment.

Mr. HUMPHREY. I thank the Senator from Massachusetts and the Senator from Wyoming for their support and their help.

The PRESIDING OFFICER. Is there further debate?

If there is no further debate, the question is on agreeing to the amendment of the Senator from New Hampshire [Mr. HUMPHREY].

The amendment (No. 245) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 246

(Purpose: To strike out the employment creation visa category)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair would state to the Senator from Arkansas that the pending business before the Senate is an amendment by the Senator from Washington [Mr. GORTON].

Mr. KENNEDY. Mr. President, I ask unanimous consent that the amendment of the Senator from Washington be temporarily set aside and it be before the Senate after the disposition of the amendment of the Senator from Arkansas.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The clerk will report the amendment of the Senator from Arkansas.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 246.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 94, strike out line 11 and all that follows through line 2 on page 95.

On page 95, line 3, strike out "(5)" and insert in lieu thereof "(4)".

On page 97, line 13, strike out "(5)" and insert in lieu thereof "(4)".

On page 97, line 19, strike out "(5)" and insert in lieu thereof "(4)".

On page 98, line 2, strike out "(5)" and insert in lieu thereof "(4)".

On page 98, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 101, line 21, strike out "(5)" and insert in lieu thereof "(4)".

On page 102, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 102, line 10, strike out "(5)" and insert in lieu thereof "(4)".

Beginning on page 105, strike out line 15 and all that follows through the item between lines 10 and 11 on page 115.

On page 116, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 116, line 11, strike out "(5)" and insert in lieu thereof "(4)".

On page 117, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 117, line 18, strike out "(5)" and insert in lieu thereof "(4)".

Mr. KENNEDY. Mr. President, is the Senator from Arkansas willing to enter into a time agreement on this amendment?

Mr. BUMPERS. I would not think that this amendment would take a lot of time. I am not prepared at this moment to enter into a time agreement. I think at the time I finish my statement on it, if the Senator would still like to enter into such an agreement, we can arrange it.

I have no interest, let me assure the managers, in prolonging this debate. As you know, this is the third time since 1983 that we have debated this amendment. Many of the Senators who have been here are familiar with it; some of the new ones perhaps are not. But, as I say, I have no interest in prolonging it.

Mr. President, as Yogi Berra used to say, "This is déjà vu all over again."

As I pointed out, this is the third time we have been through this. I was successful in deleting this so-called fat-cat provision from this bill in 1983 and was not successful last year. A motion to table my amendment was agreed to.

I am hoping that a lot of Senators will be watching and listening to the debate, and certainly those Senators who have come here since last year, I invite their very close attention to this amendment.

The amendment strikes a section of the bill, specifically section 203(b)(4), and simply because there is a reference to it also in section 104 of the bill, I strike that too.

Now, what is in this provision that I find so odious that I want to strike it totally from the bill? It is very simple. The bill provides that if you have $1 million, and you are willing to invest that $1 million in a new business and employ 10 persons for 2 years, you can become an American citizen.

There are some things about this bill that trouble me. The provisions dealing with allowing skilled workers and certain persons with high technological skills, those things are troublesome to me. But the idea of allowing somebody into this country simply because he or she happens to have $1 million, either inherited, made in the drug cartel, regardless of where the money comes from, there are 4,800 positions in this bill for them.

I must say, everybody in the Senate does not share, obviously the managers of the bill and the committee do not share, my outrage that this provision is in the bill. But for the life of me, I do not know why.

I went home last week and all anybody wanted to talk about in my State was flag burning and, incidentally, diving mules. We had a discount store down there that hired some guy who had three mules that dove off a platform. The Humane Society tried to get a restraining order without success, so the mules dove.

It was kind of interesting. I watched it on television. I was with the Humane Society in my heart, but the mules looked like they survived it very well.

Then we had another thing where a man wanted to burn a flag on the Capitol steps, and for 6 days the State was in utter turmoil over the flag. Any everybody was incensed that somebody not only wanted to burn a flag but wanted to burn it on the Capitol grounds with all the television cameras in the State, all the people that could gather there to watch. And ever since the Supreme Court rules as it did on flags, the country has been terribly agitated and upset.

What this bill says is they do not even have to love the flag. All they have to do is have $1 million. I talked to some Members of this body who are second- and third-generation immigrants, and I dare say every one of them will vote for my amendment. All we have to do is simply ask them, "When did their folks come over?" The 1900's? The 1910's? The 1920's? And then we ask them:

How many of their folks could have gotten into this country if there would have been a requirement that they have $1 million?

The answer is clear without an answer: Nobody.

The scales of justice in this country may be blind, but under this bill Lady Justice can hear cash tinkling in your pocket.

There is an INS regulation on the books now, there has been one since 1977, that if you have $40,000 and are willing to employ one person, you can get into this country. And, interestingly, not one single soul has ever entered the United States under that regulation.

Last year when we debated this, the bill contained a provision that you had to have $2 million. After I was defeated, my distinguished colleague and good friend from Texas, Senator GRAMM, offered an amendment to cut that to $1 million. So that was the provision left in the bill and, happily for all of us, that bill never got to the President's desk.

So what we have developed here is a toll road. The road to the United States today, if this bill becomes law, will be a toll road.

For the edification of the mangers of the bill, I have changed my amendment from the one I originally introduced, where we split the 4,800 immigrants up between two other categories. I just strike this investor preference.

If somebody wants to take those 4,800 slots and put them someplace else, be my guest. I will support you. But I am just simply saying I find it objectionable in the extreme that this bill again provides for a million bucks they can get in.

It is a drug dealer's dream. Every poll we see shows that the No. 1 concern of the American people is drugs. So if someone happens to be a drug dealer and they have made it big in Colombia, Peru, Mexico, The Bahamas, wherever, and they want to come into this country for $1 million—that is just one good day's pay for a big operator. He would not hesitate to start a hamburger joint and hire 10 kids for $3.35 an hour to get into the country. And who are the people who are running around with big suitcases full of cash? Why, they are members of the drug cartel. And this plays right into their hands.

In 1981 there was a Select Committee on Immigration, and we will hear the managers of the bill make the argument that the select committee voted 15 to 1 in favor of this. But at that time, this country needed jobs and it needed capital. There might have been some rationale for it. But I will tell you one thing.

Father Hesburgh, who is president of Notre Dame University, was the one dissenting vote and here is what he said.

> There is nothing wrong with persons who wish to invest. An investment is good for the USA. But the rich ought not to be able to buy their way into this country.

Father Hesburgh is one of the most respected men in this Nation. It is kind of like Abe Lincoln, polling his Cabinet one time, 9 yeas, and they got to Lincoln and Lincoln said no.

He said: The vote is 9 yeas, 1 nay—the nays have it. That is the way I feel about that Select Committee. Because Father Hesburgh expresses my thoughts perfectly.

The committee has gone to great lengths to obfuscate the real problem here. There is page after page of how the Attorney General can file deportation proceedings against somebody if they do not do what they said they would do. If, at the end of 2 years, they do not have 10 employees, then we can go through all kinds of proceedings to deport that person.

There was a GAO report, January 1987, and here is what it says about our ability to deport people once they get here.

> Based on our study about 2 percent of the denied aliens have been deported. Thirteen percent remain in the United States either awaiting hearings or under other immigration provisions. And a negligible percent have left voluntarily. About 80 percent have uncertain immigration status because INS has not started deportation proceedings.

So, do not worry about the Attorney General deporting these poor folks who did not make it. It will never happen.

What happens to some guy who comes over here with $1 million and goes into bankruptcy? He did his best, tried to survive, but could not make it to the end of 2 years. What are you going to do with him?

What is a new business, under the terms of the bill? On page 21 of the committee report, the committee says:

> Amended section 203(b)(4) is intended to create new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals.

That is what we call an oxymoron, where there is a contradiction in the same sentence. It is intended to create new employment, not to provide entrance for wealthy individuals. If it is not designed to permit entrance to wealthy individuals, why do they have to have $1 million to get in?

How about people who are trying to reunite with their families? Here are 4,800 spots taken away. If we can afford 4,800 more immigrants into this country, for Pete's sake, let us given them to deserving people.

I abhor the thought of somebody having a million dollars and sailing right by the Statue of Liberty, whether he cares anything about the country or not. He may be on the lam from the law. He may be anything. But he is not necessarily coming here because he loves Uncle Sugar and our wonderful flag.

We are already being bought up. Listen to this: the Japanese are financing 30 percent of our debt. There is over $1.5 trillion of foreign investment now. One trillion dollars of our Government securities are owned by foreign investors. Every Governor I know is spending half his time in Europe and Japan trying to get people to come here and build plants. British investment in this country has gone up 192 percent since 1980. We are being bought out lock, stock and barrel.

We do not need to be giving visas to drug dealers. According to the Washington Post, since 1977, foreign ownership of U.S. factories, banks, businesses and buildings has more than quadrupled. At the end of 1987, Europeans had $785 billion in United States holdings, compared to Japan's $194 billion. We spend a lot of time bashing the Japanese, but the truth of the matter is, they do not hold nearly as much property in this country as do the Europeans.

The list goes on and on. According to that same Post article, I want my colleagues to listen to this, and it is not entirely unrelated to this amendment, 64 percent of the prime real estate in downtown Los Angeles is owned by foreigners. Thirty-nine percent of Houston is owned by foreigners, and the city in which you sit right here, the Nation's Capital, 23 percent of it is owned by foreigners.

And we want to say if you bring $1 million over here, we will let you in personally. The Japanese own $9 billion worth of real estate in Hawaii alone. Real estate values went up 50 percent there in the last 2 years. In 1987, they bought 41 percent of all the condominiums in Honolulu. They own more than half the hotel rooms in Waikiki, and they own 10 of Oahu's 14 private golf courses.

According to that same Post article, in 1988, British investors committed a record $32.5 billion to acquire 400 United States companies. And if you read the Wall Street Journal or the Washington Post this morning, you saw where James Goldsmith is making a tender offer of $21.5 billion for an American company.

My point, I say to my colleagues, is simply that we do not need this provision to encourage foreign investment in this country. Anybody with a good immigration lawyer can come and stay.

You will hear the managers argue:

> Well, we have treaties with other countries where all you have to have is $100,000 and employ 1, 2, 3, 4 people.

Where anybody has ever entered the country under that provision or not, I do not know. But at least under those treaties we have the same privileges in their country, though I do not know of anybody who wants to leave the United States to go some place else. But I supposed you could at least say that it is equitably fair when you enter into a treaty with 3 other nations that say you can invest here and we can invest there.

I wish, Mr. President, we could debate this like the Manassas Battlefield. Senators came in and took their seats at 9 o'clock in the evening, and we debated for 3 hours, and everybody knew what the debate was about and voted and voted right. The reason I know it was right is because it was my amendment. I can tell you that if you show this on national television, 80 percent of the people of America would be just as offended as I am that this provision is in this bill.

Mr. President, what we have here, based on all those statistics I just read off, is an ongoing auction of America, and what I really believe is happening under provisions like this is that we are also auctioning off our souls.

Most of you have heard me debate the bounty hunter provision where you pay people to snitch on their employers. And I know that we have uncovered some wrongdoing in this country by paying a certain percentage of whatever we recover. One guy with Singer Co. stands to make $64 million because he blew the whistle. He said that he had known the Singer Co. was defrauding the Pentagon and had known for years, but it was only when his lawyer told him he stood to make $64 million that he came forth and told the authorities.

As bad as that fraud was, I find that really repulsive. Have we become so crass in this country that we have to pay people to do their civic duty? Have we become so insensitive to our greatness and what we can do on our own without bribing people?

On the Fourth of July when this gentleman in Arkansas tried to burn the flag on the Capitol grounds, there was a little bit of a mob scene. There were some punches swung; there was some blood.

Saturday morning I was speaking to the Governors School. At Hendrix College, 400 of the creme de la creme of the 17-year-olds in the State and their parents, and I was talking to them about this. I said if the media really wanted to perform a service, instead of playing up all that business about whether he would or would not be able to burn the flag and who was going to get killed, they should have taken a poll of the 300 people there and asked them how many of them had registered to vote and how many of them had voted in the last election.

Maybe the kind of patriotism I feel about this is old fashioned and it is quite obvious if I have come to this floor three times over the last 6 years, not to mention twice on the so-called bounty hunter provision. All I am saying is we need to instill in the American people some sense of pride, some sense of patriotism, love of flag, whatever you want, without these pecuniary benefits in here. The committee says this provision will create 48,000 jobs.

Do you know how they each that conclusion? Forty-eight hundred slots at 10 jobs each. The assumption is there will be 4,800 people coming here every year, and each one will create 10 jobs and that comes to 48,000. I tell you what I will do. I will stand on my head on the dome of the Capitol on December 31 every year and wiggle my ears if that happens. Everybody knows that is nonsense.

Now, what did we do here just recently on a debate on the FSX? The question was: Shall we or shall we not participate with the Japanese in building a fighter plane in Japan? The Senate by a very narrow margin said yes. And by saying yes, you can argue we were exporting jobs to Japan and saying to them:

> You do not have to buy the F-16, which is a good or better than any fighter plane you are going to build. You can continue to run this gigantic trade deficit against us.

And now we turn around and say through this provision:

> But all the rest of you folks, if you want to create some jobs over here, we will make you an American citizen.

One of the things I really find offensive about this is Canada, which has a similar provision and is having to revamp the whole thing right now. They have had this experience, and you are not going to get people in South Dakota.

How many of these employers who have a million bucks are going to go to South Dakota? They may go to Chicago. They may go to New York or Washington or Houston or Los Angeles. But they are not going to the lower Mississippi River Delta. They are not going to West Virginia's Appalachia. The Economic Minister of Canada says, "We are going to revamp the program. If they are going to come into this country, they are going to have to create jobs where we need them." At least that provision would meet with some approval or some justification. But now we are not helping people who really need it.

The argument is going to be made here by the managers that I am not offended by the fact that we are going to let in 27,000 high-techology, skilled people. And there are two preferences. But they are all talented people. And somebody says, if a rich man in Saudi Arabia sends his child to college in Oxford and he gets a Ph.D., he can get in under this and why are you not offended by that?

I am. But there again, that is a lot more palatable when you look at the test results and you find we are dead last in math, dead last in global studies. Only 50 percent of the 17-year-olds in America can work a two-step mathematical equation, and even the best students in this country do not match the Japanese students. So I guess I can sort of accept that because we are draining the brains of another country and not ours.

The other point that you might make is other countries are helping educate those people and we are taking the benefits of what the other country has expended on their students and bringing them here. But I can tell you one thing. If I had been chairman of this committee, I would not have put those preferences in there.

Section 104 says that the Attorney General can seek to deport these people but he must prove that this investor sought to evade the intent of the law.

Now folks, you are listening to a country trial lawyer right now, and I can tell you that when you start trying to prove that kind of intent, it is not easy. As I mentioned a moment ago, what if the investor says he tried but went bankrupt; he put his best effort forward. He is not a drug dealer. Maybe he was an honest entrepreneur. Are you going to deport him? Deportation, as I have already pointed out, is a very difficult thing.

Now, Mr. President, as I told the managers when I started talking, I am not going to belabor this. I have made about all the points I can make. We will listen to the floor managers rebut those arguments and then I would like to have a little rebuttal time. Meanwhile, if they want to enter into a time agreement, I will do that. But I can tell you, as you already know, I feel strongly about this. I think it flies right into the face of everything in which I believe. If families are going to be reunited, children with their parents, sisters with their brothers, that is all fine; that is humanitarian, and I believe in that. But for us to say if you have a million dollars, you can become an American citizen, it offends me deeply. I hope it does you.

I yield the floor, Mr. President.

Mr. KENNEDY. Could we get an agreement from the Senator now on time?

Mr. BUMPERS. Does the Senator have a suggestion?

Mr. KENNEDY. I do not know what——

Mr. BUMPERS. How much time does the Senator need on that side?

Mr. KENNEDY. I suppose we can take 30 minutes.

Mr. BUMPERS. How much?

Mr. KENNEDY. Thirty minutes.

Mr. BUMPERS. On the Senator's side?

Mr. KENNEDY. Yes.

Mr. BUMPERS. I will take 10 in addition.

Mr. KENNEDY. Could we ask, then, Mr. President, we have a time limitation of 40 minutes, 10 minutes to be controlled by the Senator from Arkansas and 30 minutes by the Senator from Wyoming and myself.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. KENNEDY. I will yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I thank the distinguished chairman for yielding.

Mr. President, I have listened to most of the speech of our dear colleague from Arkansas. He is articulate and persuasive as always. In this case, Mr. President, I believe he is also wrong. Our dear colleague from Arkansas talks about being outraged at this fat cat amendment. The amendment basically says if someone comes to this country, brings a million dollars, invests it, creates jobs, growth, and opportunity for Americans, that somehow is a privilege we ought not to grant.

Mr. President, let me first say that I do not understand why our colleague is outraged that we have an entrepreneur provision but he is not outraged that we have an education provision. If one is going to be outraged at special privilege, why should we give special privilege to someone who is distinguished in education? If a father has two sons and the first son, bieng the slower of the two, he sends into academics and the son gets his Ph.D. and distinguishes himself intellectually, under this bill the Ph.D gets preference and comes into America. Apparently, our colleague from Arkansas applauds that that is a wonderful situation. His second son, being the brighter of the two, he puts into business. If the second son is able to produce goods and services, if he is an effective entrepreneur, if he accumulates wealth, if he wishes to come to this great bastion of freedom to put his talents to work, somehow that is wrong. Somehow that is an outrage. I do not understand that, Mr. President.

Under this bill, we give preference to people who are young. Why is it an outrage to give preference to people who have accumulated wealth but not an outrage to give preference to people who are young? In fact, once in their life everyone is young, whether they have merits or they do not, whether they are drug dealers or whether they are not. We give preference in this bill to people who have skills and who have experience in various occupations. Mr. President, I cannot understand why that is more preferential than giving preference to people who put to work the ancient art of conducting business.

Mr. President, Calvin Coolidge, who is not quoted very often, said the business of America is business. When we are limiting the number of people who want to come to America legally to only 600,000 people a year and we are not limiting the number of people who are coming here illegally, I, for one, would be willing to raise that number. I, for one, want us to go more on merit and talent and ability, whether that ability is in physics or whether that ability is in the practice of business to create jobs, growth, and opportunity. I want, quite frankly, to have more people with both of those kinds of abilities.

It seems to me that the provision of this bill is a good provision. It is a provision that says that if people have been successful in business—if they can bring that talent and the fruits of that talent, a million dollars to this country, and if they meet the criteria of job creation and ability to sustain that business—they then have a right to come here and to practice that business.

Mr. President, we have a limit in this bill of 600,000 people a year that can come to America. My guess is there are 600 million people who would like to come. This bill in and of its very nature requires that we make choices. And as a result, we have set up a list of criteria, education, youth, experience, success, and entrepreneurial skills. Mr. President, that is the essence of this whole movement in immigration. I do not see how our colleague from Arkansas can support these other criteria and reject the criterion of economic success, entrepreneurial ability, and the fruits of that ability.

Mr. President, I hope we reject this amendment. I do not doubt the sincerity of the positon of the Senator from Arkansas at all, but I think his position is wrongheaded. I think it is not in the American interest. We need to bring people to this country who have skills and talents, and can help us create jobs, growth, and opportunity. This provision of the bill does it. This amendment would strike that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 7 or 8 minutes.

Mr. President, in listening to the arguments of my good friend from Arkansas, I did not recognize our bill. One of the favorite techniques used occasionally, and we heard it used again this afternoon, is to misdescribe the bill, and then differ with it and object to it. That we have seen.

The idea that is suggested by the Senator from Arkansas' argument that with the passage of this bill we are somehow aiding and assisting drug users, those involved in drug trafficking, facilitating their coming to the United States, is unworthy of a response. It is unworthy of a response. The Senator from Arkansas understands that, or certainly should understand. And to try to suggest otherwise either demonstrates he has not read the bill or does not know about the enforcement procedures or the procedures which are required under the immigration bill, No. 1.

Mr. President, this bill is a combination of different elements. The prime elements are for family reunification. The great majority, the overwhelming numbers, are for family reunification. There is a second provision in the bill that recognizes that we have shortages in certain skills.

And there is a belief based upon hours of hearings that if you are able to get individuals with certain types of skills, that is going to mean more employment for Americans, not less. We have heard debate and discussion about whether this bill is really for Americans. We believe, and as we have found during the course of our testimony, if you bring in certain kinds of skills that are not here, we find there is a good probability that you are going to stimulate more Americans working.

We were concerned, as we shaped these immigration provisions, that we would not displace other Americans. An argument could be made, an extension of the argument of the Senator from Arkansas, why do we not bring in carpenters? Why do we not just bring in further plumbers? Why not really be democratic? Just bring in hard-working people, men and women who know how to use their hands. That is the way our grandfathers came, and I yield to no one in that observation. But we are dealing with a different time. You bring those individuals in here and you are displacing American workers. Is that our objective? No. In the shaping of American immigration policy we do not want to disadvantage our fellow citizens, men and women who have been in the Armed Forces, and probably fought for our country. All of us can get as demagogic as anyone else on this issue—bled on our battlefields.

So what again is the shape of our proposal? Is one primarily for the reunification of families? There are legitimate areas of debate on this issue. We have heard them. Whether you give greater preferences to small children or whether you include the larger nuclear families, I think good strong arguments could be made either way, and I respect individuals who hold differing views on it. But we have continued the basic provision in here that provides for family reunification, and we also include provisions to bring in those with certain skills, where there are needs, in order to try to strengthen the American economy.

The provision that the Senator from Arkansas is talking about is three-quarters of 1 percent of the amount. We say that is important. Sure, it is. At other times when we debated this issue in the early eighties, when we found out that an investor visa would displace a family member, I supported the Senator from Arkansas. I supported him. But we have expanded the total numbers, by nearly 22 percent, now up to 600,000. There is a limited number of that, 4,800, for investors. We do not say if you just have the million dollars you come in here, although that I think would be a fair assumption from listening to the Senator from Arkansas. We say you have to create 10 jobs, 10 new jobs. The Senator from Arkansas finds trouble about that because they are only going to provide $3.35 an hour. As one who has been the principal sponsor of the increase in the minimum wage, I would like to see that be a good deal more. We cannot legislate that the new jobs are going to be at a certain level. But we are talking about new jobs. Read the language in the bill creating new jobs.

There was a time not long ago, certainly in my State of Massachusetts, of the top 1,500 employment areas of the country we had three of them. Unemployment was rife in this country. We are doing better now. It is most difficult in many of the rural areas of this country. My part of the country is doing better. It was not long ago that we were concerned about unemployment, and the idea that you are going to provide some new jobs had some appeal. Only three-quarters of 1 percent of the total amount is for this investor program. And if it is unfair and unjust, and it is even a fraction of that 1 percent, it ought to be out. The real question is can you make a plausible argument; whether you can make a plausible argument for the creation of those new jobs through investors.

The Senator from Arkansas talks about the $9 billion of foreign investment in Hawaii. His argument is not with our bill. It is with the other provisions of the treaty investor provisions which permit foreign investment in this country. If he whats to keep those individuals out of Los Angeles and out of Hawaii, fight that battle, but that is not our battle. And then I want to find out about what these other countries are going to do to retaliate. Are you going to keep them out? They are going to keep us out. That is nice. That is a nice thing to do.

We find an expansion in terms of global economy. We are all concerned about restrictive trade practices, and

all of us can talk about that. I am certainly glad to do it. Now the Japanese exclude American products and American investors. I am glad to talk about that all afternoon, but that is not this bill. And if he is troubled by the fact that the foreign investors own half of Los Angeles, that is not this bill. If he is troubled by drug dealers coming into the United States, that is not this bill.

So, Mr. President, we have tried to fashion and shape a compromise bill. As we have stated here at other times, I would have a different bill than the one here. The Senator from Wyoming would have a different bill. These particular provisions have been added as a part of a compromise. The Senator from Wyoming knows the questions I had in going over these particular proposals, but I support these proposals now. I think they are better proposals because of the arguments that the Senator from Arkansas made. We are grateful to him for bringing these matters up in the past. I say that quite sincerely. But I think as we are looking at where we are in terms of the legislation, what we have attempted to do, the limited nature of this particular proposal, I do think it is justifiable.

I have a difficulty, as has been pointed out by the Senator from Texas, to say that, well, it is all right if a person is an educated person. Somehow, as I think the Senator from Texas pointed out correctly, the ire of the Senator from Arkansas is all up about that investor, but not over the person that may have been spending that money on somebody else, that has been spending all that money on that individual's education.

When we talk about that poor individual who is sitting back there, as I think the reference was, on a Greek bench—the reference that was used a year or two ago—then he sees this person drive by in a Rolls Royce and gets on that investment plain, what about that educated individual? What are we going to say? Clearly, the decision that has been made in the limited areas of where we are going to deal with this in the third and sixth preferences, and also in the other independent categories, we do give the areas which we have found as a result of the study. The labor condition—in the year 2000 there are going to be areas of important need, skills that are going to be necessary in terms of our economy. We give them some preference.

I think that that is a balance, Mr. President, between family, much more limited balance, in terms of high skills that can be important in terms of our economy, and then the three-quarters of 1 percent left over in terms of the investors. I think different Members would juggle those in different ways, but I think that the basic package on that is completely justifiable and supportable. I will yield.

The PRESIDING OFFICER. The Senator from Massachusetts has 14 minutes remaining.

Mr. KENNEDY. I yield to the Senator from Illinois.

Mr. SIMON. Mr. President, and my colleagues, there is no more effective orator in this body than the Senator from Arkansas. I have great respect for him—so much respect, that at one point I publicly came out for DALE BUMPERS for President of the United States. But even someone who would make a great President can make an error now and then, and I think that my friend DALE BUMPERS is wrong on this particular amendment, when he talks about foreign investment.

As Senator KENNEDY has said, 90 percent of what he is talking about has nothing to do with this amendment, but in fact it goes just the opposite. When you talk about the foreign ownership of Los Angeles, one of the ways that you can do something about it is to get people who buy and create jobs to move into this country. That is what we are talking about.

Let me add, just so we have another sense of perspective on this, that this country admits more legal immigrants into our country than all the rest of the world combined. And we are talking about taking less than 1 percent of those and saying, "You can come in, if you create jobs." That is certainly not against the ideals of this country. I think it is kind of a minimal thing that we are doing, to say how can you build a better country.

If I quote the Senator from Arkansas correctly, and he can correct me. I have jotted this down—and he can talk faster than I can write here, I have to tell you—but he said, "Anybody with a million bucks and a good immigration lawyer can stay down." Well, if that is the case—and I am not sure that is the case—why not insist that you put that million dollars into creating jobs?

Finally, he makes a point that has some validity. He said that nobody is going to be investing in South Dakota; nobody is going to be investing in Arkansas; nobody is going to be investing in the southern part of Illinois. If he wants to have an amendment saying that that investment has to go into areas of high unemployment, I cannot speak, obviously, for Senator SIMPSON or Senator KENNEDY, but I will support such an amendment. South Dakota has four or five of the lowest-income counties in this Nation.

I would like to see that happen. I would like to see one of those counties where the Pine Ridge Indians live—maybe we can get some priorities there. I would love to see some investment in southern Illinois, where we have high unemployment. But my belief is that the fundamental concept here is sound.

Let us set aside a little less than 1 percent of these jobs for people who are going to come in and who are going to create at least 10 jobs, invest at least a million dollars. Canada does it; Australia does it. Canada has a quarter of a million dollar requirement on these kinds of jobs. Other countries do it. I think it makes sense.

I think we have crafted a balanced bill here. Not everything in it is exactly what I would like or what anyone else would like, but I think there is nothing wrong with saying we are going to set aside a few jobs for people who are going to create jobs in this country. My guess is that those who invest in those 10 jobs, generally, are going to be people where those 10 jobs will grow to 20, 30, and 40 and beyond.

So I am going to support the effort to defeat the amendment by the Senator from Arkansas, and I hope the majority of this body moves in that direction.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts has 9 minutes remaining. The Senator from Arkansas has 10 minutes remaining.

Who yields time?

The Chair informs all Senators, if no one yields time, the Chair deducts equally from both sides.

Mr. SIMPSON. The Senator from Arkansas is crouched over there behind his podium and ready to let me go on for about 8½ minutes and just drop the rocks right off the top of the roof.

Now, not allowing that to occur, I yield myself 5 minutes of the time, and I will try to dust off some of those remarkable comments of my friend.

I have learned a lot about legislating from DALE BUMPERS—not about philosophy, but about legislating. I have two splendid friends in TED KENNEDY and DALE BUMPERS, who I have enjoyed richly in my 10 years here. They are people of great and good humor, and I enjoy their camaraderie and friendship. I like their spirit and zeal, because I get into that, too. But this is old wash; it is, indeed. I felt the same as my friend from Massachusetts and my friend from Illinois. I did not know what we were talking about when I heard my friend from Arkansas speaking about this amendment.

This is an employment creation preference. We have done it before. Other countries do it. It is not for the rich. It is not for the elite. It is 4,800 visas for those who invest a million bucks and create 10 new jobs for U.S. workers. A million bucks. You invest your million bucks, and if you do not maintain the employment of the U.S. workers, then, under the law, on the second anniversary you can lose your conditional visa.

If they do not do what they are supposed to do, they get their status jerked. That is what happens to them. We have been as cautious and careful as we could be in that one.

Let me tell you about Father Ted Hesburgh. That is someone I know some things about. What a man. In his

last year of his tour of duty as president of Notre Dame when they said you can pick who you would like to receive an honorary degree, and he picked me. Boy, do not think that was not the greatest thrill of my life, to receive an honorary doctor of laws from the University of Notre Dame.

He was the only one opposed to the investor category, nobody else. The vote was 15 to 1 and he did not support it. DALE BUMPERS has given you the quote, but the rest of us, 15 of the 16 members of the Select Commission wanted it, and it went in.

I wanted to share that with you.

We are dealing with a very small figure here, less than 1 percent of the national level. I just want to completely reject the argument that the people are going to buy their way past the Statue of Liberty. That one just will not sell.

Let us be honest and candid. I have often said everyone is entitled to his own opinions, but one is entitled to his own facts.

Many of the conditions of admission under present law are economic in nature. We give special preference to aliens with advanced academic degrees, to aliens with exceptional ability in the sciences and the arts.

How do you get an education like that? You probably pay for it. They either pay for it themselves or they get grants to do it. Somebody spent a lot of money to get to a position in life where they could use those portions of our immigration law to get to the United States. They had to use their resources, or that of others, and they might have even been rich. I do not know, but I do know that that is the way it is.

In fact, these people with their Ph.D.'s or their years of research in particle physics or years of experience with one of the great symphonies or ballet companies are bringing something that is as rare and as difficult to obtain in the world as is the ability and the resources to invest 1 million bucks in an employment producing enterprise the United States.

That is what we are doing. These people outmuscle other people to get here. These are people who, I guess you could say, are elite or people of status. What is new? Nothing. So we keep it down to a small manageable level, 4,800 people.

We also deny visas to people who would become a public charge in America. How about that one? Somebody who gets here who is helpless—are we to correct that? I do not know. It seems like a pretty good rule.

But to say we are bought out lock, stock, and barrel is just an absolute absurdity. These people become part of us. The become part of our country, and they invest their resources here, and they invest in American workers.

We have been here before. What we are doing here is intending to create new employment for U.S. workers, something in our national interest, something to infuse new capital into our economy and provide immigrant visas to people, not to provide the rich with some advantage. That is an absurd argument. It will not sell. It should not sell. It is not worthy of the debate.

I urge my colleagues to reject it.

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes remaining.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I have the highest regard for the Senator from Massachusetts, as I have, of course, for my very distinguished colleague and good friend, Senator SIMPSON, and PAUL SIMON, who showed just how brilliant he was when he endorsed me for President. I have the utmost repsect for them.

The only thing I can think of is, when they got up there in that committee room, there was something in the water. They got to talking to each other and they just lost their perspective, not intentionally. They are all fine, fine gentlemen and great Senators, but they just happened to drink some water up there that was flawed, and that is the reason we have this provision in the bill.

Senator KENNEDY alluded to the point, the fact, that I was talking about how much of Los Angeles, Houston, and Washington, DC, the Japanese own. I am not quarreling with that. I am not a Japanese basher. I am glad they show up at the Treasury window every Tuesday morning to buy our bonds. They are financing 30 percent of the debt. If some Tuesday morning they do not show up, this country is in a heap of trouble. That was the point.

The point I was trying to make is we do not need any more incentives for people to invest in this country. Good Lord, they are buying it up as fast as they know how.

Then you come along with this little old provision: 4,800 slots for people who are willing to put up $1 million. He said drug dealers do not have anything to do with this. I divinely hope he is right.

But I can tell you one thing. There is not anything to keep a drug dealer out. If you do not know it, if he just happens to be making a half-billion dollars a year and wants to come to this country, and nobody knows it, the first thing you know he will be setting up shop in the nearest fast-food joint.

But here is what the committee itself said. Here is what the committee report says:

> This section is put in here to infuse new capital into the country.

We do not need to infuse any more capital into this country. As I say, it is being auctioned off now, and the Senator from Texas says, "How about the Ph.D. whose rich father educated him?"

I said, and I will say it again, if I had been drafting the bill, I would not have put that in there either. But I will say this: If a Ph.D. wants to come to this country, he is at least already equipped to make a contribution, and in this category, you may be getting a bank robber instead of a drug dealer. You may be getting someone who is on the lam from the law. When you get a Ph.D., he has already got it here in his head where we know he can make a contribution. There is a big, big difference.

The Senator from Texas said that Calvin Coolidge was not quoted often, and the quote he used shows why—"The business of America is business."

We all know that business is important to the creation of jobs. But I can tell you one thing, that the business of America is just not business. It is jobs. It is housing. It is education. It is health care. It is compassion for those who have not been as well-born as others. It is concern. And it is liberty and justice. That is what America stands for. Those are things that people here understand and that is the reason they love it.

I am concerned about the country. I say a New Yorker cartoon the other day. The television commentator is talking and these poor people are there with a few scraps of food on the table. And the commentator is saying, "This may not go down well with the meek, but in the future it will be the arrogant who will inherit the Earth."

The Senator from Massachusetts suggested I misdescribed the bill. He said, "Why do we not bring in plumbers and carpenters?"

I would rather have a plumber or a carpenter who is coming here for the right reasons than a Ph.D. or a guy with a million bucks coming for the wrong reasons.

He suggested that only three-quarters of 1 percent of the people involved here are in this particular category. Three-quarters of 1 percent—who can argue with that? That is like saying only 1 percent of the people we executed in this country last year were innocent. That is too many, and three-quarters of 1 percent is too many.

I am not trying to stop investment in this country. I am trying to stop what I see as an outrageous opportunity for fraud and evasion of the law.

Mr. President, I wanted to save some time for my very distinguished friend, Senator KERREY from Nebraska, who wished to speak on this amendment. But I do not want to delay this, and I did not want to use up all of my time. But if the managers of the bill want to go ahead and yield back time, I suppose we can go ahead and arrange that unless someone wishes to speak further on it.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Arkansas has 4 minutes. The Senator from Massachusetts has 3 minutes.

Mr. BUMPERS. I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I will take just 2 minutes.

I am even more confused with the Senator's arguments. Somehow Ph.D.'s cannot be drug dealers, is that right, because if you say you support the various provisions in terms of the Ph.D.'s, you have the same requirements under the visa provisions for the Ph.D.'d as you have for the investors.

So evidently anyone who is a Ph.D. is all right, but those investors, those investors who are going to create 10 jobs, are all going to be drug dealers.

I hear another argument: "I would rather have carpenters and plumbers in here for the right reasons than Ph.D.'s for the wrong reasons."

Now, tell me what that means?

Basically, what we are saying is we do not want the plumbers and the carpenters in here for any reason if they are going to displace American workers. That is the reason. That is the logic. You may have a different understanding of it, but that is the logic. We do not want to displace them. If you got skills, we need them, and it is going to mean more employment for Americans, we want them.

And I listened, finally, to the argument: "The test is to be the contribution to America." Fair enough. Fair enough. We believe that the greatest provisions of this legislation are contributions to Americans because they are family reunifications.

The second greatest is the 130,000 special skills that are going to mean further employment for our country.

And then the three-tenths of 1 percent that say you are gong to have to actually provide 10 new jobs.

Now, I am aware of the expansion of the job markets, and can give the figures as well as the Senator from Arkansas. But having represented a State for the better half of my years here where the unemployment was significant in terms of my State, I feel that that three-tenths of 1 percent for new jobs is not something that forms the great kind of injustice that the Senator from Arkansas has placed on it.

I do believe, Mr. President, that the arguments that were made by the Senator from Arkansas in the early 1980's that said, "All right, for every individual that we are going to take in this area, we are going to knock back a family members," I think that is not right. That argument should be made and was made and I supported it. And because of that argument, we ensured that that was not going to be the case, just an add-on; just an add-on.

And if that were the case in this, I would not support that provision for many of the reasons that were stated here by the Senator from Arkansas. Dramatically different circumstances, Mr. President.

I hope that the positions which have been expressed by the Senator from Wyoming and the Senator from Illinois and myself would be sustained.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Arkansas has 3 minutes.

Mr. BUMPERS. Mr. President, I want to state again as emphatically as I know how, if I had been drafting the bill there would be no Ph.D.'s. There would be people who were coming here because they had family here. There would be people coming here because they were repressed in their home country and wanted to be free.

The reason democracy is on the move all over the world is because the strongest yearning of man is to be free. And this bill is not just about who can make a contribution to this country. The primary motive of this bill is for compassionate reasons, because we believe in helping the oppressed, because we believe families ought not to be severed and separated.

You take the Senator from Maryland, whose family came here from Greece. Could they have come if they had had to put up a million bucks? Why, of course, they could not.

And who do you think is going to take pride in saying, "I'm an American because my old man had a million bucks?" They came because they wanted to be free, and that is the reason people ought to come today.

We are putting the crassest commercial value on American citizenship I have ever seen. It is bizarre. It is outrageous. It goes against this Senator's love of country and feelings of patriotism.

So, Mr. President, I will close where I started. There ought not to be a price put on American citizenship. You cannot put a price on it—$2 million, $10 million, whatever you want to put on it. It degrades American citizens when you say some came because they had a million, at least 4800 of them.

I find it offensive. And I can tell you that all of America would find it offensive if they listened to this debate, all this convoluted reasoning about Ph.D.'s and who can make a contribution and who can create jobs. And the rationale for this is new infusion of capital, but we have more foreign capital in this country than we can handle right now. The rationale is wrong. It is in error.

I ask my colleagues—I remember Atticus Finch in "To Kill a Mockingbird" when he asked that jury to acquit a black man who was falsely accused of raping a white woman. He said, "For God's sake, do your duty."

I am asking the Members of the United States Senate: For God's sake, do your duty and vote for this amendment.

Mr. President, I yield back such time as I have remaining.

Mr. KENNEDY. Mr. President, I wonder if we might each have 2 additional minutes. I want to make a comment about a representation made in the final argument. I ask unanimous consent that we each have 2 additional minutes.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BUMPERS. Mr. President, before I agree to that, there is not going to be tabling motion, is there?

Mr. KENNEDY. No.

Mr. BUMPERS. OK.

Mr. KENNEDY. Mr. President, one point I want to make here for the record and that is on the issues of refugees and asylum. I yield to no one in my commitment in that area. The Senator from Arkansas knows that at the present time we have the most liberal refugee and asylum law, drafted by our committee of 1980. So those persecuted individuals can come in here, I say to the Senator. That is not this bill.

The only condition on that is the limitations that are established, worked out with the administration and the Congress. So that is a different issue. If the Senator wants to debate refugee policy and asylum policy, I will be glad to debate that. But that is not this issue. It is again one of the mixtures that we have heard over the course of this afternoon.

Mr. SARBANES. Will the Senator yield for a question?

Mr. KENNEDY. I do not know how much time I have remaining.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. KENNEDY. I yield for a very brief question so I may have time to answer.

Mr. SARBANES. In our history, have we ever done this before?

Mr. KENNEDY. Yes. It is on the books at the present time.

Mr. SARBANES. Well, when was that done?

Mr. KENNEDY. The 1965 act.

Mr. SARBANES. We allowed people to put up money and get a visa and come into America?

Mr. KENNEDY. That is correct.

Mr. SARBANES. How much money?

Mr. KENNEDY. Forty-five thousand dollars. But it has never been utilized because of the way that the numbers have spilled over from one category to another.

Mr. SARBANES. Forty-five thousand dollars. Now you are taking it to a million dollars and that reflects inflation, I take it.

Mr. KENNEDY. And 10 jobs.

Mr. SARBANES. I agree with the Senator from Arkansas, Mr. President. I think it is a very bad principle. It directly contradicts what immigration has stood for in this country.

Mr. BUMPERS. Mr. President, let me yield an additional minute to the Senator from Maryland. He is on a roll and I want him to continue.

Mr. KENNEDY. Will the Senator from Maryland yield for a question, then?

Mr. SARBANES. Sure.

Mr. KENNEDY. Do you object to the provisions that give the Ph.D.'s and special skills?

Mr. SARBANES. I have trouble with those provisions.

Mr. KENNEDY. But do you object to those?

Mr. SARBANES. I am prepared to go that far, but I am not prepared to have someone sit down and write out a check for a million dollars and get a visa to come into the country.

Mr. KENNEDY. But the Senator does not object to that individual spending that money at home and gaining that education and jumping over others who are waiting in line. Evidently, the Senator does not object to that. Can you follow that logic?

Mr. SARBANES. In a lot of countries, they get that opportunity for education as a result of it being provided, in effect, as a public right, something we ought to do in this country. Most of these people who come in on these Ph.D.'s have earned them on the basis of the opportunities made available in their own country.

But as I said to the Senator, I have some difficulty with that, but I am prepared to accept that. But to move it to the point where you can sit down and count out a million dollars—what do you do? Do you go in and see the consular officer and put a million dollars in front of him and he gives you a visa?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BUMPERS. Mr. President, with my time remaining, let me just answer the question of the Senator from Maryland which was not answered: Have we ever done this before? The answer to that is no. Congress has never done it.

What the Senator from Massachusetts was telling you about is an INS regulation and not one soul has ever come into the country on it. But Congress has never, never approved this kind of thing.

Mr. President, I yield back the remainder of my time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the amendment of the Senator from Arkansas. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 108 Leg.]

YEAS—43

Adams	Bingaman	Bradley
Biden	Boren	Bryan
Bumpers	Hollings	Nunn
Burdick	Humphrey	Pryor
Byrd	Inouye	Reid
Conrad	Jeffords	Riegle
Cranston	Johnston	Robb
Daschle	Kerrey	Rockefeller
DeConcini	Kerry	Rudman
Exon	Lautenberg	Sanford
Ford	Leahy	Sarbanes
Fowler	Levin	Sasser
Glenn	Metzenbaum	Specter
Gore	Mikulski	
Harkin	Mitchell	

NAYS—56

Armstrong	Gorton	McConnell
Baucus	Graham	Moynihan
Bentsen	Gramm	Murkowski
Bond	Grassley	Nickles
Boschwitz	Hatch	Packwood
Breaux	Hatfield	Pell
Burns	Heflin	Pressler
Chafee	Heinz	Roth
Coats	Helms	Shelby
Cochran	Kassebaum	Simon
Cohen	Kasten	Simpson
D'Amato	Kennedy	Stevens
Danforth	Kohl	Symms
Dixon	Lieberman	Thurmond
Dodd	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	Wilson
Durenberger	McCain	Wirth
Garn	McClure	

NOT VOTING—1

Matsunaga

So the amendment (No. 246) was rejected.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was rejected.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SANFORD. Mr. President, let me take this opportunity at the outset to thank my distinguished colleagues from Massachusetts, Wyoming, and Illinois for their diligence and patience in showing us all the way through what is surely one of the more complex and frustrating issues this body faces. Immigration is not always a politically attractive issues for those who take a leadership position, and I applaud the fine sense of justice with which the subcommittee has crafted the bill we have before us today.

