Order Code IB10044

Immigration Legislation and Issues in the 106th Congress

Updated December 5, 2000

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SUMMARY

As the year-end business of the 106th Congress progresses, the top immigration issue is whether amnesty should be extended to certain aliens in the U.S., including certain Guatemalans, Hondurans, Salvadorans, Haitians, and Liberians. Consideration of this amnesty is holding up enactment of the FY2001 Commerce, Justice, State appropriations bill (H.R. 4690). The White House warns of a veto if amnesty is not provided. The amnesty favored by the Administration is derived from several broader "Latino Fairness" proposals. The CJS bill that passed as part of H.R. 4249 includes an alternative proposal offered by Republicans.

The top immigration issue before Congress had been the admission of temporary foreign professional workers, commonly known as H-1B nonimmigrants. Despite enactment of legislation in 1998 to increase the number of H-1B nonimmigrants, many in the business community urged that the ceiling be increased again. On October 3, 2000, the Senate and House passed S. 2045, the "American Competitiveness in the Twenty-first Century Act of 2000," which would add an additional 297,500 H-1B visas over FY2000-FY2002. S. 2045 also would eliminate the per-country ceilings for permanent employment-based admissions and would expand worker training programs in technology-related skills and educational programs in math, science, and technology. The President signed P.L. 106-313 Oct. 17.

Legislation pertaining to H-2A temporary alien agricultural workers is also before Congress. A provision intended to expedite the Labor Department's processing of H-2A labor certification applications has been enacted (P.L. 106-78). Bills to modify the H-2A program and establish an amnesty program for unauthorized seasonal workers (S.1814/H.R. 4056), and to supplement the H-2A program with a new alien agricultural worker pilot program (H.R. 4548) are pending. The future structure of the Immigration and Naturalization Service (INS) is another issue under consideration. Congress is moving forward with plans to restructure INS by separating the agency's enforcement and service functions. The House Judiciary Immigration Subcommittee has approved H.R. 3918, the "Immigration Reorganization and Improvement Act of 1999," which would establish a bureau of immigration services and a bureau of immigration enforcement within the Department of Justice. Meanwhile, the Administration is proceeding with its own plans to restructure INS internally.

Other legislation enacted to date by the 106th Congress addresses additional immigration-related issues. P.L. 106-104 and P.L. 106-113 appear to have at least temporarily resolved most refugee issues. P.L. 106-215 supplants entry/exit control requirements with a directive to develop an integrated system to record alien arrivals and departures using available data. The President has also signed laws that make the visa waiver pilot program permanent, extend the religious worker provision, create nonimmigrant visas categories for certain victims of sex trafficking and domestic violence, facilitate citizenship for adopted children, and assist certain Syrian Jews.

MOST RECENT DEVELOPMENTS

Consideration of certain "Latino Fairness" and other amnesty proposals is reportedly the major issue holding up enactment of the Commerce, Justice, State (CJS) appropriations bill (H.R. 4690) that, in turn, had been folded into the District of Columbia appropriations conference agreement (H.R. 4942, H. Rpt 106-1005). H.R. 4942 has passed both the House and Senate and cleared for the White House on October 27, 2000, but subsequently the D.C. appropriations bill has been passed separately and signed (P.L. 106-522). On October 17, the President signed legislation (P.L. 106-313, S. 2045) to raise the admissions ceiling for temporary professional (H-1B) workers. This legislation will add an additional 297,500 H-1B visas over FY2000-FY2002. A variety of other immigration-related provisions also have been sent to the President.

BACKGROUND AND ANALYSIS

Introduction

Immigration to the United States is regulated by federal law. The basic U.S. law, the Immigration and Nationality Act (INA), was enacted in 1952 and has been substantially amended since then. A major overhaul of the INA occurred in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208). The Immigration and Naturalization Service (INS) administers and enforces the INA. (For a basic introduction to immigration, see CRS Report 98-918, *Immigration Fundamentals*, and CRS Report 94-146, *Immigration: Numerical Limits on Permanent Admissions, FY1998-FY2000*.)

Pending Legislation and Issues

The major legislative issue now before the 106th Congress is proposed amnesty for various foreign nationals already in the U.S. In addition, Congress continues to deal with issues arising from the sweeping changes in IIRIRA and the 1996 welfare act.

