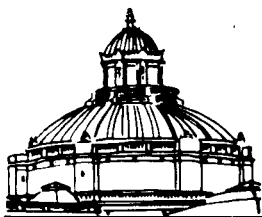


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THE IMMIGRATION AND NATIONALITY ACT--QUESTIONS AND ANSWERS

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## ABSTRACT

The basic United States law governing immigration and naturalization is contained in the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.). The following questions and answers have been prepared to explain the way in which the Immigration and Nationality Act as amended through 1981 regulates the entry of aliens for permanent and temporary residence in the United States, and other major provisions of the law. Emphasis is placed on subjects which have been of particular interest to the Congress in recent years. This supersedes CRS Report No. 81-65 EPW.



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## THE IMMIGRATION AND NATIONALITY ACT--QUESTIONS AND ANSWERS

The basic United States law governing immigration and naturalization is contained in the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.). The following questions and answers have been prepared to explain the way in which the Immigration and Nationality Act as amended through 1981 regulates the entry of aliens for permanent and temporary residence in the United States, and other major provisions of the law. Emphasis is placed on subjects which have been of particular interest to the Congress in recent years.

Immigration law and policy are widely agreed to be in need of revision and reform. An effort in this direction began with the creation by the 95th Congress of the Select Commission on Immigration and Refugee Policy. The Select Commission reported to the President and the Congress in early 1981, and its recommendations were the subject of joint hearings by the Senate Judiciary Subcommittee on Immigration and Refugee Policy and the House Judiciary Subcommittee on Immigration, Refugees, and International Law, as well as a Cabinet-level review by the Reagan Administration.

- (1) What is the difference between an alien, an immigrant, and a nonimmigrant, as the terms are used in the Immigration and Nationality Act?

The Immigration and Nationality Act defines an alien as "any person not a citizen or national of the United States," and sets forth the conditions under which aliens may enter this country. A basic distinction is made between immigrants and nonimmigrants. Immigrants are those aliens who are lawfully admitted for permanent residence. Nonimmigrants are granted temporary admission for such purposes as tourism or temporary business trips. Fewer immigrants than nonimmigrants are admitted, and the conditions of their admission are more stringent.

Once they are admitted, immigrants are subject to fewer restrictions than nonimmigrants. For example, while some nonimmigrants are admitted for the express purpose of temporary employment, most nonimmigrants--including all tourists--are prohibited from legally accepting employment. Immigrants, on the other hand, may freely accept and change employment. All nonimmigrants are required to leave the country at the end of their allotted time. Immigrants, in contrast, are admitted permanently and may apply for U.S. citizenship through the naturalization process.

(2) What are the numerical restrictions on immigration? How many immigrants are admitted annually?

Numerically restricted immigration is limited to 270,000 a year, exclusive of refugees. Under this worldwide ceiling, each independent country is restricted to a maximum of 20,000 immigrant visas, a number reached in recent years by China, Jamaica, Korea, Mexico, and the Philippines. Territories and possessions of independent countries are limited to 600 immigrant visas annually.

Additionally, there are several categories of immigrants which are exempt from numerical restrictions. Most exempt entrants are the immediate relatives of U.S. citizens, defined by the law to include the children and spouses of U.S. citizens, and the parents of U.S. citizens aged 21 or over. Congress has also passed special legislation to allow specific groups such as the Cuban and Indochinese refugees to obtain immigrant status outside the numerical limits.

Statistics follow on the number of immigrants admitted over the 10-year period fiscal 1970-1979:

1970	.....	373,326
1971	.....	370,478
1972	.....	384,685
1973	.....	400,063
1974	.....	394,861
1975	.....	386,194
1976	.....	398,613



1976, TQ .....	103,676
1977 .....	462,315
1978 .....	601,442
1979 .....	460,348

(3) What is the preference system, and how does it work?

Immigrant visas available under the current worldwide ceiling of 270,000 are distributed according to a six-category preference system which gives priority to family members and those with needed skills, as follows:

First preference (unmarried sons and daughters of U.S. citizens): 20 percent of the overall limitation of 270,000 in any fiscal year;

Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 26 percent of overall limitation, plus any numbers not required for first preference;

Third preference (members of the professions or persons of exceptional ability in the sciences and arts): 10 percent of overall limitation;

Fourth preference (married sons and daughters of U.S. citizens): 10 percent of overall limitation, plus any numbers not required by the first three preference categories;

Fifth preference (brothers and sisters of U.S. citizens 21 years of age or over): 24 percent of overall limitation, plus any numbers not required by the first four preference categories;

Sixth preference (skilled and unskilled workers in short supply): 10 percent of overall limitation;

Nonpreference (other immigrants): numbers not used by the six preference categories.