IMPORTANCE OF LEGAL IMMIGRATION REFORM

As you know, there has been no major reform of our system of legal immigration into this country since 1965. We do have a rough blueprint, however, and that is the recommendations of the Select Commission on Immigration and Refugee Policy. The recommendations of the Commission have enjoyed a broad measure of bipartisan support. Members from both sides of the aisle, as well as the President, support legal immigration reform. How sad it would be to let another year slip by without addressing the inequities and backlogs in the current system. The human and economic cost of needless delays must end. This bill generously expands legal immigration into this country by 21 percent. I am glad to be joined in my support for this new level of immigration by my fellow Senator from North Carolina. We both realize that this higher level of immigration will benefit North Carolina and the country as a whole. Let us take action today to reaffirm our country's proud and generous immigrant tradition.

CHINESE STUDENTS (INCLUDES PERSONAL INFO)

North Carolina has been proud for years to host large numbers of students and professors from the People's Republic of China. As an educator, I have had a deep and abiding interest in developing the cultural and educational ties that have developed between our two nations. I visited China personally as president of Duke University, and set up some of the first educational exchanges our country had with China. At the time China was emerging from the horrors of the cultural revolution. I believe we have a responsibility to the over 400 students and academics we host today in North Carolina—a responsibility to guarantee that they will not be forcibly sent back to a land that quakes again under totalitarian crackdown. I strongly support the amendment adopted yesterday by this body to waive the 2-year home residency requirement, and urge that this waiver quickly be made into law.

THE NATIONAL LEVEL: A SOVEREIGN NATION'S RESPONSIBILITY TO CONTROL ITS BORDERS

A sovereign nation needs to control its borders. A wise nation, however generous, needs to make thoughtful decisions about immigration across its borders. A prudent nation prepares for immigration by making plans for the housing, employment, and other social services that newly arrived immigrants need. For the first time this bill provides a national ceiling to help us plan responsibly for increased immigration flows. I support the principle behind the national ceiling in this bill.

FLEXIBILITY: 3-YEAR REVIEW

The bill before us today is flexible. As my distinguished colleague from Massachusetts noted, we have reformed immigration legislation significantly only four times since the birth of our Nation. As a result we have often found that an immigration policy that seemed reasonable one year had become out of date 15 years later. For the first time, this bill provides for a systematic review of our Nation's immigration policy. The President will compile a report on the effect of immigration on the country every year. Every 3 years Congress will review our efforts thus far. And to guarantee that this revisitation will not tie up the legislative calendar, these 3-year reviews will proceed under expedited procedures between the President and the Congress.

FAMILY REUNIFICATION: FAMILY PREFERENCE IMMIGRATION

The Kennedy-Simpson bill expands and strengthens our Nation's historic commitment to family reunification. At current levels of immediate family immigration, the bill provides for an expansion of 44,000 visas for family preference immigration. This expan-

sion includes a more than doubling of the second preference for the immediate family of permanent residents. Here the bill alleviates current backlogs where they are longest. This bill helps reunite families of recent immigrants where the need is greatest—the reunion of the nuclear family. I am proud of the achievements of this legislation. And with the flexibility for revisiting the national and family preference immigration levels, there can be no question that this bill reinforces our Nation's traditional commitment to family reunification.

Even so, to show a further commitment to family reunification, I am willing to provide a guarantee against family preference immigration being squeezed out by an increase in immediate family immigration sometime in the distant future. For this reason I support efforts to provide a floor for family preference immigration.

THE POINT SYSTEM

This bill reconfirms the United States as the land of opportunity. The point system in the independent immigrant category opens the door for immigrants whose qualifications suggest they will contribute tremendously to the American economy, but who do not have family or professional contacts here. The point system reaffirms our status as the land of opportunity—a land that cares not about the color of a man or woman's skin or the country he comes from, but a country where talent and hard work are rewarded with the highest honor our country can bestow—American citizenship.

EMPLOYER-SPONSORED IMMIGRATION: THE THIRD AND SIXTH PREFERENCES—THE SPECTER-DECONCINI AMENDMENT: (NORTH CAROLINA PARTICULARS RE RESEARCH TRIANGLE PARK)

While I support this bill, I strongly believe it does not go far enough to increase employer-sponsored immigration. While we propose to expand legal immigration by 21 percent, that is to increase legal immigration by 110,000 visas, I find it hard to believe that we are increasing visas for employer-sponsored immigration by only 1,200 visas. How can it be that less than 1 percent of the increase in immigrant visas will go to employer-sponsored immigration under the third and sixth preferences?

The third preference is vitally important to the universities. Consider the Research Triangle Park in North Carolina. These universities and businesses working together have created a hotbed of technological innovation. They are on the cutting edge of international technological development. For these universities and businesses, the third preference is their lifeline to the international pool of expertise in these high-technology areas. Schools like Duke University rely on the third preference to bring in research scholars, faculty, and technical and nursing personnel in those particular areas where there just aren't Americans available to fill the jobs. Schools that need a particular scholar or scientist now have to wait 14 months before they can get a visa. And this is after the U.S. Department of Labor has certified that "no qualified workers are available" for the position to be filled and that employment of the immigrant will not harm the wages and working conditions of other workers in the United States. Leading researchers and scientists overseas often turn instead to readily available offers in Canada or Australia.

Businesses use the sixth preference as well to bring into this country the marketing, business, and technical expertise that may be in short supply here in the United States. These companies now have to tell their potential topflight employees to wait 3 years while they wait in line for a visa. These delays and uncertainties make business planning increasingly difficult. This just will not do.

For our universities and Businesses that need to hire topnotch personnel, the current backlogs in employer-sponsored immigration are an issue of global competitiveness. I am not advocating any special favors for universities and businesses, but I urge you not to tie their hands in the international marketplace. America is fighting to maintain her competitive edge. The Specter-DeConcini amendment to increase employer-sponsored immigration marks a modest but significant effort to maintain access for American universities and business into the competitive upper tiers of the international labor market.

Now I support the national level as a concept. But I have looked into this particualr national level, and all the experts tell me that 600,000 is not a magic number. We need to come up with a national level of immigration and agree on it, but I see no reason that we have to view this figure of 600,000 as absolute.

Let me reinforce again, unless there is any doubt: The increase in visas for the third and sixth preferences will not compete with Americans looking for work in any way. Every single immigrant entering this country through the third or sixth preference is certified by the Department of Labor to be filling a position for which there are no American workers available.

LAUTENBERG, SANFORD, ET AL. AMENDMENT

Which brings me to my last point about the legal immigration bill. And this is a very important point. I am proud to cosponsor with Senator LAUTENBERG and others an amendment to this bill that will help American workers fill those positions that are in greatest shortage in American business and industry. If American companies are having a hard time finding trained personnel in particular areas, then we ought to be encouraging American workers to fill those gaps. Our amendment does just that.

Our amendment will direct the Department of Labor to do four things. First, the Department will publish an annual list of needed occupations. If we are supplying this information to potential immigrants, we should certainly be supplying it to Americans as well. Second, the Department of Labor will conduct research to better describe these job shortages. One thing I have discovered while investigating this bill is how little systematic information we actually have about job shortages in this country. We need to do better. Last, the Department of Labor will develop a plan to reduce shortages in these occupations and give States the incentives to train workers in such occupations. Here is the key. We need to gear our job retraining programs to produce American workers to fill the shortages business and industry are now experiencing. We will guarantee that an American worker has every opportunity to fill a job before an employer looks overseas.

The amendment sponsored by me, Senator LAUTENBERG, and others will guarantee that our immigration and labor policies will complement each other. A generous and sensitive immigration policy and a smart labor policy that makes the most of American skills—only in this way will we produce today a bill that will benefit the whole Nation, not just a particular few.

CONCLUSION

Let me state once again my strong support for this bill. It is high time we provided a legal immigration policy worthy of the country and people it serves. I encourage you to support the amendment sponsored by Senators SPECTER and DECONCINI to increase employer-sponsored immigration under the third and sixth preferences. I assure you, we need this amendment to keep our businesses and universities from losing ground in the competitive international labor market. And as a complement to this amendment, I urge you to support the amendment sponsored by me, Senator LAUTENBERG, and others to guarantee that American workers are encouraged to fill those labor shortages American Business and industry now face.

Mr. CONRAD. Mr. President, I rise today in opposition to S. 358. I commend my colleagues on the Judiciary Committee for their tireless efforts to reach a compromise on this legislation. I know Senators KENNEDY, SIMON, and SIMPSON have worked hard to craft a bill acceptable to all parties. I believe, as they do, that a legal immigration reform bill must be passed this year to complete the important work started in the Immigration Reform and Control Act of 1986.

This landmark legislation makes important changes in our legal immigration policies. I believe that the creation of separate family related and independent immigration visas is a step forward. Family immigration must continue to be the centerpiece of our legal immigration system. But I welcome the independent category of

immigrants, who will add to our culture and community and continue to maintain the rich diversity of our Nation. Finally, family related immigration will not compete with business-oriented immigration under this legislation. I believe this is an important step.

However, Mr. President, I cannot cast my vote in favor of this legislation. I have grave reservations about the implications this revamping of legal immigration policy will have on individuals seeking U.S. citizenship.

In particular, Mr. President, I believe that the family related immigration provisions could have profoundly negative effects. Because of the overall limit on national immigration and the offset provision, individuals seeking to emigrate to the United States based on their family connections will effectively compete against each other.

As my colleagues are aware, the General Accounting Office assessment of the Kennedy-Simpson bill, prior to the compromise, indicated that family preference immigration would dramatically fall in the next decade. GAO projected that family preference immigration could fall to zero by 1998 under the proposals set forth in the bill. While I understand that the independent commission established in this bill will recommend changes every 3 years, the GAO analysis indicates that family preference immigration will begin to decline almost immediately.

Mr. President, I simply cannot support such a drop in family preference immigration. While I agree with the goals of the bill—to give high priority to immediate family immigration—we must ensure that family preference immigration under the current first, second, fourth, and fifth preference will continue to be a vital part of our legal immigration.

As my colleagues have noted, we are a Nation of immigrants. Immigrants from different areas of the world built this country—and they have continued to contribute to and revitalize this Nation throughout our history. Family unification has traditionally been a critical part of the flow of those seeking U.S. citizenship.

Mr. President, I am especially concerned about the fifth preference, which allows adult brothers and sisters to be reunited with U.S. citizens. During Judiciary Committee consideration of the immigration bill, I wrote to the distinguished Senators on the Immigration Subcommittee to indicate my strong support for retaining and improving access to visas available under the fifth preference. I especially appreciate the consideration of the chairman of the subcommittee, Senator KENNEDY, who patiently heard my concerns and heeded them when working out this compromise.

However, Mr. President, the GAO estimates on this issue concern me. We must guarantee that brothers and sisters, and all those eligible under the family preference system, have the ability to emigrate to this country. I fear that this bill, because of the offset and the overall limit on immigration, will severely restrict fifth preference visas and other family preference immigration.

Finally, my colleagues have all noted that we must consider what is best for America when crafting immigration policy. I agree. Nothing should have higher consideration. But, Mr. President, I submit that reductions in family immigration are not good for our country. Family immigration must continue to be the mainstay of this country's immigrant flow—our culture, our economy and our national character have been shaped by the diverse and vital communities who make up the fabric of this country. It is because of this history that I must cast my vote against this bill.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it is our intention now, if it is agreeable with the Members, to consider the Lautenberg amendment, which has been worked out, and then go to the Hatch amendment and hopefully we will be able to get a time limitation and then we are down to a very few amendments. We are making good progress. So that is where we are, and hopefully, after the Hatch amendment is disposed of, the leader would spell out what our plan is going to be.

The PRESIDING OFFICER. May I tell the Senator from Massachusetts, the pending business is the Gorton amendment.

Mr. KENNEDY. I ask that it be temporarily set aside.

The PRESIDING OFFICER. Unanimous consent is required to temporarily set aside the Gorton amendment. Without objection, it is so ordered. The Senator from New Jersey.

AMENDMENT NO. 247

(Purpose: To require the Secretary of Labor to identify labor shortages and develop a plan to reduce such shortages)

Mr. LAUTENBERG. Mr. President, I thank the manager of the bill. I ask for 5 or 6 minutes to present an amendment to the Immigration Act to provide American workers with the benefit of shortage information that can be helpful to them in terms of seeking career opportunities in preparing for labor shortages in advance of crisis periods.

So, Mr. President, on behalf of myself, Senators LEVIN, BRADLEY, KERRY of Massachusetts, LIEBERMAN, and SANFORD, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Mr. LEVIN, Mr. BRADLEY, Mr. KERRY, Mr. LIEBERMAN, and Mr. SANFORD, proposes an amendment numbered 247.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 148, after line 17, add the following new title:

TITLE III—LABOR SHORTAGE REDUCTION

SEC. 301. DEFINITIONS.

As used in this title:

(1) LABOR SHORTAGE.—The term "labor shortage" means a situation in which, in a particular occupation, the quantity of labor supplied is less than the quantity of labor demanded by employers.

(2) SECRETARY.—The term "Secretary" means the Secretary of Labor.

SEC. 302. IDENTIFICATION, PUBLICATION, AND REDUCTION OF LABOR SHORTAGES.

(a) IDENTIFICATION OF LABOR SHORTAGES.—

(1) METHODOLOGY.—Utilizing available data bases to the extent possible, the Secretary shall develop a methodology to estimate, on an annual basis, national labor shortages.

(2) LABOR SHORTAGE DESCRIPTION.—As part of the identification of national labor shortages under paragraph (1), the Secretary shall, to the extent feasible, develop information on—

(A) the intensity of each labor shortage;

(B) the supply and demand of workers in occupations affected by the shortage;

(C) industrial and geographic concentration of the shortage;

(D) wages for occupations affected by the shortage;

(E) entry requirements for occupations affected by the shortage; and

(F) job content for occupations affected by the shortage.

(b) PUBLICATION OF NATIONAL LABOR SHORTAGES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and each year thereafter, the Secretary shall publish the list of national labor shortages as determined under subsection (a).

(2) DISTRIBUTION OF PUBLICATION.—The Secretary shall provide the list referred to in paragraph (1) and related information to parties and agencies such as—

(A) students and job applicants;

(B) vocational educators;

(C) employers;

(D) labor unions;

(E) guidance counselors;

(F) administrators of programs established under the Job Training and Partnership Act (29 U.S.C. 1501 et seq.)

(G) job placement agencies; and

(H) appropriate Federal and State agencies.

(3) MEANS OF DISTRIBUTION.—In making the distribution referred to in paragraph (2), the Secretary shall use various means of distribution methods, including appropriate electronic means such as the Interstate Job Bank.

(c) DEVELOPMENT OF DATA BASES.—The Secretary shall (1) conduct research and, as appropriate, develop data bases to improve the accuracy of the methodology referred to in subsection (a); and

(2) make recommendations to identify labor shortages by region, State, and local areas.

(d) REPORT TO CONGRESS.—At the same time that the Secretary issues the annual publication under subsection (b), the Secretary shall prepare and submit to the appro-

priate committees of Congress a report that—

(1) describes the progress of the research and development conducted under subsection (c);

(2) describes actions taken by the Secretary during the previous 12 months to reduce labor shortages, and specifies a plan of action to be taken by the Secretary to ensure that federally funded employment, education, and training agencies reduce national labor shortages that have been identified under subsection (a); and

(3) includes recommendations by the Secretary for parties such as Congress, Federal agencies, States, employers, labor unions, job applicants, students, and career counselors to reduce such labor shortages by—

(A) promoting recruitment efforts of job placement agencies for occupations experiencing a labor shortage;

(B) encouraging career counseling and testing to guide potential employees into occupations experiencing a labor shortage;

(C) accelerating and enhancing education and training in occupations experiencing a labor shortage; and

(D) other appropriate actions.

SEC. 303. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to carry out this title $2,500,000 for the first fiscal year beginning after the date of enactment of this title, and such sums as may be necessary to carry out this title in each subsequent fiscal year.

Mr. LAUTENBERG. Mr. President, the bill we have before us would make a number of quite significant changes in the immigration law. The members of the Immigration Subcommittee have worked hard on this bill. I recognize and commend their effort. One major part of the bill would open up immigration to foreigners who offer skills that are in short supply in our own economy.

But. Mr. President, what are we doing to help Americans get the skills and training to fill America's jobs?

The bill before us would require the Department of Labor to give foreigners detailed information about our labor market. My amendment would give to American workers the same benefit of information about labor shortages and employment opportunities.

It would give them the benefit of the same kind of information that the bill already provides to foreign workers who immigrate to the United States. And it would establish a framework for development of the labor shortage information required by S. 358.

Mr. President, before I proceed, I would like to recognize the support we have received from the chairman of the Committee on Labor and Human Resources and the floor manager of this bill.

While the Labor Committee is considering the Nation's labor shortage in the overall context of labor market operations and U.S. employment and training programs, Senator KENNEDY and his able staff provided invaluable advice to refine and facilitate this amendment. As always, I appreciate his cooperation and valuable assistance.

Mr. President, in cities and States across the country, America appears to be outgrowing its available human resources.

We have had 7 years of economic expansion, a slow-growing work force, and rapidly advancing technology. That has led experts to forecast a 23 million worker shortage during the 1990's.

According to one survey, almost two out of three businesses are having problems finding technical employees.

Mr. President, almost one-third of the Nation's metropolitan areas—77 areas—now have unemployment rates at or below 4 percent. This is an increase of more than 20 times the number in that category in 1983.

More than 30 percent of all States have unemployment rates below 4 percent. At those rates, we see a lot of unmet demand for workers. We see labor shortages in Connecticut, Delaware, Hawaii, Indiana, Iowa, Kansas, Maryland, Massachusetts, Nebraska, New Jersey, North Carolina, South Dakota, Vermont, and Virginia.

Mr. President, the shortages are going to get worse, because our domestic supply of workers is growing more slowly.

Unless we take definitive action, these shortages will limit our economic expansion, increase inflation, and hurt the U.S. competitive position in the world economy.

Mr. President, how do we solve the labor shortage? The sponsors of S. 358 say let immigration help relieve the Nation's labor shortage. Under the bill, the Department of Labor would develop lists of occupations in which there is a short supply of workers to meet current or future demand.

Foreign workers in occupations which are experiencing or will likely experience a shortage of U.S. workers would receive a preference.

Undoubtedly, these lists are going to be of great interest to foreigners who wish to come to the United States. There will surely be foreigners who will actively seek assistance to obtain the education and training required to meet shortage occupation criteria.

But what of the American worker? What about the inner-city youth looking for hope in the labor market? What of the vocational education student searching for a field of study that will offer bright employment opportunities? And what of the college student trying to identify an academic concentration that promises a secure profession?

Mr. President, we have a skills gap in this country. According to a Labor Department Study, Workforce 2000, three out of four new workers will have only limited verbal and writing skills.

Their skills fall short of what is needed in 60 percent of the new jobs. By the year 2005, most 18- to 24-year-old entry workers will come from the public schools of distressed urban districts. These people need help. They need guidance.

Mr. President, why are we designing information for use by those from other nations, while we fail to design shortage information to help fully develop our domestic workforce and improve opportunities for U.S. workers?

Why should foreign students and foreign workers be guided by the best available information on U.S. occupational shortages, while Americans are kept in the dark? The answer is they should not be left in the dark.

Apparently, even the Department of Labor agrees. A January 1989 Labor Department report says:

U.S. workers should be the primary beneficiaries of labor shortages, which tend to engender improved job opportunities, wages and working conditions.

The Department of Labor believes that immigration's most appropriate labor market role is to facilitate and supplement policies seeking to improve opportunities and access to U.S. workers.

Mr. President, the problem is we do not have the policies U.S. workers need. We do not have the information. The amendment I am offering directs the Secretary of Labor to publish and widely distribute the annual list of labor shortages, including such information as the occupations involved, number of jobs available, the industries and geographic areas where the shortages are concentrated, wages, entry requirements, and job content—the information that can help those prepare for the opportunities that are out there.

Only when workers and employment professionals know where the shortages are, can we take effective steps to reduce those shortages.

The amendment also directs the Department of Labor to prepare an annual plan to reduce the shortages identified, through action of federally funded employment, education and job training programs.

Such action may include promoting recruitment, encouraging career counseling, accelerating and enhancing education and training efforts, and other steps, many of which are effectively described in the January 1989 Department of Labor report.

The plan would also include helpful recommendations for other appropriate parties and agencies. Finally, the amendment would require the Department of Labor to conduct research to improve accuracy and geographic scope of the process.

Canada and Australia already are doing the kind of reporting that I propose here today.

Mr. President, the amendment I am offering is based on the text of S. 741, the Labor Shortage Reduction Act of 1989. That bill has the support of both public and private employment professionals represented by the Interstate Conference of Employment Security Agencies and the American Society for Personnel Administration. The bill

also has the endorsement of the Aerospace Industry Association.

Mr. President, it would be a travesty to provide job listings for foreign workers, while we kept our own workers out of touch with the opportunity. I urge my colleagues to support this amendment.

Mr. President, I understand that the amendment is acceptable to the managers of the bill and the chairman and ranking members of the Labor and Human Resources Committee. I thank them for their cooperation. I ask for adoption of this amendment.

Mr. KENNEDY. Mr. President, I want to commend the Senator from New Jersey for his amendment. I think the amendment will produce invaluable information regarding labor shortages in specific occupations. Currently such specific data is unavailable. As the labor market tightens, such information will be essential for employment policymakers for directing scarce resources in education and training as well as remuneration policy decisions.

I want to thank the Senator from New Jersey for also accommodating the concerns of the Department of Labor. My understanding is the Department does not oppose the amendment. Changes suggested by the Labor Department which are incorporated in the amendment are instructive and will improve both the available data and how the data is to be put to use.

In behalf of the Senator from Wyoming and myself, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 247) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I believe the Senator from Utah is ready to proceed with his amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 238

(Purpose: To prevent the reduction of family preference immigration below the level set in current law)

Mr. HATCH. Mr. President, I call up an amendment No. 238, the Hatch-DeConcini amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Gorton amendment will be set aside once again.

The Clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. DECONCINI, proposes an amendment numbered 238.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 77, strike lines 15 through 19, and insert in lieu thereof:

"(A)(i) 480,000, minus

"(ii) the number computed under paragraph (2), plus

"(iii) the number (if any) computed under paragraph (3); or

"(B) 216,000,

"whichever is greater."

On page 79, line 21, beginning with "number", strike through the second "in" in line 22 and insert in lieu thereof "numbers specified in subsection (c)(1)(A)(i), subsection (c)(1)(B), or".

On page 80, line 9, strike "number specified in subsection (c)(1)(A) or the number specified in" and insert in lieu thereof "numbers specified in subsection (c)(1)(A)(i), subsection (c)(1)(B), or".

On page 80, line 21, strike "(c)(1)(A)" and insert in lieu thereof "(c)(1)(A)(i), (c)(1)(B),".

On page 80, line 22, strike "(c)(1)(A)" and insert in lieu thereof "(c)(1)(A)(i), subsection (c)(1)(B),".

On page 81, line 23, srike "subsection (c)(1)(A)" and insert in lieu thereof "subsections (c)(1)(A)(i), (c)(1)(B),".

On page 83, line 20, strike "subsection (c)(1)(A)" and insert in lieu thereof "subsections (c)(1)(A)(i), (c)(1)(B),".

Mr. HATCH. Mr. President, before I discuss our amendment, I want to commend the work of the Senators SIMPSON, KENNEDY, and SIMON on this particular bill. It has many valuable features. I know that Senators who take on this particular thankless task of dealing with these difficult issues are buffetted by those who say we let in too many immigrants on the one hand, and those who say we led in too few on the other. Sometimes charges get hurled and epithets hurled around directed at Senators KENNEDY and SIMPSON that are shameful and uncalled for.

So I do appreciate the work they are doing, and also Senator SIMON.

Having said that, we have a major problem with the bill which the Hatch-DeConcini amendment addresses.

Mr. President, the purpose of this amendment is to ensure this bill does not operate automatically to reduce the number of visas available to immigrants and poor family connection preference categories below the current level.

I want to take some time to explain the family preference situation under current law and the changes made by S. 358. My concern is about those changes, and then I want to explain the Hatch-DeConcini amendment.

Under current law, there are two broad categories of legal family immigration. One category is for other family connected immigrants under a preference system. Under current law, there is no cap on the number of immediate relatives of U.S. citizens who can immigrate to this country each year.

Immediate relatives of U.S. citizens are their minor children, spouses, and parents of citizens over 21 years of age. They can enter the country each year without limit.

Minor children, spouses, and parents of citizens over 21: unlimited immigration.

In addition, 216,000 visas are allotted to other family connected preference immigrants of the following preference categories. So we are talking about family connection preference immigrants. There are four preference categories: Unmarried adult children of U.S. citizens, spouses, unmarried children of permanent resident aliens, married children of U.S. citizens, and brothers and sisters of adult U.S. citizens.

Moreover, most importantly, the visas allocated to these four family connection preference categories each year are not, and I repeat not, offset by the number of immediate family relative immigrants who enter the country in a given year.

Thus the 216,000 visas for family reunification in these four family connection preferences or preference categories are always available each and every year under current law.

Under the bill before us, S. 258, which this chart shows, the number of visas for family reunification under the four family connection preference categories could drop below the 216,000 provided annually under current law.

This is the problem that the Hatch-DeConcini amendment seeks to avert. Let me explain how the bill works in this regard. There is a new subsection 201(c)(1) of the Immigration and Nationality Act, and under the bill, this would establish a worldwide level of family connection immigration. That is for the four family connection preference categories. That annual worldwide level is equal to 480,000, minus a number of immediate family relatives, plus the number, if any, of unused independent visas.

Now, that looks pretty good under current law and as of today. If there are any unused visas from the independent immigrant category, that category or employer sponsored or new seed immigrants, they will be added to the number of visas available. Because it is unlikely there will be any such unused visas, I want to put that part of the formula to the side.

The crux of the issue for family connection preference immigrants under this bill is basically this: The bill starts

with 480,000 allowed in. It then subtracts, minus from the 480,000, a number of immediate family relatives to enter the country to determine the number of visas available to the four family connection preference categories for the following fiscal year. And the number of immediate relative immigrants eligible to enter the country each year remains uncapped. Accordingly, because approximately 220,000 immediate family relatives entered the country last year under this particular bill, if it becomes law, without the Hatch-DeConcini amendment, the 480,000 figure would be offset by the 220,000 figure.

Now, this would leave 260,000 visas available for family reunification in the four preference categories in the following year. Indeed, this is the figure which the sponsors of S. 358 have provided. I note that this would be an increase of 44,000 under current law. That is good news. The bad news is that as immediate family immigration increases each year, the offset, of course, reduces the number of visas available to immigrants in the four preference categories.

Make no mistake about it, pitting immediate family relative immigration against family connection preference immigration is a very profound change in our legal immigration policy. My basic concern is that such future increases might reduce the number of visas available to the four preference categories below the 216,000 which are currently available under current law. Indeed, this offset could drastically reduce family preference immigration and even eliminate it. Nothing in S. 358 guarantees this will not happen.

This is a difficult area in which to make predictions, because immigration patterns can vary over time. These patterns were also sensitive to world events. The number of immediate family relatives who immigrated to this country in 1980 jumped about 10 percent over the 1979 number. The 1979 number, in turn, was about a 10-percent increase over the 1978 figure. Yet, the increase from 1980 to 1981 was less than 1 percent. Between 1985 and 1986, the number again increased by nearly 10 percent. So the increases vary. Now, we need to remember that as the undocumented aliens that have been granted amnesty become citizens and are thereby eligible to bring in immediate relatives, the extent of immediate family immigration could dramatically increase. That would reduce this number down to where it could be well below the 216,000.

According to a GAO [General Accounting Office] letter to me dated July 7, 1989, just a week ago, family preference immigration in the four preference categories would, under current law, total 2,160,000 between 1990 and 1999. The GAO also estimated, however, that under S. 358, as it is presently before us, that number would drop to 1,501,151. That would be a decrease of nearly 659,000 family connection preference immigrants.

Moreover, the GAO also estimated that as a result of the offset of immediate relatives against the family preference immigration categories, as immediate family immigration rises during the decade, family preference immigration would drop to zero by 1999. Now, this assumes there is no change in the immigration levels established in the bill.

Earlier, in March 3, 1989, testimony, the GAO estimated that family preference immigration under S. 358 as originally introduced would drop to zero by 1998. Therefore, the bill before us, as amended in committee, delays this draconian outcome by just 1 year, according to the GAO. Now, I realize that the bill provides for a mechanism to increase or decrease the level of family connection immigrants by adjusting the 480,000 figure against which immediate family immigration is offset. Even if the visas for family connection preference immigrants drop below 216,000, however, there is no guarantee that this mechanism will result in any increase in the visas available for these immigrants and for these families, for reuniting these families.

Let me explain this mechanism. Under the bill, in the March before fiscal year 1984, and every 3 years thereafter, the President may recommend no change, an increase or a decrease, in the 480,000 level, against which the immediate family relatives are offset. If the recommendation amounts to a 5-percent change or less, it goes into effect, unless the Congress disapproves it. If the President recommends a change in the 480,000 level of greater than 5 percent, it goes into effect only if Congress approves it. That may be very difficult to do.

In my view, this is a mechanism which provides for the periodic review of immigration levels. But, as I mentioned earlier, it guarantees nothing. If immediate family relative immigration climbs to the point where the offset reduces the number of family connection preference visas below 216,000, which will almost certainly occur under this bill, nothing in this bill requires the restoration of the 216,000 figure.

In short, this bill creates the clear and present danger that it will automatically operate to reduce the visas available to family connection preference immigrants below the numbers available today. Now, why should that be of concern? I believe that family connection preference immigration is good for our country. Family reunification under these categories, I believe, is desirable, because it reflects traditional American family values. Immigrants in these categories have done much for America and made it a better place. Of course, America has done much for them. The operation of our free system of government and free enterprise has helped them, as these immigrants have, at the same time, used our system to add to the strength of our Nation.

I believe that the Hatch-DeConcini amendment is consistent with the intention of the sponsors of S. 358. The committee report, on page 7, discusses the national level for immigration created by the bill. The report says:

> Some concern has been expressed that the establishment of a national level may have the unintended consequence of severely restricting immigration under the family preferences.

I stress that the report calls a severe restriction of family preference immigration "unintended." Moreover, the committee report goes on to say:

> In establishing the national level, it is clearly not the committee's intent that it be used as a device for arbitrarily restricting immigration. The national level mechanism merely ensures that increases and adjustments are by deliberate actions and not by unchecked growth that characterizes current law.

Fine. Let us then take care of the risk of the unintended consequence that family preference immigration may drop below the level permitted under current law. Let us make sure that there is no restriction on family preference immigration as a result of the clear potential for growth in the uncapped immediate family relative category.

Let me explain the Hatch-DeConcini amendment. Here is how the Hatch-DeConcini amendment seeks to prevent S. 358 in causing a reduction in family preference immigration at below the level of current law. What we have here is, the amendment leaves the upper limit of the worldwide family preference immigration, the cap, at 480,000 as provided for in S. 358.

The amendment leaves in place S. 358's offset of immediate family relatives against the 480,000 figure.

So we start with 480,000, minus the number of immediate family relatives, plus the number, if any, of unused independent immigrant visas.

The amendment then provides, however, that the number of visas available to family preference immigration shall not drop below 216,000 in any fiscal year—the number available under current law.

Here is how section 201(c)(1) would read, in effect, as amended by the Hatch-DeConcini amendment:

> The worldwide level of family connection immigrants under this subsection for a fiscal year is equal to—
>
> (A)(i) 480,000, minus
>
> (ii) the number [of immediate family relatives], plus
>
> (iii) the number (if any) [of unused independent immigrant visas]; or
>
> (B) 216,000,
>
> whichever is greater.

This change makes sure that S. 358 does not automatically operate to cause a reduction of family preference visas below a floor representing the number of such visas available today.

The amendment also subjects this 216,000 visa floor to the mechanism in S. 358 which allows the President, every 3 years, to recommend increases or decreases in the levels of immigration established in the bill. I described this mechanism earlier. Thus, the amendment keeps the 216,000 visa floor and makes sure S. 358 itself does not operate to reduce that number. Plus, the amendment allows Congress, in conjunction with a Presidential recommendation, to consider whether it wants to change the floor in the future. Let us reaffirm that we will at least preserve current levels unless we, in Congress, affirmatively decide to reduce them. Let us not run the risk that we may inadvertently cause a reduction of current family preference immigration below the current level.

I do not believe the sponsors of this bill want to cause such a reduction. If that is indeed the case, then I would think that this amendment could be accepted by them.

I should note that I am against the idea of an offset altogether. I do not think we should pit immediate family relative immigrants against family-connection preference immigrants. The Hatch-DeConcini amendment, which preserves the offset with a floor, is a very reasonable middle ground.

Let me respond, Mr. President, to those of my colleagues who may believe that our concerns about a rise in immediate family immigration dropping family preference immigration below 216,000 are exaggerated. If our concerns are exaggerated, then the amendment should be acceptable because it is harmless, it will not have to go into effect. On the other hand, if our concerns are justified and the immediate family relative offset would operate to drop family preference immigration below 216,000, we should make sure that we avoid such a result unless we affirmatively choose to reduce that number in the future.

If Senators wish to make sure we preserve the 216,000 visas available each year to family preference immigrants, then they should support the Hatch-DeConcini amendment.

I feel it is important that we take this modest step. It works no change in the basic fabric of the bill. It underlines Congress' view that the family reunification policy has been good for the country and that we continue to feel that way.

Even those who believe, as I do, that an independent, new seed category and more skills-based immigration is desirable, also acknowledge that family preference immigration is healthy for the country. Ben J. Wattenberg, senior fellow at the American Enterprise Institute, one of the brightest people here in Washington, wrote in the June 15, 1989, Washington Times that there should be more immigration based on skills. But he also said, "The criterion of family preference is important and beneficial."

Now, Mr. President, I know the sponsors of S. 358 agree with that. They have provided for a new, independent category of immigrant not tied to family relatives in the United States. And they have provided for an initial, modest increase in family preference immigration. All that the Hatch-DeConcini amendment does is make sure S. 358 does not operate inadvertently in the future to drop family preference immigration below levels in current law.

In that regard, I compliment my distinguished friend from Arizona. Without him, we would not have this amendment nor the force of this amendment on the floor today.

I thank him for the work that he has done in this area along with the work he has done with regard to immigration policies generally.

With that, I urge my colleagues to support this amendment. I think it is a worthwhile thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as a member of the Judiciary Committee, the Senator from Utah, has involved himself in the issues involving immigration, and we have certainly welcomed the opportunity to discuss with him various provisions, as well as with the Senator from Arizona, who has been extremely active in all of the immigration debates, both that have been held in our committee as well as on the floor.

Obviously, the amendment raises important issues that at the outset are quite seductive in their appeal, but they have to be considered in the total context of what we have been attempting to do with this piece of legislation.

We have to look at the various provisions which are basically affected by the amendment. As I mentioned earlier in the debate, some of those are provisions involving the special skills, the third and sixth preferences, and the independent category that has been one section of the legislation.

We have the current family preferences and the current immediate relatives. What we have been able to do is to see a significant increase of some 44,000 for the family members who are qualified to come to the United States.

So, on the one hand, we have provided a very significant and expansive measure, perhaps not as much as I would like to have it, but a lot more than certainly other members of the Judiciary Committee. But I think it is an important expansion in terms of family members.

So we believe that the central concerns that have been raised by the Senators from Utah and from Arizona have been accommodated. I would not be a part of the legislation unless I was absolutely convinced that they were.

We have examined the last 10-year period in looking at the growth rate in immediate relatives. I believe we went back even longer than that—I think it was 15 years—to try and detect what might be a reasonable expectation of the growth rate, and we not only built that in but built in a very substantial increase over that, I think we effectively doubled that rate, which will be eligible to others than immediate relatives.

As a political matter, it is unrealistic to think that we would have gotten that increase unless we developed the formulation that we did in establishing a national level of immigration. That happens to be the reality. We can spend the time of the Senate here to say why that is the case, and I think my colleague from Wyoming would agree with that, because there are a number of policy matters and implications involved.

So I respect certainly the concerns which have been expressed by the Senator from Utah and I know the concerns of the Senator from Arizona.

I hope that the membership would feel that under the leadership of Senator SIMPSON and my working with him, both as the chairman of the subcommittee as well as when he was chairman, we have been an active committee, we have been sensitive, we have brought these matters to the Senate in an unprecedented way for discussion and debate.

As we mentioned, there have only been four general immigration bills in the history of this country, but we have seen, both with the 1986 act and with this legislation, a willingness to respond to the various concerns which this institution has, and we like to believe that as a result of these debates we have a better informed Senate, a better informed country on the immigration policy generally and we are having a more positive impact on the issue in this way.

So, while I respect the concern over the ceiling, but once we start building in these limitations we lose the basic concept of a total national level of immigration.

We do believe that we have placed in here sufficient numbers, based upon a 15-year record, to accommodate any growth in immediate relatives.

I understand the concern that we have in terms of the family preferences. We are basically talking about adjusting between the immediate family relatives and other family preferences. It seems the way that we have constructed that in this legislation is a desirable way to go.

Mr. SIMON. Will my colleague yield for a question?

Mr. KENNEDY. Yes, I am glad to yield.

Mr. SIMON. As the Senator from Massachusetts knows, philosophically, I agree with my colleagues from Utah and Arizona on this. But is it not true that if this is adopted, this carefully crafted compromise is likely to come

apart and we are likely to end up with no bill at all?

Mr. KENNEDY. Well, the Senator, I believe, is correct. I am always reluctant to talk about killer amendments. I will let the Senator from Wyoming express his views on that. But the effect of it would be, I believe, that once we trigger this in, what we are basically saying is we have a ceiling but it is no ceiling, because it can be varied and what we will do is lose the additional places, the 44,000 additional places, that would be available for family members which are not available today. And that, I think, is a disservice to those families.

I mean, this is a tough kind of a balance, as we debated before. We have had tough decisions on this. We have been trying to make decisions whether we are going to give special priority and preference to younger children who are not married or whether we treat the total family.

To be very frank about it, I can argue that both ways. But we made that decision, we made that judgment now, and we made it in a way in which I think was wise because we made it in a way which the groups which are most affected by it support it.

So, in precise answer to the Senator from Illinois, if we were to alter that particular kind of a cap, then we have no cap. And I think we lose those other 44,000 positions that will be available to family members which are included in this legislation. I think that would be a real disservice. It is really for that reason that I oppose the amendment.

(Ms. MIKULSKI assumed the chair.)

Mr. SIMPSON. Madam President, I will be a bit more dramatic and will label this then is a killer amendment. I think it is. And I do not mean to be dramatic or involved in selective opposition. That is what this is.

This removes the last essential element of the bill that passed the Senate in 1988. There is not a thing that Senator KENNEDY, Senator SIMON, and I have not compromised to get to this point, I can assure you. As Senator KENNEDY has said so beautifully, if anything were easy in this line of work, then we would mess with immigration reform more than four times a century. It is tough stuff because it gets caught up in emotion, guilt, fear, and racism. I have said that dozens of times. People are tired of it—tired of having to deal with it.

But things pop up. We have done some racist things in immigration reform in our history. Senator KENNEDY was in the forefront of correcting that in 1965. We try not to do it any more. We think of ourselves as being sensitive. But you can imagine my anguish in going through the illegal immigration bill and having minority groups donging on my head all day and all night telling me it was discriminatory and racist and everything else. I said, "What is more racist than just doing nothing and watching millions of people get exploited in the United States?" Well, they did not have any answer for that. I have been through that one. That is the most distasteful one I have ever gotten into. And that is what happens if you do nothing.

Then you give these advantages and these selective things. I will never forget one time when I was giving a little public talk on the issue and someone came up and sloshed booze on my shoes and said, "Your bill does not apply to Gretchen in the kitchen, does it?" And I said, "Yes, it does." Then I watched their magnificent liberalism just slip down the drainpipe. This is curious business. Because you know he said Gretchen in the kitchen was like "one of the family." But she looked like she had been on the Bataan death march, and they were giving her 50 bucks a week and every other Thursday off. That is the kind of stuff you get into in this game.

I really do not know the purpose of this amendment other than just tremendous group pressure. I understand that. That I do understand. But I can tell you that it strikes at the very heart of the legislation.

Because at sometime in the future the generosity of the American people will become strained. I have described it once as "compassion fatigue." You keep playing with the numbers and you keep doing this kind of activity and you will see what is called compassion fatigue. Then, when the real crush comes and we need to reach out to immigrants and refugees—and people do not make any distinction around here about that any more, and they are totally different, totally different—the American people might not respond in the way they have in the past. I think that is just worth commenting on.

It is not easy. This bill passed—not this bill, but something very close to it—passed the Senate by a vote of 88 to 4 last year. Then Senator KENNEDY and I went back to work and boy, we both swallowed hard. Then our good friend from Illinois came on the scene and, because he has been a very remarkable player in the game, he swallowed hard. And so we came up with this bill. It is not perfect, but it does address what we think is the national interest of the people of the United States: How many people does this old country intend to take? What are the social and economic considerations? What are the environmental considerations? That is what someone has to deal with. And that is not fun.

But I will tell you, we should give unrestricted visas to immediate family of U.S. citizens, and we do. We do not even count them. We just bring them in. And that is a pretty generous country.

And then we have the fifth preference, which is so distorted. If I had my way, we would vote to strike it. That is as painful for me to keep in this bill as it is for some other provisions that are painful for the Senator from Massachusetts or the Senator from Illinois and any other Senator. The fifth preference is a total distortion. It is a distortion. The numbers you take there you are robbing from spouses and children when you total it all up.

The fifth preference has a backlog of 1.4 million, and it is going to keep growing. I do not know how many people are really in it. Probably half of them are here already illegally. That is what I would have done if I had to wait in the backlog for 20 years. What would you mess around in your own country for with a backlog of 10, 11, 15, 20 years? You would be here. I think half of them are here, and I think some of the other half are probably deceased. We have not gone back for a reregistration to find out where that scorecard is on the fifth preference.

But we are going to keep that archaic bit of whatever it is and in the process rob numbers from spouses and children. I hope you can get the message as to what that really does. It eventually comes out just that way.

So the national interest of the United States is often missed in the great debate with regard to immigration because it gets tangled up in ethnicity and bigotry and prejudice and all sorts of things all up and down the pike.

The Hatch-DeConcini amendment would clearly tie the President's hands. There is no question about what it would do. It would tie the Congress' hands. If family-based immigration grows by more than 64,000 visas per year over its present level, affirmative action must be taken to restrict that growth. Now, that is what it does.

The amendment is against the grain and the philosophy of the Kennedy-Simpson bill. Our bill's philosophy is, we hope, clear. It is complex, yes, and noboby likes to deal with it except the interest groups. They love to deal with it. And they are very effective because they work on those four items that I just discussed before: emotion, fear, guilt, racism.