"Latino Fairness" and Legalization

A set of immigration legalization and status adjustment provisions known as the "Latino and Immigrant Fairness Act" (LIFA) reportedly is the main issue delaying approval of the Commerce, Justice and State (CJS) FY2001 appropriations bill (H.R. 4690). Some Democratic Members, with White House support, are trying to enact these provisions (S. 3095) before the 106th Congress adjourns. While supporters characterize these provisions as fair treatment of aliens who have been living and working here for years as good neighbors and dedicated employees, opponents describe the package as legalization for illegal aliens who jumped the line to get into the United States. Republicans added an alternative proposal known as the "Legal Immigration Family Equity Act" (LIFE) to the CJS bill when it was folded into the District of Columbia (D.C.) FY2001 appropriations (H.R. 4942). Since the D.C. appropriations bill has been passed separately and signed (P.L. 106-522), the status of

the immigration proposal is ambiguous. Depending on the resolution of this issue, up to two million people (including the immediate relatives of qualifying aliens) might become eligible for legal permanent resident status. (See CRS Report RS20743, *Immigration Legalization and Status Adjustment Legislation.*)

"Late Amnesty" and Registry. Prior to LIFE and LIFA, a variety of bills addressed "late amnesty and the registry. **H.R. 2125** would amend the INA to repeal the judicial review limitation on denial of adjustment to permanent resident status with respect to certain applicants for legalization under the 1986 Immigration Reform and Control Act (IRCA). The same "late amnesty" provision is included in **S. 1552**, **H.R. 3149**, and H.R. 4966. These bills also would extend the admission registry date for permanent residence. Under current law, a record of lawful admission for permanent residence may be made in the case of an alien who entered the United States prior to January 1, 1972, and meets specified requirements. Other bills proposing to change the registry date include **H.R. 4172**, which was introduced on behalf of the Administration, **S. 2407**, S. 2668, and S. 2912. These 4 bills and H.R. 4966 would move the registry date to January 1, 1986. The INS estimates that 500,000 aliens would be eligible to adjust status if the registry date would be advanced to 1986. In addition, S. 2407 and S. 2668 contain "rolling registry date" provisions to advance the registry date 1 year in each of the 5 years from 2002 through 2006. (See CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*.)

"NACARA Parity" and Liberian Adjustment. The Nicaraguan Adjustment and Central American Relief Act (NACARA), part of the District of Columbia Appropriations Act for FY1998 (P.L. 105-100), enables Nicaraguans and Cubans who had come to the United States by December 1, 1995, to adjust to legal permanent resident status. NACARA also allows Salvadorans and Guatemalans, as well as certain aliens from the former Soviet Union or specified former Warsaw Pact countries, to seek legal permanent residency under the more generous standards of hardship relief in place prior to the tightening of immigration laws in 1996. Subsequently, Congress enacted the Haitian Refugee Immigration Fairness Act of 1998, which allows certain specified Haitians to adjust to permanent resident status, as part of the FY1999 Omnibus appropriations act (P.L. 105-277).

A bipartisan group of Members in favor of applying NACARA adjustment standards to other groups (which is referred to as "NACARA parity") has introduced **H.R. 2722** on behalf of the Administration. A comparable bill (**S. 1592**) is pending in the Senate. Similar provisions are included in **H.R. 4200**, an H-1B bill, and in **S. 2912**, the "Latino and Immigrant Fairness Act of 2000," as well as in S. 2668 and H.R. 4966. These bills would amend NACARA to grant legal permanent residence to certain Guatemalans, Haitians, Hondurans, and Salvadorans. The INS estimates that about 680,000 aliens would be eligible to adjust under "NACARA Parity," but this number also includes many aliens who would also be able to adjust if the registry date would be advanced to 1986. Separate bills before Congress (**H.R. 919**, **S. 656**) would provide for the adjustment of status of certain Liberians in the United States to lawful permanent resident status. Liberian adjustment provisions also are included in S. 2668 and H.R. 4966. (See CRS Report 98-270, *Immigration: Haitian Relief Issues and Legislation*, and CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law.*)

Adjustment to Permanent Resident Status under Section 245(i). Section 245 of the INA permits an alien who is legally but temporarily in the United States to adjust to

permanent resident status if the alien becomes eligible on the basis of a family relationship or job skills, without having to go abroad to obtain an immigrant visa. Section 245 was limited to aliens who were here legally until 1994, when Congress enacted a 3-year trial provision — Section 245(i) — allowing aliens here illegally to adjust status once they became eligible for permanent residence, provided they paid a large fee. This provision was effectively repealed by the FY1998 CJS appropriations act (P.L. 105-119), which provided that only aliens who were beneficiaries of an immigration petition or a labor certification application filed on or before January 14, 1998, would be eligible for adjustment under Section 245(i). A bill (**H.R. 1841**) to restore Section 245(i) to its pre-1997 status is pending. Similar provisions also are included in S. 2668, H.R. 4966, and S. 2912. In addition, the Senate-reported version of the FY2001 CJS appropriations act (H.R. 4690) also included such a provision, but it was dropped from the District of Columbia conference agreement (H.R. 4942) that now includes the CJS bill. (See CRS Report 97-946, *Immigration: Adjustment to Permanent Residence Status under Section 245(i).*)

LIFA. "NACARA parity," Liberian adjustment, advancement of the registry date, and reinstatement of §245(i) were included in the "Latino and Immigrant Fairness Act" (LIFA) that has been introduced as S. 3095. Estimates of aliens and their derivative relatives who may benefit from this bill are as high as 2 million. This bill is comparable to language that the Senate Democrats tried unsuccessfully to bring up as an amendment during the floor consideration of S. 2045 (the H-1B legislation) on September 27. The sponsors of LIFA do not include provisions for "late amnesty" because those individuals would be able to legalize through the advancement of the registry date, a main feature of S. 3095. In an October 26 letter to congressional leaders, President Clinton led his list of reasons he would veto the CJS appropriations bill with failure to include LIFA.