Immigrant visas are made available under the preference system to the various countries on a first-come, first-served basis, not to exceed 20,000 per country a year. However, if a country has the maximum total of 20,000 made available to it in a given year, in the following year visas will be made available to that country according to the percentages assigned each preference category, in order to insure equitable distribution.

(4) What are the different categories of nonimmigrants, and how many are admitted?

Nonimmigrants are aliens admitted for a specified period of time and for a specific purpose, and are required to leave at the end of their authorized stay. The Immigration and Nationality Act defines 13 different categories of nonimmigrants, as follows: (A) officials of foreign governments, (B) temporary visitors for business or pleasure (tourists), (C) aliens in transit through the United States, (D) alien crewmen, (E) treaty aliens, (F) academic foreign students, (G) international organization aliens, (H) temporary workers, (I) representatives of foreign information media, (J) exchange visitors, (K) fiances and fiances of U.S. citizens, (L) intracompany transferees, and (M) nonacademic foreign students.

By far the greatest number of nonimmigrants enter as tourists. Of the 9,343,710 nonimmigrants admitted in fiscal year 1978, 6,642,685 were tourists, or temporary visitors for pleasure ("B-2" nonimmigrant visa classification), and 800,652 were temporary visitors for business ("B-1" nonimmigrant visa classification). Other categories of particular interest in recent years are "F" foreign students, who accounted for 187,030 of the FY 1978 nonimmigrant entries; "H" temporary workers, who accounted for 62,979 FY 1978 entries; and "J" exchange visitors, who accounted for 53,319 FY 1978 entries.

(5) What provision is made for the admission of temporary workers?

The principal nonimmigrant category providing for the entry of temporary alien workers at the request of U.S. employers is the "H" temporary worker category (Sec. 101(a)(15)(H); 8 U.S.C. 1101(a)(15)(H)). It consists of four subsections: (i) workers of distinguished merit and ability, (ii) other temporary workers entering to perform work which is itself temporary in nature, provided similarly skilled U.S. workers are not available ("H-2" workers), (iii) trainees,

(iv) and the spouses and children of the above. The "H-2" provision, as it is commonly referred to, is the most widely used, and is administered by the Department of Justice in consultation with the Department of Labor.

The largest temporary worker program operating under the authority of the H-2 provision is the so-called BWI (British West Indies) program, under which seasonal agricultural workers from the Caribbean islands enter, principally for employment on the East Coast as sugar cane cutters and apple pickers. The number of BWI workers admitted annually has been in the general vicinity of 12,000 since 1960, ranging from 9,000 to 15,000. This is a much lower range of numbers than was admitted under the Mexican Bracero Program, authorized first by treaty and then by an amendment to the Agricultural Act of 1949 during the period 1943-1964. Annual admissions of seasonal agricultural workers from Mexico under this program exceeded 400,000 during the second half of the 1950s.

(6) How are groups of refugees admitted to the United States?

All refugees are admitted to the United States under the authority of the Immigration and Nationality Act, as amended by the Refugee Act of 1980 (Act of March 17, 1980; P.L. 96-212; 94 Stat. 102). Refugee admissions are separate from immigrant admissions; they are subject to neither the worldwide ceiling and per-country limits, nor to the preference system.

The term "refugee" is defined by the law to conform with the definition used in the United Nations Protocol and Convention Relating to the Status of Refugees, to which the United States is a party. A "refugee" is a person who is unwilling or unable to return to his country of nationality or habitual residence because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion (Sec. 101(a)(42); 8 U.S.C. 1101(a)(42)).

The law provides for a "normal flow" of up to 50,000 refugees a year through fiscal year 1982. This number may be increased if the President determines after appropriate consultation with the Congress that a larger number is justified by humanitarian concerns or is otherwise in the national interest. The number was set at 231,700 for FY 1980 and 217,000 for 1981, including 168,000 Indochinese refugees each year. The FY 1982 figure is 140,000, including 100,000 Indochinese refugees.

The allocation of refugee admissions among refugee groups is determined at the beginning of each fiscal year by the President after consultation with the Congress, as will be the total annual number beginning in fiscal year 1983 (Sec. 207(a); 8 U.S.C. 1157(a)). If, during the course of a given year, the President determines after appropriate consultation with the Congress that an unforeseen emergency refugee situation exists and that the admission of the refugees is justified by grave humanitarian concerns or is otherwise in the national interest, he may specify an additional number of refugees to be admitted during the succeeding 12-month period (Sec. 207(b); 8 U.S.C. 1157(b)).