Our bill's philosophy is to increase legal immigration by 22 percent. Think of how many people have to swallow hard on that when every poll in the United States says we should limit legal immigration. Roper, Gallup, the Field poll in California—they all say we have enough or too much—60, 70, 80 percent of those polled—they say this is enough.

I am not that way. I am not ugly on that. So we arrived at a 22-percent increase.

Somebody is missing the boat when small pockets of high-powered pressure, using those four engines, will get into the game, when they know the American people do not want us to get in that game. Yet, I will continue to go on, and I have, under this bill. And the philosophy is to raise legal immigra-

tion by nearly a fourth and eliminate the present uncontrolled and undirected growth of immigration. How can we handle it all? How do we treat these people?

Those are important things. Under our bill, the specific changes in the level of immigration must be approved by us, by the people's elected representatives, the President and the Congress. That is what we do in this bill.

The bill provides for a report to consider the requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members. It provides the means to follow closely the family preferences.

That is what this amendment is all about. It is premature and out of whack. It does not even fit.

They are addressing something in this amendment which is taken care of in the bill. We have left the numbers high enough so nothing happens until this report and the subsequent review takes place. We are not in here just diddling around.

So then we are going to examine that. We are going to examine the impact of immigration on labor needs, employment and other economic and domestic conditions in the United States; the impact of immigration with respect to demographic and fertility rates and resources and environmental factors. We talk all day about acid rain and greenhouse effect.

How about immigration? That is where you have to find a place on in this country for a home and a family to surround you. That is what you provide. And those demand our attention, too, together with the impact of immigration on the foreign policy and national security interests of the United States.

Well, I have been through that one, too, because not only do we have real refugees, we have economic refugees, and we have financial refugees, and we have foreign policy refugees. We have four different categories of those except there is only one true refugee in the statute books.

So here we are, now, with an amendment which takes away the ability of the Congress and the President to do what we are supposed to do; which is what we do not like to do. So we provide a very flexible triennial process for these changes to be considered. I do not know what could be more fair. And nothing will happen to the people that Senator HATCH and Senator DECONCINI are interested in. Nothing. I can assure my colleagues that nothing will happen because we built in the numbers to assure that nothing would happen. Then the report will come out, and that is what all of us are interested in finding.

Immigration levels should not be allowed to just increase based on demand from abroad for visas in any particular category. That is not what the national interest is.

Very unfortunately, in my mind, the Hatch-DeConcini amendment would return us to a system that is not controlled by the President nor the Congress. It would allow continued growth in our immigration system without approval by the American public's elected representatives. And, I tell you, it severely undercuts the principle of a national level of immigration, and I strongly oppose the amendment.

I do not know how far we could go if this amendment became part of the package. I do not say that in an attitude of petulance. I have swallowed hard on lots of stuff. But I tell you, it would sure cause a lot of people to think more than twice about passing a bill with this in it when there are many people in here on both sides of the aisle who might best be described as rather reserved on the issue of new numbers and higher numbers.

There are a lot of persons who are not in this debate who cast those silent votes on both sides of the aisle who would not stand for any of this. You could lose the whole package. That is what I think you will find. Because we are going to open it up—and that is the only word we can use—we are going to open it up. Period. That would define it, I think, quite crisply.

If we want to be about our work then let us take our precious numbers, huge numbers up 25 percent, let us see they go to closest family members: spouses and children. That, eventually, will cause us to review carefully the next report as to what we have done, what we need to do, and whatever any administration that happens to be in power, Democrat or Republican, should be doing that is in the national interest.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Madam President, I strongly support the amendment being offered by Senators HATCH and DECONCINI to S. 358, and I urge my colleagues to support it also. As its principal sponsors have very forcefully, eloquently and persuasively argued, this amendment is both necessary and highly reasonable.

This amendment is necessary because, without it, the legislation we are considering today could drastically reduce family-based immigration, the best kind of immigration there is. S. 358 represents a departure from the traditional priority which has been placed on family reunification efforts under our immigration laws. It would—for the first time—place a cap on the number of visas which would be issued for family reunification efforts. Under that cap, the number of visas issued for the immediate relatives of U.S. citizens—which are not limited—would be subtracted from the number of visas available for other family reunification efforts. The General Accounting Office has determined that this cap and its mechanism which offsets visas for immediate relatives against other family preference visas, contained in S. 358 as originally introduced, could mean that family preference immigration could drop to zero by 1998–99.

As I said earlier this morning, Madam President, I oppose the cap. In my view, this legislation should not impose a new cap on family sponsored immigration in any way, shape or manner. The needed reforms to our system of admitting immigrants to this country can be accomplished without the cap. I was an original cosponsor of Senator SIMON's legal immigration reform bill, S. 448, which did not contain a cap. That bill proposed many of the same reforms which are contained in the Kennedy-Simpson bill, but it did not propose to accomplish those reforms at the expense of family-sponsored immigration. The legal immigration reform bill which is currently being considered in the House, H.R. 672 authored by Congressman BERMAN, does not impose a cap on family-sponsored immigration yet it, too, proposes many of the same reforms which we are considering today in this measure. It is my sincere hope, Madam President, that the final legislation which is enacted into law will not impose a cap on family sponsored immigration.

Nevertheless, Madam President, I urge my colleagues to support this amendment which mitigates, to some degree, the harsh impact of the cap. While this amendment will retain the cap and the offset mechanism which allows the number of visas issued for the immediate relatives of U.S. citizens to be subtracted from the number of visas available for other family-connected immigrants, it assures that the visas available for family-connected immigrants will not fall below the number available under current law, and that is 216,000.

And that is 216,000. Given the concerns which have been raised by GAO's projection that the cap and its offset mechanism could drastically reduce family-sponsored immigration, this amendment merely assures that family-sponsored immigration will not fall below current levels.

If this legislation must contain a cap on family-sponsored immigration and if immediate relative visas must be offset, unfortunately, against other family visas under that cap, then in order to adhere to the traditional priority which has been given to family reunification under our immigration laws, we must take the necessary precaution to insure that family-sponsored immigrants do not have fewer visas available to them in the future than they have today.

The opponents of this amendment have argued that this change in the legislation is unnecessary because procedures are provided to review and adjust the level of immigration every 3 years. They argue that any future negative impact on family-sponsored immigration caused by the cap and its

offset mechanism can be addressed by the independent commission created by this legislation to review and recommend changes in the national level of immigration. And the Congress may act expeditiously to address those changes under special parliamentary procedures established by this legislation. That is their argument.

Well, Madam President, I agree with Senators HATCH and DECONCINI that this is no guarantee at all that current levels of family-sponsored immigration will be maintained. The better approach is to adopt this amendment now and thus make sure that this legislation will not curtail future family-sponsored immigration below current levels.

Finally, Madam President, I am aware that this legislation we are considering today increases the number of visas available for family-connected immigrants. I support these increases, and I urge my colleagues to support these increases.

The sponsors of this legislation argue because of these increases, this legislation in no way diminishes our traditional priority on family reunification. I cannot agree. I simply cannot agree with this so long as this legislation also contains a cap, an offset mechanism which could drastically reduce the future availability of visas for family-connected immigrants. For all these reasons, I fully support this amendment.

I urge my colleagues to support it also, and I want to point out it is a very bipartisan effort. We have Senator HATCH, a Republican on the one hand; we have Senator DECONCINI, a Democrat on the other. I applaud them both for their leadership on this issue. I, a Democrat from California, have just spoken for this amendment, and my colleague, Senator PETE WILSON from California, is on the floor and he will take the same position. There are Democrats and Republicans alike who are strongly in support of this amendment, strongly in support of family immigration.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Madam President, I am pleased to support the amendment offered by the Senator from Utah [Mr. HATCH]. He has worked long and hard on this subject matter. I am pleased to have participated in this effort.

I want to say the Senator from Wyoming and the Senator from Massachusetts have devoted a good chunk of their career, and perhaps their political hides, to the immigration issue. It is not an easy issue. I have great admiration for what they have done, even though I have disagreed with them on a number of occasions. Be that as it may, the amendment before us will counter the negative effect that S. 358 has on family preference immigration. S. 358 has in it a provision which threatens to eventually eliminate the family preference immigration into this country.

The United States has a long tradition of immigration based on family preference. We hear about that and talk time and time again about the family; that we are a Nation that is going to do something about the family, whether it is day care or whether it is child support laws or what have you, we are talking about the family. This is what this amendment is all about.

S. 358 attempts to place some kind of limits on legal immigration. Some kind of a cap which we hear referred to, but the cap really is on the first, second, fourth and fifth, preferences, not a cap on immediate relatives. There is no cap on that, and I defy anybody here to point out that there is a cap on immediate relatives. They can come in.

Now it happens that there were less than 300,000 last year, but if there were a million, that is how many would come in. Where the cap comes in is that it puts a cap on these preferences.

I think that is a mistake. Legal immigration level into the United States in this legislation is a level of a maximum of 600,000. It is divided into two categories of 600,000.

The first category is independent immigration. Individuals entering under these categories are selected by certain means unconnected with having a relative already in the United States. That is part of this bill, and so be it.

The second category of legal immigration and the category that concerns me is related to family connections. Under S. 358, the family connection category is further subdivided into two groups. The immediate relatives of American citizens are in one group, and visa applications with other family preferences are in the second group.

So you have the one group that there is no cap on. I think it is important for our colleagues to understand there is no cap on that first group. As many of those immediate relatives of American citizens can come into the country today, tomorrow, the next until we change that law. This law does not change that. It does not stop immediate family relatives from coming, but it has a tremendous effect on the visa applications of the other family preferences.

S. 358 and the current law limit nothing on the first group, as I underscored, and I think that is important to understand. This bill would, however, limit the number that can come in under these other preferences, and that is what we want to talk about.

I do not want to say the Senator from Wyoming is calling this something that he thinks is a killer amendment, but we are not talking about killing anything. What we are talking about is life. We are talking about permitting families to live together. To me that is not a killer amendment.

This limit on family preference immigration would be calculated by subtracting the number of immediate relatives visas issued from 480,000, an arbitrary figure set there, and that is where we come up with this so-called cap. It is no cap except as to the second group that I talked about, visa applications with other family preferences, those other four preferences.

For example, last year, 220,000 immediate relative immigrants came into the United States leaving 260 family preferences visas that could have been granted. So we had in the first group 220,000 immediate relatives. It could have been a million, it could have been 480,000. It was 220,000. That is how many were processed. They were all brought in.

There was nobody saying there is a cap here, and there is nobody going to say in this bill there is a cap now on those immediate family relatives. They are going to come in.

If that number grows, you have more immigrants into this country. The problem with this approach is that for every immediate relative immigration visa that is granted under this present bill, a family preference visa is going to be denied. So as this grows, the family preference, the second group that I am talking about, is going to shrink.

Is that what we want? We do not want family preferences to come in?

Let me read what those preferences are: Unmarried adults, sons and daughters of U.S. citizens. That is going to shrink; less family members are going to come in; spouses, unmarried sons and daughters of permanent resident aliens; married sons and daughters of U.S. citizens, they will not be able to come in as the immediate family relatives group grows and comes into the first group. And then brothers and sisters of adult citizens of the United States. I do not think that is what immigration is all about, or family legislation is all about.

S. 358 could even result in the complete elimination of the family preference category. I believe that is where we are really headed. The Senator from Wyoming pointed out he thinks these preferences should be gone. I do not want to put words in his mouth. Maybe he has taken out all of them. I know I have talked to him about the fifth preference. I think that is a matter of disagreement. If you do not want sons and daughters of adult citizens, if they are part of your family, they ought not to be permitted into the country, well, that is the policy. That is what this bill does because it limits that group as the immediate family members grow. I do not think that is good policy.

The General Accounting Office predicts, as the senior Senator from California has already pointed out, by the year 1999, 10 years from now, immedi-

ate family immigration will total 480,000 and as a result of that family preference immigration under S. 358 would be zero. So this second group is gone in 10 years. The Senator from Wyoming said we only address immigration four times in a century. Maybe we will address it four times in the next 10 years or one more time in the next 10 years but why put into the law something that is literally going to wipe out a whole preference, and that preference is family members.

Mr. WILSON. Will the Senator yield.

Mr. DECONCINI. I will be glad to yield to my friend from California.

Mr. WILSON. It is my understanding from what the Senator has just said that someone who had been in the category of a fifth preference for as much as perhaps 10 to 11 years, a brother or sister of a U.S. citizen, could conceivably under S. 358, were it to become law, find himself ultimately, notwithstanding that 10- or 11-year wait, displaced by an increase in the number of immediate relatives that is predicted to swell under the GAO study by 1999 so as to fill up the entire 480,000 slots.

Mr. DECONCINI. The Senator from California is so right. The important thing to reiterate I think is that the immediate families are not going to be reduced. They are going to be able to come in no matter how many there are. It is this preference of the brothers and sisters of citizens that is going to be shrunk as the Senator from California very astutely points out.

Mr. WILSON. The same thing would be true, I take it, where we are talking about not a brother or sister but the spouse or unmarried son or daughter of a permanent resident. Even though they get an increase, over what is presently authorized, they could be entirely crowded out.

Mr. DECONCINI. Exactly. That is what is going to happen. There is no question that the immediate family members are growing. The Senator from Wyoming pointed out the percentage. But what we are seeing is that number growing and at the same time these preferences that have been a policy of this country for a long time to unite families are going to shrink.

Mr. SIMPSON. Mr. President, will the Senator yield.

Mr. DECONCINI. Certainly, I yield to my good, dear friend from Wyoming.

Mr. SIMPSON. To keep the debate topical. I want to do that because this is what we need to do in this. I have never said I wanted to get rid of any preference.

Mr. DECONCINI. If the Senator will yield, I thought he said earlier he would vote to get rid of it.

Mr. SIMPSON. The Senator said get rid of it. I have never said that.

Mr. DECONCINI. I apologize.

Mr. SIMPSON. I said I would want to get rid of the fifth preference, if I had my druthers. And let me ask this of my two friends, who have been deeply involved in immigration issues. Senator DECONCINI, my friend, and I served together on the Select Commission on Immigration for Refugee Policy and he knows how tough it is. My friend from California represents the State of California, and that is about as rough as you can get, unless it is Arizona or unless it is Utah. I understand that. I hope everybody understands that, too, because that is what we are talking about. We are talking about heat.

Now, I am talking about immigration. If you want to leave it as it is today, then the wait for a Filipino brother of a U.S. citizen today is estimated to be 50 years, if he applies today. I hope all are hearing that. Fifty years. That is present law. We can leave it like that. I guess I am ready to do that.

Is there anyone in this Chamber who would distribute limited visas to a brother and a sister-in-law and to nieces and nephews, and not to spouses who have been waiting to join their wife or husband here for years? Anyone here want to do that? Let us get down where the rubber meets the road.

Mr. DECONCINI. Will the Senator yield? I will be glad to answer that question.

Mr. SIMPSON. Yes.

Mr. DECONCINI. If the amendment of the Senator from Utah and the Senator from Arizona is not passed, the spouses, unmarried sons and daughters of permanent resident aliens is going to be reduced. So it seems to me that the Senator has clarified it. I apologize if I misquoted him because I thought he would vote to scratch the fifth preference. If I made a reference that he would scratch all the preferences, I apologize for that. But in essence what this bill is doing, what S. 358 is doing is limiting all of those preferences. Maybe what the Senator intended to do or wanted to do was to permit preference 1, 2 and 4 continued and just apply this so-called cap that we talk about to the fifth preference.

Mr. SIMPSON. Mr. President, Senator CRANSTON, who is also deeply involved because he represents the State of California, made a statement that family immigration would drop to zero. That was his statement. That is the whole position of Senators HATCH and DECONCINI. The only reason it will drop to zero is because we are giving the visas to the closest family members under this bill. I hope that everybody hears that. I really do not care a whit anymore on win or lose. I gave that up long ago. I just want people to hear. The only way it could ever drop to zero is because we are giving the visas to the closest family—spouses and children of citizens of the United States. Now, if that is not what it is all about, I missed something.

Mr. DECONCINI. Will the Senator yield for a question?

Mr. SIMPSON. Indeed.

Mr. DECONCINI. Is it not true, would the Senator from Wyoming agree, that under the present law, under S. 358, whatever the number of immediate family members apply, they are going to be granted visas? Is that correct?

Mr. SIMPSON. Immediate family.

Mr. DECONCINI. Immediate family.

Mr. SIMPSON. It is always uncounted.

Mr. DECONCINI. So they are going to come in.

Mr. SIMPSON. Sure.

Mr. DECONCINI. Assuming they continue to grow, as they grow, is it not true that this legislation, S. 358, limits these other preferences? Is that correct? As this continues to grow and should it reach 480,000 or more, then these other preferences would not exist; is that correct?

Mr. SIMPSON. Mr. President, we are talking about family-based immigration. That is what I keep hearing. That is our heritage. If that is our heritage, then let us do it. We do it pretty well right now, 480,000. The Senator is correct on those visas.

What we are talking about is spouses and children of citizens. Only if spouses and children of citizens take all of the available visas will the more distant family preferences be squeezed. We make 480,000 visas available for family.

Now, that is the way it is. All this bill provides is that 80 percent of all visas go to the closest family member. That is what we are doing. There is nothing sinister about it. If you are going to have family reunification, let us not have family reunions. Let us call it family reunification, and that is a spouse or a child. That is not your niece. It is not your brother-in-law.

That is where we are at this point, and that is what everybody seems to be missing in the emotion of the moment. If you are going to have to crunch numbers, then crunch the ones for nieces, nephews and in-laws. You do not crunch the numbers for spouses and children of citizens.

Now, if you do not want a limit, fine. Then you can go ahead and do this and have a rich time of it. I do not think the Congress of the United States will allow a bill to pass which says there shall be no limit on legal immigration into the United States. I do not believe that. We will find out.

I do not believe that. We will find out.

Mr. DECONCINI. Madam President, will the Senator yield?

Mr. SIMPSON. Yes.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. DECONCINI. Let me point out from what the Senator from Wyoming says, and I think he will agree—I ask him if he does, and please speak up. I know he will. Right now there is no limit on immediate family. Does the Senator agree with that?

Mr. SIMPSON. That is correct.

Mr. DECONCINI. S. 358 does not change that.

Mr. SIMPSON. Right.

Mr. DECONCINI. That is correct.

What S. 358 does is, as the immediate family numbers grow they are reduced from these other preferences. Is that correct?

Mr. SIMPSON. That is correct, Madam President.

Mr. DECONCINI. I thank the Senator from Wyoming.

That is the essence right here. Do we want to jeopardize the other four preferences and literally eliminate them so that there are no unmarried adult sons and daughters of U.S. citizens able to come in? Is that what we want to do, because that is what we are doing. Do we want to stop spouses, unmarried sons and daughters of permanent resident aliens? They are here legally. They just have not applied for citizenship. Maybe they will. They will be reduced. Do we want married sons and daughters of U.S. citizens not to be able to come in or to have fewer come in every year? That is what we are going to do. Then the fifth preference, brothers and sisters of adult U.S. citizens, because what the law is now, and what the law will be if S. 358 passes without this amendment. The immediate family relatives are going to continue to come in. That may grow; it may shrink. I suggest it is going to grow, and it is going to grow.

What this little neat piece of legislation before us does is puts a cap of 480,000. That 480,000 number says that when you meet that number, which we have not met yet on immediate family relatives, then you have no more of these preferences.

Madam President, Senator HATCH and I believe that is intolerable. That is why we are here trying to do something to correct it, and it is not going to do any great hardship to this legislation or any other legislation because what the amendment of the Senator from Utah does is say there is going to be a permanent minimum of 216,000 available every year. Every year there is going to be that many available to come in under these four preferences. Is that to much to ask? That is a cap in itself. You always are going to have at least that many. Until we get up to the 480,000, you are going to have a few more just like we did last year. Do we not want family members to come in? In my judgment, we do.

Mr. HATCH. Madam President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. DECONCINI. I would like to finish if the Senator does not mind.

This amendment ensures that family preference categories are going to be available, and that is what I want my colleagues to understand. That is why the Senator from Utah and I are opposing the amendment. He spent a lot of time, and I have, too. The Senator from Wyoming says we come from States with heat. Indeed, it was 118 degrees yesterday in Phoenix. That is a lot of heat. But also I come from a State that has a lot of people who have family members who may not be immediate family members who do not want to be wiped off the slate. This establishes a minimum of 216,000.

Under the Hatch amendment, no matter how many immediate relatives' visas are granted, we are going to have at least 216,000 of these family reunifications. We must decide whether we want to continue to grant family preference immigration visas or whether we want to risk eliminating them altogether.

We must remember as we debate the issue today, and if the House takes up this bill, S. 358 does not put a ceiling or a cap on legal immigration of immediate families. They are going to come in.

The Senator from Wyoming and the Senator from Massachusetts have not even thought of that, I do not believe. I am pleased with that. As long as the number of immediate relatives is not limited, and I agree it should not be, there is no ceiling on legal immigration under both the current law and S. 358.

If a million immediate members come in, that is how many is going to come in. But once it gets to 480,000 there are not going to be any more of these preferences—no more unmarried adult sons and daughters of U.S. citizens, no more spouses' unmarried sons and daughters of permanent resident aliens, no more married sons and daughters of U.S. citizens, and no more brothers and sisters of adult U.S. citizens.

So in fact the family preference category is going to disappear. That is what we are overseeing if we do not pass the Hatch amendment. If we pass this bill as is, we are here at a burial service. We are burying and putting away forever family preferences.

The Hatch-DeConcini amendment provides a very necessary safety valve and guarantees that family preference visas are going to remain at least at a minimal 216,000.

I yield the floor.

Mr. SIMPSON. Madam President, that is why I like getting into spirited discussion with my friend from Arizona. We do that in committee. We do that privately. And I respect him and enjoy his spirit and energy. I understand. I can hear what he is saying. But I think we are talking past each other. Let me verify that. I will agree totally that we have no limits on immediate family. That is the truth. That is the way that is.

We have immediate relative immigration that did not increase 7 percent for the last 2 years. Yet the GAO based its report on the presumption that it would increase by 7 percent. In 1987 it fell by 1,000 persons. In 1988, it grew by only 1 percent.

Thus, the GAO conclusion that the more distant family preference immigration would drop to zero is not consistent with the present situation at all. In fact, I think this is critical, I hope my friends will hear this, if I might direct their energy to this. Under this bill I cannot imagine how you could feel that we would be embarked on such a course when Senator KENNEDY, Senator SIMON, and I as three members of the subcommittee of diverse philosophical background would never be involved in that kind of sinister activity of closing off family immigration. It is so dramatic that it does not ring true. The President and the Congress under this bill, every 3 years, will be examining it, looking at the level of immigration, and making necessary revisions. That is what we will be doing.

Please hear this. There is not a single thing in this bill, and I hope the sponsor will hear this, that limits one whit any preference, not one. There is nothing in this bill, nothing, that limits any preference until the next report, and the next report will tell us what we should do. This bill is left with the total flexibility to handle every single number from every single preference that will come in, without question.

Mr. DeCONCINI. Without question?

Mr. SIMPSON. Yes. I can say that is what is in this bill.

Mr. DeCONCINI. If the Senator will yield, I will answer the question, because it does limit immigration.

Mr. SIMPSON. Please.

Mr. DeCONCINI. The Senator is incorrect, in my opinion, because the mere fact that you have this report coming down the pike in 3 years does not mean that this Congress is going to pass anything that is going to raise any limits or adjust the so-called 480,000 cap. What we are talking about here, in response to the Senator from Wyoming, is if next year there happens to be 480,000 immediate family relatives, you have limited these preferences—exactly what the Senator said he did not want to do.

Mr. HATCH. Madam President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. SIMPSON. I certainly yield for a question.

Mr. HATCH. With anything more than 264,000 for immediate family you are talking about a reduction of what the current law is. I know that the two Senators and the floor managers of this bill have operated in the utmost good faith in every way on this bill. I have total admiration for both of them. But I think the points made are very valid points. I think Senator DECONCINI made the point that you cannot guarantee we can adjust because of the mechanism within the bill if you rise over 264,000 immediate-family visas. So what we want to do is make sure the family reunification can take place.

As I understand it, the Senator from Wyoming said he could not understand the reason for the amendment. That was my impression. Well, the reason for the amendment is to protect family reunification under the preference categories. That is plain and simple. S. 358 offsets, I think, is a threat to such family reunification.

Yes, if the current situation stayed static, I suspect the Senator from Wyoming's position could not be refuted, but it does not stay static. The GAO makes it clear that it will not stay static, and that we are going to by 1999, have zero preference categories visas. So the bill's currently operated provisions do not solve that problem in the future. That is what this amendment will do.

This amendment will prevent that type of a result. No one's hands are tied. The President and the Congress can change the 480,000 cap, and they can change the 216,000 floor under this amendment, at any time that they want to. I think it is better to do it this way than the way in the bill.

Mr. KENNEDY. Will the Senator yield for a question?

Mr. SIMPSON. I just want to say to my friends from Arizona and Utah that that is why we built in 44,000 new numbers into this bill, to take care of just exactly what you are speaking of, because only the most extraordinary activity would ever raise it any further than what we have built in. I yield to my friend.

Mr. KENNEDY. I would just like to make sure that the Senate has some understanding of what the current situation under family preference is.

The PRESIDING OFFICER. Will the Senator from Massachusetts withhold? Are you withholding?

Mr. KENNEDY. I would like to ask the Senator a brief question. Is his understanding the same as mine, that under the existing family preferences, which have been referred to, there is not a guarantee to all those preferences that they are going to get in here? I mean, it has been suggested that we have all these preferences out there, and if we do not take this amendment, you are going to have a lot of problems in these particular categories.

Madam President, in the second preference, that is spouses and children of residents, you wait 8 years today for that. We are trying not to double that number, so that as a result of the amnesty program, when you are permitting those individuals, some 3 million, who want to bring their families, their wives and children, who are residents and today have to wait 8 years, will not wait 16 years.

You know, you can cut this about whatever way you want to in terms of the families. I would go for a broader kind of a program, and the Senator from Wyoming, a more constricted one. The one concern that has been expressed here, we have addressed, Madam President, and the Senator has gone through. We put in the record what the past history has been, what the flow has been, the best information. But it is important, Madam President, to recognize that with these existing preferences now, the second preference, and the fourth preference, married sons and daughters of United States citizens is 8 years, if you are from Mexico.

We tried to build those numbers up so they will not wait that long. So unless, as the Senator from Wyoming has pointed out, you want to completely open unrestricted policy, which maybe some of us would go along with, I think probably the assessment of the Senator from Wyoming that this body is not prepared to do it, you are going to have to make some judgments and calls on it, but do not elude yourself by thinking because you are in the family preference category, you are unable to get in here. Some are not; some are. The first preference is that you are. But you are certainly not in the fifth preference, as I pointed out. You wait for 15 years, if you are from some countries, and today you are going to be waiting in the fourth preference, which are married sons and daughters. The second preference is spouse and children of residents.

Now, if we have increased that by 40,000, if we have accepted the amendment of the Senator from Utah, which is going to have this rolling cap, Madam President, we are not going to get the legislation. And make no mistake about it, you are not going to get the increase in those family preferences. You are just not going to get it. It is not there. I would like to have it, but it is not there. That is a hard, cold political reality. These are some of the balances.

I want to just join in support of the point the Senator from Wyoming has made, because these are tough difficult choices. We have debated and discussed and had some differences, whether to give a faster track for small children. Then I think a credible argument is to extend it to nuclear families, so we went for that. I, quite frankly, think you could go, as I mentioned, either way on that—at least I could. You would rather do for the families that are going to be impacted. I take their advice. But you are making tough and difficult judgments and choices, unless it is the will of this body just to throw the whole door wide open; and as one who has been involved in this issue, that is not where it is. We are always caught between those who wanted a more expansive program, and I have been proud to be associated with that group in the past. There is another group who feel that we need to have more restraint because of a wide variety of difficult implications, such as the burden on the tax system, housing, adequate education programs, and all the rest. This, I think, is why we have reached this kind of resoluton.

I ask the the Senator from Wyoming, does the Senator not agree with me that even though there are these other preference, that that does not guarantee that if you fall into that preference, you are getting in here. Would you not agree with me that with the acceptance of this total package, that we are going to reduce, hopefully, in an important way, the reunification of many families?

Mr. SIMPSON. Madam President, I agree totally with my friend from Massachusetts, the Senator that has been working on the issue for 27 years. I find that people come here and begin to talk about the preference system, and they do not know what it is. Like our quota system—how many countries are there, 168, and we have 270,000 numbers to divide among them for legal immigration.

These are things that make me wish I had never gotten involved in this stuff, because you can pick up the New York Times or the Washington Post or the Cody Enterprise, and they will take an article on refugees, and before you are through, they will call them immigrants. If nobody understands that, then TED KENNEDY and I will never get anywhere, along with our friend from Illinois. That is the problem.

If you are going to have a bill and raise the family numbers like we did by almost a fourth, it is unheard of—at least in the last 50 years. I do not know if it will sell, but if we are going to do that; then we think—maybe misguidedly—that 80 percent of all of those visas should go to the closest family member. Now, if anyone really wants to get in and argue that, I would love to hear it.

I see Senator DECONCINI is not in the Chamber, but I want to ask him and Senator HATCH a very simple question. It seems to me the Senators are really asking one thing only. They must want unlimited immigration into the United States, and I would like the answer to that question from both of the participants in the amendment.

Mr. BOSCHWITZ addressed the Chair.

Mr. SIMPSON. I think I have the floor. I would like to hear the response of the two Senators, and then I will be happy to yield to my friend from Minnesota.

Mr. HATCH. Will the Senator yield?

Mr. SIMPSON. I asked a question of my colleague.

The PRESIDING OFFICER. Will the Senator withhold? The Senator from Wyoming has the floor.

Mr. SIMPSON. I would like to have a response to the question, and I will then yield to my friend from Minnesota.

Mr. HATCH. Are you yielding to me?

Mr. SIMPSON. I would like to have your response.

Mr. HATCH. I appreciate the question of the distinguished Senator from

Wyoming. I do not believe that we need to know the number of actual immigrants each year at the expense of family-connection preference immigration. I do not believe that we need to know the actual—or excuse me, I do not believe that we need to set an annual number, if it means that we are going to cut the current level of current family preference consideration drastically, which GAO says we will do by 1999, to zero. I have no problem with uncapped immediate family immigration and a set number each year of family-connection preference immigration.

We have had that system for some time now and it has worked well and families benefited. I believe in family reunification. If I understand my friends and colleagues from Wyoming and Massachusetts, they do, also.

So I think it is important and it reflects traditional American values.

I note that even under S. 358, we are never completely sure how many people come into the country, although I recognize it is unlikely to occur in a short period of time in theory.

If immediate family relative immigration ever begins to exceed 480,000 we will not know how many family immigrants will enter the country because immediate family immigration remains uncapped. So there is no way we will know anyway.

So I think that answers the distinguished Senator's question.

Mr. SIMPSON. Madam President, it seems to me that what the sponsors of the amendment are proposing is that we never say "no" to a person who has a family member in the United States. That is the only way I can read this.

We have limits now, and people wait for decades. There are 2 million of them out there under present law who are not being serviced, and our bill tries to make more rational the application of those limits.

We are trying to be responsible in distributing the necessarily limited visas to the closest family members. That is what this "sinister" approach is. It is not meanspirited, unless you want unlimited immigration.

If that is the case, then let us call it that and have an up or down vote.

I yield to my friend from Illinois.

Mr. SIMON. Madam President, if my colleague will yield, first in this compromise in this complicated area, what we have done is to increase numbers for family preference by 22 percent without this amendment and then we will face in the next 4, 4½, or 5 years, because of the amnesty program, a brand new problem that no one here has any idea what is going to happen. No one does.

We are saying 3 years from now let us review it. That is what the bill calls for right now. That seems to me to make an awful lot of sense.

I hope our colleagues will listen as we try to get that point across.

I thank my colleague from Wyoming for yielding.

Mr. SIMPSON. I thank my friend from Illinois who has come into this activity with good grace and good humor, learned and participated in it, and knows already how you do combat for 2 or 3 days on the floor every time one comes up.

Honestly, I hope I am not being self-effacing or anything else, I really do not care if you win or lose as long as you understand what we are doing. Again, that is my only hope as I legislate.

I yield to my friend from Minnesota.

The PRESIDING OFFICER. Does the Senator from Wyoming choose to continue to hold the floor and thereby continue this rather lively discussion through yielding, or does he want the Senators to be able to seek time in their own recognition?

Normally Senators yield for the purpose of a question. However, this has been a situation where I think elasticity is called for.

Mr. SIMPSON. Madam President, I do not intend to try to dominate the debate. I think my friend from Minnesota was asking a question. If that is so, I will try to accept it. If not, I will yield the floor to him at this point. I think I am nearly through.

Mr. BOSCHWITZ. Madam President, I will seek recognition in my own right.

Mr. SIMPSON. Then let me not end but just make a couple of comments and then yield to my friend.

The philosophy of this bill is, as I have said, trying to increase immigration and set a specific level of immigration. We do not call it a cap. It is a national level of immigration. This amendment here takes us back to current law on national level.

If we go back to current law in the second preference of immediate family of aliens, then family visas there would be reduced. Senator KENNEDY made the point to get the more visas that S. 358 provides, a specific national level must be set. The amendment upsets that balance without question, and I think it is just important if you win, lose or draw that you just hear one thing. All we are saying is if you are going to have a national level of immigration then something is going to get squeezed obviously. If you do not want a national level of immigration, then this amendment is what you should gravitate toward. It will help reach that.

I just do not believe that people are really able to sell that back in the old home district that you want an amendment or a bill that will provide for unlimited immigration because that is where you are headed with this amendment, and everything that shows up in my mail room seems to indicate the American people do not want that.

All we are saying is if the squeeze comes, then why not do what everyone in this room would want to do. First take care of reuniting spouses and children, not taking a number away for someone who wants to be reunited with their brother-in-law and take that number away from someone who wants to be reunited with their spouse or their minor child.

I yield the floor.

Mr. LEVIN. Mr. President, I rise today in support of the Hatch-DeConcini amendment to S. 358.

By creating a guarantee of 216,000 visas for family preference immigration, the Hatch-DeConcini amendment helps to ensure that the principle of family reunification will continue to guide our immigration policy. We are all concerned about maintaining some form of control over our immigration policy. However, that control should not be at the expense of family reunification.

While S. 358 would continue to allow unlimited immediate relative admissions, visas for other close family members could be reduced. I oppose this reduction and I urge passage of the Hatch-DeConcini amendment.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from California.

Mr. WILSON. Mr. President, I will not take a great deal of time, not as much as I intended originally to take, because this has been a very good debate, one of the better that I have head on one of the more difficult subjects.

I commend the Senator from Wyoming. He has labored long and hard in what is not a vineyard but a very rocky, thorny place, and he has done so most of the time with his characteristic good humor. This is the kind of subject that would try the patience of a saint.

I must say that this whole business of immigration could perhaps best be equated to the problem that faced a Solomon in really having to decide a very critical family matter.

Many times this afternoon my friend from Wyoming has asked the question, quite appropriately, who wants to suggest that in terms of giving preference on immigration to family-connected members that we should give preference to a brother or to an unmarried adult son as opposed to immediate family members, the spouse, the parents, or the minor children of a U.S. citizen?

The fact of the matter is those are very difficult choices for families themselves to make.

In some cases, I will tell him, in my home State immigrant families have decided that really in order of the benefit that would be derived, it might make more sense for the younger adult brother to come than for the father.

Those are painful decisions. Sometimes thay are dictated by economics, by stitutions that have to do with matters that relate to the ability to bring that family member to the United

States, wholly apart from what the immigration law provides.

I do not know that we are, any of us, wise enough to prescribe a generalized prescription that will do perfect equity in every case.

But the fact of the matter is to anyone listening to this very good debate this afternoon, I think it has become clear that the concern that has generated this amendment is one that is completely bona fide.

My friend from Wyoming has repeatedly said that in my State and in other States where there are large immigrant populations there is intense heat generated by this entire question of immigration. He is right, if by "heat" he means intense emotion. People feel intensely emotional about their families; about their children, God knows; about their spouses, of course; about parents and about other family members not within that category of immediate relative.

There is intense emotion felt. There is love. There is a desire to bring to this Nation with all that it offers those in one's family who are beloved, who in many cases have waited long and patiently who are in the category of the fifth preference and in many cases do not have a very good chance. We are talking about family reunification.

In some instances, the wait is so long that it would seem more accurate to call it ancestor reunification in terms of their prospects of getting here in time to be reunited with their family.

But what is clear is that those who have proposed this amendment have done so precisely because they feel that the answer to the question posed by our friend from Wyoming—should we pit one group of family-related immigrants against another?—is that this cap, which he does not call it, will do precisely that. Because what their amendment proposes is to set a floor on the number of immigrants who can come into the country who do not fall into the category of immediate relatives, and they do so as you have heard repeatedly this afternoon because the projection is that without this amendment the General Accounting Office sees that by 1999 there will be a squeeze indeed and in fact the level of immigration for family-connected members other than the immediate family, other than the minor children, the spouses and the parents, will have dropped to zero because all others will have been crowded out by the immediate relatives.

I think what has been established is that the likelihood under review at almost any time in the future is that immediate relatives, immediate family members, are probably going to be accommodated. The question is to what extent are we going to allow into the country those other family members who are not minor children, spouses, or parents? And the answer it seems clear to me is that the whole purpose of this legislation is to set a limit, and indeed very candidly the Senator from Wyoming has stated that that is the purpose, that that will be the effect.

What you have in the Hatch-DeConcini amendment is a common sense and humane effort to see to it that as we seek to accommodate those immediate family members, those immediate relatives, we also provide a sufficient compartment in that immigration liner coming to us that it will be able to accommodate some of the others. And the number that they have selected, 216,000, happens to be the number that reflects that kind of immigration last year.

What we do know is that we can expect, according to every source, that the number of immediate relatives will grow and that as it grows there will be a corresponding reduction unless, of course, this amendment is adopted and provides for that floor. Without it the prospect, everyone seems to agree, is that finally as the number of immediate family members increases in immigration to this Nation the number that is available through these other preferences, the second, the third, the fifth, is going to correspondingly be reduced.

That is very simply stated what this amendment is all about. I think that it is a wise amendment. I think that we would be unwise, I think that we would be arrogating to ourselves the power of a Solomon. If we find these decisions difficult, I tell you that the families themselves find them difficult. I do not think that they will thank us for simplifying the choice for them. They are not asking us to do this. To the contrary, let us not impose upon them a parameter that they have not sought and that does not exist in current law.

Family reunification is a concern not just with respect to the minor children, the spouses, the parents. It does involve brothers and sisters. It does involve other members of the family. And that has certainly been the experience in my State.

So I would say, with the greatest respect in the world for the extraordinary service provided by my friend, the Senator from Wyoming, who is motivated both by a genuine concern for his country and by what he feels, to be fairness, that, respectfully, those of us who support this amendment disagree to the extent that we feel that fairness requires that there be allocated to other family members than the immediate relatives a floor that will protect their immigration. Without that floor, without this amendment, we see them by the turn of the century no longer able to come to this Nation.

One of the things in this great American ambivalence to immigration is that when we get here, those of us who are the sons and daughters of immigrants, many times we feel it is time to haul up the ladder. It is true that no nation can lose control of its borders, though I have to tell you that I think that we have in certain respects and they are obvious. But what is also true is that in every generation, this Nation has received an incredible infusion of energy and brains and guts and drive that has made this Nation the richest and strongest and the best in the world because our richest resource has been our people and in many cases some of the very newest Americans, the most recent arrivals.

So I will simply say to you that I think that we should continue a wise policy of immigration that permits us to continue to benefit in that fashion. It is in the tradition of this Nation. I would simply say that this amendment is fair. It seeks equity as many of us think it is required to be practiced so that we do not too narrowly define the favored class in family reunification.

Mr. President, I thank the Chair and yield the floor.

Mr. GRAMM. Mr. President, listening to my dear colleague from California reminded me of that joke that Smirnoff, the new American, ex-Soviet comedian, said about how the day he was sworn in as a new citizen, immediately he had this deep concern well up in his bosom about all these foreigners.

There is a conflict here, Mr. President. We hear it in what our dear colleague from Wyoming says. The conflict is between a number and a principle. The number of 600,000. The number was developed by our dear colleague from Massachusetts and our dear colleague from Wyoming. It did not come down from Mount Olympus. It was developed by this committee. The principle is a principle of family unification.

It seems to me that the amendment of the Senator from Utah is a pretty straightforward, simple, fair amendment. It says, starting out with a formula of this bill, you start out with family preference of 480,000 people. Then you subtract the number of immediate family members that come.

Now, the concern of the distinguished Senator from Utah is that pretty quickly, what is left is going to be nothing. So he says that when the number has gotten down to 216,000, that it will go no lower. The Senator from Wyoming says, "But that violates the number of 600,000."

Mr. President, we have a conflict between a number that did not come from God and a principle of family unification. We have a choice between a number and a principle—a principle that is vitally important as people love their kinfolk. They come to America seeking freedom and opportunity. They achieve it here. They want to bring their relatives here to share in that freedom.

So what Senator Hatch simply says is that at a point at which subtracting the number of immediate relatives leaves only 216,000 visas for family sponsored immigrants, it will not sub-

tract further. The objection to that is not that that is an unreasonable number. The objection is that it violates the 600,000 cap. Given a choice between an arbitrary number and a principle of family reunification, I find myself on the side of the family reunification.

Finally, Mr. President, let me say that this magical number would have more meaning to me if it were not for the fact that we have seen that number of people are coming into the country illegally every year.

We have tremendous illegal immigration in this country which has not been stopped and yet we are here setting up arbitrary limits that prevent people who came here legally, who have been successful, who have achieved the American dream, from bringing their kinfolk to America.

I do not think that is right. I do not think it makes any sense. And I do not think that this is a very bold or daring amendment in terms of doing injustice to the bill before us. I think it is a simple, straightforward amendment. It says that when you reach the point of only 216,000 people left to come in under family preference, after you take out the immediate family, you do not let it go any lower.

If that means that you go above 600,000 in the total, so be it. That is ultimately the debate.

I am sure people listening to our colleague from Wyoming think that there is some kind of inherent inconsistency in the amendment and the bill. But the real problem is this cap, and I think the amendment that is proposed is reasonable and modest, and I think it ought to be adopted, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I thank my friend from Texas because he put it so succinctly well. I would like to point out to my friend, the Senator from Wyoming, that some of his statements are a little bit misleading, if I may say so. He talks about brothers-in-law. The bill does not mention brothers-in-law. He spoke earlier about nieces and nephews. This bill and the present immigration law does not speak about nieces and nephews. He talks about an unlimited immigration. Well, there is unlimited immigration, in a sense, under the present law. Immediate family members do come in in unlimited numbers.

As I understand the bill that is now being proposed by the Senator from Wyoming and the Senator from Massachusetts, that would not be changed. Immediate family—minor children, parents, and spouses of U.S. citizens—continue to come into this country without numerical limit. If, however, immediate relatives, come in very large numbers, they begin to push out brothers and sisters and other relatives who are not quite as immediate.

What the pending amendment says is that 216,000 of those not-so-immediate relatives should come in no matter how many immediate relatives come in. And I support this amendment of the Senator from Arizona and the Senator from Utah.

The Senator from Wyoming says that the Congress and the President are going to review this every 3 years. But I did not see in this bill any assurance that the Congress was going to act on this matter every 3 years.