LIFE. Senate Judiciary Committee Chair Orrin Hatch, along with Congressmen Henry Bonilla and Lamar Smith, has offered an alternative proposal called the "Legal Immigration Family Equity Act" (LIFE) that focuses on the "late amnesty" cases and the immediate relatives of legal permanent residents (LPRs) who have second preference petitions pending. Those aliens who are part of the "late amnesty" litigation would be permitted to legalize under the terms of §245A originally established by IRCA. According to the sponsors, about 600,000 aliens would benefit from a new temporary "V" visa for spouses and children of LPRs. This language has been added to the CJS appropriations bill (H.R. 4690) that, in turn, was folded into the District of Columbia appropriations conference agreement (H.R. 4942, H. Rpt. 106-1005), which has passed both the House and Senate. Since the D.C. appropriations bill has been passed separately and signed (P.L. 106-522), the status of the proposal is ambiguous.

H-2A Temporary Agricultural Workers

In recent years, there have been legislative efforts to modify or supplement the H-2A temporary agricultural program authorized by the INA (§101(a)(15)(H)(ii)(A)). The H-2A program is small but growing, with approximately 42,000 workers approved in FY1999. Agricultural employers have long complained that the program is overly cumbersome, while farm labor advocates have argued that it provides too few protections for U.S. workers. In part, the debate reflects the inherent conflict in the program goals of expeditiously providing employers with foreign workers, while protecting U.S. workers. Legislation has been enacted to expedite the processing of H-2A applications. Broader legislation is pending, including a

bill ordered reported by the House Judiciary Committee (**H.R. 4548**). Recent media reports indicate that a compromise is near on efforts to create a new temporary agricultural worker program (which also may include a legalization or adjustment of status provision), but details of this proposal are not available at this time.

Senator Gordon Smith has introduced **S. 1814**, the "Agricultural Job Opportunity Benefits and Security Act of 1999." It evolved from legislation passed by the Senate in the last Congress, with the notable addition of an amnesty program. Another Senate bill (**S. 1815**) includes only the amnesty title of S. 1814. On May 4, 2000, the Senate Judiciary Immigration Subcommittee held a hearing on S. 1814. A companion bill to S. 1814 (**H.R. 4056**) has been introduced in the House. S. 1814/H.R. 4056 would establish a time-limited amnesty program for aliens who have worked here illegally in seasonal agriculture and who continue to do so for a specified time. In addition, the bills would require the Department of Labor (DOL) to maintain a system of agricultural worker registries that would list U.S. citizen and lawful permanent resident alien workers, as well as workers participating in the amnesty program. Agricultural employers seeking H-2A workers would be required to apply for workers from this registry before their H-2A applications could be considered.

A related bill, the "Agricultural Opportunities Act" (**H.R. 4548**), would establish a pilot "H-2C" alien agricultural worker program to supplement the existing H-2A program. Like S. 1814/H.R. 4056, H.R. 4548 would require DOL to maintain a system of agricultural worker registries containing a database of authorized U.S. workers. Under H.R. 4548, agricultural employers would have to apply for registry workers before being allowed to import H-2C workers. Unlike S. 1814/H.R. 4056, however, H.R. 4548 would not establish an amnesty program. On September 20, 2000, the House Judiciary Committee completed its markup of H.R. 4548 and ordered the bill reported, as amended, by a vote of 16-11. (See CRS Report 97-714, *Immigration: The H-2A Temporary Agricultural Worker Program*; CRS Report 95-712, *Immigration: The Labor Market Effects of Temporary Alien Farm Worker Programs*; and CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*.)

Criminal Aliens

Two laws enacted in 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208), significantly affected how criminal aliens — aliens who have engaged in criminal activity — are treated in the removal process. Among other changes, these laws:

- mandate more widespread confined detention of criminal aliens after criminal imprisonment ends, even in cases where criminal confinement ended years before;
- make it much harder for criminal aliens with longstanding ties in the United States to remain here, even in some cases where solid family and community ties may appear to outweigh the seriousness of past criminal conduct; and
- curtail judicial review of removal orders based on criminal convictions.

These changes have been controversial as a growing number of press accounts relate how individual long-term aliens have been placed in confinement and threatened with removal even though their criminal activity either may not generally be regarded as particularly serious or occurred in the distant past. Mandatory detention, curtailment of judicial review, and

"retroactive" application of restrictions on discretionary relief also have been critically received in the courts, which frequently (though not always) have narrowed or halted their application. Between the perception of some Members that the 1996 changes have been unduly harsh in certain instances and the desire of other Members to regain congressional control over detention and review policy from the courts, revisions of the 1996 criminal alien rules may be forthcoming. Meanwhile, INS has ceased to apply the letter of the 1996 mandatory detention requirements in some classes of cases and reportedly is considering modifying its implementation of the mandatory removal provisions as well.