If found eligible, refugees may have their status adjusted to that of immigrant, or permanent resident alien, after residence in the United States for a year, without regard to any numerical limitations (Sec. 209; 8 U.S.C. 1159). Title IV of the Immigration and Nationality Act provides for refugee resettlement assistance, which is generally available for not more than 3 years after entry.

(7) Are there refugee-related provisions for individuals, in addition to the procedures for regular and emergency refugee group admissions described above?

Provision is made for the granting of asylum on a case-by-case basis to aliens who meet the definition of "refugee" and who are physically present in the United States or at a land border or port of entry, regardless of their status (Sec. 208; 8 U.S.C. 1158). Adjustment to immigrant status by aliens who have

been granted asylum is limited to 5,000 a year, after a year's residence in the United States.

Additionally, the Attorney General is required to withhold the deportation of any alien, with certain specified exceptions, if he determines that upon the alien's return home, his life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion (Sec. 243(h); 8 U.S.C. 1253(h)).

Finally, individual refugees may be admitted under the parole provision of the Immigration and Nationality Act in certain narrowly defined cases. This provision authorizes the Attorney General to parole any alien into the United States temporarily, at his discretion and under conditions he prescribes, in emergencies or for reasons in the public interest. While parole is not admission for permanent residence, under certain circumstances a parolee may adjust to immigrant status. The parole provision has been used in the past for the admission of groups of refugees, including Hungarians, Cubans, and Indochinese. It was amended in 1980 to specifically restrict its use for the admission of refugees to individual cases where the Attorney General determines that compelling reasons in the public interest require the alien's parole rather than his admission as a refugee (Sec. 212(d)(5); 8 U.S.C. 1182(d)(5)).

(8) What is a commuter alien, or "green-card commuter?"

Commuter aliens, sometimes referred to as "green-card commuters," are aliens who have been admitted as immigrants, for permanent residence, and who live in either Canada or Mexico and commute to the United States for daily or seasonal employment. The legality of the commuter status has been challenged in the courts, but was upheld by the U.S. Supreme Court in Saxbe v. Bustos, 419 U.S. 65 (1974). The number of commuters reported as of December 1981 was 47,866, of

which 39,949 commuted across the Mexican border, and 7,917 commuted across the Canadian border.

The card used by the commuter to enable him to pass freely across the U.S. border as an immigrant legally entitled to work in this country is no longer the green border crossing identification card once used, but the alien registration receipt card (Form I-151 or the more recent Form I-551) issued by the U.S. Immigration and Naturalization Service (INS) to immigrants. In addition, commuters are required to possess a Form I-178, the commuter status card, which is issued every 6 months as proof of employment in the United States.

(9) What is an illegal or undocumented alien?

Illegal aliens are aliens who have violated the immigration law. The phrase is a popular expression, rather than a term defined in the Immigration and Nationality Act. It generally refers to two categories of immigration law violators. Most illegal aliens enter the United States illegally, bypassing inspection. A smaller number enter the United States legally, usually as nonimmigrants, and violate the terms of their admission, usually by overstaying and accepting unauthorized employment. The term "illegal alien" is disliked by some, partly because of the connotation of criminality. Synonymous terms are undocumented alien, undocumented worker, illegal immigrant, and deportable alien.

The number of illegal or undocumented aliens in the United States is not known. The most frequently cited estimates of the illegal population range from 3 to 6 million. There were 953,425 apprehensions in fiscal year 1981, of which an unknown number were multiple apprehensions of the same people.

(10) What provisions of the Immigration and Nationality Act apply specifically to illegal, or undocumented aliens?

Under section 275 (8 U.S.C. 1325), any alien who enters the United States without examination by INS or through misrepresentation or fraud, is guilty of a

misdemeanor punishable by up to 6 months' imprisonment and/or a \$500 fine. A second offense is a felony, punishable by not more than 2 years' imprisonment and/or a \$1,000 fine. Section 276 (8 U.S.C. 1326) provides that an alien who was previously deported and who enters without permission from the Attorney General is guilty of a felony punishable by not more than 2 years' imprisonment, and/or a fine of \$1,000.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324) defines the smuggling, harboring, transporting, or encouraging of illegal entrants as felonies, punishable by a fine not exceeding \$2,000 and/or by imprisonment for a term not exceeding 5 years, for each alien involved; it also provides for the seizure and forfeiture of vehicles used in illegal transportation. However, the law specifically exempts the employment of illegal entrants from the penalties attached to harboring. Section 274(a)(4) contains the following proviso: "Provided, however, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Aliens who accept employment or otherwise violate the conditions of their admission are subject to deportation under Sec. 241(a)(9) of the Act (8 U.S.C. 1251(a)(9)), which provides that an alien shall be deported if he "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 Sec. 248, or to comply with the conditions of any such status." Aliens who accept unauthorized employment are also prohibited from adjusting their status from that of nonimmigrant to that of permanent resident alien (immigrant) while remaining in this country (Sec. 245(c); 8 U.S.C. 1255c).