Unlimited immigration, Mr. President? This bill would allow one-fourth of 1 percent of the American people to come in each year: 600,000 people is approximately one-fourth of 1 percent of the American people. At the time of the largest and most rapid economic growth in this country, 3 or 4 percent of the population was coming in as immigrants each year.

People say that immigrants are going to take away jobs. But the period of fastest job growth in relation to the population came at the time when the most immigrants in relation to the population came in.

This is not an amendment that asks for unlimited immigration, especially by historical standards. It is not an amendment that, in the words of the Senator from Wyoming, says: Never say no, to use his exact phrase. Rather, it allows all immediate relatives of U.S. citizens to come in—just as under the present law, and just as under the bill he proposes. But, in addition to that, 216,000 relatives who belong to other family categories, can also come in.

As a matter of fact, immediate family of permanent legal residents would be turned back in the event that the amendment were not adopted. That's because these immediate relatives fall under the second preference.

All of these preferences, Mr. President, are very confusing to understand. That's why put together this chart.

There is a first, second, fourth, and fifth preference that applies to families, but immediate family come outside of the preferences. Those folks can simply come in without limit. Immediate family, again, are mother and father, spouse, and minor children.

The first preference is adult, unmarried children of U.S. citizens; 54,000 of them come in under the present law. This bill reduces that to 23,400. But that is not too bad, even though there is a reduction, because the actual number that came in was 12,107, as you see.

The second preference is the immediate family not of citizens, but of legal permanent residents. That is the preference that the Senator from Wyoming says is often a 12-year wait and which, under the formula as established in the bill, he raises to 148,000. I compliment him for doing so.

Let me just say, if we look at this chart, all the family preferences taken together, add up to this figure of 216,000 that we are talking about.

The fourth preference is married adult children of U.S. citizens, and only that child. If a married adult child wants to bring his wife, let us say, and minor children, he has to get here first himself.

The fifth preference is the siblings, or the brothers and sisters of U.S. citizens. And, in this area, the Senator from Wyoming points out that in the case of the Philippines, the wait is 50 years.

So what this amendment says is that the immediate family of U.S. citizens can still come into this country in unlimited numbers. I believe that is the way it should be. But let's not forget the other relatives.

As the Senator from Texas says, once people get here to the United States and have an opportunity to enjoy the freedoms of the United States, they want to bring, as he says, their kinfolk. That, of course, is first the immediate family: the children, the minor children, the mother and the father, and the spouse. They do not count toward any limitation under the existing law.

However, under the proposed bill, S. 358, immediate relatives cut into these other preferences. What the Senator from Arizona and what the Senator from Utah are saying is that immediate relatives of U.S. citizens should not count against these preferences.

As the Senator from Illinois has pointed out, the immediate relatives, the numbers will climb, soon, within the next 6, 8, 10 years. And the result is that they will climb so high that under this bill they will squeeze out all of these other preferences. Mothers will squeeze out their sons. In other words, a mother who is brought here by a U.S. citizen will squeeze out her other children. Mothers will squeeze out brothers and sisters, and that really is not the way we want to go.

So I think that the Senator from Arizona and the Senator from Utah are, indeed, on the right track. I think that we do, indeed, have to support this amendment.

My concern about the bill is really related to this area of family preference immigration. The Senator from Wyoming talks about limitations on the fifth preference, that there are too many years of waiting under this category. I will, therefore, offer amendments either tonight or tomorrow, as time permits, to increase the fifth preference so that we can have more brothers and sisters come into this country.

The Senator from Wyoming is correct that the mail runs against the idea of bringing in new immigrants; that many people think that jobs are going to be taken by these immigrants, and they feel threatened by that. I think the entire experience of the United States has been that immigrants create jobs; that immigrants by and large come to this country with nothing and they come as the greatest

consumers of all. For that reason they do, indeed, create jobs.

Again, Mr. President, during the time when we had the greatest job growth as a percentage of population, when we had the fastest economic growth—the industrial revolution—this country experienced its heaviest immigrant flow. I would suspect that most of the grandfathers, great grandfathers and grandmothers of the Members of this body came during that period of time. That is what we are trying to recreate with this bill, to open the shores of this country because this country alone is a country of immigrants.

So I say to my good friend from Wyoming that we are not talking about unlimited immigration. Not at all. We are talking about guaranteeing that 216,000 people, in addition to immediate family members of American citizens, can be reunited with their family in the United States.

This is an amendment that does not necessarily increase, but might increase immigrant flow into this country by as much as 216,000 people a year.

I will have more to say about it later, but I hope that the Senate will consider this amendment and act favorably on this amendment as it should. I yield the floor.

Mr. SIMPSON. Mr. President, I understand on each occasion when we deal with immigration and refugee issues, and my friend from Minnesota, known affectionately of old No. 43, because I am No. 44, and he has never let me forget that, in our seniority ratings that is, of course. I did not know he paid that close attention, but he continues to bring it up, puts it on papers, slips it under the door. He does have me by 1 day seniority.

He is one of my loveliest friends in this place. His intent and his intentions are so authentic because he fled Nazi Germany and at the age of 5 was a refugee, a true refugee. Had he stayed or his parents, they would have been killed. They could not get visas here and they could not get visas there and they went to Poland and went to England and went to other countries and finally got here. He was 5 years old at that time. He is the only man in the body who cannot be President of the United States because he was born in Germany.

When my friend RUDY BOSCHWITZ speaks on this issue, he comes from a place of passion that I could never even imagine. So he does gravitate to these issues.

But let me say, as he said some of my statements might be, I think the word he used is misleading and he uses that in the debate sense. I like that. But I can tell my friend that if he will look again at the current law, the fifth preference today allows brothers and sisters and their family of U.S. citizens to immigrate. Under the fifth preference, 64,800 immigrants are admitted annually. Less than a third of those visas goes to brothers or sisters of citizens and two-thirds go to brothers-in-law, sisters-in-law, nieces and nephews. I will be glad to present those and will print those in the RECORD.

Those are the figures. I am not making them up. That is why I am talking about brothers-in-law and sisters-in-law and nieces and nephews.

I am saying only this: Unless you want unlimited immigration, and perhaps that is the vote we ought to just put to the body. Somebody should make the amendment that we want unlimited immigration into the United States.

I do not think that would pass. If it did, why, I do not think it would stay on the books very long. I guess that is what I could say.

But in the event that it came up, I do not think it would pass. Therefore, what limits should we have? I can tell you that I have never felt like bringing something down from Mount Olympus. I think that mountain in the Li'l Abner comic strip where the man used to hide with the kickapoo joy juice is how I feel about this. I can assure you we came up; we did not come down Mount Olympus, we went up 22 percent, an unheard of activity in the history of immigration reform.

There is no other way to describe a brother's wife than being a sister-in-law, and the brother's children are nieces and nephews, and that is the way it is. All of these people enjoy petitioning rights under current law.

Senator BOSCHWITZ, and I think it is important he hear this, stated he does not see where Congress is required to act every 3 years. Let me address him to the bill. S. 358, page 80, "The President shall transmit such determination to the Congress by not later than March 31 before the fiscal year involved." I think I am going to wait until my friend is able to hear my remarks because I do not want to catch him off guard.

Mr. BOSCHWITZ. Will the Senator repeat that?

Mr. SIMPSON. I shall. Senator BOSCHWITZ, Mr. President, has stated that he does not see anywhere where Congress is required to act every 3 years. I am citing and quoting from S. 358, the bill before us today in our discussions, page 80 stating that "The President shall transmit such determination to the Congress by not later than March 31 before the fiscal year involved and shall deliver such determination to both Houses of Congress on the same day and while each House is in session." The President must act.

And then if you would please go to page 83 of the bill it states, "No later than the first day of session following the day on which a determination is transmitted to the House of Representatives and to the Senate under paragraph (2), * * * a joint resolution (as defined in paragraph (5)) in respect to each such change shall be introduced (by request) in each House by the chairman of the Committee on the Judiciary of that House, or by a Member or Members of the House designated by such chairman."

That is the language. I do not know how it could be any clearer. The President is required to recommend a change every 3 years and, if necessary, the level of immigration.

Mr. BOSCHWITZ. Is the President required to recommend the change or to report? And is the Congress required to act only if he recommends the change?

Mr. SIMPSON. It is stated at page 80 of the bill, the President shall, and other conditions, after soliciting the views of the members of the Committees on the Judiciary of the House of Representatives and of the Senate determine whether or not the number specified in the section of the law should be changed for any fiscal year of the 3 fiscal year periods beginning with the next fiscal year and transmit that for determination. He shall transmit such determination to the Congress. I have read that previously. If the recommendation is a 5-percent increase or decrease, it can take effect without congressional approval, without congressional action. If more than a 5-percent increase is recommended, the Congress must act and then expedited procedures are set.

Mr. BOSCHWITZ. If the Senator will yield, I thank the Senator. Congress need not act unless the President recommends that change. I believe in what I said. I said that the President must report but the Congress must not necessarily act.

Mr. SIMPSON. That, Mr. President, is not correct. I would not leave my colleagues to believe that it is. S. 358 would mandate that Congress act in response if only one person raised the finger or objects to the President's recommendation. Senator BOSCHWITZ would be able to require us to act. I would be able to require us to act. And I am sure that he would and I would if it were inimicable to our interests. But that is the way it is drafted. It is here. There is nothing more I can add. It would be repetitive and dull-witted to put this portion of the bill in the RECORD. It is already there. There it is.

Mr. BOSCHWITZ. If the Senator will yield, this says that in the event that the President makes a recommendation—as I understand this bill—in the event that the President makes a recommendation for a change that exceeds 5 percent, then the Senate or the House, Congress must act. But in the event that you make the recommendation for no change, though he must report, the Congress need not act. The Congress, of course, can act at any time in any event if it wants to change this law.

Mr. SIMPSON. Mr. President, I think I have cited what is the critical part of this legislation. Shall determine whether or not the number specified in subsection (c)(1)(A) or the number specified in subsection

(d)(1)(A) should be changed for any fiscal year. That is whether or not. I do not know what more to detail on that. I did say this. Any Member can trigger "the President shall." The language is clear in paragraph 2 on page 80, clearer yet as to the increase or decrease of 5 percent, clearer yet if the increase is recommended Congress must act, clearer yet about the joint resolution, clearer yet that it be done by a member or Members of the House as designated by the chairman. I do not know what more I can add. I am not trying to be evasive.

Mr. BOSCHWITZ. Will the Senator yield for a question? In the event that the President makes a recommendation of no change, does the Congress have to act? Yes or no.

Mr. SIMPSON. It has to introduce the joint resolution, obviously. That is what it says. It says they shall. And then on to page 82. Go from 80 to page 82.

Mr. DECONCINI. Will the Senator from Wyoming yield for a question on that subject matter? If it says they shall introduce a resolution, does that mean that they have to act? Does that mean that they have to bring it to the floor and vote on it?

Mr. SIMPSON. That is correct. Then there are expedited procedures under that provision which are quite detailed. In fact, it tells about the debate on page 83, 84, 85.

Mr. DECONCINI. If the Senator will yield for another question, what if the President should decide to reduce the number by, say, less than 5 percent, to be roughly 24,000, 23,999. Then what happens? Must the Congress proceed and shall they introduce and go through the expedited procedure?

Mr. SIMPSON. Mr. President, it takes one Member of either body to do just that.

Mr. DECONCINI. So the answer is yes.

Mr. SIMPSON. Yes. That is correct. That is correct.

Mr. BOSCHWITZ. May I ask another question? As I read this subsection on page 83, it says if the President no later than the first day of session following the day on which determination is transmitted to the House and Senate under paragraph (2), which determination—that is what the President sends over—provides for a change in the number specified. Let us presume that it does not provide for a change as I have suggested. Then as I read this the joint resolution is not required. However, if one Senator wants to do something, I presume he could do something about this at any time—an amendment on any bill that comes before us, but I do not think this requires us to act.

I wonder if the Senator would address the never-say-no, the unlimited immigration the Senator was speaking about and why this amendment provides for unlimited immigration or why it is a never-say-no amendment, because I certainly do not read it as such.

Mr. SIMPSON. Mr. President, I said it was a never-say-no amendment to somebody who had relatives in the United States. That is what I said. And I want that quite clear. That is what I did say and that is what it is. There is no question about it.

Mr. BOSCHWITZ. Is the Senator talking about immediate family?

Mr. SIMPSON. I am talking about those relatives in the United States.

Mr. BOSCHWITZ. Immediate family.

Mr. SIMPSON. Immediate family come in unnumbered. Preferences come in numbered. Preferences are not filled. All those things come about and people then petition.

Mr. BOSCHWITZ. This is not a never-say-no amendment.

Mr. SIMPSON. I describe it as that. I share with my colleague that I describe it as that. May I say, Mr. President, if this is not sufficient clarification for anyone, I would certainly entertain an amendment to make it clearer that the Congress must act no matter what is in the determination, whether it is a selection to go up or down. That is the purpose of what we have put in here. If it is not that clear, I would certainly entertain an amendment to clarify it. I thought it was.

Mr. BOSCHWITZ. Mr. President, has the Senator from Wyoming yielded?

Mr. SIMPSON. I would like to conclude my remarks. Senator WILSON asked one of the critical questions of the debate in my mind. He said should we pit one group of immigrants against another. That is what he said. In the ideal world we would not and we would never. But let me tell you, ladies and gentlemen, in the real world right now, today, 2 million people are waiting in line for 270,000 visas. That is what is happening today, family and independent allocated in present law, current law. Given this reality and given the fact that visa demand cannot be ever matched by the supply of U.S. visas, I believe we must make some terribly difficult but necessary choices, and those choices are closer family members must be admitted before those more distant members are admitted, and by that I mean brothers and sisters-in-law and nieces and nephews.

And two, we must admit more skilled independent immigrants because our system of legal immigration has been overwhelmed by family reunification which was never the intention. We have two areas of the world that send 85 percent of legal immigration to areas of the world, and we have come away from what is known and left us with positions of adversely affected countries. That is what has happened to it. So I say we must admit more of those. That is what this bill does.

If we continue current law, and if we support the Hatch-DeConcini amendment, we have avoided making the very difficult choices. You may be assured that you have just stepped away from anything to address the issue.

I think it would be a terrible misnomer to say that this amendment is a bold statement, and an innovative and creative thing because all it does is play chicken because all it does is put us right back where we are today. Surely, no one wants to continue that with those kind of backlogs. It is not a creative thing. It is a something which is simply an escape, a failure to deal honestly with a tough, tough, tough issue. Until we do, it will never get resolved. Let us not call it "creative" or "innovative." Let us just call it "you ducked."

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I would like to move to a vote, and I ask for the yeas and nays on the Hatch amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, I think the debate has gone on too long probably for everybody. I am not going to prolong it for more than 1 more minute. I think it is important to remember what has made immigration so important to this country, what has made this country so important to the world, is the fact that families have an opportunity to be united here, and that the Hatch amendment before us tonight just ensures that is going to continue at a bare minimum.

I hope my colleagues will support it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. BOSCHWITZ. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have.

Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Utah. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. COATS] is necessarily absent.

The PRESIDING OFFICER Mr. FORD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 62, nays 36, as follows:

[Rollcall Vote No. 109 Leg.]

YEAS—62

Adams	Gore	McConnell
Bingaman	Gorton	Metzenbaum
Boren	Graham	Mikulski
Boschwitz	Gramm	Nickles
Bradley	Harkin	Nunn
Breaux	Hatch	Packwood
Bryan	Hatfield	Pell
Bumpers	Heflin	Pryor
Burdick	Heinz	Reid
Chafee	Jeffords	Riegle
Conrad	Kasten	Robb
Cranston	Kerrey	Sanford
D'Amato	Kerry	Sarbanes
Daschle	Kohl	Specter
DeConcini	Lautenberg	Stevens
Dixon	Leahy	Symms
Domenici	Levin	Wallop
Durenberger	Lieberman	Warner
Fowler	Mack	Wilson
Garn	McCain	Wirth
Glenn	McClure	

NAYS—36

Armstrong	Exon	Mitchell
Baucus	Ford	Moynihan
Bentsen	Grassley	Murkowski
Biden	Helms	Pressler
Bond	Hollings	Rockefeller
Burns	Humphrey	Roth
Byrd	Inouye	Rudman
Cochran	Johnston	Sasser
Cohen	Kassebaum	Shelby
Danforth	Kennedy	Simon
Dodd	Lott	Simpson
Dole	Lugar	Thurmond

NOT VOTING—2

Coats	Matsunaga

So the amendment (No. 238) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I was pleased to join Senator KENNEDY as a cosponsor of the Immigration Act of 1989, S. 358.

This bill creates two separate immigrant visa preference systems: One for family members; another for independent immigrants. Although the legislation continues to stress family reunification and in fact does much to streamline the existing system, it also recognizes that the United States requires skilled immigrants. To accomplish both these goals, 120,000 visas will be reserved for independent immigrants, that is, for persons of exceptional merit or with needed skills. Of these 120,000 visas, 54,000 will be distributed according to a point system which will award points for levels of education, occupational demand, and occupational experience. The cumbersome individual labor certification requirement is eliminated for these visas.

At present, over 90 percent of the visas issued today are family related. Those seeking visas under the non-preference category have little chance. However, this legislation changes that, and the new category established is expected to benefit individuals from Western European countries such as Ireland, Italy, and others that were earlier sources of immigration to this country, but which have been effectively shut out due to the strict preference system currently in place.

This legislation seeks to inject fairness into our immigration laws. Traditionally, apart from the Chinese Exclusion Act of the late 19th century we did little to regulate immigration to this country at all. That is until 1924 when we enacted the National Origins law that had in mind keeping the United States exactly as it once had been. It set national origin quotas on the basis of the 1890 census, was pro-Northern European, pro-Western Europe, and openly so. This was nativist legislation, though some of the natives were not very welcome when they arrived.

The 1965 Immigration and Nationality Act amendments were a direct response to this nativist legislation and attempted to undo that earlier bias. The 1965 amendments accomplished this, but overdid it in the process. Stressing family ties, the 1965 law clogged the system and cut off access to this country for the people and nations where immigration took place three or four generations ago. The 1981 report of the Select Commission on Immigration and Refugee Policy—a distinguished panel headed by Father Theodore Hesburgh and counting among its members our two sponsors today, Senators KENNEDY and SIMPSON—summed it up well. The report states that:

> The low priority accorded nonfamily immigrants and a cumbersome labor certification process for clearing them for admission has made it difficult for persons without previous family ties in the United States or extensive training and skills to immigrate.

The effort to limit immigration in 1924 to some groups to prefer them over others, was not well-received. It was not right, not fair. Now we have moved too far in the other direction. The system now disadvantages individuals from countries which sent the first waves of immigrants to America. Since most European immigrants arrived in this country long before 1965, they do not have any close relatives to bring them in. Clearly, a mid-course correction is in order.

The legislation now before us accomplishes such a correction. It restores fairness and balance to our immigration laws to ensure that certain individuals and nations are not penalized because of their long heritage in this country. Certainly, the interests of family reunification are great and our immigration policies should not hamper such. However, we also need to help the descendants of our forefathers, to open the doors to opportunity for them as well.

It is also worth noting that this is not an overpopulated country. In fact, at some point in the next century the American population will actually start to decline. There is room for some more people in this country; there always has been and should be. I urge my colleagues to support the Immigration Act of 1989. In closing, Mr. President, I would ask unanimous consent that the following brief chronology of U.S. immigration policy be placed in the RECORD.

CHRONOLOGY

1875: First Federal retriction on immigration prohibits prostitutes and convicts.

1882: First general immigration law enacted which curbs Chinese immigration. Congress excludes convicts, lunatics, idiots, and persons likely to become public charges, and places a head tax on each immigrant.

1891: Ellis Island opens as immigrant processing center.

1903: List to excluded immigrants expands to include polygamists and political radicals such as anarchists.

1917: Congress requires literacy in some language for immigrants and virtually bans all immigration from Asia.

1921: Quotas are established limiting number of immigrants of each nationality.

1924: National Origins Law (Johnson-Reed Act) sets temporary annual quotas at two percent of the country's U.S. population based on 1890 Census and sets immigration limit of 150,000 in any one year from non-Western Hemisphere countries.

1943: Chinese Exclusion Laws repealed.

1952: Immigration and Nationality Act of 1952 (McCarran-Walter) Reaffirms national origins system, and sets immigration limits.

1965: Immigration and Nationality Act Amendments of 1965 abolish national origins system, and establish preference system and annual ceilings for countries.

1976 and 1978: Additional amendments to Immigration and Nationality Act.

1986: Immigration Reform and Control Act imposes sanctions on employers who hire illegal aliens and grants amnesty to illegal aliens in this country since 1982.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, during my debate on the amendment that was voted on a few minutes ago, I mistakenly said that nephews and nieces and brothers-in-law could not be admitted under the fifth preference. Apparently I was mistaken, and the Senator from Wyoming was correct.

On page 92 of the bill, it defines the fifth preference as "Brothers and Sisters of Citizens." And then it goes on to say, "Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 25 percent of such worldwide level, . . ."

I read that and did not realize brothers and sisters could bring their spouses and children. That is the nephews and nieces. I stand corrected and apologize to my friend, the Senator from Wyoming, number 44 in rank-

ing here in the Senate. He, indeed, was correct, and I was mistaken.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I ask the Senator from Minnesota if there is anything else he wants to retract today?

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader.

TIME LIMITATION AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the following be the only amendments, in addition to the pending committee substitute, remaining in order to the bill, S. 358, under the following time limitations where indicated:

A Specter-DeConcini amendment increasing employer-sponsored visas, 90 minutes equally divided;

A Helms second-degree amendment to the Specter-DeConcini amendment relevant to the subject matter of the first-degree amendment, 60 minutes equally divided;

A Simon amendment on points for arranged employment, 10 minutes equally divided;

A Gorton amendment on Chinese immigration, 20 minutes equally divided;

A Levin amendment clarifying a study by a congressional commission, 10 minutes equally divided;

A Simpson amendment to restore English language points, I hour equally divided;

A Kennedy-Simpson technical amendment, 10 minutes equally divided;

A Shelby amendment on census counting of illegal aliens, 2 hours equally divided;

A possible Bentsen or Graham second-degree amendment to the Shelby amendment, 2 hours equally divided;

An Exon amendment prohibiting certain benefits for illegal aliens, 30 minutes equally divided;

A Gramm amendment relating to immigration, 1 hour equally divided;

A Helms second-degree amendment to the Gramm amendment relating to immigration, 1 hour equally divided;

A Gramm amendment regarding rural investor visas, 1 hour equally divided;

A Gramm amendment on point system preference, 40 minutes equally divided;

A Gramm amendment on 5 percent Presidential recommendation, 1 hour equally divided;

A Helms second-degree amendment to the Gramm amendment on 5 percent Presidential recommendation, 1 hour equally divided;

A Gramm amendment on rural doctors and nurses, 1 hour equally divided;

A Gramm amendment on lower investment requirement to $500,000 for investors' visas, 1 hour equally divided;

A Gramm amendment on the removal of limitation on number of investors' visas, 1 hour equally divided;

A Gramm amendment on removal of per-country limits on selected immigrants, I hour equally divided;

A Gramm amendment on exemption of future increases of immediate relatives from national cap, 20 minutes equally divided;

A Boschwitz amendment to increase the fifth preference by 40,000, 40 minutes equally divided;

A Boschwitz amendment to increase the fifth preference by 30,000, 20 minutes equally divided;

A Boschwitz amendment to increase the fifth preference by 20,000, 20 minutes equally divided;

A Kassebaum technical amendment, 10 minutes equally divided.

I further ask unanimous consent that these amendments all be first degree amendments, except where specifically noted otherwise; that no motions, other than motions to table and/or reconsider, be in order; that upon the disposition of these amendments the Senate proceed, without any intervening debate or action, to third reading and final passage of the bill.

I further ask unanimous consent that the agreement be in the usual form with respect to the division of time.

The PRESIDING OFFICER. Is there objection?

Mr. SIMON. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I have three amendments that were not included that I think we are going to get agreement on and may be included in the technical amendments. But I would like to reserve 10 minutes for three amendments to be equally divided.

The PRESIDING OFFICER. Is that 10 minutes for the total of the three or 10 minutes each?

Mr. SIMON. Ten minutes each. I think we can get by without any time, but just in case, I want to reserve that.

Mr. MITCHELL. That will be no problem. Will the Senator merely identify in some brief way the subject matter of the amendments?

Mr. SIMON. One is the quota for Hong Kong. One is the investors going to areas of unemployment. The third is reserving a portion on the point system in the event the Simpson amendment does not carry.

Mr. MITCHELL. Mr. President, I ask unanimous consent that my request be amended to include a provision for the three amendments identified by Senator SIMON, with the time limit indicated; that is, 10 minutes equally divided on each of those amendments.

Mr. KENNEDY. Mr. President, reserving the right to object, I appreciate the willingness of the two leaders to try to move us forward. I would like to preserve the possibility for an amendment to the Shelby amendment that deals with a constitutional issue. I know that there has been a reservation by Senator BENTSEN and Senator GRAHAM for a possible second amendment. I would like to at least reserve that right, as well.

Mr. MITCHELL. For yourself?

Mr. KENNEDY. Yes.

Mr. MITCHELL. Mr. President, I amend my request by adding, where I stated a possible Bentsen or Graham second-degree amendment, that now be amended to read a possible Bentsen or Graham second-degree amendment on the same subject and a possible Kennedy amendment in addition thereto on the same subject, with 30 minutes, equally divided, on such a Kennedy amendment if offered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That during the further consideration of S. 358, a bill to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, the following amendments be the only amendments in order, in addition to the pending committee substitute, with the following time limitations where indicated, with the time to be equally divided and controlled:

Specter-DeConcini: Increasing employer sponsored visas, 90 minutes;

Helms 2d degree to the Specter-DeConcini: Relevant to the subject matter of the first degree amendment, 1 hour;

Simon: Points for arranged employment, 10 minutes;

Simpson: Restore English language points, 1 hour;

Kennedy-Simpson: Technical amendment, 10 minutes;

Shelby: Census counting of illegal aliens, 2 hours;

Possible Kennedy: 2d degree on the same subject, 30 minutes;

Possible Bensten or Graham: 2d degree on same subject, 2 hours;

Exon: Prohibiting certain benefits for illegal aliens, 30 minutes;

Gramm: Relating to immigration, 1 hour;

Helms: 2d degree to Gramm re immigration, 1 hour;

Gramm: Rural investor visas, 1 hour;

Gramm: Point system preference, 40 minutes;

Gramm: 5 percent Presidential recommendation, 1 hour;

Helms: 2d degree to Presidential recommendation, 1 hour;

Gramm: Rural doctors and nurses, 1 hour;

Gramm: Lower investment requirement to $500,000 for investors visa, 1 hour;

Gramm: Removal of limitation on number of investors visas, 1 hour;

Gramm: Removal of per country limits on selected immigrants, 1 hour;

Gramm: Exemption of future increase of immediate relatives from national cap, 20 minutes;

Boschwitz: Increase 5th preference 20,000, 20 minutes;

Boschwitz: Increase 5th preference 30,000, 20 minutes;

Boschwitz: Increase 5th preference 40,000, 40 minutes;

Kassebaum: Technical amendment, 10 minutes;

Simon: Hong Kong quota, 10 minutes;

Simon: Investors in unemployment areas, 10 minutes; and

Simon: Reserving portion of point system, 10 minutes;

Ordered further, That these amendments all be first degree amendment, except where specifically noted and that no motions, other than motions to table and or reconsider, be in order.

Ordered further, That upon disposition of these amendments, the Senate proceed, without any intervening debate or action to third reading and final passage of the bill,

Ordered further, That the agreement be in the usual form with respect to the division of time.

Mr. KENNEDY. Mr. President, we are prepared to stay in and consider some of the amendments that have been worked out. The Senator from Michigan's amendment has been worked out and the amendment of the Senator from Washington has been worked out. That is our intention.

Quite frankly, a number of these amendments that have been listed by the leader we have been working on during the course of the day and we will be glad, to the extent that we can, to deal with those this evening.

I yield the floor.

AMENDMENT NO. 246

(Purpose: To instruct the Commission on Legal Immigration Reform to review the impact of per country immigration levels)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Gorton amendment will be set aside for consideration of an amendment of the Senator from Michigan.

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 246.

On page 122 after line 5, insert the following new subsection.

"(5) the impact of per country immigration levels on family connected immigration."

Mr. LEVIN. Mr. President, this amendment would require the Commission on Legal Immigration Reform to review the impact of per country immigration levels on family-connected immigration. There are already provisions in the bill to create the Commission and to direct it to review certain particulars. This amendment would simply add the new per country immigration levels to the issues for the Commission to review. I am concerned about how the new per country limit on family visas will affect family immigration from those countries with high demand for the limited visas.

PER COUNTRY LIMIT UNDER CURRENT LAW

Under current law, no country is allowed to use more than 20,000, or in some cases 16,000, family preference visas annually. If a country uses the maximum allowed 20,000 visas 1 year, then the following year, its family preference visas are limited to 16,000.

Let me emphasize here, that admissions of immediate relatives of U.S. citizens are not counted against this limit; and that is as it should be. Thus, a country that regularly reaches the per country limit, has unlimited admissions for immediate relatives of U.S. citizens, plus 16,000 visas for other family preference categories.

The bill before the Senate today could significantly alter this situation.

PER COUNTRY LIMIT UNDER S. 358

A little discussed provision of the bill would change the way the per country limit would apply to family immigration. I believe the new limits could have considerable impact on family immigration, especially immigration from the so-called high demand countries.

In principle, the bill would make two changes. First, it would change the per country limit from a raw number to a percentage of available visas. Second, it would, within certain limits, count immediate relatives of U.S. citizens against the per country limit on family preference immigration.

The first change would make the new limit 7 percent of the family preference visas available worldwide. Remember, the number of family preference visas available worldwide is 480,000 minus the immediate relatives of U.S. citizens, or 216,000, whichever is greater. Thus, the per country limit on family connected immigration would never be lower than 7 percent of 216,000, or 15,120.

So, it would seem that we are simply lowering the effective per country limit on family connected immigration from 16,000 to 15,120.

But the second change would reduce family preference immigration even further.

The second change would further reduce family preference immigration below the 15,120 limit because immediate relatives could claim up to half of the 15,120 visa limit.

S. 358 would alter current law by reducing its annual allowance of family preference visas because of the high number of immediate relative admissions. Put another way, admissions of immediate relatives are offset against the allowance of visas for other relatives.

Although the offset is limited to half the family preference allowance, I fear that S. 358 could significantly reduce family preference immigration from high demand countries.

Let me use an example from a hypothetical country to demonstrate how the offset mechanism would work.

Let's assume that the operative per country limit for fiscal year 1991 is 15,120 family preference visas. Further assume, that a country had 25,000 immediate relative admissions in fiscal year 1989 and 30,000 immediate relative admissions in fiscal year 1991. Finally, assume that immediate relative demand remains at 30,000 for fiscal year 1992.

Under current law, in fiscal year 1992 our hypothetical country would be allowed 30,000 immediate relative visas plus 16,000 family connection visas, for a total of 46,000.

Whereas, under S. 358, the increase of 5,000 immediate relatives between fiscal year 1989 and fiscal year 1991 would be counted against the per country limit of 15,120 for the following year, fiscal year 1992. This would reduce the country's family connection limit from 15,120 to 10,120. Thus, in fiscal year 1992 when the reduction would take place, the hypothetical country would be allowed 30,000 immediate relative visas, plus only 10,120 family preference visas, for a total of only 40,120 visas.

So, under S. 358 as immediate relative admissions grow, other family immigration decreases—one is offset against the other.

The committee has clearly foreseen this effect and has placed a limit on the offset mechanism. The bill specifies that increases in admissions of immediate relatives, can offset no more than half the family preference per country limit.

Going back to the scenario I described a minute ago, if immediate relative admissions from the hypothetical country had increased from 25,000 to 35,000, the hypothetical country would still be guaranteed 7,500 family preference visas.

This guarantee of 7,500 family preference visas affords high demand countries some protection against the offset mechanism, but I am troubled by the bill's provisions nevertheless.

Even with the safeguards, the bill we are debating effectively reduces the per country limit on family preference visas from 16,000 to 7,500.

IMPACT ON HIGH DEMAND COUNTRIES

GAO identified seven high demand countries which hover at, or near, the current per country limit of visas. They are: China, Great Britain, including Hong Kong, Korea, Mexico, The Dominican Republic, India, and the Philippines.

By effectively reducing the per country limit on family preference visas from 16,000 to 7,500, it would seem possible, indeed probable, that S. 358 would reduce family immigration from these countries.

STUDY IMPACT OF PER COUNTRY LIMITS

The amendment I am introducing today simply requires the Commission on Legal Immigration Reform to review the impact of the new per country levels of immigration on family immigration from high demand

countries. Such a review would be consistent with the purpose of the Commission, as it would be established under S. 358. The amendment I am offering would require the Commission to specifically consider the effect of the new per country levels of immigration which the bill would establish.

Mr. President, I understand the amendment is acceptable by both sides. I wish to thank Senator KENNEDY and Senator SIMPSON and their staffs for working with us on this amendment.

Mr. KENNEDY. Mr. President, I thank the Senator from Michigan for bringing this matter to our attention. It requires the congressional commission to look also at the impact of our bill on family immigration. This has been our intention. It is certainly a very consistent amendment and one I think that strengthens the legislation. I urge our colleagues to accept it.

Mr. SIMPSON. Mr. President, this is a perfectly acceptable amendment. I appreciate the usual good work of my friend from Michigan. He thoughtfully follows those issues of family reunification and family immigration. I am very pleased to accept that and thank him for it.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on the agreement to the amendment of the Senator from Michigan [Mr. LEVIN].

The amendment (No. 248) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 242, AS MODIFIED

(Purpose: To grant adjustment to lawful resident status of certain nationals of the People's Republic of China)

Mr. GORTON. Mr. President, I have sent to the desk a modification to my earlier amendment which I believe is the pending business. I ask unanimous consent that the amendment be so modified.

The PRESIDING OFFICER. Without objection, it is so modified.

The amendment (No. 242), as modified, is as follows:

(1) EXTENSION OF DURATION OF STATUS.—Subsection 245B(e)(1) of section 302 of title III of the bill relating to the status of students from the People's Republic of China set forth in amendment numbered 239, as amended, is hereby further amended by striking the date "June 5, 1992" and inserting in lieu thereof the date "June 5, 1993."

(2) ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.—Section 302 of title III of the bill, as amended, is further amended by the following subsection (f) to read in its entirety as follows:

"(f) ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.—

(1) ADJUSTMENT OF STATUS.—The status of a national of the People's Republic of China shall be adjusted by the Attorney General to that of an alien lawfully admitted for temporary residence if the alien—

(A) applies for such adjustment during the 90-day period prior to June 5, 1993;

(B) establishes that the alien (i) lawfully entered the United States on or before June 5, 1989, as a nonimmigrant described in subparagraph (F) (relating to students), subparagraph (J) (relating to exchange visitors) or subparagraph (M) (relating to vocational students) of section 101(a)(15) of the Immigration and Nationality Act, or lawfully changed status to that of a nonimmigrant described in any such subparagraph on or before June 5, 1989, (ii) held a valid visa under any such subparagraph as of June 5, 1989, and (iii) has resided continuously in the United States since June 5, 1989 (other than brief, casual and innocent absences); and

(C) meets the requirements of section 245A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(4)), provided however, membership in the Communist party of the People's Republic of China or subdivision thereof shall not constitute an independent basis for denial of adjustment of status if such membership was "involuntary" or "nonmeaningful";

and the Attorney General shall not have terminated prior to June 5, 1993, the status accorded under subsection (e) of this Section. The Attorney General shall provide for the acceptance and processing of applications under this subsection by not later than ninety (90) days after the date of enactment of this Act.

(2) STATUS AND ADJUSTMENT OF STATUS.—The provisions of subsections (b), (c) (6) and (7) (d), (f), (g), and (h) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) shall apply to aliens provided temporary residence under subsection (a) in the same manner as they apply to aliens provided lawful temporary residence status under section 245A(a) of such Act, provided however, membership in the Communist party of the People's Republic of China or any subdivision thereof shall not constitute an independent basis for denial of adjustment of status if such membership was "involuntary" or "nonmeaningful"."

Mr. GORTON. Mr. President, I also ask unanimous consent that Senators SIMON, KOHL, BOSCHWITZ, and CRANSTON be listed as original sponsors to this amendment, and that all of those Members who were listed as sponsors of my original amendment (Senators KASTEN, DOMENICI, WILSON, COHEN, GRAMM, LIEBERMAN, and D'AMATO) be incorporated as original cosponsors of the modified amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, earlier today I proposed an amendment which I described as building on the Mitchell-Dole amendment which was agreed to yesterday with respect to students, vocational students and exchange visitors from the People's Republic of China. I proposed that amendment with three underlying goals in mind.

First, to provide a degree for these young Chinese nationals who had been overtaken by the dramatic and regrettable repression of the democracy movement in Beijing on the 3d and 4th of June and on subsequent days.

Second, to provide what I consider to be the most effective possible sanction against the People's Republic of China—the possible permanent loss of the brightest and best of its young people who are represented by those students here in the United States.

Third, selfishly, to create an asset for the United States by offering a greater possibility that those students might become permanent residents and ultimately citizens of the United States.

Their brightness, the high degree of their education, their technical attainments, their dedication to democracy, their general work ethic, all combine to cause them to be exactly the kind of people we would like to have as full-time residents and citizens of the United States.

The three distinguished Senators who make up the Subcommittee on Immigration, the distinguished Senator from Massachusetts, Senator KENNEDY, Wyoming, Senator SIMPSON, and Illinois Senator SIMON, had certain concerns about the amendment as originally proposed. In fact, they would have been opposed to my earlier amendment because it would create a new and different precedent in our immigration law. However, they have been sympathetic with the goals which I outlined in connection with my earlier amendment. The modification which I have submitted I believe with the approval of all of them—is a closer parallel to yesterday's leadership amendment. It would reach the same goal sought by my original amendment, albeit taking somewhat longer.

My current amendment would have the Government deal with these Chinese students until June 5, 1993, in exactly the way outlined by the Mitchell-Dole amendment which was agreed to by this body yesterday. If up to that date, however, slightly less than 4 years from the time at which we are debating this amendment, the President had been unwilling or unable to certify that it was perfectly safe for the Chinese students and other temporary residents to return to the People's Republic of China, then automatically they would be authorized to adjust to temporary residence status if they had submitted an application within the 90-day period prior to June 5, 1993. After maintaining temporary residence status for at least 18 months, they may apply for and be granted permanent residence status which may eventually lead to citizenship.

The other provisions which I discussed in that earlier amendment would either be included or will be included in one or more technical amendments to be offered by other Members at a later point. Those technical amendments will assure the right to work prior to the June 5, 1993, date on the part of these students from China.

We want them to be able to work to help defray the costs of their education, to contribute to society, and in

some cases to make themselves eligible for citizenship under other provisions of the immigration laws as and when they can so do.

To summarize, this amendment together with the technical amendments will allow the Chinese students to work during their stay in our country. It will give them the kind of security which they want and need to continue to work here in the United States for democracy in China. It will provide the most effective possible sanction against the People's Republic of China for its actions in early June. Further, it will provide the greatest possible encouragement for liberalization in China in the future in order that the Government of the People's Republic of China will provide some incentive for these bright and talented students to return. If the situation in China continues to be repressive, it may well result in a substantial increase in the number of permanent residents and citizens here in the United States to the benefit of the people of the United States.

I would describe it as meeting all of the goals underlying my original amendment today. I express extreme gratitude toward the three distinguished Senators and Senator KOHL and their staffs for their willingness to work with me and my staff to achieve such an important addition to this bill.

Mr. President, I ask unanimous consent that the July 7, 1989, letter of J.H. Jerry Zhu, Esq., to Jimmy Wu, Esq., be printed in the RECORD, Messrs. Zhu and Wu have provided valuable assistance to me and my staff in the highly technical area of immigration law, for which I am grateful.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DAVIS WRIGHT & JONES,
Seattle, WA, July 7, 1989.

JIMMY WU, ESQ.,
Attorney at Law, Seattle, WA.

DEAR JIMMY: Pursuant to our conference call on July 5, 1989, I am writing to present my views on S. 1209, a bill introduced by Senator Gorton on June 20, 1989, which will permit Chinese foreign students and exchange visitors immediately to apply for and, if otherwise eligible, receive permanent resident status in the United States.

There is no lack of precedents for this type of legislation. The Congress has been consistent in its willingness to approve legislation to aid persecuted people of the world. For example, Congress has approved legislation on behalf of the Cuban refugees (Public Law 89-733); the Hungarian refugee (Public Law 85-559); admission of refugee-escapees who are within the mandate of the United Nations High Commissioner for Refugees (Public Law 86-648); and for refugees from communist countries outside the Western Hemisphere (Public Law 89-236). The justifications for the enactment of those acts are manifold, including—

Providing protection for people who had been in the forefront of fights for freedom and who had fled their homes to escape Communist oppression;

Discharging our international humanitarian obligation not to return persecuted people to a country where their lives or freedoms would be threatened;

Relieving the refugees of following a circuitous route to permanent resident status, and avoiding waste of time and money, and undue burdens on them and their families who had very limited funds;

Reducing the Government's expenditures on behalf of those refugees;

Aiding the refugees in their resettlement by enhancing their opportunity to qualify for employment in the United States; and

Accepting the refugees, and in doing so, acquiring a valuable national asset.

U.S. Cong. & Adm. News' 58-198, pp. 3147-3155; and U.S. Cong. & Adm. News' 89-732, pp. 3792-3802.

It is true that Chinese students and scholars are not "refugees," as the term is defined under § 101(a)(42) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1101(a)(42). Most are still in status, on F (Student), J (Exchange student), or M (Vocational student) visas. In addition, unlike the Cuban and Hungarian refugees, they were not admitted to the United States in a parolee status. Very few have sought asylum up to this time. However, like the Cuban and Hungarian refugees, the Chinese students and scholars are not able to return to their home country for the foreseeable future, and their presence in the United States without permanent resident status will cause the same type of problems that can only be solved by the enactment of legislation such as the "Cuban Refugees Act" in 1966 and the "Hungarian Refugees Act" in 1958. For reasons stated below, we believe it is in the interest of the United States and the Chinese students to forestall those problems by granting them permission to immediately apply for permanent resident status in the United States.

It is anticipated that before long the Chinese Communist leadership will launch a propaganda campaign aimed at wooing the Chinese students and scholars back to China. Promises will be made not to punish those who took part in demonstrations and other anti-government activities in the United States. The leadership might even grant exceptionally favorable treatment to returning students in terms of career opportunities, compensation, or housing, using the returning students and scholars as propaganda tools.

In discussions with representatives of the Chinese student body in Seattle, I asked the question: "Under what circumstances will you feel safe to go back?" The response was unanimous. The students will not go back to China in reliance on whatever promises the leadership may make. The students note that if history and recent events teaches anything, it teaches that the Chinese Communist Party cannot be trusted to keep promises made to the people. Only when the Chinese government reverses its characterization of the June 4 pro-democracy movement from "counterrevolutionary" to "patriotic," the students say, can they consider it safe to go back. Such a correction is not likely within the next four or five years. In the meantime, Chinese students and scholars will explore every possible channel to try to stay in the United States, legally or even illegally.