To effect the 1996 changes, Congress amended the INA in three significant ways: (1) it covered much more criminal conduct under the category of *aggravated felony*, a new class of criminal aliens established in the INA in the 1980s that now covers crimes of violence or theft punished by a year's imprisonment (including suspended sentences), as well as drug crimes; (2) it dramatically lowered the seriousness of criminal conduct that requires an alien to be detained between release from criminal confinement and subsequent deportation to include almost all potentially deportable criminal aliens and not just aliens who have been convicted of an *aggravated felony*; and (3) it lowered the seriousness of criminal conduct that bars immigration judges from granting discretionary relief from removal, while also making it more difficult for criminal aliens who are not now disqualified based on seriousness of offense from meeting other eligibility criteria.

The complexity of, and controversy about, the 1996 changes are compounded by their "retroactive" application. That is, for example, the current definition of aggravated felony applies to past convictions that were not aggravated felonies at the time of conviction, and aliens who previously never were detained for past criminal conduct now must be detained — at least under the letter of current law. (See CRS Report 97-415, *Criminal Aliens: Expanded Detention, Restricted Relief from Removal*, by Larry M. Eig.)

Perhaps the most sympathetically viewed of those affected by the 1996 changes are long-term immigrants whose misconduct and release from incarceration, if any, occurred well before they seek relief from detention and removal. Thus, on September 19, 2000, the House passed **H.R. 5062** by voice vote. This bill, introduced by Rep. Bill McCollum with bipartisan support, would ease most, but not all, of the effects of the 1996 changes in discretionary relief for legal permanent residents whose criminal activity occurred before IIRIRA became law on September 30, 1996. Earlier, Rep. McCollum had introduced **H.R. 2999**, the "Fairness for Permanent Residents Act of 1999," a bill that covers similar ground but also would change statutory requirements for mandatory detention. Also similar to, but broader than H.R. 5062, is **H.R. 3272**, the"Keeping Families Together Act" introduced by Rep. Bob Filner, one of the cosponsors of H.R. 5062. In April 1999, Rep. Barney Frank, another cosponsor of H.R. 5062, introduced the "Family Reunification Act of 1999" (**H.R. 1485**), which also would allow certain criminal aliens to apply for relief from removal even though they would be disqualified from doing so under the 1996 changes. (See CRS Report RS20681, *Mandatory Deportation of Criminal Aliens: Proposed Relief for Long-Term Residents* by Larry M. Eig.)

A comprehensive reform bill introduced by Representative John Conyers on July 26, 2000, the "Restoration of Fairness in Immigration Law Act" **(H.R. 4966)**, addresses criminal alien issues more extensively. This bill would broadly roll back many of the mandatory immigration consequences that currently attach to criminal activity. In some cases, H.R. 4966 would reestablish pre-1996 rules on criminal conduct; in other cases, the bill would establish

standards somewhere between current law and previous law; and in still other instances, the bill would establish standards on criminal aliens that are less stringent than pre-1996 law.

In the Senate, legislation introduced by Senator Moynihan, **S. 173**, addresses relief, detention, and judicial review aspects of the 1996 changes. **S. 3120**, the "Immigrant Fairness Restoration Act," introduced by Senator Kennedy on September 27, 2000, echoes themes contained in S. 173. S. 3120 also addresses many of the criminal alien provisions addressed by the House in H.R. 4966. More narrowly focused companion bills entitled "Fairness to Immigrant Veterans Act of 1999," **H.R. 2287** and **S. 871**, would broadly ease detention, relief, and review restrictions for certain criminal aliens who are honorably discharged veterans or active service personnel.

Legislation pertaining to international crime, the "Denying Safe Havens to International and War Criminals Act of 1999" (**S. 1754**), passed the Senate on November 4, 1999. Title II, "Anti-atrocity Alien Deportation," would amend the INA to provide for the inadmissibility and removability of aliens who have committed acts of torture abroad and to establish an Office of Special Investigations within the Department of Justice's Criminal Division. Bills similar to title II are pending in the House, including **H.R. 3058** and **H.R. 2642**, and additional action on barring torturers from the U.S. may be forthcoming.

Secret evidence. The use of secret evidence under immigration law arises primarily in three contexts. Longstanding law allows the consideration of undisclosed evidence to exclude an arriving alien from admission on security or terrorism grounds if disclosing the evidence would threaten security, safety, or other public interest. Statutory authority under the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208) precludes an alien from examining national security evidence proffered by the Government in opposition to an alien's admission or application for discretionary relief (including asylum). The same laws also established a special alien removal court to consider terrorist removal cases based on classified information. In proceedings before this court an alien may be removed based on sensitive information considered in chambers out of the alien's presence, but in cases involving permanent resident aliens, a special counsel must be appointed to examine the information on the alien's behalf.