(11) What other criteria exist for the admission of aliens, and for their remaining in the United States?

The Immigration and Nationality Act sets forth 33 grounds for exclusion of aliens. All aliens must satisfy admitting officials that they are not excludable under these provisions unless the provisions are waived or otherwise declared inapplicable (e.g., in the case of refugees). The Attorney General is given discretionary authority to waive most of the provisions as they apply to nonimmigrants, but relatively few may be waived for immigrants. The grounds for exclusion relate generally to personal qualifications, including health, economic and occupational status, and literacy; misconduct, including criminal behavior, immorality, potentially subversive activities or affiliations, and draft evasion; and formalities in application for entry, including documentary requirements.

The Immigration and Nationality Act also includes a list of 19 grounds for deportation, many of which are related to the grounds for exclusion. The vast majority of deportable aliens are aliens who entered illegally without inspection. Most are granted voluntary departure rather than being prosecuted under the penalty provisions for illegal entry, or undergoing formal deportation procedures.

Three of the grounds for exclusion which have been of particular interest to the Congress recently are those relating to labor certification, the admission of aliens likely to become public charges, and the admission of members or affiliates of the Communist party. These are discussed below.

(12) What is labor certification?

Labor certification refers to Sec. 212(a)(14) (8 U.S.C. 1182(a)(14)), one of the 33 grounds for exclusion itemized by the Immigration and Nationality Act. It is limited in applicability to would-be immigrants seeking entry under the



occupational preferences (third and sixth), and to aliens who will be employed in the United States who are seeking entry as nonpreference immigrants. Aliens seeking to enter as immigrants under these classifications may do so only if the Secretary of Labor certifies that there are not sufficient "able, willing, qualified, and available" U.S. workers, and that the alien's admission will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The purpose of the labor certification provision is to protect U.S. workers from adverse competition from alien labor. It has been criticized on the grounds that it is unduly cumbersome to administer; that it does not apply to the majority of immigrants who enter as relatives, or to refugees; and that many aliens entering with labor certification change occupations shortly after entry.

(13) What provision is there in the Immigration and Nationality Act to insure that immigrants will be self-supporting, or provided for by relatives, and will not require public assistance?

The Immigration and Nationality Act provides for the exclusion of aliens who are "likely at any time to become public charges" (Sec. 212(a)(15); 8 U.S.C. 1182(a)(15)). It also provides for the deportation of an alien who has become a public charge within 5 years after entry, unless the reasons for this are affirmatively shown to have arisen after entry (Sec. 241(a)(8); 8 U.S.C. 1251(a)(8)). In order to establish that he is not likely to become a public charge, an alien seeking admission may be required to provide assurance of financial support, in the form of an affidavit of support, from a resident of the United States. However, court decisions have generally established that such affidavits of support are not legally binding on the U.S. resident sponsors. According to various administrative and judicial decisions, in order for an alien to be deportable under the public charge provision, there must be a liability for

payment, a demand for payment, and a refusal or omission to pay. These conditions are not generally present in cases where an alien legally participates in a public service or benefit program.

Alien eligibility requirements for participation in the major Federal public assistance programs are set forth in the laws and/or regulations establishing and governing those programs, rather than in the Immigration and Nationality Act. Aliens lawfully admitted for permanent residence and refugees are currently eligible, with the restrictions noted below, for most major public assistance programs, including the Supplemental Security Income (SSI) program, Aid to Families with Dependent Children (AFDC), Medicaid, and the food stamp program. Nonimmigrants and illegal aliens are not eligible for participation in these programs.

Legislation enacted by the 96th and 97th Congresses restricts the availability of SSI and AFDC benefits and food stamps for certain immigrants who have met the public charge requirement for entry by means of an affidavit of support from a U.S. resident sponsor. The enabling legislation for each of these programs has been amended to provide that for the purposes of determining eligibility for participation, immigrants will be deemed to have some portion of their immigration sponsors' income and resources available for their support for a period of 3 years after entry.