Many will seek to adjust their nonimmigrant visa status to that of a permanent resident under Section 245 of the Act, 8 U.S.C. 1225. In order to do so, they will have to find an employer; have the employer apply for a Labor Certification with the Department of Labor, certifying that their employment in the United States will not adversely affect conditions of U.S. workers, and that sufficient U.S. workers are not able, willing, qualified and available for the job. 8 U.S.C. § 1182(a)(4). This, in itself, is a very time-consuming process. After obtaining a Labor Certification, the students will need to apply for an immigrant visa under either § 203(a)(3) (Third Preference), or § 203(a)(6) (Sixth Preference) of the Act due to the quota system which restricts the number of aliens eligible to be admitted to the United States each year. If they are lucky, their immigrant visa quota will become available before their nonimmigrant visa expires. Then and only then will they be eligible to apply for adjustment of status under Section 245 of the Act.

Students who are J visa holders will be subject to the two-year home-country residency requirement under Section 212(e) of the Act. An application for waiver of this requirement has to be made before they can be eligible to adjust their status. The approval process for such waiver applications, most likely based on claims of persecution, will involve the Immigration and Naturalization Service, the United States Information Agency, and the Bureau of Human Rights and Humanitarian Affairs.

In addition, students who are members of the Chinese Communist Party will have to apply for waiver of excludability under Section 212(a)(28) of the Act before becoming eligible for adjustment of status.

During this lengthy process, which may take as long as 12 months to 2½ years, the students are required to maintain their nonimmigrant status and have a valid Chinese passport. If they are out of status or without a valid passport, they will not be eligible to adjust their status to that of an immigrant in the United States. It should be mentioned here that the Chinese embassy and consulates in the United States may refuse to extend the students' passports once they expire.

If a student cannot complete any step along the way—obtaining extension of validity of passport, receiving labor certification or an immigrant visa, or remaining in status until the immigrant visa quota for China becomes current—the students may find themselves out of status and subject to deportation. They will be left with no recourse except seeking political asylum based on persecution or fear of persecution. Some of them may take this approach directly.

The reality we will have to face is that if the students should fail in their efforts to obtain permanent resident status under either Section 245 of the Act or the Refugee Act of 1980, the United States, out of humanitarian consideration, still should not or cannot force them to go back to China so long as the basis for fear of persecution exists. If such is the case, why not permit the students to apply for permanent resident status immediately and, in doing so, avoid all the problems which the government and the students will otherwise have to cope with. We only need to examine the problems and costs associated with delay for the Cuban and Hungarian refugees to realize the benefits of a direct and permanent approach.

One concern in taking the approach outlined in S. 1209 is, of course, the reaction from the Chinese government over the loss of these students and scholars, which may have diplomatic and military implications. Nevertheless, the U.S. government cannot avoid grappling with the problem at some point. It is in the interest of U.S.-China relations to deal with the problems now rather than later.

The reasons to act can be summarized as follows:

(1) The Chinese Communist leadership were well prepared to accept the eventual loss of these students when they made the decision to crack down on the pro-democracy movement. They will not be surprised if

the Congress passes this bill. The Chinese leadership may make a lot of noise, but will not take retaliatory measures. They may restrict other students and scholars from coming to the United States, but this had already happened even before the crackdown on the pro-democracy movement.

(2) Any humiliation of the Chinese leadership as a result of this legislation will be short-lived when compared with the lengthy and repetitive J visa waiver process or the political asylum process. Each waiver or asylum application will be based on persecution or a fear of persecution. Each individual case will constitute an accusation against the Chinese government of persecution. The filing and processing of such applications will continue over a long period of time, even after resumption of normal relations between the two countries.

(3) The passing of this bill will encourage the Chinese leadership to take positive steps to attract these students back to China. U.S. permanent resident status does not mean abandonment of Chinese citizenship. The Chinese students would become eligible for U.S. citizenship only after five years have passed since obtaining permanent resident status. The students will remain citizens of the People's Republic of China. If the Chinese government really wants these students back, they will know that they must improve the political environment in China before the students must decide to become U.S. citizens and abandon Chinese citizenship. Since the U.S. desires improvement in the political environment in China, passage of S. 1209 will help fulfill a major U.S. foreign policy goal.

(4) Once normal relations have resumed, on the basis of a more democratic attitude by the Chinese government toward its own people, these students, whether they decide to stay permanently in the United States or return to China, will become excellent bridge builders between the two countries.

It should also be mentioned here that the Chinese students are unique in the sense that they are the elite of Chinese society. If permitted to stay permanently in the United States, they will not be a liability, but a valuable national asset to the United States.

For reasons stated above, I recommend that the AILA favor and support S. 1209, and make recommendation to the Congress accordingly.

Very truly yours,

J.H. JERRY ZHU.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I first of all want to thank the Senator from Washington for his willingness to work with us on this issue. He has identified an important area of public concern, and I think that the solution that we have reached is consistent with what we have done historically and is extremely relevant to the current condition. It allows adjustment of status after 4 years, using the Amnesty Program procedures. This is a consistent procedure with what we have done for the Poles, the Afghans, the Ugandans, and the Eastern Europeans.

In the interim the students are protected for 4 years unless the President certifies beforehand that it is safe to return.

So this builds on what we have done. It follows the past precedent. I think there is adequate reason to support this proposal, and I want to personally extend my sense of appreciation for the cooperation. I think we achieve the objective of the Senator from Washington and we do it in a way which follows the past traditions. I do think it is the way to move. I think we achieve the objective, and I am grateful to the Senator for working this out.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank Senator GORTON for the amendment as we have now agreed to accept in the form presented. If the President does not certify by June 5, 1993, that conditions are safe enough for Chinese students to return home, then we should put them on the track toward temporary residence and then permanent residence. I have had some serious concerns about granting permanent status to people who are now only granted temporary relief, and this does preserve the ability of the President to terminate the grant. The amendment is acceptable.

I appreciate the effort that Senator GORTON has gone to and I think, with this proposal and this amendment, that we have rather thoroughly addressed the Chinese student issue. I had wanted to do that, and with what Senators MITCHELL, DOLE, and what Senator MURKOWSKI and now Senator GORTON have said, I think any obligation—and we certainly have one to these fine young people and others in the United States—that we certainly met that. I thank the Senator from Washington for assuring that.

The PRESIDING OFFICER. The Senator from Washington.

Mr. KOHL. Mr. President, I am proud to be a cosponsor of the Gorton amendment. I am also delighted to see that the leadership is now willing to accept the additional level of assurance that this amendment offers above and beyond the protections afforded in the Mitchell-Dole amendment we adopted yesterday. Clearly, this amendment does not replace the Mitchell-Dole measure. It adds new protections. Chinese nationals can continue to apply for permanent residence immediately under the Mitchell-Dole amendment.

Ever since the tragic events in China, we have all been struggling with how we might best protect the Chinese students now in the United States. I filed legislation on this issue before the recess. During the recess, while I was in Wisconsin, I met with a number of Chinese students. Here in Washington, my staff met with the staff from the offices of Senator SIMON, Senator DIXON, Senator CRANSTON, Senator GORTON, Senator KENNEDY, Senator SIMPSON, and others, to discuss how we might deal with this issue. Over the past week, there have been a number of additional meetings which produced the leadership amendment we adopted yesterday and which have now produced the Gorton amendment we are preparing to adopt. In all of these meetings, there has been an excellent spirit of cooperation and bipartisanship. There has been give and take, compromise and accommodation. It may not have always been the best way to legislate, but it has produced good legislation. I am proud to be associated with it. And I am proud of the work that my staff—in the State and here in Washington—has played in shaping both the leadership amendment and the Gorton amendment.

Mr. President, the various amendments we have adopted to help Chinese students now in the United States represent the best elements of American society: compassion—a human desire to help those who share our love of freedom and democracy—and commitment—a belief that we have to oppose and seek to prevent the abouse of basic human rights by any government of any country. I think the American people can be proud of what we have done on this issue. I look forward to action in the House and the prompt presentation fo legislation on this issue to the President.

The PRESIDING OFFICER. Is there further debate? If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 242), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have concluded the debate for this evening. We will commence the debate tomorrow on the immigration bill at 10 o'clock with the Exon amendment. There has been a time limitation on that, but I mention it just for the benefit of the Members. Then, hopefully, we will move along as rapidly as we can through the remaining amendments.

EXHIBIT C

1990 U.S.C.C.A.N. 6801-1, 1990 WL 300998 (Leg.Hist.)
***6801-1** P.L. 101-649, IMMIGRATION ACT OF 1990

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

STATEMENT BY PRESIDENT OF THE UNITED STATES

STATEMENT BY PRESIDENT GEORGE BUSH UPON SIGNING S. 358

26 Weekly Compilation of Presidential Documents 1946, December 3, 1990

November 29, 1990

Today I am pleased to sign S. 358, the "Immigration Act of 1990"—the most comprehensive reform of our immigration laws in 66 years. This Act recognizes the fundamental importance and historic contributions of immigrants to our country. S. 358 accomplishes what this Administration sought from the outset of the immigration reform process: a complementary blending of our tradition of family reunification with increased immigration of skilled individuals to meet our economic needs.

The legislation meets several objectives of this Administration's domestic policy agenda—cultivation of a more competitive economy, support for the family as the essential unit of society, and swift and effective punishment for drug-related and other violent crime.

S. 358 provides for a significant increase in the overall number of immigrants permitted to enter the United States each year. The Act maintains our Nation's historic commitment to family reunification by increasing the number of immigrant visas allocated on the basis of family ties.

At the same time, S. 358 dramatically increases the number of immigrants who may be admitted to the United States because of the skills they have and the needs of our economy. This legislation will encourage the immigration of exceptionally talented people, such as scientists, engineers, and educators. Other provisions of S. 358 will promote the initiation of new business in rural areas and the investment of foreign capital in our economy.

I am also pleased to note that this Act facilitates immigration not just in numerical terms, but also in terms of basic entry rights of those beyond our borders. S. 358 revises the politically related "exclusion grounds" for the first time since their enactment in 1952. These revised grounds lift unnecessary restrictions on those who may enter the United States. At the same time, they retain important administrative checks in the interest of national security as well as the health and welfare of U.S. citizens.

Immigration reform began in 1986 with an effort to close the "back door" on illegal immigration through enactment of the 1986 Immigration Reform and Control Act (IRCA). Now, as we open the "front door" to increased legal immigration, I am pleased that this Act also provides needed enforcement authority.

S. 358 meets several objectives of my Administration's war on drugs and violent crime. Specifically, it provides for the expeditious deportation of aliens who, by their violent criminal acts, forfeit their right to remain in this country. These offenders, comprising nearly a quarter of our Federal prison population, jeopardize the safety and well-being of every American resident. In addition, S. 358 improves this Administration's ability to secure the U.S. border—the front lines of the war on drugs—by clarifying the authority of Immigration and Naturalization Service enforcement officers to make arrests and carry firearms.

S. 358 also improves the antidiscrimination provisions of the IRCA. These amendments will help deter discrimination that might be related to the ***6801-2** implementation of "employer sanctions" under the 1986 law. In this regard, S. 358 helps to remedy unfortunate side effects of this important deterrent to illegal immigration.

In signing this legislation, I am concerned with the provision of S. 358 that creates a new form of relief known as "temporary protected status." The power to grant temporary protected status would be, except as specifically provided, the "exclusive authority" by which the Attorney General could allow otherwise deportable aliens to remain here temporarily because of their nationality or their region of origin. I do not interpret this provision as detracting from any authority of the executive branch to exercise prosecutorial discretion in suitable immigration cases. Any attempt to do so would raise serious constitutional questions.

GEORGE BUSH

The White House
November 29, 1990

(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****. 2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

1990 U.S.C.C.A.N. 6801-1, 1990 WL 300998 (Leg.Hist.)

End of Document

EXHIBIT D

22 I. & N. Dec. 206 (BIA), Interim Decision 3362, 1998 WL 483979

United States Department of Justice

Board of Immigration Appeals

In re HO, Petitioner

In Visa Petition Proceedings

WAC 98 072 50493

Decided by the Associate Commissioner, Examinations, July 31, 1998.

**1 *206 (1) Merely establishing and capitalizing a new commercial enterprise and signing a commercial lease are not sufficient to show that an immigrant-investor petitioner has placed his capital at risk. The petitioner must present, instead, evidence that he has actually undertaken meaningful concrete business activity.

(2) The petitioner must establish that he has placed his own capital at risk, that is to say, he must show that he was the legal owner of the invested capital. Bank statements and other financial documents do not meet this requirement if the documents show someone else as the legal owner of the capital.

(3) The petitioner must also establish that he acquired the legal ownership of the invested capital through lawful means. Mere assertions about the petitioner's financial situation or work history, without supporting documentary evidence, are not sufficient to meet this requirement.

(4) To establish that qualifying employment positions have been created, INS Forms I-9 presented by a petitioner must be accompanied by other evidence to show that these employees have commenced work activities and have been hired in permanent, full- time positions.

(5) In order to demonstrate that the new commercial enterprise will create not fewer than 10 full-time positions, the petitioner must either provide evidence that the new commercial enterprise has created such positions or furnish a comprehensive, detailed, and credible business plan demonstrating the need for the positions and the schedule for hiring the employees.

ON BEHALF OF PETITIONER: JOHN L. SUN 3550 WILSHIRE BOULEVARD, SUITE 1250 LOS ANGELES, CA 90010-2413

DISCUSSION

The preference visa petition was approved by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be reversed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). The director determined that the petitioner had already invested the requisite amount of capital, apparently obtained through lawful *207 means. The director further found that, while the business had only two employees at the time of her decision, the business plan called for at least eight more employees within the next 12 months.

The petitioner has chosen not to respond.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

(i) which the alien has established,

(ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

**2 (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The petitioner indicates that the petition is based on the creation of a new business located in a targeted employment area, for which the required amount of capital invested has been adjusted downward.

MINIMUM INVESTMENT AMOUNT

8 C.F.R. § 204.6(e) states, in pertinent part, that:
Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

On December 18, 1997, King's Wheel Corp. filed its articles of incorporation with the State of California. According to the petitioner, who is the president, director, and chief executive officer of the corporation, King's Wheel will import steel and aluminum automobile wheels from Taiwan and market them in the United States as a wholesaler. On December 20, 1997, the petitioner signed a lease on behalf of King's Wheel for an "office and warehouse" located at 350 W. Artesia Boulevard in Compton, California.

Compton is in Los Angeles County, and the most current information available from the California Employment Development Department indicates that all of Los Angeles County is an area of sufficiently high unemployment to qualify as a targeted area. Therefore, the amount of capital necessary to make a qualifying investment in this matter is $500,000.

*208 INVESTMENT OF QUALIFYING CAPITAL

8 C.F.R. § 204.6(e) states, in pertinent part, that:
Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a non-commercial activity such as owning and operating a personal residence.

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

**3 8 C.F.R. § 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or *209 preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On December 30, 1997, the sum of $515,000 was transferred from an unidentified bank account to one of King's Wheel's business accounts at Cathay Bank, and the business account was credited $514,995. On January 5, 1998, the petitioner obtained 500,000 of the one million authorized shares of King's Wheel; the petitioner indicates that these shares were in exchange for $500,000.

Capital at risk

Even though the petitioner owns only half of the authorized shares in King's Wheel, he is the sole shareholder thus far. He is also the only officer of the corporation. As such, the petitioner exercises sole control over the corporation's activities; whether the business proceeds according to plan or whether, for example, the business returns the petitioner's money is the petitioner's decision alone. Therefore, the petitioner cannot meet his at-risk requirement by merely depositing funds into a corporate account.

The business plan indicates that sales would commence in three to six months from the date of submission of the petition (January 12, 1998), yet the petitioner has not undertaken the necessary preparations to meet this deadline. The petitioner has not submitted evidence that King's Wheel has purchased inventory or office equipment. The petitioner has not shown that he has entered into negotiations with potential suppliers of wheels abroad, nor has he even identified who his potential suppliers are. The petitioner has not provided evidence that he has identified or entered into negotiations with potential buyers within the United States. The petitioner has not even furnished evidence that he has contracted with the suppliers of local utilities, such as the telephone or electric companies. The petitioner has not adequately explained how the business will go about spending the $500,000 that have been placed into its account. Although the petitioner has signed a lease for King's Wheel's showroom, the lease contains an escape clause at section 14, allowing King's Wheel to assign the lease or sublet the property with consent from the landlord.

**4 The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. A mere deposit into a corporate money-market account, such that the petitioner *210 himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. [1] Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement. Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's de minimis action of signing a lease agreement, without more, is not enough.

Source of funds

8 C.F.R. § 204.6(j) states, in pertinent part, that:
(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petitioner must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

To show that he has invested his own capital obtained through lawful means, the petitioner has furnished copies of bank statements showing that as of December 12, 1997, he had NT$1,339,447 (less than US$41,000 [2]) on deposit at the Bank of Taiwan, and as of December 23, 1997, an individual named "Ho Wang Chung-Chia, Theresa Wang" had NT$6,255,844.52 (US$191,427.31) on deposit at the First Commercial Bank. The petitioner *211 has also submitted a letter from the United World Chinese Commercial Bank indicating that he holds 506,000 shares of capital stock in the bank, and as of December 22, 1997, those shares were worth NT$30,866,000. A letter from United Orthopedic Corporation states, "Mrs. Ho Wang Chung-Chia, also known as Theresa Wang has invested N.T. $1,000,000 in United Orthopedic Corp." On December 19, 1997, Ms. Chung-Chia Ho Wang's single unit on the 11th floor of an 18-story, 147-unit condominium in Taiwan was appraised at NT $6,502,348 (less than US$199,000).

**5 The petitioner asserts that Chung-Chia Ho Wang is his wife; however, he has submitted no documentation, such as a marriage certificate, to substantiate this claim. [3] Even if Ms. Wang is the petitioner's wife, and even if her assets can be considered joint property, the petitioner has failed to establish the source of the funds transferred to the King's Wheel money-market account, totalling $515,000. Prior to the date of transfer, neither Taiwanese bank account contained sufficient funds; in fact, the two accounts together contained less than $250,000. Neither the petitioner nor Ms. Wang has sold any shares of stock in the Taiwanese corporations, and Ms. Wang appears still to own the condominium unit. As stated earlier, the wire-transfer receipt does not reveal from what bank account(s) the funds originated.

Furthermore, while the petitioner claims to have been a medical doctor in Taiwan, he has not presented any evidence of his having engaged in this occupation, nor has he provided any documentation regarding his level of income. The petitioner explains

that, through his medical practice and investments, he has accumulated "liquid assets" of approximately US$1.4 million, and therefore the source of his $500,000 is lawful. The above documentation does not reflect $1.4 million in liquid assets; moreover, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

EMPLOYMENT CREATION

8 C.F.R. § 204.6(j)(4)(i) states:

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have ***212** already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. § 204.6(e) states, in pertinent part:
Employee means an individual who provides services or labor for the new commercial enterprise and who receive wages or other remuneration directly from the new commercial enterprise...This definition shall not include independent contractors.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

****6** As evidence that two positions have already been created, the petitioner has submitted two Forms I-9 completed just three days prior to the date he signed the Form I-526 petition. The business plan calls for the hiring of eight employees within the next 12 months: a secretary, an accounting clerk, a truck driver, two warehouse people, and three salespersons.

With respect to the two persons identified in the Forms I-9, the petitioner has not explained what positions they occupy, and it is not known whether they work full- or part-time or whether they work at all. Forms I-9 verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. In the absence of such evidence as paystubs and payroll records showing the number of hours worked, the petitioner has not met his burden of establishing that he has created full-time employment within the United States.

In addition, as the business plan fails to reveal what these two individuals do, it is not altogether clear that they would still be needed once sales commenced and the business progressed beyond its "planning stage." The petitioner has not demonstrated that he has created permanent employment.

According to 8 C.F.R. § 204.6(j)(4)(i)(B), if a petitioner has not already met the employment-creation requirement, he must submit a comprehensive business plan from which it is clear that the business will in fact require 10 qualifying employees

within the next two years. To be "comprehensive," *213 a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. [4] Most importantly, the business plan must be credible.

**7 Certainly no astute investor would place half a million or a million dollars into a business that he had not thoroughly researched. Creating a comprehensive business plan as described above is normal practice for any businessman seeking to operate a viable business. Without knowing whether a business is feasible and has the potential for long-term survival, neither the petitioner nor the Service can reasonably conclude that it will create permanent, full-time employment. It is not too onerous to ask a petitioner who has not yet met the employment-creation requirement to submit to the Service a real business plan. Other administrative agencies, such as the Small Business Administration, and private financial institutions routinely require the submission of detailed business plans before extending loans to businesses. Permanent resident status is no less significant a matter than a loan.

The petitioner's four-page "business plan" is wholly inadequate and fails to meet the petitioner's burden of showing that he will create 10 permanent, full-time positions within the next two years.

*214 CONCLUSION

The petitioner is ineligible for classification as an alien entrepreneur because he has failed to establish that he has made an active, at-risk investment and has failed to clarify the source of his funds. The petitioner has further failed to demonstrate clearly that his proposed business will result in the requisite employment creation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the petition is denied.

ORDER: The decision of the director is reversed. The petition is denied.

Footnotes

1 King's Wheel has two accounts at Cathay Bank: the money-market account into which the $514,995 were deposited and a commercial checking account containing $3,100. The petitioner has not shown any activity in either account.

2 This figure assumes an exchange rate of NT$32.68 = US$1, which appears in the materials submitted by the petitioner. The current exchange rate is closer to NT$34.27 = US$1. WASHINGTON POST, July 21, 1998, at C10.

3 The real-estate appraisal indicates that Ms. Wang's name changed to "Ho" after marriage, but "Ho" is a common Chinese name.

4 The Service recognizes that each business is different and will require different information in its business plan. These guidelines, therefore, are not all-inclusive.

22 I. & N. Dec. 206 (BIA), Interim Decision 3362, 1998 WL 483979

End of Document

EXHIBIT E

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

Foreign State	Employment Preferences						Grand Total
	5th Employ. Creation	5th Target Employ. Areas	Regional Pilot Program	Regional Target Areas	5th Total	Employ. Preferencc Total	
Africa							
Algeria	0	0	0	0	0	33	187
Angola	0	0	0	4	4	11	29
Benin	0	0	0	0	0	11	47
Botswana	0	0	0	0	0	5	7
Burkina Faso	0	0	0	0	0	20	42
Burundi	0	0	0	5	5	15	20
Cabo Verde	0	0	0	0	0	5	555
Cameroon	0	0	0	0	0	101	444
Central African Republic	0	0	0	0	0	5	9
Chad	0	0	0	0	0	1	5
Comoros	0	0	0	0	0	1	1
Congo, Dem. Rep. of the	0	0	0	0	0	43	221
Congo, Rep. of the	0	0	0	0	0	4	11
Cote d'Ivoire	1	0	0	0	1	37	156
Djibouti	0	0	0	0	0	2	5
Egypt	0	0	0	37	37	745	1,766
Equatorial Guinea	0	0	0	0	0	0	0
Eritrea	0	0	0	0	0	20	170
Ethiopia	0	1	0	4	5	175	1,510
Gabon	0	0	0	0	0	10	22
Gambia, The	0	0	0	0	0	12	122
Ghana	0	0	0	0	0	294	1,125
Guinea	0	0	0	0	0	16	107
Guinea-Bissau	0	0	0	0	0	2	5
Kenya	0	0	0	5	5	366	806
Lesotho	0	0	0	0	0	1	2
Liberia	0	0	0	0	0	16	404
Libya	0	0	0	0	0	50	68
Madagascar	0	0	0	0	0	18	19
Malawi	0	0	0	0	0	24	31
Mali	0	0	0	0	0	18	54
Mauritania	0	0	0	0	0	12	26
Mauritius	0	0	0	0	0	33	41
Morocco	0	0	0	0	0	138	605
Western Sahara	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	138	605
Mozambique	0	0	0	0	0	4	7
Namibia	0	0	0	0	0	10	13
Niger	0	0	0	0	0	19	32
Nigeria	5	0	0	45	50	860	2,513
Rwanda	0	0	0	0	0	16	34
Sao Tome and Principe	0	0	0	0	0	0	1

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	**5th Employ. Creation**	**5th Target Employ. Areas**	**Regional Pilot Program**	**Regional Target Areas**	**5th Total**	**Employ. Preference Total**	**Grand Total**
Senegal	0	0	0	0	0	68	222
Seychelles	0	0	0	0	0	3	3
Sierra Leone	0	0	0	0	0	47	200
Somalia	0	0	0	0	0	10	179
South Africa	0	0	0	22	22	1,039	1,139
South Sudan	0	0	0	0	0	0	1
Sudan	0	0	0	0	0	34	173
Swaziland	0	0	0	0	0	5	7
Tanzania	0	0	0	0	0	80	128
Togo	0	0	0	0	0	10	164
Tunisia	0	0	0	0	0	37	73
Uganda	0	0	0	0	0	124	233
Zambia	0	0	0	0	0	74	103
Zimbabwe	0	0	0	0	0	143	203
Region Total For Africa	**6**	**1**	**0**	**122**	**129**	**4,827**	**14,050**
Asia							
Afghanistan	0	0	0	1	1	72	470
Bahrain	0	0	0	0	0	62	72
Bangladesh	0	0	0	2	2	571	8,241
Bhutan	0	0	0	0	0	2	7
Brunei	0	0	0	0	0	18	18
Burma	0	0	0	0	0	69	490
Cambodia	0	0	0	1	1	73	495
China - mainland born	67	95	0	8,966	9,128	22,641	38,034
- Taiwan born	4	0	0	122	126	1,731	2,637
- PRC nationals adjusting under CSPA	0	0	0	0	0	0	0
Hong Kong S.A.R	0	1	0	29	30	531	1,313
India	5	8	0	83	96	40,859	55,893
Indonesia	0	0	0	2	2	472	647
Iran	10	1	0	65	76	1,277	3,803
Iraq	0	0	0	8	8	76	341
Israel	1	4	0	2	7	1,293	1,498
Japan	0	2	0	47	49	2,139	2,293
Jordan	0	0	0	7	7	238	1,932
Korea, North	0	0	0	0	0	59	75
Korea, South	8	10	0	207	225	11,786	13,297
Kuwait	0	0	0	8	8	216	431
Laos	0	0	0	0	0	27	77
Lebanon	2	0	0	0	2	361	1,401
Malaysia	0	3	0	1	4	559	759
Maldives	0	0	0	0	0	1	1
Mongolia	1	0	0	0	1	101	134

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	**5th Employ. Creation**	**5th Target Employ. Areas**	**Regional Pilot Program**	**Regional Target Areas**	**5th Total**	**Employ. Preference Total**	**Grand Total**
Nepal	0	0	0	0	0	971	1,774
Oman	0	0	0	0	0	32	38
Pakistan	2	0	0	7	9	2,271	10,620
Philippines	0	0	0	2	2	8,172	25,141
Qatar	0	0	0	1	1	38	53
Saudi Arabia	0	0	0	6	6	222	424
Singapore	0	0	0	10	10	372	423
Sri Lanka	0	0	0	2	2	512	763
Syria	0	0	0	7	7	212	1,222
Thailand	8	0	0	5	13	379	676
Timor-Leste	0	0	0	0	0	2	2
United Arab Emirates	0	0	0	11	11	310	491
Vietnam	0	0	0	121	121	580	18,808
Yemen	0	0	0	1	1	51	747
Region Total For Asia	**108**	**124**	**0**	**9,724**	**9,956**	**99,358**	**195,541**
Europe							
Albania	0	0	0	0	0	90	537
Andorra	0	0	0	0	0	1	1
Armenia	0	0	0	0	0	108	408
Austria	0	0	0	1	1	150	163
Azerbaijan	4	0	0	0	4	63	129
Belarus	0	0	0	1	1	175	283
Belgium	0	0	0	4	4	291	310
Bosnia and Herzegovina	0	0	0	0	0	52	89
Bulgaria	0	0	0	0	0	295	455
Croatia	0	0	0	0	0	59	78
Cyprus	0	0	0	0	0	45	51
Czech Republic	0	0	0	0	0	150	177
Denmark	0	0	0	0	0	241	259
Faroe Islands	0	0	0	0	0	1	1
Greenland	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	242	260
Estonia	0	0	0	0	0	34	41
Finland	0	0	0	0	0	138	141
France	4	0	0	15	19	1,828	1,995
French Polynesia	0	0	0	0	0	1	1
French Southern and Antarctic Lands	0	0	0	0	0	0	0
New Caledonia	0	0	0	0	0	0	1
Saint Barthelemy	0	0	0	0	0	0	2
Saint Martin	0	0	0	0	0	0	1
St. Pierre and Miquelon	0	0	0	0	0	0	0
Wallis and Futuna	0	0	0	0	0	0	0

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	5th Employ. Creation	5th Target Employ. Areas	Regional Pilot Program	Regional Target Areas	5th Total	Employ. Preference Total	Grand Total
TOTAL	4	0	0	15	19	1,829	2,000
Georgia	0	0	0	0	0	60	162
Germany	0	0	0	10	10	1,606	1,782
Great Britain and Northern Ireland	3	4	1	33	41	4,922	5,454
Anguilla	0	0	0	0	0	2	6
Bermuda	0	0	0	4	4	20	31
British Indian Ocean Territory	0	0	0	0	0	0	0
British Virgin Islands	0	0	0	0	0	1	13
Cayman Islands	0	0	0	0	0	3	14
Falkland Islands	0	0	0	0	0	0	0
Gibraltar	0	0	0	0	0	2	2
Montserrat	0	0	0	0	0	1	18
Pitcairn	0	0	0	0	0	0	0
St. Helena	0	0	0	0	0	0	0
South Georgia and the South Sandwich Islands	0	0	0	0	0	0	0
Turks and Caicos Islands	0	0	0	0	0	1	6
TOTAL	3	4	1	37	45	4,952	5,544
Greece	0	0	0	1	1	243	297
Hungary	0	0	0	1	1	192	227
Iceland	0	0	0	0	0	47	51
Ireland	0	0	0	4	4	589	606
Italy	4	1	0	4	9	943	1,071
Kazakhstan	1	4	0	11	16	127	194
Kosovo	0	0	0	0	0	14	138
Kyrgyzstan	0	0	0	0	0	18	62
Latvia	0	0	0	0	0	39	64
Liechtenstein	0	0	0	0	0	0	0
Lithuania	0	0	0	0	0	50	101
Luxembourg	0	0	0	0	0	6	7
Macedonia	0	0	0	0	0	46	194
Malta	0	0	0	0	0	13	13
Moldova	0	0	0	0	0	78	185
Monaco	0	0	0	1	1	3	4
Montenegro	0	0	0	0	0	7	65
Netherlands	0	0	0	10	10	516	547
Aruba	0	0	0	0	0	5	12
Curacao	0	0	0	0	0	2	4
Sint Maarten	0	0	0	0	0	3	15
TOTAL	0	0	0	10	10	526	578
Norway	0	0	0	2	2	63	72
Svalbard	0	0	0	0	0	0	0
TOTAL	0	0	0	2	2	63	72
Poland	0	0	0	1	1	1,085	1,978
Portugal	0	0	0	1	1	177	252
Macau	0	0	0	3	3	25	63

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	**5th Employ. Creation**	**5th Target Employ. Areas**	**Regional Pilot Program**	**Regional Target Areas**	**5th Total**	**Employ. Preference Total**	**Grand Total**
TOTAL	0	0	0	4	4	202	315
Romania	0	0	0	1	1	557	774
Russia	8	0	0	92	100	1,298	1,821
San Marino	0	0	0	0	0	0	0
Serbia	0	0	0	0	0	153	219
Slovakia	0	0	0	5	5	123	156
Slovenia	0	0	0	0	0	18	22
Spain	0	0	0	13	13	1,017	1,114
Sweden	0	0	0	0	0	392	421
Switzerland	0	1	0	4	5	256	264
Tajikistan	0	0	0	0	0	37	73
Turkey	0	0	0	1	1	913	1,132
Turkmenistan	0	0	0	0	0	21	38
Ukraine	1	1	0	5	7	665	1,496
Uzbekistan	0	0	0	0	0	99	523
Vatican City	0	0	0	0	0	0	0
Region Total For Europe	**25**	**11**	**1**	**228**	**265**	**20,180**	**26,886**
North America							
Antigua and Barbuda	0	0	0	0	0	16	121
Bahamas, The	0	0	0	0	0	73	123
Barbados	0	0	0	0	0	35	126
Belize	0	0	0	0	0	41	245
Canada	6	3	0	43	52	5,149	5,716
Costa Rica	0	0	0	1	1	190	344
Cuba	0	0	0	0	0	6	3,609
Dominica	0	0	0	0	0	20	218
Dominican Republic	0	2	0	0	2	283	25,558
El Salvador	0	0	0	0	0	932	8,804
Grenada	0	0	0	0	0	27	142
Guatemala	0	0	0	2	2	834	3,737
Haiti	0	0	0	0	0	100	6,918
Honduras	1	0	0	3	4	700	2,717
Jamaica	0	1	0	0	1	653	6,413
Mexico	11	0	0	118	129	7,104	41,549
Nicaragua	0	0	0	1	1	71	825
Panama	0	0	0	0	0	68	289
Saint Kitts and Nevis	0	0	0	0	0	8	115
Saint Lucia	0	0	0	0	0	17	234
Saint Vincent and the Grenadines	0	0	0	0	0	9	131
Trinidad and Tobago	0	0	0	1	1	241	1,020
Region Total For North America	**18**	**6**	**0**	**169**	**193**	**16,577**	**108,954**

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	**5th Employ. Creation**	**5th Target Employ. Areas**	**Regional Pilot Program**	**Regional Target Areas**	**5th Total**	**Employ. Preference Total**	**Grand Total**
Oceania							
Australia	0	0	0	2	2	761	830
Christmas Island	0	0	0	0	0	1	1
Cocos (Keeling) Islands	0	0	0	0	0	0	0
Norfolk Island	0	0	0	0	0	0	0
TOTAL	0	0	0	2	2	762	831
Fiji	0	0	0	0	0	24	282
Kiribati	0	0	0	0	0	0	2
Marshall Islands	0	0	0	0	0	2	3
Micronesia, Federated States of	0	0	0	0	0	0	0
Nauru	0	0	0	0	0	0	0
New Zealand	1	1	0	0	2	204	229
Cook Islands	0	0	0	0	0	0	0
Niue	0	0	0	0	0	0	0
Tokelau	0	0	0	0	0	0	0
TOTAL	1	1	0	0	2	204	229
Palau	0	0	0	0	0	1	3
Papua New Guinea	0	0	0	0	0	3	3
Samoa	0	0	0	0	0	2	25
Solomon Islands	0	0	0	0	0	1	1
Tonga	0	0	0	0	0	0	121
Tuvalu	0	0	0	0	0	0	0
Vanuatu	0	0	0	0	0	0	0
Region Total For Oceania	**1**	**1**	**0**	**2**	**4**	**999**	**1,500**
South America							
Argentina	0	3	0	9	12	1,118	1,324
Bolivia	0	0	0	0	0	257	568
Brazil	0	2	0	28	30	2,421	2,955
Chile	0	0	0	1	1	325	475
Colombia	1	0	0	2	3	1,433	5,271
Ecuador	0	0	0	3	3	883	4,781
Guyana	0	0	0	0	0	91	3,866
Paraguay	0	0	0	0	0	43	70
Peru	0	0	0	0	0	698	3,353
Suriname	0	0	0	0	0	9	69
Uruguay	0	0	0	0	0	110	149
Venezuela	2	7	0	87	96	2,030	2,740
Region Total For South America	**3**	**12**	**0**	**130**	**145**	**9,418**	**25,621**

Table V (Part 3)
Immigrant Visas Issued and Adjustments of Status
Subject to Numerical Limitations
Fiscal Year 2014

	Employment Preferences						
Foreign State	5th Employ. Creation	5th Target Employ. Areas	Regional Pilot Program	Regional Target Areas	5th Total	Employ. Preference Total	Grand Total
Grand Totals	161	155	1	10,375	10,692	151,359	372,552

EXHIBIT F

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 30, 2013 **PM-602-0083**

Policy Memorandum

SUBJECT: EB-5 Adjudications Policy

PURPOSE: The purpose of this policy memorandum (PM) is to build upon prior policy guidance for adjudicating EB-5 applications and petitions. Prior policy guidance, to the extent it does not conflict with this PM, remains valid unless and until rescinded.

SCOPE: This PM is applicable to, and is binding on, all USCIS employees.

AUTHORITY:

- Immigration and Nationality Act (INA) sections 203(b)(5) and 216A
- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Pub. L. No. 102-395, § 610, 106 Stat 1828, 1874 (1992)
- 8 C.F.R. §§ 204.6 and 216.6

I. Introduction

The purpose of the EB-5 Program is to promote the immigration of people who can help create jobs for U.S. workers through their investment of capital into the U.S. economy.

Congress established the EB-5 Program in 1990 to bring new investment capital into the country and to create new jobs for U.S. workers. The EB-5 Program is based on our nation's interest in promoting the immigration of people who invest their capital in new, restructured, or expanded businesses and projects in the United States and help create or preserve needed jobs for U.S. workers by doing so.

In the EB-5 Program, immigrants who invest their capital in job-creating businesses and projects in the United States receive conditional permanent resident status in the United States for a two-year period. After two years, if the immigrants have satisfied the conditions of the EB-5 Program and other criteria of eligibility, the conditions are removed and the immigrants become unconditional lawful permanent residents of the United States. Congress created the two-year conditional status period to help ensure compliance with the statutory and regulatory

requirements and to ensure that the infusion of investment capital is sustained and the U.S. jobs are created.

The 1990 legislation that created the EB-5 Program envisioned lawful permanent resident status for immigrant investors who invest in and engage in the management of job-creating commercial enterprises. In 1993, the legislature enacted the "Immigrant Investor Pilot Program" that was designed to encourage immigrant investment in a range of business and economic development opportunities within designated regional centers. In 2012 Congress reaffirmed its commitment to the regional center model of investment and job creation by removing the word "Pilot" from the now twenty-year old program, and by providing a three-year reauthorization of the regional center model through September 2015.

Our goal at U.S. Citizenship and Immigration Services (USCIS) is to make sure that the potential of the EB-5 Program, including the Immigrant Investor Program, is fully realized, and that the integrity of the EB-5 Program is protected. Through our thoughtful and careful adjudication of applications and petitions in the EB-5 Program, we can realize the intent of Congress to promote the immigration of people who invest capital into our nation's economy and help create jobs for U.S. workers.

II. The Preponderance of the Evidence Standard

As a preliminary matter, it is critical that our adjudication of EB-5 petitions and applications adhere to the correct standard of proof. In the EB-5 program, the petitioner or applicant must establish each element by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). That means that the petitioner or applicant must show that what he or she claims is more likely so than not so. This is a lower standard of proof than both the standard of "clear and convincing," and the standard "beyond a reasonable doubt" that typically applies to criminal cases. The petitioner or applicant does not need to remove all doubt from our adjudication. Even if an adjudicator has some doubt as to the truth, if the petitioner or applicant submits relevant, probative, and credible evidence that leads to the conclusion that the claim is "more likely than not" or "probably true", the petitioner or applicant has satisfied the standard of proof.

III. Ensuring Program Integrity

It is critical to our mission to ensure that we administer the EB-5 program with utmost vigilance to program integrity. Our operational teams work in collaboration with the Fraud Detection and National Security directorate and cases presenting issues relating to fraud, national security, or public safety should be referred as appropriate to law enforcement and regulatory authorities.

IV. The Three Elements of the EB-5 Program

The EB-5 Program is based on three main elements: (1) the immigrant's investment of capital, (2) in a new commercial enterprise, (3) that creates jobs. Each of these elements is explained below in the context of both the original EB-5 Program and the Immigrant Investor Program.

A. The Investment of Capital

The EB-5 Program is based in part on the fact that the United States economy will benefit from an immigrant's contribution of capital. It is also based on the view that the benefit to the U.S. economy is greatest when capital is placed at risk and invested into a new commercial enterprise that, as a result of the investment, creates at least ten jobs for U.S. workers. The regulations that govern the EB-5 Program define the terms "capital" and "investment" with this in mind.

1. "Capital" Defined

The word "capital" in the EB-5 Program does not mean only cash. Instead, the word "capital" is defined broadly in the regulations to take into account the many different ways in which an individual can make a contribution of financial value to a business. The regulation defines "capital" as follows:

> Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur [immigrant investor], provided that the alien entrepreneur [immigrant investor] is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

8 C.F.R. § 204.6(e).

The definition of "capital" has been clarified in regulations and in precedent decisions that our Administrative Appeals Office (AAO) has issued:

- First, the definition of "capital" is sufficiently broad that it includes not only such things of value as cash, equipment, and other tangible property, but it can also include the immigrant investor's promise to pay (a promissory note), as long as the promise is secured by assets the immigrant investor owns, the immigrant investor is liable for the debt, and the assets of the immigrant investor do not for this purpose include assets of the company in which the immigrant is investing.

  In our AAO's precedent decision *Matter of Hsiung*, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998), we reflected the fact that the immigrant investor's promissory note can constitute "capital" under the regulations if the note is secured by assets the petitioner owns. We also determined that:

  (1) The assets must be specifically identified as securing the promissory note;

  (2) Any security interest must be perfected to the extent provided for by the jurisdiction in which the asset is located; and,

(3) The asset must be fully amenable to seizure by a U.S. note holder.

- Second, all of the capital must be valued at fair market value in United States dollars. 8 C.F.R. § 204.6(e) (definition of "capital"). The fair market value of a promissory note depends on its present value, not the value at any different time. *Matter of Izummi,* 22 I&N Dec. 169, 186 (Assoc. Comm'r 1998). Moreover, to qualify as capital for EB-5 purposes, "nearly all of the money due under a promissory note must be payable within two years, without provisions for extensions." *Id.* at 194.

- Third, the immigrant investor must establish that he or she is the legal owner of the capital invested. *Matter of Ho,* 22 I&N Dec. 206 (Assoc. Comm'r 1998).

- Fourth, any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. The immigrant investor must demonstrate by a preponderance of the evidence that the capital was obtained through lawful means. According to the regulation, to make this showing the immigrant investor's petition must be accompanied, as applicable, by:

  (1) Foreign business registration records; or,

  (2) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this list), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor; or,

  (3) Evidence identifying any other source(s) of capital; or,

  (4) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past fifteen years.

8 C.F.R. § 204.6(j)(3)(i)-(iv).

2. "Invest" Defined

The immigrant investor in the EB-5 Program is required to invest his or her capital. The petitioner must document the path of the funds in order to establish that the investment was his or her own funds. *Matter of Izummi*, 22 I&N Dec. at 195. The regulation defines "invest" as follows:

> Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur [immigrant investor] and the new commercial enterprise

> does not constitute a contribution of capital . . . .

8 C.F.R. § 204.6(e).

The regulation also provides that, in order to qualify as an investment in the EB-5 Program, the immigrant investor must actually place his or her capital "at risk" for the purpose of generating a return, and that the mere intent to invest is not sufficient. The regulation provides as follows:

> To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petition is actively in the process of investing. The alien must show actual commitment of the required amount of capital.

8 C.F.R. § 204.6(j)(2).

The EB-5 Program is seeking to attract individuals from other countries who are willing to put their capital at risk in the United States, with the hope of a return on their investment, to help create U.S. jobs. The law does not specify what the degree of risk must be; the entire amount of capital need only be at risk to some degree.