While the special removal court provisions were the most controversial when enacted, the discretionary relief and admission provisions have been most controversial as implemented. Coupled with mandatory detention provisions, the relief and admission provisions have allegedly led to several highly publicized cases of aliens, often Muslim and Arab, being detained for extended periods without being allowed to examine the information underlying their incarceration. Defenders of the use of secret evidence in such cases claim that its use is essential to deal with foreign terrorists and other potential threats to security. Critics, on the other hand, state that unexamined evidence is often flawed and its use to incarcerate and deport fundamentally unfair.

On June 10, 1999, Rep. David Bonior introduced **H.R. 2121**, the "Secret Evidence Repeal Act," to end the use of undisclosed evidence in immigration proceedings. This bill gained bipartisan support and 128 cosponsors. Yet its potential enactment as introduced remained staunchly opposed by the Government and various groups sensitive to security concerns. On September 26, 2000, the House Judiciary Committee considered H.R. 2121

and adopted a substitute offered by Rep. Bob Barr by a vote of 26-2. Under the Barr substitute, the Government would have to provide an alien with an unclassified summary of any classified information it is relying upon. This summary would be prepared under the supervision of a federal judge and would be the only version that could be considered by the adjudicators of the alien's case (H.Rept. 106-981).

INS Operations. In recent years, INS has come under intense criticism for not expeditiously deporting criminal aliens. According to the Attorney General, over 35,318 criminal aliens were released by INS over a 5-year period ending in May 1999. Of that number, 11,605 went on to commit additional serious crimes, including 98 homicides, 142 sexual assaults, 44 kidnappings, 346 robberies, and 1,214 assaults. INS reports that some of these individuals had won removal cases, were allowed to post bond by immigration judges, or were released because INS deemed them as not posing a threat to society. On the other hand, some of these individuals may have been subject to mandatory detention and removal because of their criminal records. This matter is still under review by the Department of Justice and by the House Immigration Subcommittee, which subpoenaed INS criminal alien records following the arrest and apprehension of Angel Maturino Resendez, a Mexican national charged with multiple counts of first-degree murder in the United States.

In FY1999, INS removed 62,359 criminals — a 12% increase over FY1998. In addition, INS removed 114,631 non-criminals; the bulk of non-criminal removals (89,035), however, consisted of administrative removals for fraudulent documents through the expedited removal program at ports of entry.

Despite increased funding during FY1999, INS officials reported that the agency did not possess the detention capacity to fully comply with the mandatory detention requirements included in IIRIRA. They estimated that to do so would require a detention capacity of between 19,000 and 34,000 beds. For FY1999, to meet detention mandates and other challenges, Congress provided INS with an emergency supplemental appropriation of $80 million (**P.L. 106-31**). At the end of FY1999, INS had a detention capacity of 16,563 beds; nearly 95% of this capacity was utilized for mandatory detainees (aggravated felons, other criminals subject to mandatory detention, terrorists, expedited removals, and aliens who had been issued a final order of removal by an Immigration Judge).

INS Reorganization and Budget

INS Restructuring. Members of Congress and Administration officials are moving forward with plans to restructure INS by more clearly separating immigration services and enforcement programs operationally. On March 22, 2000, the House Judiciary Immigration Subcommittee approved a bill (**H.R. 3918**) to split INS, establishing a bureau of immigration services and a bureau of immigration enforcement within the Department of Justice. H.R. 3918 is identical to **H.R. 2528**, the "Immigration Reorganization and Improvement Act of 1999," as introduced last July by Representative Harold Rogers. Last November, the Immigration Subcommittee amended and approved H.R. 2528. The amended version of H.R. 2528 represented a compromise negotiated with Attorney General Janet Reno. Late in the session last year, however, the Administration pulled its support for H.R. 2528, as amended, stalling full committee markup. Immigration Subcommittee Chairman Smith asserted during the March 22 markup that the reintroduction of H.R. 2528 as H.R. 3918 was necessary because the Administration had negotiated in "bad faith."

On September 23, 1999, the Senate Judiciary Committee's Immigration Subcommittee held a hearing on another INS restructuring proposal (**S. 1563**), but so far this session the Senate has not addressed this issue. The Administration, meanwhile, is proceeding with its own plans to restructure INS internally. (See CRS Report RS20279, *Immigration and Naturalization Service Reorganization and Related Legislative Proposals,* and CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*.)

INS FY2001 Budget. On June 26, 2000, the House passed a Departments of Commerce, Justice, and State (CJS) appropriations bill for FY2001 (**H.R. 4690, H. Rept. 106-680**) that would provide $4.7 billion in funding to INS. It included increases for border and interior enforcement, detention and removal, and the continued reduction of pending application caseloads. The House-passed bill also contained a provision to authorize an H-1B premium service fee, but did not include Administration-requested provisions to reinstate Section 245(i) of the INA, raise the airport user fee, or end the cruise ship user fee exemption. On July 21, 2000, the Senate Appropriations Committee ordered reported H.R. 4690 (S. Rpt.106-404). The bill would have provided $4.6 billion to INS for FY2001. In addition, it included $322 million in emergency funding for the Southwest border initiative, for total INS funding of $4.9 billion. Unlike the House-passed bill, the Senate measure would have reinstated Section 245(i). The House-passed measure was slightly below, while the Senate measure was above, the $4.8 billion requested by the Administration.