(14) May aliens who are members of the Communist Party and affiliated organizations come to the United States?

The Immigration and Nationality Act, in Sec. 212(a)(28) (8 U.S.C. 1182(a)(28)), provides for the exclusion of aliens who are members of proscribed political organizations, primarily the Communist Party and affiliated groups. This provision may be waived in the case of aliens seeking to enter as nonimmigrants,

if such a waiver is sought by the Secretary of State and approved by the Attorney General. An exemption is possible in the case of an alien seeking entry as an immigrant if he shows that his membership was involuntary or qualifies as a defector.

The Immigration and Nationality Act also provides for the exclusion, without the possibility of a waiver, of any alien believed to be seeking entry to engage in activities which would be prejudicial to the public welfare (Sec. 212(a)(27); 8 U.S.C. 1182(a)(27)), or who is believed likely to engage in subversive activities after entry (Sec. 212 (a)(29); 8 U.S.C. 1182(a)(29)).

(15) How does an immigrant become a citizen?

The process whereby an immigrant becomes a citizen is known as naturalization, the subject of title III of the Immigration and Nationality Act. In most cases, an applicant for naturalization must be an alien lawfully admitted for permanent residence (immigrant), who is at least 18, and who has resided in the United States continuously for at least 5 years. He must also be of good moral character; believe in the principles of the Constitution of the United States; and be able to speak, read, and write simple English, unless exempt because of age and length of residence. There are exceptions to these requirements for special classes, such as children, veterans, and the spouses of U.S. citizens.

(16) What are the principal agencies involved in administering the Immigration and Nationality Act?

Major responsibility for administering the immigration law rests with the U.S. Immigration and Naturalization Service (INS), within the Department of Justice, and the State Department's Bureau of Consular Affairs. State Department activities encompass most of the overseas functions, including the issuance of visas by consular officers. INS inspects all entering aliens at the U.S. border

and airports, and issues alien registration receipt cards (Form I-151 or the more recent Form I-551) to immigrants, and the arrival-departure card (Form I-94) to nonimmigrants. Domestic enforcement of immigration laws as well as many of the service functions relating to benefits fall within the jurisdiction of INS, frequently in cooperation with the State Department. Important roles are also played by the Department of Labor, in employment-related admissions; and by the Department of Health and Human Services's Public Health Service, in the medical examination of aliens who apply for admission to the United States.

(17) What have been the major amendments to the Immigration and Nationality Act since its enactment in 1952?

While the structure of the Immigration and Nationality Act has remained basically the same since 1952, the immigration provisions were significantly changed by the Act of October 3, 1965 (P.L. 89-236; 79 Stat. 911). These amendments abolished the 40-year old national origins quota system as the primary control on U.S. immigration, replacing it with an annual ceiling on Eastern Hemisphere immigration of 170,000 and a 20,000 per country limit. Within those restrictions, immigrant visas were distributed on a first-come, first-served basis according to a seven-category preference system. The 1965 amendments also provided for a ceiling on Western Hemisphere immigration for the first time in our history, limiting total immigration from other countries in this Hemisphere to 120,000 a year.

The Immigration and Nationality Act Amendments of 1976 (P.L. 94-571; 90 Stat. 2703) extended the 20,000 per-country limit and a slightly modified version of the seven-category preference system equally to the Western Hemisphere. The preference system and the per-country limits were applied to the two hemispheres under the separate ceilings of 170,000 for the Eastern Hemisphere, and 120,000 for the Western Hemisphere. Legislation enacted in 1978 (P.L. 95-412;

92 Stat. 907) combined the separate ceilings on the two hemispheres in a single worldwide ceiling of 290,000 with a single preference system. It also created the Select Commission on Immigration and Refugee Policy, which submitted its final report, entitled U.S. Immigration Policy in the National Interest, in early 1981.

Major amendments were enacted by the 96th Congress in the form of the Refugee Act of 1980 (P.L. 96-212; 94 Stat. 102), which revised the procedures for the admission of refugees and provided general authority for Federal assistance for refugee resettlement. Provision is made for both a regular flow and the emergency admission of refugees, following legislatively prescribed consultation with the Congress. The legislation eliminated refugees as a category of the preference system, and set the permanent worldwide ceiling at 270,000, exclusive of refugees.

Most recently, the Immigration and Nationality Act Amendments of 1981 (P.L. 97-116; 95 Stat. 1611) passed the Congress during the first session of the 97th Congress, and were signed by President Reagan on December 29, 1981. Popularly known as the INS efficiency act, the legislation was generally noncontroversial and consisted of remedial and technical amendments to the existing law.