If the immigrant investor is guaranteed the return of a portion of his or her investment, or is guaranteed a rate of return on a portion of his or her investment, then that portion of the capital is not at risk. *Matter of Izummi,* 22 I&N Dec. at 180-188. For the capital to be "at risk" there must be a risk of loss and a chance for gain. In our precedent decision *Matter of Izummi*, 22 I&N Dec. at 183-188, the AAO found that the capital was not at risk because the investment was governed by a redemption agreement that protected against the risk of loss of the capital and, therefore, constituted an impermissible debt arrangement under 8 C.F.R. § 204.6(e) as it was no different from the risk any business creditor incurs. *Id.* at 185. Furthermore, a promise to return any portion of the immigrant investor's minimum required capital negates the required element of risk. Thus, if the agreement between the new commercial enterprise and immigrant investor, such as a limited partnership agreement or operating agreement, provides that the investor may demand return of or redeem some portion of capital after obtaining conditional lawful permanent resident status (*i.e.*, following approval of the investor's Form I-526 and subsequent visa issuance or, in the case of adjustment, approval of the investor's Form I-485), that portion of capital is not at risk. Similarly, if the investor is individually guaranteed the right to eventual ownership or use of a particular asset in consideration of the investor's contribution of capital into the new commercial enterprise, such as a home (or other real estate interest) or item of personal property, the expected present value of the guaranteed ownership or use of such asset does not count toward the total amount of the investor's capital contribution in determining how much money was truly placed at risk. *Cf. Izummi* at 184 (concluding that an investment cannot be considered a qualifying contribution of capital at risk to the extent of a guaranteed return). Nothing, however, precludes an investor from receiving a return on his or her capital (*i.e.*, a

distribution of profits) during or after the conditional residency period, so long as prior to or during the two-year conditional residency period, and before the requisite jobs have been created, the return is not a portion of the investor's principal investment and was not guaranteed to the investor.

An investor's money may be held in escrow until the investor has obtained conditional lawful permanent resident status if the immediate and irrevocable release of the escrowed funds is contingent only upon approval of the investor's Form I-526 and subsequent visa issuance and admission to the United States as a conditional permanent resident or, in the case of adjustment of status, approval of the investor's Form I-485. An investor's funds may be held in escrow within the United States to avoid any evidentiary issues that may arise with respect to issues such as significant currency fluctuations[1] and foreign capital export restrictions. Use of foreign escrow accounts however is not prohibited as long as the petition establishes that it is more likely than not that the minimum qualifying capital investment will be transferred to the new commercial enterprise in the United States upon the investor obtaining conditional lawful permanent resident status. At the Form I-829 stage, USCIS will require evidence verifying that the escrowed funds were released and that the investment was sustained in the new commercial enterprise.

3. The Amount of Capital That Must be Invested

The statute governing the EB-5 Program provides that the immigrant investor must invest at least $1,000,000 in capital in a new commercial enterprise that creates not fewer than ten jobs. As discussed above, this means that the present fair market value, in United States dollars, of the immigrant investor's lawfully-derived capital must be at least $1,000,000. 8 U.S.C. § 1153(b)(5)(C)(i).

An exception exists if the immigrant investor invests his or her capital in a new commercial enterprise that is principally doing business in, and creates jobs in, a "targeted employment area." In such a case, the immigrant investor must invest a minimum of $500,000 in capital. 8 U.S.C. § 1153(b)(5)(C)(ii); 8 C.F.R. § 204.6(f)(2). *See* Section 3.a below for the definition of where the new commercial enterprise is "principally doing business."

An immigrant investor may diversify his or her total EB-5 investment across a portfolio of businesses or projects, so long as the minimum investment amount is placed in a single commercial enterprise. For immigrant investors who are not associated with a regional center, the capital may be deployed into a portfolio of wholly-owned businesses, so long as all capital is deployed through a single commercial enterprise and all jobs are created directly within that commercial enterprise or through the portfolio of businesses that received the EB-5 capital through that commercial enterprise. For example, in an area in which the minimum investment

[1] It should be noted that when funds are held in escrow outside the United States, USCIS will review currency exchange rates at the time of adjudicating the I-526 petition to determine if it is more likely than not that the minimum qualifying capital investment will be made. At the I-829 stage, USCIS will review the evidence in the record, including currency exhange rates at the time of transfer, to determine that when the funds were actually transferred to the United States, the minimum qualifying capital investment was actually made.

amount is $1,000,000, the investor can satisfy the statute if the investor invests in a commercial enterprise that deploys $600,000 of the investment toward one business that it wholly owns, and $400,000 of the investment toward another business that it wholly owns. *See* 8 C.F.R. § 204.6(e). (In this instance, the two wholly-owned businesses would have to create an aggregate of ten new jobs between them.) An investor cannot qualify, on the other hand, by investing $600,000 in one commercial enterprise and $400,000 in a separate commercial enterprise.

In the regional center context, where indirect jobs may be counted, the commercial enterprise may create jobs indirectly through multiple investments in corporate affiliates or in unrelated entities, but the investor cannot qualify by investing directly in those multiple entities. Rather, the investor's capital must still be invested in a single commercial enterprise, which can then deploy that capital in multiple ways as long as one or more of the portfolio of businesses or projects can create the required number of jobs.

a. "Targeted Employment Area" Defined

The statute and regulations governing the EB-5 Program defines a "targeted employment area" as, at the time of investment, a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. A "rural area" is defined as any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). 8 U.S.C. § 1153(b)(5)(B)(ii), (iii); 8 C.F.R. § 204.6(e). In other words, a rural area must be both outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more.

Congress expressly provided for a reduced investment amount in a rural area or an area of high unemployment in order to spur immigrants to invest in new commercial enterprises that are principally doing business in, and creating jobs in, areas of greatest need. In order for the lower capital investment amount of $500,000 to apply, the new commercial enterprise into which the immigrant invests or the actual job creating entity must be principally doing business in the targeted employment area.

For the purpose of the EB-5 Program, a new commercial enterprise is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be deemed to be "principally doing business" in the location that is most significantly related to the job creation. Factors to be considered in making this determination may include, but are not limited to, (1) the location of any jobs directly created by the new commercial enterprise; (2) the location of any expenditure of capital related to the creation of jobs; (3) where the new commercial enterprise conducts its day-to-day operation; and (4) where the new commercial enterprise maintains its assets that are utilized in the creation of jobs. *Matter of Izummi,* 22 I&N Dec. at 174.

As discussed fully below, investments through the Immigrant Investor Program can be made through regional centers and the new commercial enterprise may seek to establish indirect job creation. In these cases, the term "principally doing business" will apply to the job-creating

enterprise rather than the new commercial enterprise. *See* 8 C.F.R. § 204.6(j)(6); *Matter of Izummi,* 22 I&N Dec. at 171-73 (discussing the location of commercial enterprises to which the new commercial enterprise made loans).

The immigrant investor may seek to have a geographic or political subdivision designated as a targeted employment area. To do so, the immigrant investor must demonstrate that the targeted employment area meets the statutory and regulatory criteria through the submission of: (1) evidence that the area is outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more; (2) unemployment data for the relevant metropolitan statistical area or county; or (3) a letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area. 8 C.F.R. § 204.6(j)(6).

b. A State's Designation of a Targeted Employment Area

The regulation provides that a state government may designate a geographic or political subdivision within its boundaries as a targeted employment area based on high unemployment. Before the state may make such a designation, an official of the state must notify USCIS of the agency, board, or other appropriate governmental body of the state that will be delegated the authority to certify that the geographic or political subdivision is a high unemployment area. The state may then send a letter from the authorized body of the state certifying that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. 8 C.F.R. § 204.6(i).

Consistent with the regulations, USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area. However, for all TEA designations, USCIS must still ensure compliance with the statutory requirement that the proposed area designated by the state in fact has an unemployment rate of at least 150 percent of the national average rate. For this purpose, USCIS will review state determinations of the unemployment rate and, in doing so, USCIS can assess the method or methods by which the state authority obtained the unemployment statistics. Acceptable data sources for purposes of calculating unemployment include U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from the Local Area Unemployment Statistics).

There is no provision that allows a state to designate a rural area.

B. New Commercial Enterprise

As discussed at the beginning of this PM, the EB-5 Program eligibility requirements are based on the fact that the U.S. economy will benefit from an immigrant investor's investment of capital into a new commercial enterprise that, as a result of the investment, creates at least ten jobs for U.S. workers. We have discussed above the requirements regarding "capital" and "investment." We now turn to the definition of, and requirements for, a "new commercial enterprise."

1. "Commercial Enterprise" Defined

First, the regulation governing the EB-5 Program defines the term "commercial enterprise" broadly, consistent with the realities of the business world and the many different forms and types of structures that job-creating activities can have. The regulation defines a "commercial enterprise" as follows:

> [A]ny for-profit activity formed for the ongoing conduct of lawful business.

8 C.F.R. § 204.6(e).

The regulation provides a list of examples of commercial enterprises. It specifically states that the list is only of examples, and is not a complete list of the many forms a commercial enterprise can have. The examples listed are:

> [A] sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

8 C.F.R. § 204.6(e).

Finally, the regulation provides that the commercial enterprise must be one that is designed to make a profit, unlike, for example, some charitable organizations, and it does not include "a noncommercial activity such as owning and operating a personal residence." 8 C.F.R. § 204.6(e).

2. "New" Defined

In its effort to spur job creation through a wide variety of businesses and projects, the EB-5 Program has presented a broad definition of what constitutes a "new" commercial enterprise into which the immigrant investor can invest the required amount of capital and help create jobs.

The EB-5 Program defines "new" as "established after November 29, 1990." 8 C.F.R. § 204.6(e). The immigrant investor can invest the required amount of capital in a commercial enterprise that was established after November 29, 1990 to qualify for the EB-5 Program, provided the other eligibility criteria are met.

In addition, in the EB-5 Program a "new" commercial enterprise also means a commercial enterprise that was established before November 29, 1990 if the enterprise will be restructured or expanded through the immigrant investor's investment of capital:

a. The Purchase of an Existing Business That is Restructured or Reorganized

The immigrant investor can invest in an existing business, regardless of when that business was first created, provided that the existing business is simultaneously or subsequently restructured or reorganized such that a new commercial enterprise results. 8 C.F.R. § 204.6(h)(2). The facts of *Matter of Soffici*—where an investor purchased a Howard Johnson hotel and continued to run it as a Howard Johnson hotel—were not sufficient to establish a qualifying restructuring or reorganization. 22 I&N Dec. 158, 166 (Assoc. Comm'r 1998) ("A few cosmetic changes to the decor and a new marketing strategy for success do not constitute the kind of restructuring contemplated by the regulations, nor does a simple change in ownership."). On the other hand, examples that could qualify as restructurings or reorganizations include a plan that converts a restaurant into a nightclub, or a plan that adds substantial crop production to an existing livestock farm.

b. The Expansion of An Existing Business

The immigrant investor can invest in an existing business, regardless of when that business was first created, provided that a substantial change in the net worth or number of employees results from the investment of capital. 8 C.F.R. § 204.6(h)(3).

"Substantial change" is defined as follows:

> [A] 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.

8 C.F.R. § 204.6(h)(3).

Investment in a new commercial enterprise in this manner does not exempt the immigrant investor from meeting the requirements relating to the amount of capital that must be invested and the number of jobs that must be created. 8 C.F.R. § 204.6(h)(3).

3. Pooled Investments in Non-Regional Center Cases

The EB-5 Program provides that a new commercial enterprise can be used as the basis for the petition of more than one immigrant investor. Each immigrant investor must invest the required amount of capital and each immigrant investor's investment must result in the required number of jobs. Furthermore, the new commercial enterprise can have owners who are not seeking to enter the EB-5 Program, provided that the source(s) of all capital invested is (or are) identified and all invested capital has been derived by lawful means. 8 C.F.R. § 204.6(g).

4. Evidence of the Establishment of a New Commercial Enterprise

To show that the new commercial enterprise has been established, the immigrant investor must present the following evidence, in addition to any other evidence we deem appropriate:

(1) as applicable, articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document for the new commercial enterprise; or,

(2) A certificate evidencing authority to do business in a state or municipality or, if the form of the business does not require any such certificate or the state or municipality does not issue such a certificate, a statement to that effect; or,

(3) Evidence that, as of a date certain after November 29, 1990, the required amount of capital for the area in which an enterprise is located has been transferred to an existing business, and that the investment has resulted in a substantial increase in the net worth or number of employees of the business to which the capital was transferred. This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth or number of employees.

8 C.F.R. § 204.6(j), (j)(1)(i)-(iii).

5. Evidence of the Investment in a New Commercial Enterprise

In order for the immigrant investor to show that he or she has committed the required amount of capital to the new commercial enterprise, the evidence presented may include, but is not limited to, the following:

(1) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(2) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(3) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading, and transit insurance policies containing

ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(4) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(5) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

8 C.F.R. § 204.6(j)(2)(i)-(v).

6. The Requirement that the Immigrant Investor be Engaged in the Management of the New Commercial Enterprise

The EB-5 Program requires the immigrant investor to be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial responsibility or through policy formulation. It is not enough that the immigrant investor maintain a purely passive role in regard to his or her investment. 8 C.F.R. § 204.6(j)(5).

To show that the immigrant investor is or will be engaged in the exercise of day-to-day managerial control or in the exercise of policy formulation, the immigrant investor must submit:

(1) A statement of the position title that the immigrant investor has or will have in the new enterprise and a complete description of the position's duties; or,

(2) Evidence that the immigrant investor is a corporate officer or a member of the corporate board of directors; or,

(3) If the new enterprise is a partnership, either limited or general, evidence that the immigrant investor is engaged in either direct management or policy making activities. If the petitioner is a limited partner and the limited partnership agreement provides the immigrant investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the immigrant investor will be considered sufficiently engaged in the management of the new commercial enterprise.

8 C.F.R. § 204.6(j)(5)(i)-(iii).

7. The Location of the New Commercial Enterprise in a Regional Center

As previously mentioned, there is a regional center model within the EB-5 Program that allows for not only "direct job" creation, but "indirect job creation" as demonstrated by reasonable methodologies. Originally introduced as a "pilot program," and now titled the "Immigrant Investor Program," the program provides investors with expanded opportunities to demonstrate job creation in accordance with a series of job creation rules discussed below. "Regional center" is defined as follows:

> Regional center means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

8 C.F.R. § 204.6(e).

A regional center that wants to participate in the Immigrant Investor Program must submit a proposal using Form I-924, that:

(1) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(2) Provides in verifiable detail how jobs will be created directly or indirectly;

(3) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(4) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and,

(5) Is supported by economically or statistically sound valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

8 C.F.R. § 204.6(m)(3)(i)-(v).

USCIS will review the proposed geographic boundaries of a new regional center and will deem them acceptable if the applicant can establish by a preponderance of the evidence that the

proposed economic activity will promote economic growth in the proposed area. The question is a fact-specific one and the law does not require any particular form of evidentiary showing, such as a county-by-county analysis. In USCIS's experience, the reasonableness of proposed regional center geographic boundaries may be demonstrated through evidence that the proposed area is contributing significantly to the supply chain, as well as the labor pool, of the proposed projects.

The Immigrant Investor Program was implemented with the goal of spurring greater economic growth in the geographic area in which a regional center is developed. The regional center model within the Immigrant Investor Program can offer an immigrant investor already-defined investment opportunities, thereby reducing the immigrant investor's responsibility to identify acceptable investment vehicles. As discussed fully below, if the new commercial enterprise is located within and falls within the economic scope of the defined regional center, different job creation requirements apply.

A regional center can contain one or more new commercial enterprises.

The level of verifiable detail required for a Form I-924 to be approved and provided deference may vary depending on the nature of the Form I-924 filing. If the Form I-924 projects are "hypothetical" projects,[2] general proposals and general predictions may be sufficient to determine that the proposed regional center will more likely than not promote economic growth, improved regional productivity, job creation, and increased domestic capital investment. Determinations based on hypothetical projects, however, will not receive deference and the actual projects on which the Form I-526 petitions will be based will receive de novo review during the subsequent filing (e.g., an amended Form I-924 application including the actual project details or the first Form I-526 petition filed by an investor under the regional center project). Organizational and transactional documents submitted with a Form I-924 hypothetical project will not be reviewed to determine compliance with program requirements since these documents will receive de novo review in subsequent filings. If an applicant desires review of organizational and transactional documents for program compliance, a Form I-924 application with a Form I-526 exemplar should be submitted.

Form I-924 applications that are based on actual projects may require more details than a hypothetical project in order to conclude that the proposal contains verifiable details and is supported by economically or statistically sound forecasting tools.[3] Determinations based on

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[2] An "actual project" refers to a specific project proposal that is supported by a *Matter of Ho* compliant business plan. A "hypothetical project" refers to a project proposal that is not supported by a *Matter of Ho* compliant business plan. The term "exemplar" refers to a sample Form I-526 petition, filed with a Form I-924 actual project proposal, that contains copies of the commercial enterprise's organizational and transactional documents, which USCIS will review to determine if they are in compliance with established EB-5 eligibility requirements.

[3] In cases where the Form I-924 is filed based on actual projects that do not contain sufficient verifiable detail, the projects may still be approved as hypothetical projects if they contain the requisite general proposals and predictions. The projects approved as hypotheticals, however, will not receive deference. In cases where some projects are approvable as actual projects, and others are not approvable or only approvable as hypothetical projects, the approval notice should contain a statement identifying which projects have been approved as actual projects and will be accorded deference and those projects that have been approved as hypothetical projects but will not be accorded deference.

actual projects, however, will be accorded deference to subsequent filings under the project involving the same material facts and issues. While an amended Form I-924 application is not required to perfect a hypothetical project once the actual project details are available, some applicants may choose to file an amended Form I-924 application with a Form I-526 exemplar in order to obtain a favorable determination which will be accorded deference in subsequent related filings, absent material change, fraud, willful misrepresentation, or a legally deficient determination (discussed in more detail below).

C. The Creation of Jobs

In developing the EB-5 Program, Congress intended to promote the immigration of people who invest capital into our nation's economy and help create jobs for U.S. workers. Therefore, the creation of jobs for U.S. workers is a critical element of the EB-5 Program.

It is not enough that the immigrant invests funds into the U.S. economy; the investment must result in the creation of jobs for qualifying employees. As discussed fully below, the EB-5 Program provides that each investment of the required amount of capital in a new commercial enterprise must result in the creation of at least ten jobs.

It is important to recognize that while the immigrant's investment must result in the creation of jobs for qualifying employees, it is the new commercial enterprise that creates the jobs.[4] This distinction is best illustrated in the non-regional center context by an example:

> Ten immigrant investors seek to establish a hotel as their new commercial enterprise. The establishment of the new hotel requires capital to pay financing costs to unrelated third parties, purchasing the land, developing the plans, obtaining the licenses, building the structure, taking care of the grounds, staffing the hotel, and the many other types of expenses involved in the development and operation of a new hotel. The immigrant's investments can go to pay part or all of any of these expenses. Each immigrant's investment of the required amount of capital helps the new commercial enterprise – the new hotel – create ten jobs. The ten immigrants' investments must result in the new hotel's creation of 100 jobs for qualifying employees (ten jobs resulting per each individual immigrant's capital investment).

See 8 C.F.R. §204.6(j) (it is the new commercial enterprise that will create the ten jobs).

Since it is the commercial enterprise that creates the jobs, the developer or the principal of the new commercial enterprise, either directly or through a separate job-creating entity, may utilize interim, temporary or bridge financing – in the form of either debt or equity – prior to receipt of EB-5 capital. If the project commences based on the interim or bridge financing prior to the receipt of the EB-5 capital and subsequently replaces it with EB-5 capital, the new commercial enterprise may still receive credit for the job creation under the regulations. Generally, the replacement of bridge financing with EB-5 investor capital should have been contemplated prior

[4] 8 C.F.R § 204.6(j)(4)(i).

to acquiring the original non-EB-5 financing. However, even if the EB-5 financing was not contemplated prior to acquiring the temporary financing, as long as the financing to be replaced was contemplated as short-term temporary financing which would be subsequently replaced, the infusion of EB-5 financing could still result in the creation of, and credit for, new jobs. For example, the non EB-5 financing originally contemplated to replace the temporary financing may no longer be available to the commercial enterprise as a result of changes in availability of traditional financing. Developers should not be precluded from using EB-5 capital as an alternative source to replace temporary financing simply because it was not contemplated prior to obtaining the bridge or temporary financing.

It is also important to note that the full amount of the immigrant's investment must be made available to the business(es) most closely responsible for creating the jobs upon which EB-5 eligibility is based. *Matter of Izummi*, 22 I&N Dec. at 179. Thus, in the regional center context, if the new commercial enterprise is not the job-creating entity, then the full amount of the capital must be first invested in the new commercial enterprise and then made available to the job-creating entity. *Id.*

1. Full-Time Positions For Qualifying Employees

The EB-5 Program requires that the immigrant investor invest the required amount of capital in a new commercial enterprise in the United States that "will create full-time positions for not fewer than 10 qualifying employees." *8 C.F.R. § 204.6(j).*

An "employee" is defined as follows:

> Employee means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise.

8 C.F.R. § 204.6(e).

The employee must be a "qualifying employee" for the purpose of the EB-5 Program's job creation requirement. A "qualifying employee" is defined as follows:

> Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur [immigrant investor], the alien entrepreneur's spouse [immigrant investor's], sons, or daughters, or any nonimmigrant alien.

8 C.F.R. § 204.6(e).

The EB-5 Program's job creation requirement provides that it is "full-time employment" that must be created for the ten or more qualifying employees. INA § 203(b)(5)(A)(ii), 8 U.S.C. § 1153(b)(5)(A)(ii). "Full-time employment" is defined as follows:

> Full-time employment means employment of a qualified employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

A full-time employment position can be filled by two or more qualifying employees in a job sharing arrangement as long as the 35-working-hours-per-week requirement is met. However, a full-time employment position cannot be filled by combinations of part-time positions, even if those positions when combined meet the hourly requirement. *8 C.F.R. § 204.6(e).* Direct jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as full-time jobs for EB-5 purposes. Consistent with prior USCIS interpretation, however, jobs that are expected to last for at least two years generally are not intermittent, temporary, seasonal, or transient in nature.

Due to the nature of accepted job creation modeling practices, which do not distinguish whether jobs are full- or part-time, USCIS relies upon the reasonable economic models to determine that it is more likely than not that the indirect jobs are created and will not request additional evidence to validate the job creation estimates in the economic models to prove by a greater level of certainty that the indirect jobs created, or to be created, are full-time or permanent. USCIS may, however, request additional evidence to verify that the direct jobs will be or are full-time and permanent, which may include a review of W-2s or similar evidence at the Form I-829 stage.

2. Job Creation Requirement

As previously discussed, the centerpiece of the EB-5 Program is the creation of jobs. The immigrant investor seeking to enter the United States through the EB-5 Program must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least ten qualified employees.

There are three measures of job creation in the EB-5 Program, depending on the new commercial enterprise and where it is located:

a. Troubled Business

The EB-5 Program recognizes that in the case of a troubled business, our economy benefits when the immigrant investor helps preserve the troubled business's existing jobs. Therefore, when the immigrant investor is investing in a new commercial enterprise that is a troubled business or, in the regional center context, is placing capital into a job-creating entity that is a troubled business, the immigrant investor must only show that the number of existing employees in the troubled business is being or will be maintained at no less than the pre-investment level for a period of at least two years. 8 C.F.R. § 204.6(j)(4)(ii).

This regulatory provision, while allowing job preservation in lieu of job creation, does not decrease the statutory numeric requirement; in the case of a troubled business, ten jobs must be preserved, created, or some combination of the two (e.g., an investment in a troubled business that creates four qualifying jobs and preserves all six pre-investment jobs would satisfy the statutory and regulatory requirements).

A troubled business is defined as follows:

> [A] business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur's [immigrant investor's] Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

8 C.F.R. § 204.6(e).

b. New Commercial Enterprise Not Associated With a Regional Center

For a new commercial enterprise that is not associated with a regional center, the EB-5 Program provides that the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly-owned subsidiaries) must itself be the employer of the qualified employees who fill the new full-time positions. 8 C.F.R. § 204.6(e) (definition of employee).

c. New Commercial Enterprise Located Within and Associated With a Regional Center

For a new commercial enterprise that is located within a regional center, the EB-5 Program provides that the full-time positions can be created either directly or indirectly by the new commercial enterprise. 8 C.F.R. § 204.6((j)(4)(iii). Investors investing in a regional center are subject to all the same program requirements except that they may rely on indirect job creation as demonstrated through reasonable methodologies. 8 C.F.R. §§ 204.6(m)(1), (7).

Indirect jobs are those that are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise. For indirect jobs, the new full-time employees would not be employed directly by the new commercial enterprise. For example, indirect jobs can include, but are not limited to, those held by employees of the producers of materials, equipment, or services used by the new commercial enterprise. Indirect jobs can qualify and be counted as jobs attributable to a regional center, based on reasonable economic methodologies, even if they are located outside of the geographical boundaries of a regional center.

For purposes of demonstrating indirect job creation, petitioners must employ reasonable economic methodologies to establish by a preponderance of the evidence that the required infusion of capital or creation of direct jobs will result in a certain number of indirect jobs.

3. Evidence of Job Creation

In order to show that a new commercial enterprise will create not fewer than ten full-time positions for qualifying employees, an immigrant investor must submit the following evidence:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or,
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. § 204.6(j)(4)(i).

For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526. The business plan filed with the Form I-526 should reasonably demonstrate that the requisite number of jobs will be created by the end of this two-year period.

Our AAO precedent decision has articulated the standards by which USCIS will review a business plan:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Matter of Ho, 22 I&N Dec. at 213. USCIS will review the business plan in its totality to determine if it is more likely than not that the business plan is comprehensive and credible. A

business plan is not required to contain all of the detailed elements described above, but the more details the business plan contains, as described in *Matter of Ho*, the more likely it is that the plan will be considered comprehensive and credible.

In the case of a troubled business, a comprehensive business plan must accompany the other required evidentiary documents. 8 C.F.R. § 204.6(j)(4)(ii). In the case of a new commercial enterprise within a regional center, the direct or indirect job creation may be demonstrated by the types of documents identified above or by reasonable methodologies. 8 C.F.R. § 204.6(j)(4)(iii).

When there are multiple investors in a new commercial enterprise, the total number of full-time positions created for qualifying employees will be allocated only to those immigrant investors who have used the establishment of the new commercial enterprise as the basis for their entry in the EB-5 Program. An allocation does not need to be made among persons not seeking classification in the EB-5 Program, nor does an allocation need to be made among non-natural persons (such as among investing corporations). 8 C.F.R. § 204.6(g)(2).

In general, multiple EB-5 investors petitioning through a regional center or on a standalone basis may not claim credit for the same specific new job. Thus, as a general matter, a petitioner or applicant may not seek credit for the same specifically identified job position that has already been allocated in a previously approved case.

V. Procedural Issues

The EB-5 Program provides that the immigrant investor will file an initial petition and supporting documentation to be classified as eligible to apply for an EB-5 visa through USCIS's adjustment of status process within the United States or through the Department of State's visa application process abroad. Upon adjustment of status or admission to the United States, the immigrant investor is a conditional lawful permanent resident. INA § 216A(a). The EB-5 Program further provides that if, two years after obtaining conditional permanent resident status, the immigrant investor has sustained the investment, created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees, and is otherwise conforming to the EB-5 Program's requirements, the conditions generally will be removed and the immigrant investor will be an unconditional lawful permanent resident. INA § 216A(d)(1); 8 C.F.R. § 216.6(c).

A. The Sequence of Individual Investor Filings

An immigrant investor seeking admission into the United States as a lawful permanent resident will proceed in the following sequence:

1. The Form I-526 Petition

- For an immigrant investor who is investing in a new commercial enterprise that is not part of a regional center, the immigrant investor will file a Form I-526 that, together with the supporting evidence, demonstrates by a preponderance of the evidence that the immigrant investor has invested, or is actively in the process of investing, lawfully

obtained capital in a new commercial enterprise in the United States that will create full-time positions for not fewer than ten qualifying direct employees.

- For an immigrant investor who is investing in a new commercial enterprise that is part of a regional center:
    - The entity seeking designation as a regional center will file a Form I-924 that, together with the supporting evidence, demonstrates by a preponderance of the evidence that the requirements for a regional center have been met. The individuals who establish the regional center can be, but need not be, the immigrant investors themselves; and,
    - Once USCIS designates the entity as a regional center, each immigrant investor will file a Form I-526 that, together with the supporting evidence, demonstrates by a preponderance of the evidence that the immigrant investor has invested, or is actively in the process of investing, lawfully obtained capital in a new commercial enterprise in the United States that will create directly or indirectly full-time positions for not fewer than ten qualifying employees.

It is important to note that at this preliminary Form I-526 filing stage, the immigrant investor must demonstrate his or her commitment to invest the capital but need not establish that the required capital already has been invested; it is sufficient if the immigrant investor demonstrates that he or she is actively in the process of investing the required capital. However, evidence of a mere intent to invest or of prospective investment arrangements entailing no present commitment will not suffice. 8 C.F.R. § 204.6(j)(2); *see Matter of Ho,* 22 I&N Dec. at 210. Similarly, at this preliminary stage the immigrant investor need not establish that the required jobs already have been created; it is sufficient if the immigrant investor demonstrates in a business plan that it is more likely than not that the required jobs will be created. 8 C.F.R. § 204.6(j); 8 C.F.R. § 204.6(m).

2. The Form I-829 Petition

Within ninety days prior to the two-year anniversary of the date on which the immigrant investor obtained conditional lawful permanent resident status, the immigrant investor will file a Form I-829 to remove the conditions. The Form I-829 petition to remove conditions must be accompanied by the following evidence:

(1) Evidence that the immigrant investor invested or was actively in the process of investing the required capital and sustained this action throughout the period of the immigrant investor's residence in the United States. The immigrant investor can make this showing if he or she has, in good faith, substantially met the capital investment requirement and continuously maintained his or her capital investment over the two years of conditional residence. At this stage the immigrant investor need not have invested all of the required capital, but must have substantially met that requirement. The evidence may include, but is not limited to, an

audited financial statement or other probative evidence such as bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements; and,

(2) Evidence that the commercial enterprise created or can be expected to create, within a reasonable time, ten full-time jobs for qualifying employees. In the case of a troubled business, the immigrant investor must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. At least ten jobs must be preserved or created per immigrant investor. The evidence may include, but is not limited to, payroll records, relevant tax documents, and Forms I-9.

See 8 C.F.R. § 216.6(a)(4)(ii-iv).

It is also important to note that the EB-5 Program allows an immigrant investor to become a lawful permanent resident, without conditions, if the immigrant investor has established a new commercial enterprise, substantially met the capital requirement, and can be expected to create within a reasonable time the required number of jobs. All of the goals of capital investment and job creation need not have been fully realized before the conditions on the immigrant investor's status have been removed. Rather, the regulations require the submission of documentary evidence that establishes that it is more likely than not that the investor is in "substantial" compliance with the capital requirements and that the jobs will be created "within a reasonable time."

The "within a reasonable time" requirement permits a degree of flexibility to account for the realities and unpredictability of starting a business venture, but it is not an open-ended allowance. The regulations require that the business plan submitted with Form I-526 establish a likelihood of job creation "within the next two years," 8 C.F.R. § 204.6(j)(4)(i)(B), demonstrating an expectation that EB-5 projects will generally create jobs within such a timeframe. Whether a lengthier timeframe for job creation presented in a Form I-829 is "reasonable" is to be decided based on the totality of the circumstances presented, and USCIS has latitude under the law to request additional evidence concerning those circumstances. Because the law contemplates two years as the baseline expected period in which job creation will take place, jobs that will be created within a year of the two-year anniversary of the alien's admission as a conditional permanent resident or adjustment to conditional permanent resident may generally be considered to be created within a reasonable period of time. Jobs projected to be created beyond that time horizon usually will not be considered to be created within a reasonable time, unless extreme circumstances, such as *force majeure*, are presented.

B. Regional Center Amendments

Because businesses strategies constantly evolve, with new opportunities identified and existing plans improved, the instructions to Form I-924 provide that a regional center may amend a previously-approved designation. The Form I-924 provides a list of acceptable amendments, to

include changes to organizational structure or administration, capital investment projects (including changes in the economic analysis and underlying business plan used to estimate job creation for previously-approved investment opportunities), and an affiliated commercial enterprise's organizational structure, capital investment instruments or offering memoranda.

Such formal amendments to the regional center designation, however, are not required when a regional center changes its industries of focus, its geographic boundaries, its business plans, or its economic methodologies. A regional center may elect to pursue an amendment if it seeks certainty in advance that such changes will be permissible to USCIS before they are adjudicated at the I-526 stage, but the regional center is not required to do so. Of course, all regional centers "must provide updated information to demonstrate the center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area . . . on an annual basis," 8 C.F.R. § 204.6(m)(6), through the filing of their annual Form I-924A.

C. Deference to Previous Agency Determination

Distinct EB-5 eligibility requirements must be met at each stage of the EB-5 immigration process. Where USCIS has evaluated and approved certain aspects of an EB-5 investment, that favorable determination should generally be given deference at a subsequent stage in the EB-5 process. This policy of deference is an important part of ensuring predictability for EB-5 investors and commercial enterprises (and the persons they employ), and also conserves scarce agency resources, which should not ordinarily be used to duplicate previous adjudicative efforts.

As a general matter, USCIS will not reexamine determinations made earlier in the EB-5 process, and the earlier determinations will be presumed to have been properly decided. Where USCIS has previously concluded that an economic methodology satisfies the requirement of being a "reasonable methodology" to project future job creation as applied to the facts of a particular project, USCIS will continue to afford deference to this determination for all related adjudications, so long as the related adjudication is directly linked to the specific project for which the economic methodology was previously approved. For example, if USCIS approves a Form I-924 or Form I-526 presenting a *Matter of Ho* compliant business plan and a specific economic methodology, USCIS will defer to the finding that the methodology was reasonable in subsequent adjudications of Forms I-526 presenting the same related facts and methodology. However, USCIS will still conduct a de novo review of each prospective immigrant investor's lawful source of funds and other individualized eligibility criteria.

Conversely, a previously favorable decision may not be relied upon in later proceedings where, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. A change in fact is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (defining materiality in the context of denaturalization). Where a new filing involves a different project from a previously-approved filing, or the same project but with material changes to the

project plan, deference will not be afforded to the previous adjudication because the agency is being presented with the given set of facts for the first time.

Since prior determinations will be presumed to have been properly decided, a prior favorable determination will not be considered legally deficient for purposes of according deference unless the prior determination involved an objective mistake of fact or an objective mistake of law evidencing ineligibility for the benefit sought, but excluding those subjective evaluations related to evaluating eligibility. Unless there is reason to believe that a prior adjudication involved an objective mistake of fact or law, USCIS should not reexamine determinations made earlier in the EB-5 process. Absent a material change in facts, fraud, or willful misrepresentation, USCIS should not re-adjudicate prior USCIS determinations that are subjective, such as whether the business plan is comprehensive and credible or whether an economic methodology estimating job creation is reasonable.

D. Material Change

The process of establishing a new business and creating jobs depends on a wide array of variables over which an investor or the creator of a new business may not have any control. The very best of business plans may be thrown off, for example, because of a sudden lack of supply in required merchandise, an unexpected hurricane that devastates an area in which the new business was to be built, or a change in the market that the business is intended to serve.

The effect of changed business plans on a regional center or an individual investor's immigration status may differ depending on when the change is made relative to the alien investor's status in the United States.

1. Investors Who Have Not Obtained Conditional Lawful Permanent Resident Status

It is well-established that in visa petition proceedings, a petitioner must establish eligibility at the time of filing and that a petition cannot be approved if, after filing, the petitioner becomes eligible under a new set of facts or circumstances. *See, e.g.*, *Matter of Izummi*, 22 I. & N. Dec. at 176 ("If counsel had wished to test the validity of the newest plan, which is materially different from the original plan, he should have withdrawn the instant petition and advised the petitioner to file a new Form I-526."). In addition, the petitioner must continue to be eligible for classification at the time of adjudication of the petition. 8 C.F.R. § 103.2(b)(1).

Thus, consistent with *Matter of Izummi*, if there are material changes to a Form I-526 at any time after filing, the petition cannot be approved. Under these circumstances, if, at the time of adjudication, the petitioner is asserting eligibility under a materially different set of facts that did not exist when the petition was filed, he or she must file a new Form I-526 petition. For example, if a petitioner files a Form I-526 petition purporting to be associated with a particular project within the scope of an approved regional center but, subsequent to filing, it is determined that the proceeds of the investment will be directed to a job-creating entity in an entirely different project, the petition may not be approved.

A deficient Form I-526 petition may not be cured by subsequent changes to the business plan or factual changes made to address any other deficiency that materially alter the factual basis on which the petition was filed. The only way to perfect material changes under these circumstances is for the immigrant investor to file a new Form I-526 petition to correspond to the changed plans.

Similarly, if, after the approval of a Form I-526 petition but before an alien investor has been admitted to the United States or adjusted his or her status pursuant to that petition, there are material changes to the business plan by which the alien intends to comply with the EB-5 requirements, the alien investor would need to file a new Form I-526 petition. Such material changes would constitute good cause to revoke the approved petition and would result in the denial of admission or an application for adjustment of status.

2. Investors Who Have Obtained Conditional Lawful Permanent Resident Status

Historically, USCIS has required a direct connection between the business plan the investor provides with the Form I-526 and the subsequent removal of conditions. USCIS would not approve a Form I-829 petition if the investor had made an investment and created jobs in the United States if the jobs were not created according to the plan presented in the Form I-526. While that position is a permissible construction of the governing statute, USCIS also notes that the statute does not require that direct connection. In order to provide flexibility to meet the realities of the business world, USCIS will permit an alien who has been admitted to the United States on a conditional basis to remove those conditions when circumstances have changed. An individual investor can, at the prescribed time, proceed with his or her Form I-829 petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the Form I-526, the requirements for the removal of conditions have been satisfied. Pursuant to this policy, USCIS will no longer deny petitions to remove conditions solely based on failure to adhere to the plan contained in the Form I-526 or to pursue business opportunities within an industry category previously approved for the regional center.

It is important to note that a Form I-526 must be filed in good faith and with full intention to follow the plan outlined in that petition. If the alien investor does not demonstrate that he or she filed the Form I-526 in good faith, USCIS may conclude that the investment in the commercial enterprise was made as a means of evading the immigration laws. Under these circumstances, USCIS may terminate the alien investor's conditional status as required by 8 U.S.C. § 1186b(b)(1)(A).

Furthermore, nothing in this change in policy relieves an alien investor from the requirements for removal of the conditions as set out in 8 U.S.C. § 1186b(d)(1) and 8 C.F.R. § 216.6(a)(4). Thus, even in the event of a change in course, a petitioner must always be able to demonstrate (1) that the required funds were placed "at risk" throughout the period of the petitioner's residence in the United States, and (2) that the required amount of capital was made available to the business or businesses most closely responsible for creating the employment; (3) that this "at risk" investment was "sustained throughout" the period of the applicant's residence in the United States; and (4) that the investor created (or maintained, if applicable), or can be expected to

create within a reasonable period of time, the requisite number of jobs. Accordingly, if an alien investor fails to meet any of these requirements, he or she would not be eligible for removal of conditions.

While changed circumstances after the investor has been admitted in conditional lawful permanent resident status may not require the filing of an amended Form I-526 petition in order for the investor to proceed with and obtain an approval of a Form I-829 petition, changed circumstances which are material may prevent deference from being accorded to the prior determination and a more extensive review will need to be conducted at the Form I-829 stage. For example, in the case of a petition affiliated with a regional center, the petitioner will only receive deference to a prior determination of indirect job creation if the new business plan falls within the scope of the regional center (as defined by either the initial approval or by subsequent amendment to the regional center) with which the petitioner is affiliated. So if an alien was admitted to the United States based on a petition related to a regional center that was only approved for certain projects related to the food service industry, if the proceeds of the alien's investment were subsequently redirected to an alternate project within the job-creating entity, that project would have to be within the food service industry to continue to receive deference to the prior determination of the indirect job creation of the regional center program.[5] Similarly, if a change in plan required the liquidation of an investment and reallocation of that investment into either another job-creating entity or new commercial enterprise, the petition may not comply with the requirements to invest and sustain the investment throughout the period of the alien's residence in the United States. 8 U.S.C. § 1186b(d)(1)(A)(ii); 8 C.F.R. §§ 216.6(a)(4)(iii), (c)(1)(iii).

However, there may be advantages to closely adhering to the business plan described in the Form I-526. If the alien investor follows the business plan described in the Form I-526, USCIS will not revisit certain aspects of the business plan, including issues related to the economic analysis supporting job creation. Thus, during review of the Form I-829, USCIS will generally rely on the previous adjudication if the petitioner claims to have fulfilled the business plan that accompanied the Form I-526 petition. This is consistent with the general policy mandating USCIS deference to previous determinations set forth above in section IV.C.

To improve processing efficiencies and predictability in subsequent filings (i.e. application of deference), many regional centers may choose to amend the Form I-924 approval to reflect job creation in additional industries not previously reviewed at the time of project approval, as well as the resulting change in economic analysis and job creation estimates. Such amendments, however, are not required in order for individual investors to proceed with filing Forms I-526 or Forms I-829 based on the additional jobs created, or to be created, in additional industries.

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[5] Industry codes are useful for determining that verifiable detail has been provided and the estimated job creation in the economic methodolgy is reasonable, however it should be noted that these industry codes are used for informational purposes in estimating job creation and do not limit the economic or job creating activity of an approved regional center or its investors. Jobs created in industries not previously identified in the economic methodology may still be credited to the investors in subsequent Form I-526 and Form I-829 filings, as long as the evidence in the record establishes that it is probably true that the requisite jobs are estimated to be created, or have been created, in those additional industries.

USCIS will develop a mechanism for the regional center or the immigrant investor to notify USCIS when substantive material changes need to be communicated. Although USCIS will no longer deny petitions solely as a result of a departure from the business plan described in the Form I-526, the certainty afforded by adherence to a previously approved business plan may be eroded as a regional center project departs from that plan. Therefore, if the immigrant investor is seeking to have his or her conditions removed based on a business plan not consistent with the approved Form I-526, the alien investor may need to provide evidence to demonstrate the element of job creation or any other requirement for removal of conditions that is called into question by the changed plan.

Similarly, while the adjudication of Form I-829 petitions will be determined by the facts of an individual case, USCIS may need to revisit issues previously adjudicated in the Form I-526, such as the economic analysis underlying the new job creation in cases where the changes could affect the previously decided issues. For example, if the investment proceeds were diverted from a job-creating entity in one industry to another, and the applicable multipliers changed, USCIS would need to verify that the change did not affect the job creation estimates. Similarly, if the number of investors on a given project changed dramatically, or if certain assumptions or benchmarks made in the economic assessment were not satisfied, USCIS may need to revisit prior determinations to ensure that the requirements for removal of conditions have been met.

USCIS recognizes the fluidity of the business world and therefore allows for material changes to a petitioner's business plan made after the petitioner has obtained conditional lawful permanent resident status. However, immigrant investors, and the regional centers with whom they associate, should understand that availing themselves of this flexibility does decrease the degree of predictability they will enjoy if they instead adhere to the initial plan that is presented to and approved by USCIS.