Subsequently, the FY2001 Commerce, Justice, State (CJS) appropriations act (H.R. 4690),which would provide the Immigration and Naturalization Service (INS) with $4.8 billion for FY2001, nearly matching the Administration's request, was folded into the District of Columbia (DC) appropriations conference agreement (H.R. 4942; H.Rept. 106-1005). This measure was narrowly passed by the House on October 26, 2000, and by the Senate on the following day. The D.C. appropriations bill subsequently passed separately and was signed (P.L. 106-522). The conference agreement includes program increases of $101 million for border control and management and $121 million for interior enforcement and the removal of deportable aliens. It would also authorize a new expedited service fee for employers petitioning for skilled H-1B visa nonimmigrant workers, but it does not reinstate Section 245(i). (See CRS Report RS20618, *Immigration and Naturalization Service's FY2001 Budget*.)

Alien Eligibility for Public Assistance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; P.L. 104-193), also referred to as the 1996 welfare act, significantly restricted the eligibility of legal aliens for needs-based public assistance. Previous law had not generally distinguished legal permanent residents from citizens. As the result of perceived abuses and budgetary concerns, P.L. 104-193 barred most legal aliens from Supplemental Security Income (SSI) for the Aged, Blind, or Disabled and from food stamps. It also allowed the states to limit alien access to Medicaid and Temporary Assistance for Needy Families (TANF). Additionally, legal aliens arriving after August 22, 1996, the enactment date of PRWORA, were barred from these and other federal means-tested programs for 5 years after arrival. These changes proved controversial, particularly the termination of benefits for aliens who were already receiving them when the 1996 act became law. The 105th Congress passed several laws continuing or partially restoring SSI, Medicaid, and food stamps to some

previous beneficiaries and extending refugee eligibility for 2 years. (See CRS Report 96-617, *Alien Eligibility for Public Assistance*.)

Legislative activity on alien eligibility for public assistance has continued in the 106th Congress. Both the House and Senate have passed versions of an anti-trafficking bill (**H.R. 3244**) that contain different provisions to make certain alien trafficking victims eligible for federal assistance. **H.R. 1788**, which denies federal public benefits to individuals who participated in Nazi persecution, has been reported by the House Judiciary and Government Reform committees. The Senate companion bill is **S. 1249**.

In addition, legislation to expand legal immigrants' eligibility for public benefits is before both houses. On June 21, 2000, Representative Lincoln Diaz-Balart introduced a bill (**H.R. 4707**) for himself and a bipartisan group of cosponsors that would allow states to provide health coverage for children and pregnant women through Medicaid and the State Child Health Insurance program (referred to as both SCHIP and CHIP). H.R. 4707 is comparable to the "Immigrant Children's Health Improvement Act of 1999" (**S. 1227**), which was introduced by the late Senator John Chafee and also has bipartisan support. **S. 2668**, an omnibus immigration bill sponsored by Senator Bob Graham, contains provisions similar to S. 1227. More comprehensive legislation, the "Fairness for Legal Immigrants Act of 1999" (**S. 792**/**H.R. 1399**), would give states the option of allowing legal immigrant pregnant women, children, and blind or disabled medically needy individuals to be eligible for medical assistance under the Medicaid program or, in the case of children, SCHIP, regardless of their date of entry. For pre-August 1996 legal immigrants, the act would restore SSI eligibility for those who are elderly and poor; and for post-August 1996 legal immigrants, it would restore SSI eligibility for those who become disabled after entering the country. It also would restore food stamp eligibility for all pre-August 1996 legal immigrants.

The Administration has included funding in its FY2001 budget request to expand public assistance benefits for legal immigrants. Similar proposals were in the FY2000 request, but no action was taken on them. The Administration would restore SSI and related Medicaid for immigrants who have been here 5 years and subsequently become disabled. It also would allow states to provide health coverage for children and pregnant women through Medicaid and SCHIP and restore food stamp eligibility for immigrants here before August 22, 1996, who subsequently reach 65. As the 106th Congress draws to a close, the White House is renewing its push to provide health coverage for immigrant children and pregnant women and to restore food stamp eligibility for legal immigrants, saying that the President may veto appropriations that do not contain these provisions.

Other related bills include **S. 1805**, which would restore all food stamp benefits available to legal immigrants before the 1996 welfare act; **H.R. 3192** is the House companion bill. **S. 1709** and **H.R. 4282** would provide federal reimbursement for indirect costs relating to the incarceration of illegal aliens and for emergency health services furnished to undocumented aliens. **H.R. 2205** would provide additional funding to states for emergency health services furnished to undocumented aliens. **H.R. 2849** would reimburse states for the costs of educating certain illegal alien students.

Other Pending Issues

Alien Smuggling. On October 3, 2000, the House passed **H.R. 238** that would set mandatory minimum sentences for alien smuggling. Under current law, it is illegal for persons to bring aliens into the United States at any place other than a designated port of entry. It also is illegal to transport those aliens, to conceal or harbor those aliens, or to encourage or induce aliens to enter or reside in the United States illegally. H.R. 238 would establish sentences ranging from 2-to-10 years to 20 years to life, or the death penalty, depending on the nature of the offense.

Expedited Removal. IIRIRA included provisions known as "expedited removal" that target the perceived abuses of the asylum process by restricting the hearing, review, and appeals process for aliens at ports of entry. Now, if an immigration officer at a port of entry finds that an alien arriving without proper documentation does not intend to apply for asylum or does not fear persecution, the officer can deny admission and order the alien summarily removed from the United States. If an asylum officer determines that an alien does not have a "credible fear" of persecution, the alien is removed. IIRIRA requires that those aliens must be kept in detention while their "credible fear" cases are pending. A bipartisan group of Senators introduced S. 1940, the "Refugee Protection Act of 1999," to limit the use of expedited removal procedures to periods deemed immigration emergencies. In addition, S. 1940 would exempt aliens fleeing countries with poor human rights records from expedited removal, would in large part restore administrative and judicial review, and would replace mandatory detention of asylum seekers with a policy of detention at the discretion of the Attorney General.

Refugees. The Department of Health and Human Service's Office of Refugee Resettlement (HHS/ORR) provides transitional assistance to temporarily dependent refugees, asylees, and Cuban/Haitian entrants when they arrive in the United States. The House Appropriations Committee recommended $433.1 million for ORR in the FY2001 appropriations bill for the Departments of Labor, Health and Human Services, and Education (**H.R. 4577**). This amount, which is $0.5 million above the President's request, has not been matched by the Senate. The Senate Appropriations Committee recommended $425.6 million for FY2001. The House amended and passed H.R. 4577 on June 14, 2000, and the Senate amended and passed its version of H.R. 4577 on June 30, 2000.

The Senate-passed version of H.R. 4577 would extend the so-called Lautenberg amendment for an additional year. The Lautenberg amendment is a provision of P.L. 101-167, the FY1990 Foreign Operations appropriations act, that requires the Attorney General to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status; and provides for adjustment to permanent resident status for certain Soviet and Indochinese nationals granted parole after being denied refugee status.

Commonwealth of the Northern Mariana Islands (CNMI). The CNMI is a U.S. territory in the Pacific. The 1976 law by which Congress approved the establishment of the CNMI (P.L. 94-241) stated that certain laws, including federal immigration laws, would not apply to the CNMI, except as later made applicable by Congress. For a number of years, Members of Congress and Administration officials have expressed concern about the number of nonresident alien workers in the CNMI and allegations of their mistreatment. Legislation

to address these concerns was introduced in past Congresses, but was not enacted. On February 7, 2000, the Senate passed **S. 1052** to extend the INA to the CNMI.

Child-related Immigration Legislation. The House passed, on September 7, 2000, the "Child Support Distribution Act" (**H.R. 4678**), which includes a provision to make failure to pay child support a ground for inadmissibility. **H.R. 1520**, which has been ordered reported by the House Judiciary Committee, would give priority in family first preference visa issuance to children of U.S. citizens who "aged out" of eligibility for immediate relative visas.

Legislation Enacted by the 106th Congress

H-1B Temporary Professional Workers

On October 17, 2000, the President signed into law a significant amendment to the H-1B program (P.L. 106-313). Temporary workers are admitted to the United States under the "H" nonimmigrant category, a part of the INA (§ 101(a)(15)(H)). H-1B nonimmigrants – professionals who work in specialty occupations – make up the largest category of temporary alien workers. The 105th Congress enacted the American Competitiveness and Workforce Improvement Act (Title IV of P.L. 105-277) in 1998 to increase the number of H-1B nonimmigrants and reform perceived abuses of the visa. This law increased the admissions ceiling for the H-1B category from 65,000 to 115,000 in both FY1999 and FY2000, and to 107,500 in FY2001. It reverts back to 65,000 in FY2002. By mid-1999, FY1999 admissions had reached 115,000, and this year's ceiling was reached in June. Many in the business community, notably in the information technology area, have been urging that the ceiling be raised again.