VI. Conclusion

Congress created the EB-5 Program to promote immigrants' investment of capital into new commercial enterprises in the United States so that new jobs will be created for U.S. workers. The EB-5 Program provides for flexibility in the types and amounts of capital that can be invested, the types of commercial enterprises into which that capital can be invested, and how the resulting jobs can be created. This flexibility serves the promotion of investment and job creation and recognizes the dynamics of the business world in which the EB-5 Program exists. We will continue to adjudicate EB-5 cases with vigilance to program integrity and mindful of these important principles.

VII. Use

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

EXHIBIT G

U.S. Citizenship and Immigration Services

Investor Alert - Investment Scams Exploit Immigrant Investor Program

Release Date: October 01, 2013

The U.S. Securities and Exchange Commission's Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services are jointly issuing this Investor Alert to warn individual investors about fraudulent investment scams that exploit the Immigrant Investor Program, also known as "EB-5."

The U.S. Securities and Exchange Commission's ("SEC") Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services ("USCIS") are aware of investment scams targeting foreign nationals who seek to become permanent lawful U.S. residents through the Immigrant Investor Program ("EB-5"). In close coordination with USCIS, which administers the EB-5 program, the SEC has taken emergency enforcement action to stop allegedly fraudulent securities offerings made through EB-5.

The EB-5 program provides certain foreign investors who can demonstrate that their investments are creating jobs in this country, with a potential avenue to lawful permanent residency in the United States. Business owners apply to USCIS to be designated as "regional centers" for the EB-5 program. These regional centers offer investment opportunities in "new commercial enterprises" that may involve securities offerings. Through EB-5, a foreign investor who invests a certain amount of money that is placed at risk, and creates or preserves a minimum number of jobs in the United States, is eligible to apply for conditional lawful permanent residency. Toward the end of the two-year period of conditional residency, the foreign investor is eligible to apply to have the conditions on their lawful permanent residency removed, if he or she can establish that the job creation requirements have been met. Foreign investors who invest through EB-5, however, are not guaranteed a visa or to become lawful permanent residents of the United States. For more details, read the EB-5 Immigrant Investor section of USCIS's website at www.uscis.gov.

The fact that a business is designated as a regional center by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered by the business, or has otherwise expressed a view on the quality of the investment. The SEC and USCIS are aware of attempts to misuse the EB-5 program as a means to carry out fraudulent securities offerings. In a recent case, *SEC v. Marco A. Ramirez, et al.*, the SEC and USCIS worked together to stop an alleged investment scam in which the SEC claims that the defendants, including the USA Now regional center, falsely promised investors a 5% return on their investment and an opportunity to obtain an EB-5 visa. The promoters allegedly started soliciting investors before USCIS had designated the business as a regional center. The SEC alleged that while the defendants told investors their money would be held in escrow until USCIS approved the business as eligible for EB-5, the defendants misused investor funds for personal use such as funding their Cajun-themed restaurant. According to the SEC's complaint, the investors did not obtain even conditional visas as a result of their investments through the USA Now regional center.

In another case, *SEC v. A Chicago Convention Center, et al.*, the SEC and USCIS coordinated to halt an alleged $156 million investment fraud. The SEC alleged that an individual and his companies used false and misleading information to solicit investors in the "World's First Zero Carbon Emission Platinum LEED certified" hotel and conference center in Chicago, including falsely claiming that the business had acquired all necessary building permits and that the project was backed by several major hotel chains. According to the SEC's complaint, the defendants promised investors that they would get back any administrative fees they paid for their investments if their EB-5 visa applications were denied. The defendants allegedly spent more than 90 percent of the administrative fees, including some for personal use, before USCIS adjudicated the visa applications.

As with any investment, it is important to research thoroughly any offering that purports to be affiliated with EB-5. Take these steps:

- ***Confirm that the regional center has been designated by USCIS.*** If you intend to invest through a regional center, check the list of current regional centers on USCIS's website at www.uscis.gov. If the regional center is not on the list, exercise extreme caution. Even if it is on the list, understand that USCIS has not endorsed the regional center or any of the investments it offers.
- ***Obtain copies of documents provided to USCIS.*** Regional centers must file an initial application (Form I-924) to obtain USCIS approval and designation, and must submit an information collection supplement (Form I-924A) at the end of every calendar year. Ask the regional center for copies of these forms and supporting documentation provided to USCIS.
- ***Request investment information in writing.*** Ask for a copy of the investment offering memorandum or private placement memorandum from the issuer. Examine it carefully and research similar projects in evaluating the proposal. Follow up with any questions you may have. If you do not understand the information in the document or the issuer is unwilling or unable to answer your questions to your satisfaction, do not invest.
- ***Ask if promoters are being paid.*** If there are supposedly unaffiliated consultants, lawyers, or agencies recommending or endorsing the investment, ask how much money or what type of benefits they expect to receive in connection with recommending the investment. Be skeptical of information from promoters that is inconsistent with the investment offering memorandum or private placement memorandum from the issuer.
- ***Seek independent verification.*** Confirm whether claims made about the investment are true. For example, if the investment involves construction of commercial real estate, check county records to see if the issuer has obtained the proper permits and whether state and local property tax assessments correspond with the values the regional center attributes to the property. If other companies have purportedly signed onto the project, go directly to those companies for confirmation.
- ***Examine structural risk.*** Understand that you may be investing in a new commercial enterprise that has no assets and has been established to loan funds to a company that will use the funds to develop projects. Carefully examine loan documents and offering statements to determine if the loan is secured by any collateral pledged to investors.
- ***Consider the developer's incentives.*** EB-5 regional center principals and developers often make capital investments in the projects they manage. Recognize that if principals and developers do not make an equity investment in the project, their financial incentives may not be linked to the success of the project.
- ***Look for warning signs of fraud.*** Beware if you spot any of these hallmarks of fraud:
  - **Promises of a visa or becoming a lawful permanent resident**. Investing through EB-5

makes you eligible *to apply for* a conditional visa, but there is no guarantee that USCIS will grant you a conditional visa or subsequently remove the conditions on your lawful permanent residency. USCIS carefully reviews each case and denies cases where eligibility rules are not met. Guarantees of the receipt or timing of a visa or green card are warning signs of fraud.

- **Guaranteed investment returns or no investment risk.** Money invested through EB-5 must be at risk for the purpose of generating a return. If you are guaranteed investment returns or told you will get back a portion of the money you invested, be suspicious.
- **Overly consistent high investment returns.** Investments tend to go up and down over time, particularly those that offer high returns. Be suspicious of an investment that claims to provide, or continues to generate, high rates of return regardless of overall market conditions.

- **Unregistered investments.** Even though a regional center may be designated as a regional center by USCIS, most new commercial enterprise investment opportunities offered through regional centers are not registered with the SEC or any state regulator. When an offering is unregistered, the issuer may not provide investors with access to key information about the company's management, products, services, and finances that registration requires. In such circumstances, investors should obtain additional information about the company to help ensure that the investment opportunity is *bona fide*.
- **Unlicensed sellers.** Federal and state securities laws require investment professionals and their firms who offer and sell investments to be licensed or registered. Designation as a regional center does not satisfy this requirement. Many fraudulent investment schemes involve unlicensed individuals or unregistered firms.
- **Layers of companies run by the same individuals**. Some EB-5 regional center investments are structured through layers of different companies that are managed by the same individuals. In such circumstances, confirm that conflicts of interest have been fully disclosed and are minimized.

If your investment through EB-5 turns out to be in a fraudulent securities offering, you may lose both your money and your path to lawful permanent residency in the United States. **Carefully vet any EB-5 offering before investing your money and your hope of becoming a lawful permanent resident of the United States.**

USCIS and the SEC have in recent years built a strong partnership with an emphasis on fostering EB-5 program integrity. The two agencies coordinate on issues at the case-specific and programmatic levels, and have participated in joint public engagement events to raise awareness among EB-5 developers and investors as to these issues. This Investor Alert is another example of our coordinated efforts regarding EB-5 program integrity.

Multilingual Versions of this Page

- Chinese (traditional)
- Korean
- Spanish

Last Reviewed/Updated: 10/01/2013

EXHIBIT H

Press Release

SEC Charges Unregistered Brokers in EB-5 Immigrant Investor Program

FOR IMMEDIATE RELEASE
2015-127

Washington D.C., June 23, 2015 — The Securities and Exchange Commission today charged two firms that illegally brokered more than $79 million of investments by foreigners seeking U.S. residency. The charges are the first against brokers handling investments in the government's EB-5 Immigrant Investor Program and follow earlier SEC actions against fraudulent EB-5 offerings.

Ireeco LLC, originally of Boca Raton, Fla., and its successor Ireeco Limited, a Hong Kong-based company operating in the U.S., were charged with acting as unregistered brokers for more than 150 EB-5 investors. The EB-5 program administered by the U.S. Citizenship and Immigration Services (USCIS) provides a path to legal residency for foreigners who invest directly in a U.S. business or private "regional centers" that promote economic development in specific areas and industries.

According to the SEC's order, Ireeco LLC and Ireeco Limited used their website to solicit EB-5 investors, some of whom were already in the U.S. on a temporary visa. While Ireeco LLC and Ireeco Limited promised to help investors choose the right regional center to invest with, they allegedly directed most EB-5 investors to the same handful of regional centers, ones that paid them commissions of about $35,000 per investor once USCIS approved an investor's petition for conditional residence ("green card").

"While raising money for EB-5 projects in the U.S., these two firms were not registered to legally operate as securities brokers," said Eric I. Bustillo, Director of the SEC's Miami Regional Office. "The broker-dealer registration requirements are critical safeguards for maintaining the integrity of our securities markets, and the SEC will vigorously enforce compliance with these provisions."

Without admitting or denying the SEC's findings, Ireeco LLC and Ireeco Limited agreed to be censured and to cease and desist from committing or causing similar violations in the future. They also agreed to administrative proceedings to determine whether they should be ordered to return their allegedly ill-gotten gains, pay penalties, or both based on their violations.

The SEC's investigation was conducted by Brian Theophilus James in the Miami office, and the case was supervised by Assistant Regional Director Chedly C. Dumornay and Associate Regional Director Glenn S. Gordon. The SEC appreciates the assistance of the USCIS.

###

Related Materials

- SEC order

EXHIBIT I

U.S. Citizenship and Immigration Services

Immigrant Investor Regional Centers

As of May 2, 2016, USCIS approved 834 regional centers.

The following is a list of current EB-5 (immigrant investor) regional centers by state. The list will be periodically updated. To update information for your approved regional center, the official point of contact (POC) for the regional center should contact USCIS at: USCIS.ImmigrantInvestorProgram@uscis.dhs.gov.

The official point of contact may also submit updates in writing to the following address:

USCIS, Immigrant Investor Program
131 M Street NE
3rd Floor, Mailstop 2235
Washington, DC 20529

USCIS approval of an EB-5 regional center application does not in any way:

- Constitute USCIS endorsement of the activities of that regional center;
- Guarantee compliance with U.S. securities laws; or
- Minimize or eliminate risk to the investor.

Potential investors are encouraged to seek professional advice when making any investment decisions.

Regional centers that have been terminated are listed on the terminated regional center page.

Note: This page is provided for informational purposes only. USCIS plans to update this page periodically but makes no claims that the published list of approved regional centers is complete, timely or accurate. Any use or reliance on the information provided is strictly at your own risk. Please see USCIS Website Policies for further information.

This page does not represent a legal notice or investment advice of any kind. Potential investors should always do their own research and consult with a financial professional before making any investment decision. USCIS has issued a joint advisory with the U.S. Securities and Exchange Commission (SEC), Investor Alert: Investment Scams Exploit Immigrant Investor Program. The SEC offers free investor education materials. For more information, visit Investor.gov.

Regional centers can operate in multiple states. Since this table lists regional centers by state, some will be listed more than once.

Go to USCIS Regional Centers with Identification Numbers (PDF) to find the identification numbers of the regional centers listed below.

Printer Friendly

Show 10 entries Search:

Showing 1 to 10 of 1,183 entries Previous Next

State	Regional Center
Alabama	Alabama EB-5 Regional Center, LLC
Alabama	America Development Investment Center Regional Center
Alabama	America's Center for Foreign Investment
Alabama	Baypointe EB5 Regional Center, LLC
Alabama	Civitas Alabama Regional Center
Alabama	Cornerstone Regional Center, Inc.
Alabama	CP Southern Regional Center
Alabama	Encore Alabama/Florida Regional Center
Alabama	Gulf Coast Regional Investment Center, LLC
Alabama	Gulf States Regional Center, LLC

Showing 1 to 10 of 1,183 entries Previous Next

Find this page at www.uscis.gov/eb-5centers

Return to Top

Last Reviewed/Updated: 05/19/2016

EXHIBIT J

Release No. 75268 (S.E.C. Release No.), Release No. 34-75268, 2015 WL 3862865

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF IREECO, LLC AND IREECO LIMITED RESPONDENTS.

Administrative Proceeding File No. 3-16647
June 23, 2015

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER, AND ORDERING CONTINUATION OF THE PROCEEDINGS

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Ireeco, LLC and Ireeco Limited (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Exchange Act, Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order, and Ordering Continuation of the Proceedings ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

A. RESPONDENTS AND RELATED PARTIES

1. Respondent Ireeco, LLC is a Florida Limited Liability company formed in May 2006 by Stephen Parnell ("Parnell") and Andrew Bartlett ("Bartlett"). Ireeco, LLC was based in Boca Raton, Florida during the relevant time period, but changed its principal address to Greenville, South Carolina in March 2014. Ireeco, LLC has never been registered with the Commission in any capacity. From at least January 2010 through May 2012, Ireeco, LLC acted as an unregistered broker-dealer in connection with the sales of securities involving the EB-5 Visa Program.

2. Respondent Ireeco Limited is a Hong Kong entity formed by Parnell and Bartlett in May 2012 purportedly for tax purposes. Ireeco Limited is the 100% owner of Ireeco, LLC. Ireeco Limited has never been registered with the Commission in any capacity. From at least May 2012 through the present, Ireeco Limited has been acting as an unregistered broker-dealer in connection with the sales of securities involving the EB-5 Visa Program.

3. Parnell, age 57, is a resident of Boca Raton, Florida. He is the co-managing member of Ireeco, LLC, and also a principal and equal co-owner of Ireeco Limited. Parnell previously was registered with the State of Florida as an investment adviser representative with Investment Visa Advisors LLC.

*2 4. Bartlett, age 61, is a resident of Osprey, Florida. He is the co-managing member of Ireeco, LLC, and also a principal and equal co-owner of Ireeco Limited.

B. FACTUAL BACKGROUND

(a) The EB-5 Visa Program

5. Congress created the EB-5 Visa Program back in 1990 to provide would-be immigrants with the opportunity to become lawful permanent residents by investing in the U.S. economy. To qualify for an EB-5 visa, the foreign applicant first must invest $1 million ($500,000 if in a targeted employment area) [1] in a USCIS-approved U.S. commercial enterprise. USCIS defines a ""commercial enterprise" as any for-profit activity formed for the ongoing conduct of lawful business. Once the investment requirement has been met, the foreign applicant then can apply for a conditional green card (I-526 Petition), which is good for two years from approval. If the investment creates or preserves at least 10 full-time jobs during that time, the foreign applicant then may apply to have the conditions removed (I-829 Petition) from his or her green card and live and work in the U.S. permanently.

6. In 1992, a program was enacted that set aside a certain number of EB-5 visas for investments that were affiliated with an economic unit known as a ""regional center." [2] A regional center is defined as any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. EB-5 regional centers are designated by the USCIS to administer EB-5 investment projects based on proposals for promoting economic growth.

7. An applicant investor is only required to invest $500,000 if done through a regional center. Many regional centers also require each applicant investor to pay an administrative fee. The administrative fee varies from project to project and typically is used to offset legal fees, travel, and other expenses incurred by the regional center. By investing through a regional center, the foreign investor is relieved of the day-to-day operations of the business and is not responsible for the direct management of the center's investment. As a result, the vast majority of issued EB-5 visas have been for applicants who invest through regional centers. Under the regulations, the EB5 Visa Program is capped at 10,000 visas annually.

(b) Respondents' EB-5 Business

8. Parnell and Bartlett formed Ireeco, LLC in 2006. Between at least January 2010 and May 2012, Ireeco, LLC solicited foreign investors who wished to invest in the EB-5 Visa Program through regional centers. Ireeco, LLC employed a small staff of four to five people located in the United States, including Parnell and Bartlett, and operated primarily through its website, www.whicheb5.com. According to its website, Ireeco, LLC worked with foreign individuals to determine if the EB-5 Visa Program would work for them. Ireeco, LLC stated that it provided foreign investors with the information and education they would need in choosing the right regional center to invest with. The website included information about Parnell and Bartlett's background and experience.

*3 9. Ireeco, LLC claimed to have provided independent EB-5 "education and information" to over 3,300 immigrants from 34 countries. It also claimed to have a 100% success rate in that all of its customers were successful in obtaining their I-526 petitions and that those who reached the I-829 petition stage were successful in obtaining their unconditional green card. On its website, Ireeco, LLC cautioned potential investors that "[e]very regional center is in competition to sell you on why their

business plan is better than anyone else's; they want your money and thus they carefully paint a picture of all the positive aspects of their regional center often without making you aware of any potential negatives."

10. In May 2012, Parnell and Bartlett formed Ireeco Limited, a Hong Kong entity, and it became a managing member of Ireeco, LLC. Ireeco Limited has since replaced Ireeco, LLC as the company that solicits foreign investors for EB-5 investments and is now the contracting party with the regional centers. Although Ireeco Limited is currently listed as the owner of the website, www.whicheb5.com, a "U.S. Admin Office" address for the company out of Greenville, South Carolina appears prominently on the site. Ireeco Limited relied on the same small staff of four to five people located in the United States, including Parnell and Bartlett, that operated Ireeco, LLC.

(c) Unregistered Broker Activity

11. Through their website, Respondents offered to assist foreign investors in choosing the right EB-5 projects. As a first step, the potential investor would make a request for information on through the website and then would be contacted by Parnell or another of Respondents' representatives. The objective of that first contact with the potential investor was to ascertain the applicant's interest in the program and level of knowledge. In at least 10 instances, potential investors already were residing in the U.S. on some other type of temporary visa when they were solicited by Ireeco, LLC or later by Ireeco Limited.

12. After the initial call with the potential investor, representatives from Respondents would try to arrange for a more substantive follow-up call with the investor to discuss the next step in the EB-5 investment process. At that point, Respondents proceeded to send EB-5 industry publications and other information about the program to the potential investor via email. Respondents also provided the investor with marketing information touting Parnell's and Bartlett's experience and expertise in EB-5 investments. If Respondents were unable to set up a follow-up call with the investor and months had passed since that initial contact, Respondents would email the prospect to see if he or she remained interested in the EB-5 Visa Program. Respondents would send these emails automatically to potential customers three months after the first inquiry, and then again after 18 months.

*4 13. If Parnell or another of Respondents' representatives were able to arrange follow-up calls with potential investors, they would then talk to the prospects about their background, visa status, understanding of how U.S. businesses operate, area of business in their home country, and interest in a particular geographical area or a specific type of EB-5 project. Based on the information obtained from the potential customer, Respondents determined first if he or she qualified for the EB-5 project, and second, what his or her investment preferences were.

14. Once Respondents had a better understanding of the potential investor's EB-5 preferences and suitability, Respondents gave the investor one or more EB-5 regional center projects as possible choices, as well as background information about those centers. Respondents performed "due diligence" on each of the regional centers it selected for their customers.

15. After investors identified which of the regional centers they were most interested in, Respondents "registered" the customers with the regional center by providing their names, contact information and visa status. The investors then dealt directly with the regional center, with Respondents being consulted by investors on occasion. The regional centers provided their offering documents directly to investors. Investors also would contact Respondents from time to time if they had questions about the investments or offering materials.

16. Respondents did not collect fees directly from the investors. Instead, under the "referral partner agreements" first between Ireeco, LLC and the regional centers it selected for its customers and later between Ireeco Limited and the regional centers, the centers compensated Respondents for each registered investor who invested funds in an EB-5 offering. Respondents earned the fee once the investor's I-526 petition (conditional green card) was approved by USCIS. The fee was a commission based on a fixed portion of the ""administrative fee" the investor paid to the regional center and averaged around $35,000 per investor.

17. From January 2010 through the present, Respondents were paid fees for actively soliciting over 158 foreign investors for selected regional centers. Together, these investors invested a combined total of $79 million in the regional centers. Respondents referred most of the investors to the same handful of regional centers.

C. VIOLATIONS

18. As a result of the conduct described above, Respondents willfully violated Section 15(a)(1) of the Exchange Act by using the mails or any means or instrumentality of interstate commerce to engage in the business of effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities for the accounts of others without registering as a broker-dealer with the Commission or without associating with a broker-dealer registered with the Commission.

IV.

***5** Pursuant to this Order, Respondents agree to additional proceedings in this proceeding to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties. If disgorgement is ordered, Respondents shall pay prejudgment interest thereon, calculated from January 1, 2010, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with such additional proceedings, Respondents agree: (a) they will be precluded from arguing they did not violate the federal securities laws described in this Order; (b) they may not challenge the validity of their Offer or this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer, and to continue proceedings to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties, in accordance with Section IV above.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 15(a) of Exchange Act.

B. Respondents are censured.

C. The hearing officer shall conduct additional proceedings to determine whether it is appropriate to order disgorgement of ill-gotten gains and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties, in accordance with Section IV above.

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 A targeted employment area is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate.

2 The EB-5 visa requirements for an investor under the pilot program are essentially the same as in the standard EB-5 investor program, except the pilot program provides for investments in USCIS-approved "regional centers."

Release No. 75268 (S.E.C. Release No.), Release No. 34-75268, 2015 WL 3862865

End of Document

EXHIBIT K

Release No. 76570 (S.E.C. Release No.), Release No. 34-76570, 2015 WL 8001128

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF ROGER A. BERNSTEIN RESPONDENT.

Administrative Proceeding File No. 3-16983
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate that ceaseand-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Roger A. Bernstein ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds [1] that:

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with his representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, recommended that his clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from his clients, Respondent received transaction-based compensation from the Regional Center for investments he facilitated.

Respondent

2. Roger A. Bernstein, age 48, is a resident of North Miami, Florida. He is a licensed attorney specializing in immigration. During the relevant time period, he was a partner of a law firm located in Miami, Florida.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions or other transaction-based compensation to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Transaction-Based Compensation for His Clients' EB-5 Investments

6. From at least January 2010 through August 2012, Respondent received transactionbased compensation from one or more EB-5 Investment Offerers totaling $132,500.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to his clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based compensation for his services from the EB-5 Investment Offerers. While some of Respondent's activities overlapped with legal services, for which he received fees, Respondent was paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Roger A. Bernstein's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of $132,500 and prejudgment interest of $8,243 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional

interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600]. Payment must be made in one of the following ways:

*3 (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Roger A. Bernstein as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76570 (S.E.C. Release No.), Release No. 34-76570, 2015 WL 8001128

End of Document

EXHIBIT L

Release No. 76571 (S.E.C. Release No.), Release No. 34-76571, 2015 WL 8001130

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF ALLEN E. KAYE RESPONDENT.

Administrative Proceeding File No. 3-16984
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Allen E. Kaye ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds [1] that:

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with his representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, advised his clients to buy securities through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from his clients, Respondent received a commission from the Regional Center for each investment he facilitated.

Respondent

2. Allen E. Kaye, age 76, is a resident of Hoboken, New Jersey. He is a licensed attorney specializing in immigration. During the relevant time period, he was a principal of a New York, New York law firm.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Commissions for His Clients' EB-5 Investments

6. From at least January 2010 through January 2013, Respondent received commissions from one EB-5 Investment Offerer totaling $90,000.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to his clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based commissions for his services from the EB-5 Investment Offerer. While some of Respondent's activities overlapped with legal services, for which he received fees, Respondent was paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

Disgorgement

Respondent has submitted a sworn Statement of Financial Condition as of April 30, 2015 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Allen E. Kaye's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of $90,000 and prejudgment interest of $10,549, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition as of April 30, 2015 and other documents submitted to the Commission.

*3 C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and prejudgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was, in any material respect, fraudulent, misleading, inaccurate, or incomplete. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76571 (S.E.C. Release No.), Release No. 34-76571, 2015 WL 8001130

End of Document

EXHIBIT M

Release No. 77459 (S.E.C. Release No.), Release No. 34-77459, 2016 WL 1179271

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF LINDA YOO RESPONDENT.

Administrative Proceeding File No. 3-17182
March 28, 2016

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Linda Yoo ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds [1] that

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with her representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, recommended that her clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from her clients, Respondent received a commission from the Regional Center for each investment she facilitated.

Respondent

2. Linda Yoo, age 51, is a resident of Bellevue, Washington. She is a licensed attorney specializing in immigration. During the relevant time period, she was a partner of a law firm located in Bellevue, Washington.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Commissions for Her Clients' EB-5 Investments

6. From at least January 2009 through January 2014, Respondent received commissions from one or more EB-5 Investment Offerers totaling $205,000. On one or more occasions, the commission was paid to a foreign bank account identified by the Respondent despite the fact that the Respondent was U.S.-based.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to her clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based commissions for her services from the EB-5 Investment Offerers. While some of Respondent's activities overlapped with legal services, for which she received fees, Respondent was paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Linda Yoo's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall pay disgorgement of $205,000, prejudgment interest of $23,169, and civil penalties of $50,000, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act

Section 21F(g)(3). Payment shall be made in the following installments: (1) 50% of the total amount within ten (10) days of the entry of this Order, (2) 20% of the total amount within ninety (90) days of the entry of this Order, (3) 15% of the total amount within one-hundred-eighty (180) days of the entry of this Order, and (4) 15% of the total amount within two-hundred-seventy (270) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

***3** (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:
Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Linda Yoo as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 77459 (S.E.C. Release No.), Release No. 34-77459, 2016 WL 1179271

End of Document

EXHIBIT N

Release No. 76572 (S.E.C. Release No.), Release No. 34-76572, 2015 WL 8001131

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF TARANEH KHORRAMI RESPONDENT.

Administrative Proceeding File No. 3-16985
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate that ceaseand-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Taraneh Khorrami ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds [1] that:

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with her representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, recommended that her clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the investments. In addition to receiving legal fees from her clients, Respondent received a referral fee from the Regional Center for each investment she facilitated.

Respondent

2. Taraneh Khorrami, age 37, is a resident of Los Angeles, California. She is a licensed attorney with a focus on immigration law. During the relevant time period, she was a partner of a small Sherman Oaks, California law firm.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions or referral fees to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Referral Fees for Her Clients' EB-5 Investments

6. From at least January 2010 through October 2011, Respondent received referral fees from one EB-5 Investment Offerer totaling $60,000. On one or more occasions, the referral fee was paid pursuant to an invoice for legal services sent by Respondent to the EB-5 Investment Offerer.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to her clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based referral fees for her services from the EB-5 Investment Offerer. While some of Respondent's activities may have overlapped with legal services, for which she received fees, Respondent was paid transaction-based referral fees for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Taraneh Khorrami's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of $60,000, prejudgment interest of $7,843, and a civil money penalty of $25,000 to the Securities and Exchange Commission for transfer to the general fund

of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600]. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

***3** (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Taraneh Khorrami as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76572 (S.E.C. Release No.), Release No. 34-76572, 2015 WL 8001131

End of Document

EXHIBIT O

Release No. 76573 (S.E.C. Release No.), Release No. 34-76573, 2015 WL 8001133

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF MIKE S. MANESH AND MANESH & MIZRAHI, APLC RESPONDENTS.

Administrative Proceeding File No. 3-16986
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

*1 The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Mike S. Manesh and Manesh & Mizrahi, APLC (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over then and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds [1] that

Summary

1. Respondents violated Section 15(a)(1) of the Exchange Act by acting as unregistered broker-dealers in connection with their representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondents, an immigration attorney and law firm, recommended that their clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from their clients, Respondents received a commission from the Regional Center for each investment they facilitated.

Respondents

2. Mike S. Manesh, age 60, is a resident of Los Angeles, California. He is a licensed attorney concentrating in immigration law. During the relevant time period, he was a partner of Law Offices of Mike S. Manesh, a predecessor to Manesh & Mizrahi, APLC.

3. Manesh & Mizrahi, APLC, formerly known as Law Offices of Mike S. Manesh, is a law firm located in Los Angeles, California.

Background

4. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 5. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

6. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondents Received Commissions for Their Clients' EB-5 Investments

7. From at least January 2010 through May 2011, Respondents received commissions from one or more EB-5 Investment Offerers totaling $85,000.

8. Respondents performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to their clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondents received transaction-based commissions for their services from the EB-5 Investment Offerers. While some of Respondents' activities overlapped with legal services, for which they received fees, Respondents were paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

9. As a result of the conduct described above, Respondents violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Mike S. Manesh and Manesh & Mizrahi, APLC's Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents shall pay, jointly and severally, disgorgement of $85,000 and prejudgment interest of $11,159 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) 25% of the total amount within ten (10) days of the entry of this Order, (2) 25% of the total amount within ninety (90) days of the entry of this Order, (3) 25% of the total amount within one-hundred-eighty (180) days of the entry of this Order, and (4) 25% of the total amount within two-hundred-seventy (270) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and prejudgment interest, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

*3 (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/ Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mike S. Manesh and Manesh & Mizrahi, APLC as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76573 (S.E.C. Release No.), Release No. 34-76573, 2015 WL 8001133

End of Document

EXHIBIT P

Release No. 76569 (S.E.C. Release No.), Release No. 34-76569, 2015 WL 8001126

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF MICHAEL A. BANDER AND BANDER LAW FIRM, PLLC RESPONDENTS.

Administrative Proceeding File No. 3-16982
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

*1 The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Michael A. Bander and Bander Law Firm, PLLC (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds [1] that:

Summary

1. Respondents violated Section 15(a)(1) of the Exchange Act by acting as unregistered broker-dealers in connection with their representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondents, an immigration and nationality attorney and law firm, recommended that their clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from their clients, Respondents received a commission from the Regional Center for each investment they facilitated.

Respondents

2. Michael A. Bander, age 76, is a resident of Coral Gables, Florida. He is a licensed attorney concentrating in immigration and nationality law. During the relevant time period, he was a partner of Bander Law Firm PLLC.

3. Bander Law Firm, PLLC is a law firm located in Miami, Florida.

Background

4. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 5. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

6. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondents Received Commissions for Their Clients' EB-5 Investments

7. From at least January 2010 through February 2014, Respondents received commissions from one or more EB-5 Investment Offerers totaling $228,750. On one or more occasions, the commission was paid pursuant to an invoice for legal services sent by Respondents to the EB-5 Investment Offerers.

8. Respondents performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to their clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondents received transaction-based commissions for their services from the EB-5 Investment Offerers. While some of Respondents' activities overlapped with legal services, for which they received fees, Respondents were paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

9. As a result of the conduct described above, Respondents violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Michael A. Bander and Bander Law Firm, PLLC's Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents shall pay, jointly and severally, disgorgement of $228,750, prejudgment interest of $19,434, and a penalty of $25,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) 25% of the total amount within ten (10) days of the entry of this Order, (2) 25% of the total amount within ninety (90) days of the entry of this Order, (3) 25% of the total amount within onehundredeighty (180) days of the entry of this Order, and (4) 25% of the total amount within twohundredseventy (270) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

***3** (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/ Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Michael A. Bander and Bander Law Firm, PLLC as the Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76569 (S.E.C. Release No.), Release No. 34-76569, 2015 WL 8001126

End of Document

EXHIBIT Q

Release No. 76568 (S.E.C. Release No.), Release No. 34-76568, 2015 WL 8001125

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF MEHRON P. AZARMEHR AND AZARMEHR LAW GROUP RESPONDENTS.

Administrative Proceeding File No. 3-16981
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

*1 The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Mehron P. Azarmehr and Azarmehr Law Group (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds [1] that:

Summary

1. Respondents violated Section 15(a)(1) of the Exchange Act by acting as unregistered broker-dealers in connection with their representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondents, an immigration attorney and law firm, recommended that their clients participate in the Immigration Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from their clients, Respondents received a commission from the Regional Center for each investment they facilitated.

Respondents

2. Mehron P. Azarmehr, age 51, is a resident of Austin, Texas. He is a licensed attorney specializing in immigration. During the relevant time period, he was a partner of Azarmehr & Associates, a predecessor to Azarmehr Law Group.

3. Azarmehr Law Group, formerly known as Azarmehr & Associates, is a law firm located in Austin, Texas.

Background

4. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 5. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

6. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondents Received Commissions for Their Clients' EB-5 Investments

7. From at least January 2010 through December 2011, Respondents received commissions from one EB-5 Investment Offerer totaling $30,000. On one or more occasions, the commission was paid pursuant to an invoice for legal services sent by Respondents to the EB-5 Investment Offerers.

8. Respondents performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to their clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondents received transaction-based commissions for their services from the EB-5 Investment Offerers. While some of Respondents' activities overlapped with legal services, for which they received fees, Respondents were paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

9. As a result of the conduct described above, Respondents violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Mehron P. Azarmehr and Azarmehr Law Group's Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents shall pay, jointly and severally, disgorgement of $30,000, prejudgment interest of $2,965, and a penalty of $25,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) 25% of the total amount within ten (10) days of the entry of this Order, (2) 25% of the total amount within ninety (90) days of the entry of this Order, (3) 25% of the total amount within onehundredeighty (180) days of the entry of this Order, and (4) 25% of the total amount within twohundredseventy (270) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

***3** (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/ Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:
Enterprise Services Center

Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mehron P. Azarmehr and Azarmehr Law Group as the Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76568 (S.E.C. Release No.), Release No. 34-76568, 2015 WL 8001125

End of Document

EXHIBIT R

Release No. 76574 (S.E.C. Release No.), Release No. 34-76574, 2015 WL 8001135

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF KEFEI WANG, RESPONDENT.

Administrative Proceeding File No. 3-16987
December 7, 2015

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

***1** The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Kefei Wang ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds [1] that:

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with his representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent helped effect certain individuals' securities purchases in an EB-5 Regional Center. Respondent received a commission from that Regional Center for each investment he facilitated.

Respondent

2. Kefei Wang, age 39, is a resident of China. During the relevant time period, he was a U.S. resident and an owner of Nautilus Global Capital, LLC , a now defunct entity that was based in Fremont, California.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest $1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or $500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

*2 4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Commissions for His Clients' EB-5 Investments

6. From at least January 2010 through May 2014, Respondent received a portion of commissions from one EB-5 Investment Offerer totaling $40,000. The commissions constituted his portion of the commissions that were paid pursuant to a written Agency Agreement between Nautilus Global Capital and the EB-5 Investment Offerer. On one or more occasions the commission was paid to a foreign bank account identified by the Respondent despite the fact that the Respondent was U.S.-based during the relevant time period.

7. Respondent performed activities necessary to effectuate the transaction, including recommending the specific EB-5 Investment Offerer referenced in paragraph 6 to his clients; acting as a liaison between the EB-5 Investment Offerer and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerer. Respondent received his portion of transaction-based commissions due to Nautilus Global Capital for its services from that EB-5 Investment Offerer.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Kefei Wang's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of $40,000, prejudgment interest of $1,590, and a civil money penalty of $25,000 to the Securities and Exchange Commission for transfer to the general fund

of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600]. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

*3 (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center Accounts Receivable Branch HQ Bldg., Room 181, AMZ-341 6500 South MacArthur Boulevard Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kefei Wang as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Release No. 76574 (S.E.C. Release No.), Release No. 34-76574, 2015 WL 8001135

End of Document

EXHIBIT S

VIEW FROM CHICAGO ERIC POSNER WEIGHS IN.

MAY 13 2015 10:00 AM

Citizenship for Sale

The "immigrant investor" program is unfair, ineffective, and way too cheap.

By Eric Posner

Numerous countries—including Antigua and Barbuda (above)—offer citizenship to foreigners who donate to or invest in them.

Photo courtesy Andrew Moore/Flickr

A recent **spate** of newspaper **stories** has revealed that several countries around the world have started selling citizenship to foreigners. Some of the stories imply that this is a scam, possibly a dangerous scam that could benefit only money launderers and terrorists. The idea of governments hawking citizenship to the highest bidder makes people queasy. But the programs make sense for the countries involved and don't pose a danger to anyone.

If you want to find a real scam involving a country that sells citizenship to foreigners, you don't need to look overseas. Here at home we do just that with a ludicrous program for "immigrant investors." It's the worst combination of bad economics, political cronyism, and unfairness—and it has been **endorsed** by saints of capitalism Warren Buffett and Bill Gates.*

First, let's start with the fake scandal. Numerous countries—all of them small, most of them poor—offer citizenship to foreigners who donate to or invest in them. According to a **Bloomberg article**, these countries include Antigua and Barbuda, Bulgaria, Comoros, Cyprus, Dominica, Grenada, Malta, and St. Kitts and Nevis. The people who buy citizenship rarely want to live in these countries. Some of them think (probably wrongly) that citizenship in one of these countries would reduce their tax burden in their home country. The real reason appears to be that these countries have agreements with the United States or the EU that allow people to travel back and forth without obtaining visas. Foreigners from countries without these visa privileges can, by buying citizenship from Antigua or St. Kitts, take advantage of these programs.

So the countries are not really selling "citizenship" to rich people. They are selling them the right to avoid having to apply for a visa if they want to travel to the United States or Europe. This would be worrisome if the countries in question didn't screen for terrorists and criminals, but because of international pressure, they do. The United States can block St. Kitts passport-holders at the border if it does not trust St. Kitts' screening process. We don't mind if harmless rich people visit our country and buy Rolex watches in boutiques, and so all that is going on is that St. Kitts is saving us some of the cost of evaluating visa applications.

And while it might seem unpleasant that rich people can obtain yet another benefit with their wealth, the money that they give these countries can be put to good use. These are mostly poor and vulnerable countries that can use whatever money they can get.

Now let's turn to the United States. Under the **EB-5 visa program**, foreigners can obtain a green card and then citizenship by making a small investment—$1 million, or $500,000 if it's in an area with high unemployment—that will create or preserve 10 jobs for U.S. workers. Foreign investors can funnel their funds through "regional centers," which are private organizations that finance commercial projects. These centers spare investors the trouble of figuring out for themselves whether an area suffers from high unemployment and whether a specific investment would generate the requisite 10 jobs.

The program is a mess. The government "is unable to demonstrate the benefits of foreign investment into the U.S. economy" under the program, in the words of the **Inspector General** of Homeland Security. Among other things, it's almost impossible to figure out whether a specific investment generates jobs rather than reshuffles them from one place to another. There have also been examples of **outright fraud** and **political cronyism**. Part of the problem is a lack of documentation but the real problem is that the program is misconceived.

When we think about investment, the starting point is that investors don't need citizenship or any other inducement to put money into a project when they will earn higher than the market rate of return. So given the risk and other opportunities, someone will invest $1 million or more in a mall complex or housing development if the expected return is, say, 10 or 15 percent. Many foreigners make such investments, and the vast majority of them make them not to obtain citizenship but to make money. In 2013, **they ponied up $236 billion**. Meanwhile, Americans invested another **$2.5 trillion** in the economy. At most $10 billion can be attributed to foreigners who seek visas, and probably a lot less.

The EB-5 program, then, just pumps up aggregate foreign investment in the United States by a few tenths of a percent per year. Given the size and liquidity of capital markets, the program has reduced the cost of capital by an infinitesimal amount, basically zero. A tiny reduction in the cost of capital might produce a tiny increase in the number of jobs, but most likely it will produce a tiny increase in profits for other investors or tiny reductions in price for consumers. It's a bit like saying that you can immigrate to the United States if you buy a few cars from a domestic auto dealer at a price slightly higher than what the dealer is charging.

It's also worth pointing out that the price we charge for citizenship is extraordinarily low. A $500,000 investment requirement is not a $500,000 price tag. If you invest in a high-unemployment area which other investors avoid, you might sacrifice some return on your investment, but you'll probably get your investment back. A shrewd investor will find an investment that pays a couple percentage points below the market rate. If he invests $500,000 in order to obtain, say, a 6 percent return rather than an 8 percent return, then the true price he pays for U.S. citizenship is $10,000 in foregone return.

Foreigners have figured this out. While the program started off slowly in the 1990s because of bureaucratic hurdles that were later dismantled, in 2014 the **visas ran out before the end of the year**, thanks to a surge in demand among Chinese, who snatched up 85 percent of them.

Gary Becker, the late University of Chicago economist and Nobel laureate, once **proposed** that the United States should sell citizenship to foreigners for a flat fee. The EB-5 program approximates Becker's proposal, albeit in the most inefficient way possible. Becker argued that citizenship is a scarce good just like tomatoes and hula hoops, and is thus subject to the law of supply and demand. America owns visas and should sell them to willing buyers at the market-clearing price. We would attract immigrants who are skilled enough to earn wages that would cover the fee, and we would gain again from the tax on their wages once they began work in this country. These types of immigrants—the ones who could afford the fee—would be least likely to burden the public fisc by needing welfare payments. (Criminals and terrorists would be screened out.)

Becker's scheme is a lot better than the EB-5 program. At least it would generate cold cash for the U.S. Treasury rather than randomly scatter poorly thought-out investments across the country. And it would produce few opportunities for political opportunism and fraud. But it has flaws as well. Becker's plan would benefit not just talented, productive people who can pay for citizenship out of future wages, but the idle rich of other countries—the rentiers and the trust-fund babies—who we may not want as fellow citizens. Meanwhile, it would do nothing for poor people who could obtain low-paying jobs in the United States Americans refuse to take, which would nonetheless vastly increase their income relative to what they get in their homeland.

Moreover, Becker's scheme doesn't address the politics of immigration. Once immigrants obtain citizenship, they can use the vote to influence policy. If they don't share American values, then they might use their votes to change our laws and institutions in ways we don't like. In Europe, tensions between liberal natives and newcomers with conservative religious values have sparked a backlash among the public, and soul-searching among the elites, who have scrambled to figure out ways **to assimilate immigrants or screen out those who can't be assimilated**.

Malta and St. Kitts needn't worry about this problem because people who buy citizenship from those countries don't want to live in them. Where crowds are banging at the gates, like United States or Australia (**which is considering** a money-for-citizenship proposal), traditional methods for selecting immigrants are wiser.

Correction, May 13, 2015: *This article originally misspelled Warren Buffett's last name. (**Return**.)*

JURISPRUDENCE THE LAW, LAWYERS, AND THE COURT.

JUNE 6 2016 4:39 PM

The Supreme Court Needs to Settle Birthright Citizenship

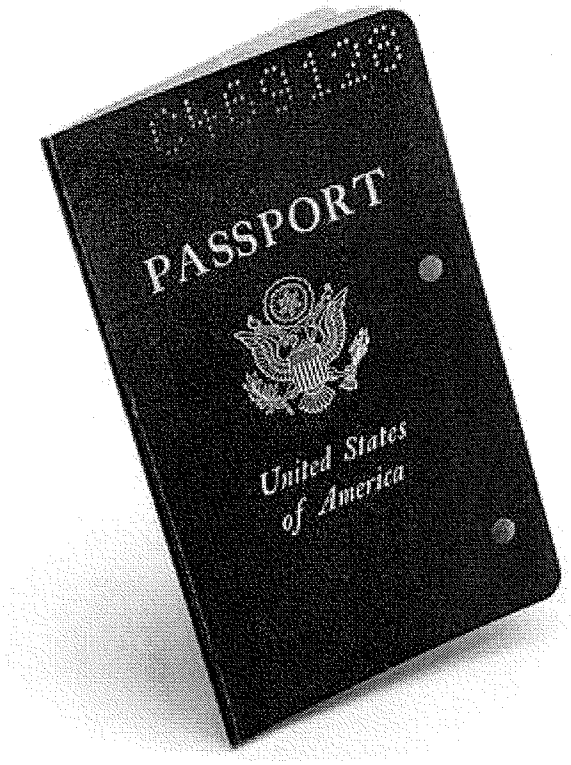
An injustice in American Samoa shows how SCOTUS can end this controversy.

By Mark Joseph Stern

EXHIBIT T

Opinion / Editorial

Editorial For sale: U.S. citizenship, $500,000 to $1 million



The EB-5 visa program was designed to provide entry visas--and a path toward American citizenship--to immigrants who invest at least $1 million, or $500,000 in high unemployment or rural areas, to create or preserve at least 10 jobs. (Los Angeles Times)

By The Times Editorial Board · Contact Reporter

NOVEMBER 29, 2015, 5:00 AM

Depending on how you look at it, a federal immigration program that offers foreign investors a shortcut to naturalization is either tantamount to selling American citizenship or a shrewd tactic to draw job-creating investments from overseas. In reality, it's a bit of both, and as a key part of the program comes up for reauthorization in the next few weeks, Congress needs to make some fundamental changes or kill it altogether.

The EB-5 (short for Employment-Based Fifth Preference Immigrant Investor) visa program began a quarter of a century ago as the federal government was looking for ways to spur foreign investment. The Immigration Act of 1990 — the last time Congress overhauled the immigration system — reserves up to 10,000 EB-5 visas each year for immigrants who invest at least $1 million, or $500,000 in high

unemployment or rural areas, to create or preserve at least 10 jobs. In return, the investor (plus a spouse and children) receives a two-year conditional green card that, if the job-creation goal is reached, can be converted into permanent resident status with a path to citizenship.

“

The poorly conceived structure of the regional centers lets investors withdraw their money in two years, once they've received their Lawful Permanent Resident status.

The program bombed at first, with only a few hundred people applying — in part because of the complicated application and verification process, and in part because few people knew the visas existed. So in 1993, Congress started the Regional Center Pilot Program, which allowed local governments and businesses to create investment pools using money provided by EB-5 visa holders. Instead of individual investors launching or reviving businesses themselves, they could simply toss a check in the investment pool and count whatever jobs were created as proof that they had, indeed, put the requisite number of people to work. The program floundered until the last recession, after which privately owned regional centers exploded, growing from 74 in 2009 to 697 this year. The government hit its 10,000-visa limit for the first time in 2014, driven in part by regional centers pursuing foreign investors.

Although that sounds like good news, the results have been mixed. That's largely because the government fails to track investments and their impact on communities, its regulations make it too easy to game the system, and the poorly conceived structure of the regional centers lets investors withdraw their money in two years, once they've received their Lawful Permanent Resident status.

The Government Accountability Office and Homeland Security's Office of the Inspector General have criticized the program for lack of accountability and oversight, problems rooted in how Congress designed it. As of May, the government was investigating 59 cases of suspected fraud involving the regional centers. Among the stickier accountability issues: The government has limited means to verify whether the investment money is coming from legitimate business activities, and it's not well equipped to measure the results of centers' work. The agency that administers the program, U.S. Citizenship and Immigration Services, is geared toward enforcing immigration law, not analyzing economic development, and the enabling legislation requires limited record keeping. So no one can say with any authority how much investment and how many jobs the centers have spawned. The Bipartisan Policy Center think tank estimates, conservatively, that $4.2 billion of investment by the centers has produced 77,150 jobs (both direct and indirect — for example, the workers hired not just at a factory funded by investors but also at the doughnut shop next door where those workers eat).

Sen. Dianne Feinstein (D-Calif.) has called for ending the regional center program, whose authorization lapses Dec. 11. Others, such as Sen. Patrick Leahy (D-Vt.) and Sen. Charles E. Grassley (R-Iowa), have proposed an overhaul they say would address many of these problems and shore up oversight, including using investor fees for an "EB-5 Integrity Fund" to audit the regional centers. If Congress adopts such reforms, the program may be worth saving. Leahy's interest, in fact, is based on the success of the Vermont's EB-5 regional center, which has attracted $563 million to help finance 15 projects within the state. A similar government-run center could be a useful investment mechanism for Los Angeles to find money for hard-to-fund affordable housing projects.

But the program clearly needs an overhaul. For instance, the private firms that get federal permission to create regional centers design their own districts, which Feinstein's office argues has led to gerrymandering by tethering high-unemployment neighborhoods to wealthy ones. Remember, EB-5 visas are available for $500,000 invested in high-unemployment or rural areas; otherwise, the investment must be $1 million. So the gerrymandering allows wealthy immigrants to gain Legal Permanent Resident status by making what amounts to a two-year, $500,000 loan to an investment pool building a high-end hotel in a ritzy part of town that is connected, on paper, to a neighborhood with more risk and a higher need for investment. It's hard in that scenario not to see the program the way Feinstein does — as selling citizenship.

The process moves quickly, requiring only about six months for initial approval of the EB-5 visa. Contrast that with the millions of applicants of lesser means who have been waiting years for other employment-based or family-related visas (it varies radically depending on the country of origin because of varying visa allotments per country). Foreign investment in the U.S. is valuable, but EB-5 visa holders account for a sliver at best of the $150 billion to $200 billion that investors pour into this country. Congress needs to weigh the worth of the individual investments, and the potential for solving the program's structural problems, against the distasteful perception that the rich can buy their way to an American passport.

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A version of this article appeared in print on November 29, 2015, in the Opinion section of the Los Angeles Times with the headline "For sale: U.S. citizenship" — Today's paper | Subscribe

This article is related to: Editorials, Opinion, Immigration, Dianne Feinstein, Naturalization, Economic Inequality, U.S. Congress

EXHIBIT U

The Atlantic

Should Congress Let Wealthy Foreigners Buy Green Cards?

Each year, America grants green cards to 10,000 rich investors, the vast majority of whom are Chinese. Is this program creating enough jobs to warrant its continuation?

Petar Kujundzic / Reuters

ALANA SEMUELS

SEP 21, 2015 | BUSINESS

TEXT SIZE

The massive $20 billion Hudson Yards project is one of the nation's biggest development efforts. When it's completed on New York's west side, it will have have 5,000 apartments, six skyscrapers, and pneumatic tubes for trash disposal. And one more feature of the project: It has paved the way for the green cards of about 1,200 Chinese millionaires.

MORE FROM

THE NEXT ECONOMY

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How's that? Via what's known as the EB-5 "Immigrant Investor" program, which allows foreigners to get a green card if they invest a certain amount of money to create jobs in the United States. In effect, rich people can buy American citizenship, and that's made it controversial in an era of wariness about immigration.

Now, Congress is looking at ways to reform the program, even as parts of it are set to expire September 30.

"There have been some rare but highly publicized failures in the EB-5 program," said Steve Yale-Loehr, an immigration lawyer at Miller Mayer and a professor of immigration law at Cornell Law School.

Foreign interest in the EB-5 program has grown dramatically in the last few years. Applications were sluggish until the recession, Yale-Loehr said. But then, when domestic financing for construction projects was tough to find,

some developers started to look overseas for financing.

There were just 700 visas issued in 2007; in 2014, for the first time ever, the program reached its quota of 10,000 visas through the EB-5 program and had to stop accepting applications. The quota was reached again this year.

For wealthy foreigners, the EB-5 program is the best bet for getting U.S. citizenship. Other options—finding an employer or a family member to sponsor them—have long backlogs and a lot of paperwork. The EB-5, by contrast, is a relative breeze.

"Most of them are doing it because they want the green card and it's the fastest or best way to get a green card," Yale-Loehr said.

Chinese investors are the vast majority of the people using the program: Last year, 9,128 of the EB-5 visas were allocated to Chinese nationals, according to State Department statistics. The next biggest number: 225, the number of South Korean nationals who received EB-5 visas. (These figures include investors and their family members, on average, for every investor, two family members have been granted conditional visas, according to the Brookings Institution.)

National Origin of EB-5 Visa Recipients, 2014

But with the sudden influx of money from China and elsewhere, the government could not keep up, and regulation lagged behind. Some of the most salacious scandals have concerned swindlers defrauding potential investors, and visas going to people with criminal histories, all beneath regulators' noses.

One of the biggest problems, experts say, is that investors can put money into projects like Hudson Yards and earn a green card without actually creating very many jobs, at least not directly. That's largely because of the way the EB-5 program has been changed since its inception.

Congress established the EB-5 program as part of a general immigration overhaul in 1990. At first, the visa was only for direct investors who spent $1 million and created 10 jobs (a separate provision allowed people investing in rural or high-unemployment areas to spend just $500,000). But applications were sluggish, Yale-Loehr said, so in 1992, Congress decided to also allow private entities (such as Related Companies, the developer of the Hudson Yards company) or regions to apply to be "regional centers" which essentially pool foreign investors' money.

It is these regional centers that have created so much controversy for the EB-5 program. When it changed the law, Congress allowed regional centers to count the number of indirect jobs their project might create, rather than just direct jobs. So rather than a foreign investor saying he was going to open a

factory and employ 15 people directly, a foreign investor could say he was investing in a construction project that would create jobs in a restaurant down the street that might serve construction workers. Now, about 95 percent of EB-5 visas are awarded through regional-center programs, rather than through direct jobs.

Most investors pay not $1 million, but instead just $500,000, since they are investing in what is called a "Targeted Employment Area." Congress allowed for TEAs to encourage investors to put money in areas that needed jobs. Just what constitutes a "Targeted Employment Area" is loose and defined by individual states. The designation was meant to spur investors to put money in rural areas and those with high unemployment. But instead, places such as Hudson Yards, which is on the edge of one of the richest neighborhoods in the country, is considered a Targeted Employment Area because the project also counts poorer census tracts, including some in Harlem, in its TEA, Yale-Loehr said. There is a little sense in that—workers might be coming from Harlem, after all—but there is also room for gerrymandering. Changing the definition of TEAs was one of the recommendations of Jeh Johnson, the Secretary of the Department of Homeland Security, in an April letter to Congress. Doing so would "prevent gerrymandering," he suggested.

The Hudson Yards development received funding from EB-5 investors (Mark Lennihan / AP)

Some advocates want the regional-center aspect of the program gone entirely. They're in luck: That's one of the provisions that is set to expire September 30, and a group called the More American Jobs Alliance (MAJA) argues that Congress should let it do so.

"There are more than enough direct-job projects in the country to take up the annual quota of EB-5 visas," MAJA argued in a paid advertisement in *The Wall Street Journal*.

"The indirect jobs are just not tangible," Ron Rohde, the group's secretary-general, told me. By contrast, in direct-job programs, he explained "You have 10 names, 10 Social Security numbers, and that is who is getting the benefit."

Getting an EB-5 visa might get a little bit harder, though, depending on what Congress decides to do next. Yale-Loehr thinks there's not enough time for Congress to make major changes to the program before September 30, so he anticipates the regional-center provision will be renewed for a short period of time, say six months or so, while Congress decides how to overhaul the program.

And just how it will be overhauled is a mystery.

An in-depth Brookings Institution report suggests creating a partnership with the Department of Commerce to administer the program, calling the U.S. Citizen and Immigration Services department "ill-suited" to the task. Commerce could more effectively monitor and collect data on the EB-5

program, ensuring that investors are creating the jobs they say they will, the report argues.

Report author Audrey Singer also calls for Congress to tighten rules defining what constitutes a Targeted Employment Area. She also suggests that the EB-5 program could be modified to include a stipulation that some jobs through regional centers go to local residents of a TEA.

"Plenty of money is exchanging hands in the EB-5 program" she wrote, earlier this month. "Let's ensure some of it is going to the people and places it is intended to aid."

On the Senate side, this is something that those in charge want to see as well. Senator Chuck Grassley (R-Iowa) and Patrick Leahy (D-Vermont) introduced a bill in June that seeks to get more EB-5 money into rural areas (like their states) by redefining Targeted Employment Areas. The bill would also raise the investment threshold for applicants, requiring people to invest $800,000 for targeted employment areas and $1.2 million for non-targeted employment areas. It also would make it easier for the government to monitor fraud and track regional centers' progress.

A House bill proposes making the program permanent, increasing fraud abuse, and changing the way applications are counted so that family members don't count towards the annual cap. It would require less reform than the Senate bill would.

A third bill, introduced more recently, includes some of both proposals, but is still relatively light on reforms.

And then of course there is another option: Doing nothing, which wouldn't be too surprising during this Congressional term. Doing nothing, of course, is just what some advocates want. Doing nothing would eliminate the regional

centers program and likely slow the visa-application process. What no one knows, yet, is whether that would slow the economy, too.

ABOUT THE AUTHOR

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Twitter

EXHIBIT V

Money from investor visas floods U.S., but doesn't reach targeted poor areas

Originally published March 7, 2015 at 8:00 pm Updated March 9, 2015 at 12:48 pm

Dexter Station, where Facebook plans to relocate its Seattle office, was built and financed partly by EB-5 funds.The visa program was intended to benefit depressed areas, not booming ones like Seattle. (Greg Gilbert / The Seattle Times)

Wealthy foreigners seeking the federal EB-5 investor visa have fueled more than $2 billion in local real estate projects.

Seattle Times business reporter

The developer of a 44-story downtown skyscraper boasts on its website that it's "a prestigious address in the center of Seattle's legal, financial, creative and technology workforces."

To state and federal officials, however, the backers of the $440 million Fifth & Columbia project present it as right in the middle of an area with double-digit unemployment.

The same goes for Stadium Place, a half-billion-dollar hotel, apartment and office project north of CenturyLink Field. Ditto for Dexter Station, a $150 million office building near South Lake Union, and Potala Tower, a $190 million hotel project in the upscale Belltown neighborhood.

How does downtown Seattle, the job center of the nation's fastest-growing big city, become Detroit on paper? Why would a project be portrayed in such different lights?

The answer is an opaque federal program, known as EB-5, that annually allots about 10,000 green cards, or permanent-residency visas, to wealthy foreigners who each invest $1 million in a U.S. enterprise that creates at least 10 permanent, full-time jobs.

Few of them actually pay that price. Instead they use a loophole that cuts the price of a green card to $500,000 if they invest in a rural area or urban one with high unemployment. The discount was intended to create jobs in depressed communities.

Loophole exploited

Wealthy people seeking a green card have fueled billions in local real-estate projects, but not in the economically struggling areas the federal program was created to help.

But here and elsewhere, the program is being exploited by promoters seeking ready capital for prominent, speculative projects in economically prosperous districts.

The rules allow them to string together several areas of high unemployment with one of low unemployment, like Manhattan or downtown Seattle, then build their project in the more prosperous area.

Henry Liebman, founder and CEO of Seattle-based American Life, one of the most prolific developers nationwide using EB-5 money, says the industry is simply doing what the government allows.

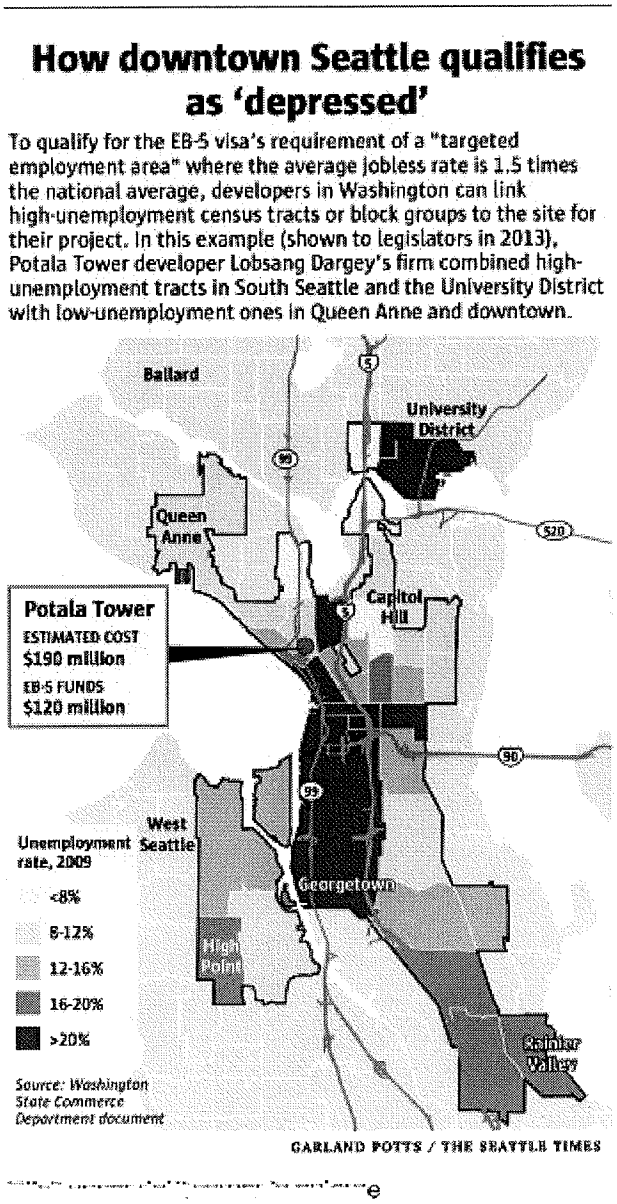
"If you don't like gerrymandering," he said, "change the rules."

The EB-5 program is so secretive and murky that its effectiveness in creating jobs and lowering unemployment is unknown, according to a Brookings Institution report.

A blistering critique by the Department of Homeland Security's Office of Inspector General in 2013 said there is so little tracking of EB-5 money that it's impossible for the federal government to show the resulting investments have created jobs.

The EB-5 program is so secretive and murky, its effectiveness in creating jobs and lowering unemployment is unknown.

Federal rules let states decide how the economically depressed areas are defined. Washington state lets EB-5 promoters qualify by defining a "targeted unemployment area" for the program not just from full census tracts, but from smaller zones called census block groups, making it easier to attach high-joblessness areas to the more desirable location.



"I've seen these areas of substantial unemployment gerrymandered across the country," said Paul Harrington, director of the Center for Labor Markets and Policy at Drexel University in Philadelphia.

Virtually no information is publicly available about individual projects or the criteria used to get them approved. And neither state nor federal officials will provide even a list of the projects or their targeted areas, calling it proprietary company information.

Research by The Seattle Times shows EB-5 financing is booming in the Puget Sound region, helping to

bankroll more than $2 billion in current projects.

It's a nationwide surge. Investor applications for the federal program soared more than eightfold from 2008 to 2014.

Washington state plays a leading role. Industry pioneer American Life has recruited more than 10 percent of all EB-5 investors approved nationally for green cards since 1997. And Washington has more than 40 of the federally approved firms that pool capital from these immigrant investors, triple the number in 2013 and more than any other state except California, Florida, New York and Texas.

Even the state Department of Commerce's top EB-5 expert, James Palmer, left and launched one last year.

Meanwhile, the industry is lobbying Congress to make the program permanent before it expires in September. Under one pending bill, family members of immigrant investors would not be counted in the 10,000-visa cap, potentially tripling the number of green cards available to wealthy foreigners and their families.

The Wave apartment building is part of the Stadium Place hotel, apartment and office project north of CenturyLink Field in Seattle, financed by EB-5 money. (Mike Siegel / The Seattle Times)

Job targets

Some EB-5 projects in Washington have gone to areas struggling to create jobs, such as Grant County.

But more than half of the state's EB-5 projects relying on the high-unemployment incentive are in King County, although it has the lowest jobless rate of the 39 counties.

To steer capital to poor areas, the EB-5 law says immigrant investors can get the $500,000 green card by putting their money to work in a "targeted employment area" that has an average unemployment rate at least 150 percent of the national jobless rate.

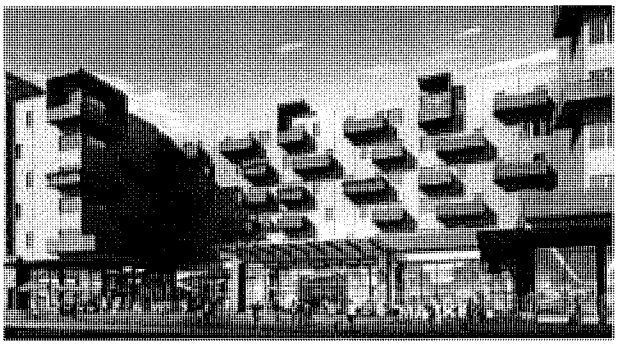
The EB-5 industry often gets creative when defining such an area. In some cases, the building blocks for a targeted area stretch across a state or wind through a city with an irregular chain of carefully chosen census tracts.

> If you don't like gerrymandering, change the rules." - Henry Liebman, founder & CEO of a developer using EB-5 money

EB-5 projects aren't required to hire residents of the area that is used to qualify for the program, either.

Bellevue attorney Cletus Weber, who works with EB-5 investors, argues that "even if you don't build right in the high-unemployment areas, that economic growth still benefits them."

The industry's trade group, the Association to Invest In the USA, or IIUSA, estimates that in 2012 the program created more than 19,000 jobs, mostly in construction, and the money spent by those workers created an additional 23,000 jobs.



Conflicts with intent

Today's steady stream of EB-5 projects in prosperous areas appears at odds with what Congress intended in creating "the millionaire visa" in 1990.

More than half of the state's EB-5 projects relying on the high-unemployment incentive are in King County, although it has the lowest jobless rate of the 39 counties.

"Ten thousand 'job creation' visas are provided for investors who invest in enterprises, especially in depressed rural or urban areas, which create a minimum of 10 new jobs for Americans," said Sen. Ted Kennedy, D-Mass., when the law took effect in October 1991.

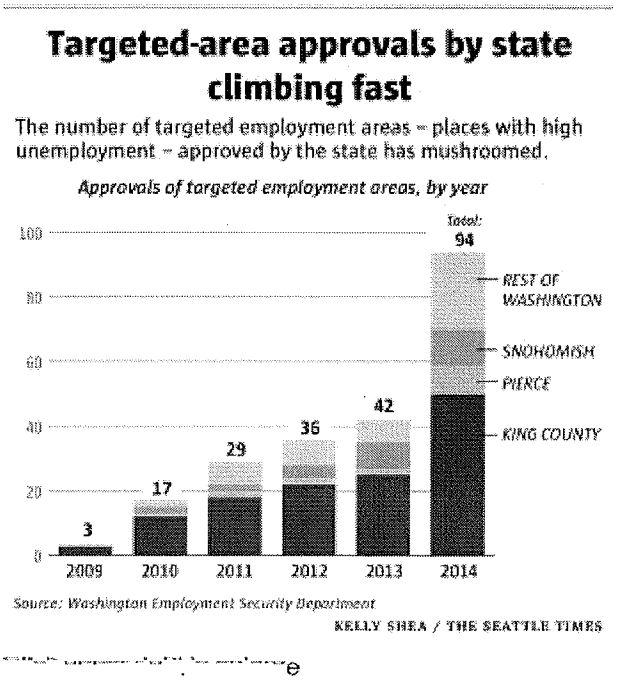
Demand was far lower than expected, however. Critics noted that Canada offered green cards to wealthy foreigners on much better terms.

A few years later, Congress liberalized the rules on how projects could take credit for creating jobs. And because Congress never raised the investment requirement, the visa effectively became cheaper, since the original $1 million threshold would be $1.8 million in today's dollars.

The EB-5 funding strategy took off in earnest after the 2008 financial crisis.

As conventional lenders spurned speculative projects, real-estate developers discovered that EB-5 investors were a patient and willing source of capital, less concerned about the risk.

"Most of my clients want the green card above all else," immigration attorney Nelson Lee told a Washington state legislative committee in 2013. The investors' attitude, said Lee, was "if I lose my money, I lose my money, but I don't want to lose the green card."



Skyscraper dreams

While EB-5 is a tiny fraction of the foreign direct investment in the United States, it's playing a role in a range of high-profile projects. Even New York's $20 billion Hudson Yards redevelopment project, reportedly the largest private construction project ever undertaken in the United States, has raised about

$600 million through EB-5.

Seattle developer Kevin Daniels said he started considering the visa program after American Life, which manages 10 EB-5 investment centers nationwide, kept outbidding him in buying properties.

In 2008, Daniels Real Estate obtained permits to build Fifth & Columbia Tower, a glass-and-steel wonder that includes a 184-room luxury hotel and 528,000 square feet of office space.

But the Great Recession put Daniels' skyscraper dreams on hold. He admits he "put all his marbles" into obtaining financing through an EB-5 investment center based in New York, and "one year later I found out I worked with a crook."

Eventually, though, he did raise money through an EB-5 investment firm called Seattle Regional Center, run by Kevin Stamper.

Now, said Daniels, EB-5 capital accounts for about $250 million of Fifth & Columbia's $440 million project.

The targeted area initially approved by the state for the project consisted of 12 contiguous census tracts, stretching from Seattle's Queen Anne neighborhood down to SeaTac and Tukwila, Stamper said. The area's average unemployment rate was 13.8 percent in 2011 – just barely enough to qualify.

> Why isn't it structured in a way where you could do more to drive jobs and investment, versus a Hilton Garden or Holiday Inn Express? We'd love to figure out a way to harness it." - Mary Trimarco, assistant director, state Commerce Department

Because the state's approval expires every June 30, Stamper reapplied. But last year the same mix of census tracts wouldn't have qualified since its overall jobless rate was too low.

Last July, the state began letting EB-5 promoters use smaller census block groups, after urban developers complained it was too difficult to find individual census tracts, or a combination of them, that met the federal requirement for high unemployment.

So Stamper focused the targeted area on downtown Seattle, pinpointing two census block groups. With just 1,150 residents in the labor force, some in homeless shelters, they had a 12.5 percent overall unemployment rate, enough to qualify as a targeted area.

"It's a couple blocks from one of the most depressed areas" in downtown, Daniels said about Fifth & Columbia. "It's dead on."

Omar and Christine Lee are developers of 19-story hotel/apartment project... (Greg Gilbert / The Seattle Times) More

Is it gerrymandering?

Other local EB-5 developers are taking advantage of the program's targeted-area loophole to build projects in job-rich areas.

One of them is Tukwila's Washington Place, a 19-story hotel and apartment tower that's just a block from Westfield Southcenter, the largest indoor shopping mall in the Pacific Northwest. There are about a dozen hotels nearby, but the last one was built almost 20 years ago.

Developers Omar and Christine Lee say they've recruited 132 investors from China, India, Vietnam and the Philippines to pony up $500,000 each for the $120 million project at the former Circuit City site.

The project's targeted employment area consists of seven census block groups and has an average jobless rate of 14.3 percent, according to an approval letter from the state obtained by The Seattle Times.

The block group where the high-rise will be built has an unemployment rate of zero because it's in a bustling commercial area with no residents.

But the targeted area includes block groups in Bryn-Mawr Skyway, an unincorporated area about 4 miles north where unemployment ranges as high as 20.1 percent. Those neighborhoods boost the average

for the targeted area enough to meet the federal program's requirement.

Similarly, the 40-story Potala Tower in Seattle's Belltown neighborhood is in a census tract with a 2013 unemployment rate of 4 percent, state figures show.

A spokesman for Potala CEO Lobsang Dargey, an immigrant from Tibet who now develops real estate as CEO of Dargey Development, wouldn't identify the other tracts included in its targeted job zone.

But in 2013, state lawmakers were shown a targeted area drawn up by Dargey's firm.

The targeted area was irregularly shaped, with census tracts that extended down through Rainier Valley, looped around to High Point in West Seattle and touched parts of the Central Area and the University District — all relatively high unemployment areas. Together, lawmakers were told, the linked tracts had an average jobless rate in 2009 of 14.1 percent.

States vary in how much cherry-picking they allow.

Robert Haglund, the administrator of EB-5 targeted area approvals for Washington's Employment Security Department, said the state had the discretion under U.S. Citizenship and Immigration Services

guidelines to let EB-5 promoters use the small census block groups. Oregon takes the same approach, he said.

California requires using the larger census tracts; developers can string together no more than 12.

Texas, at the other extreme, has delegated the decisions to city mayors and county judges, who may rely on the industry to tell them what's appropriate.

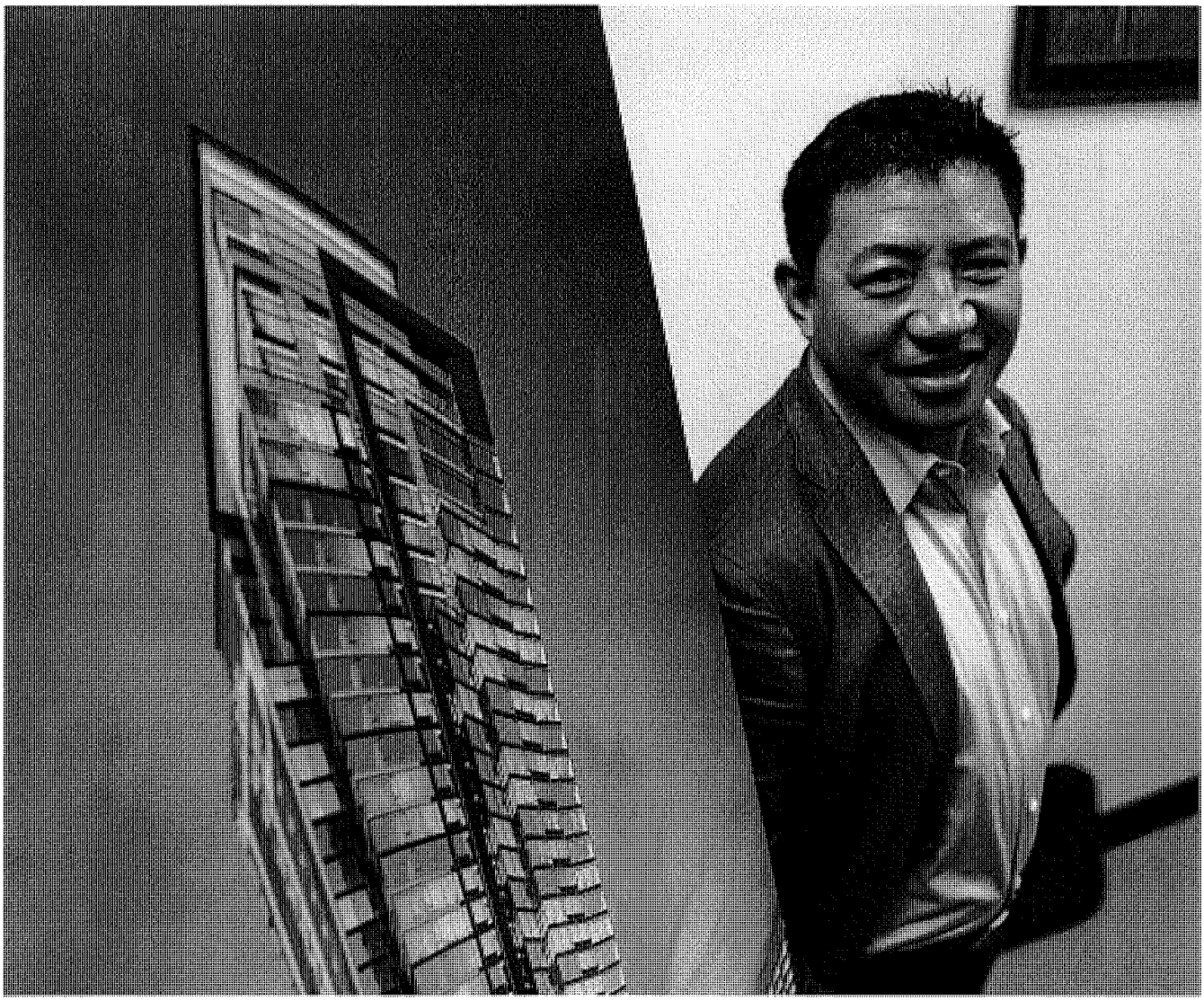
"It's whatever anyone will sign off on," said Paul Scheuren, an economist at industry consultant Impact DataSource in Austin, Tex.

At the Tukwila project's groundbreaking in September, developer Christine Lee said the project would create 1,600 direct and indirect jobs. Gary Locke, former Washington governor and U.S. ambassador to China, added star power to the event.

"We're celebrating economic development," Locke said. "It's about jobs, hundreds and hundreds of jobs, good-paying jobs for the community."

But under the law, Lee's investors can take credit for a statistical estimate of jobs created indirectly — even a truck driver hauling carpet across the country to the hotel site.

Before 2012, the federal government let EB-5 investors even count the employees of a building project's tenants to meet the job-creation requirement, said Weber, the immigration attorney. Once that was reined in, EB-5 developers shifted from office projects to hotels, Weber said.



Lobsang Dargey, chief executive of Dargey Development and Path America, stands next to a drawing of one of his planned projects in his Bellevue office. (John Lok / The Seattle Times)

Kevin Chen, a member of the Mak Fai Washington Kung Fu Club Lion Dance Team,... (John Lok / The Seattle Times) More

EB-5 in inner city

Some developers across the nation are using EB-5 capital to infuse vitality into long-neglected neighborhoods, as the law was intended to do.

In 2012, a Dallas developer opened the first full-service hotel to be built in South Dallas since 1946, according to the Boston nonprofit Initiative for a Competitive Inner City. The project was built in the Cedars neighborhood, which has a 40 percent poverty rate and high unemployment.

A public-private partnership between the city and an asset-management firmfunded it with $5.5 million from 11 EB-5 investors.

Under an agreement with the city, at least three-quarters of the hotel jobs were offered first to local, low-income residents in Dallas.

And the hotel operator, NYLO Hotels, gives staff 80 hours of training.

To gauge the project's impact, the city is tracking many indicators, including jobless rates, per capita income and crime rates.

That's far more data than the federal immigration agency collects on EB-5 projects.

EB-5 "is a pretty blunt instrument now," said Kim Zeuli, research director at the Initiative for a Competitive Inner City.

The federal program should be revamped "to support projects that would not have been funded otherwise, especially in parts of the country that need it most," she wrote recently in a journal published by the Federal Reserve Bank of Boston.

Mary Trimarco, an assistant director in the state Commerce Department, said there are no similar public-private partnerships in Washington state to use EB-5 money for high-priority needs.

Her department has no say in defining or approving the EB-5 areas in the state, and she wishes the federal program was refocused away from commercial projects that could find other financing.

"If you use a little imagination, there are a lot of things that could be done with EB-5," she said, listing affordable housing, college dormitories and research parks.

Lance Matteson, executive director of the nonprofit SouthEast Effective Development, a community-development corporation focused on Seattle's Rainier Valley, said the area badly needs jobs, but to date there have been no EB-5-funded projects built in Southeast Seattle.

"We're supportive of this as a tool," he said. "Ironically this is the most international part of Seattle, but it's least benefited from this tool."

Another chance

With key provisions of the EB-5 program to expire in September, three senior Republican senators have asked for a review by the Government Accountability Office (GAO), an independent watchdog for Congress.

A GAO spokesman says the review will examine, among other things, whether estimates of the program's economic benefits "are valid and reliable."

Stamper, the EB-5 investment broker, said he favors a more uniform way to define the areas to which investors' funds are steered.

At present, he said, "Each state is able to come up with pretty much whatever they want."

The state Commerce Department's Trimarco is also ready to see some changes.

"Why isn't it structured in a way where you could do more to drive jobs and investment, versus a Hilton Garden or Holiday Inn Express?" she asked. "We'd love to figure out a way to harness it."

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EXHIBIT W

Wealthy immigrants can invest way to visas

Originally published December 10, 2011 at 8:00 pm Updated December 11, 2011 at 4:00 pm

Svetlana Anikeeva, a Russian immigrant living in Redmond, is seen in front of the Sodo building she and her husband invested in to get green cards. With developers struggling to find financing, use of EB-5 capital is expanding.

Cash-strapped developers and wealthy foreigners are flocking to a little-known visa program that allows people from other countries to obtain a U.S. green card if they invest at least $500,000 in a development project that leads to at least 10 new jobs.

Section Sponsor

As his son moved through high school, Xiaohong Mu began researching the immigration policies of Western countries where he believed his boy would get the best education.

The owner of a petroleum-engineering firm in the southwest Chinese city of Chengdu, Mu considered Australia and Canada before settling on the United States.

America, he believes, will not only prepare his son for future success, but he also thinks he can find new business opportunities here.

Mu and his family will move to Seattle this month under a little-known but increasingly popular visa program reserved for foreigners who invest at least $500,000 in an American enterprise.

It's a source of money that cash-starved developers across the U.S. are using to help fund any number of new projects — from ski resorts in Vermont to utility-line extensions for a new BMW plant in Moses Lake.

About $48 million in these investor funds will help finance the state of Washington's $4.6 billion replacement of the Highway 520 floating bridge.

The relative obscurity of the so-called EB-5 visa program has allowed it to escape scrutiny at a time

debate over immigration in this country has raged.

As developers struggle to get traditional sources of funding for their projects, use of EB-5 capital is expanding and expected to total $1.2 billion nationally for 2011, up from $845 million last year.

The financiers are wealthy foreigners — primarily the Chinese — who see an opportunity to gain permanent U.S. residency without the long wait and complicated processing associated with family and work-related visas — if they can qualify for those visas at all.

"There's a kind of gold rush going on right now — developers trying to get projects going and a huge group of Chinese with money," said James Palmer, economic-development manager at the state Department of Commerce.

While the state is not directly involved in operating the EB-5 visa program, Palmer has made himself an expert of sorts, fielding frequent calls from area developers and would-be investors around the globe seeking information about the program. "It's a marriage made in heaven," he said.

Mu's investment is visible to anyone who has attended a game at Safeco Field: the second phase of a $155 million office complex going up just south of the stadium in Sodo.

"The first priority is securing the green card," Mu said through an interpreter. "Financial return of the capital is second."

Russian citizen Svetlana Anikeeva, along with her husband, invested $500,000 in an earlier phase of the same project. Now living in Redmond on a conditional green card she received about 16 months ago, Anikeeva can't help but feel a sense of pride when she drives past the building that her investment helped make possible.

"I tell people that being born in the U.S. itself is worth at least $500,000," she said.

Small-scale program

Capped at just 10,000 visas a year nationwide, the EB-5 visa program is relatively small, but offers one of the quickest paths to legal residency.

Overseen by the U.S. Citizenship and Immigration Services, it is one of several visa-for-cash programs worldwide, including one in Canada.

Congress established the U.S. program 20 years ago to allow foreign investors from any country who could prove the lawful source of their money to obtain conditional green cards for themselves and immediate family members. For the green cards to become permanent, each investment must have created at least 10 new, full-time jobs for legal U.S. residents by the end of two years.

Typically, foreigners invest $500,000 through entities known as regional centers — usually development

companies such as American Life, which owns the Sodo office complex that Mu and Anikeeva invested in.

These centers may also operate as investment companies, like the Washington Regional Center, which used EB-5 funds from 95 Chinese investors to purchase state bonds for the 520 bridge project.

The investors have virtually no direct management involvement in the centers, which are authorized by Citizen and Immigration Services. The investors may live wherever they want in the U.S., regardless of the location of the project.

In 2007, there were just under 800 visa applicants and 11 regional centers nationwide. By the end of fiscal 2011, nearly five times that many foreigners had applied and 179 centers were operating — 11 in Washington state.

And new regional centers are coming onboard every day.

A virtual cottage industry has sprung up among marketing agents overseas who promote the centers while peddling U.S. residency to the wealthy.

The marketing frenzy is particularly prolific in China, where Mu said he is bombarded daily with sales pitches.

"There's no privacy protection here," he said. "If people know you have money, they'll contact you. Every day I still get calls, emails and text messages."

The program isn't without risk, and the U.S. government makes no guarantee to investors they'll get their money back and prohibits regional centers from making upfront promises about return of capital.

In the past, projects have failed and investors have lost their money. What's more, foreigners who've been allowed into the country through the program on a conditional green card face deportation if a project they invested in fails to meet the job-creation requirement after two years.

"Despite its many benefits and increasing popularity, the EB-5 program still presents serious risks," said Elizabeth Peng, a Mercer Island immigration attorney.

"I tell investors this is money they should be willing to lose, that if they can't afford the risk they shouldn't do it."

Doesn't mind risk

Svetlana Anikeeva understood the risks when she and her husband plunked down much of their savings two years ago in exchange for the chance to live in the U.S.

Since her first visit to America as an exchange student in 1995, Anikeeva said she knew this is where

she wanted to live. Other types of visas were not available to her and her husband, who owns a car business in Japan. The EB-5, she said, was the perfect solution for the couple and their 11-year-old daughter.

She receives a monthly statement from American Life on the progress of the project and distributions of about $200.

"For us this was not a business opportunity, it's an immigration opportunity," Anikeeva said.

Immigration attorney-turned-developer Henry Liebman, chief executive of American Life, has raised about $700 million from more than 1,000 EB-5 investors and created about 15,000 jobs over the last dozen years.

In Sodo and across the U.S., his company — one of the country's oldest regional centers — has developed about 40 commercial projects by pooling foreign investments with other funding.

"It's not a huge source of capital, but it's still significant," Liebman said. "It's money that wouldn't otherwise be available in a time of limited liquidity."

Test ahead in Congress

The regional center EB-5 program, which has always operated as a pilot, is set to expire in September unless Congress renews it, as it has in the past.

At least two bills have been introduced to make it permanent, including one by U.S. Rep. Rick Larsen, D-Lake Stevens.

David North, a fellow at the Center for Immigration Studies, a Washington, D.C.-based think tank that advocates immigration enforcement, called it a "silly little program" with "extremely little effect" on the nation's economy.

Compared to total foreign investment in the U.S., he said, "it's pennies. If you talk to serious venture capitalists, they'll laugh at the idea of getting money in half-million chunks."

Seattle attorney Steve Miller said he steers clients away from the EB-5 program — both the regional-center track or a much smaller one that allows investors to set up and directly operate their own companies in the U.S. He says there are enough concerns to raise a "significant red flag."

Miller, for example, is working to remove conditions from the green card of a client who first obtained it more than 10 years ago.

That case dates back to the late 1990s, when uncertainty plagued the program. During that time, the then-Immigration and Naturalization Service discovered fraud, some of it resulting from ambiguity over the agency's own policies.

Some developers were taking investors' money without delivering projects and the jobs they promised, and some investors got green cards without making their full investments. As a result, hundreds of foreigners and their family members from that period still do not have permanent green cards.

Between the late 1990s and mid-2000s, participation in the program slowed. While the government has since clarified its policies regarding the program, Miller said he tries to explore other avenues for high-income clients willing to operate businesses in the U.S.

Wave of Chinese

As the number of wealthy Chinese has increased, so has their participation in the visa program. More than 40 percent of program investors are from China — far higher on the West Coast.

A recent study by China Merchants Bank and Bain & Co., a consulting firm, found almost 60 percent of China's "high net-worth individuals" — those with at least $1.5 million in assets — are either considering or completing emigration through investment programs.

Five years ago, it was Koreans, Taiwanese or people from across Europe, said Kim Foster, with the Aero-Space Port International Group, which established Washington's first regional center in Grant County.

Mercer Island immigration attorney Cletus Weber said his firm's Chinese clients tend to fall mostly into one of two categories: parents like Mu who want to move to the U.S. so their children can get a better education, or college students whose parents hand them $500,000 so they can set themselves up in the U.S.

Said his partner, attorney Peng: "As U.S. permanent residents, they have more doors open to them than if they came as foreign students."

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