On October 3, 2000, both the Senate and the House passed the "American Competitiveness in the Twenty-first Century Act of 2000" (**S. 2045**) with bipartisan support. It subsequently was signed by the President October 17. Much of the debate centered on procedural issues – specifically whether amendments that would legalize certain aliens (mostly Central Americans and Liberians) would be permitted – that ultimately failed. S. 2045 includes many of the same features as the version of the bill reported earlier by the Senate Judiciary Committee. S. 2045 will raise the number of H-1B visas by 297,500 over 3 years, FY2001-FY2003. It also will authorize additional H-1B visas for FY1999 to compensate for the excess inadvertently approved that year. In addition, S. 2045 excludes from the new ceiling all H-1B nonimmigrants who work for universities and nonprofit research facilities. The bill also will facilitate the portability of H-1B status for those already here lawfully, eliminate the per-country ceilings for employment-based immigrants, and require a study of the "digital divide" on access to information technology. It makes changes in the use of the H-1B fees for education and training, notably earmarking a portion of DOL training funds for skills that are in information technology shortage areas and adding to the NSF portion a K-12 math, science and technology education grant program. Because S. 2045 originated in the Senate, it does not contain revenue provisions. Separate legislation to increase the H-1B fee from $500 to $1,000 (**H.R. 5362**) and exempt educational institutions, universities and nonprofit research facilities from paying the fee passed the House on October 6 and the Senate on October 10. It was signed by the President October 17 (P.L. 106-311). (See CRS

Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*.)

Other Temporary Workers

Religious Workers. An immigration provision that allows for the admission of immigrants to perform religious work (INA § 101(a)(27)(C)) sunset on September 30, 2000. Although the provision has a broad base of support, some expressed concern that it is vulnerable to fraud. On September 19, 2000, the House passed **H.R. 4068**, which would extend the current admissions policy through FY2003. On October 19, the Senate passed **S. 2406**, introduced by Immigration Subcommittee Chairman Spencer Abraham, to make the religious worker provisions permanent. There was also legislation in the House to make the program permanent (H.R. 1871). Ultimately, the Senate also passed H.R. 4068 on October 19 and the President signed it November 1, 2000 (P.L. 106-409). (See CRS Report 97-891, *Immigration: Religious Workers*.)

Nurses. P.L. 106-95, the Nursing Relief for Disadvantaged Areas Act of 1999, includes provisions intended as a short-term solution for nursing shortages in a limited number of medically underserved areas. The act establishes a new H-1C category for 500 nonimmigrant nurses annually for 4 years in health professional shortage areas. It sets forth admissions requirements, including a maximum 3-year stay. Petitioning hospitals would have to be in shortage areas defined by HHS, have at least 190 acute care beds, and have specified percentages of Medicare and Medicaid patients. A previous H-1A category for nurses, which has expired, was subject to fewer restrictions. (See CRS Report RS20164, *Immigration: Temporary Admission of Nurses for Health Shortage Areas (P.L. 106-95)*.)

H-2A Temporary Agricultural Workers. P.L. 106-78, the FY2000 Agriculture appropriations act, § 748, amends the INA to reduce from 60 to 45 days the minimum period prior to need that employers must file H-2A labor certifications; and to increase from 20 to 30 days the minimum days in advance of need that the Secretary of Labor must act on H-2A certification requests. DOL had already amended its regulations, effective July 29, 1999, to reduce from 60 to 45 days the period of time prior to need that employers must file labor certifications. In combination, the two changes would shorten the domestic recruitment period to 15 days, a move not favored by DOL.

Refugees

The annual number of refugee admissions and the allocation of these numbers among refugee groups are determined at the start of each fiscal year by the President after consultation with Congress. On September 30, 1999, President Clinton signed Presidential Determination No. 99-45, authorizing a FY2000 ceiling of 90,000 admissions, including 10,000 as needed for the Kosovo crisis, to be funded by P.L. 106-31.

P.L. 106-104 reauthorized HHS's Office of Refugee Resettlement program through FY2002. P.L. 106-113, the Consolidated Appropriations Act, appropriated $426.5 million for this program for FY2000, which is consistent with recent budget levels. The appropriation also includes funds to implement P.L. 105-320, the Torture Victims Relief Act

of 1998, which authorizes $7.5 million for HHS grants to domestic treatment programs for torture victims.

P.L. 106-113 also reenacted for 2 years a version of an expired provision previously referred to as the McCain amendment. The revised provision, quoting from the conference report, "restores eligibility for U.S. refugee resettlement to certain sons and daughters of Vietnamese re-education camp survivors, and also provides such eligibility for sons and daughters who were denied the right the resettle in the United States [solely] because their government-issued residency documents did not prove 'continuous coresidency' with their parents."

Section 110 Integrated Entry and Exit Data System

The INS Data Management Improvement Act of 2000 (**P.L. 106-215**) amends Section 110 of IIRIRA to require the development of an integrated entry and exit system that would use available data to record alien arrivals and departures, without establishing additional documentary requirements. The scope of Section 110, as amended, is much narrower than the original IIRIRA provision, which would have required the development of a system to record the entry and exit of every alien arriving in and departing from the United States. Despite these revisions to the law, the Senate-reported FY2001 CJS appropriations act (H.R. 4690) includes a provision to repeal the amended version of Section 110 outright.

P.L. 106-215 includes provisions that: (1) rewrite Section 110 to require the development of a system using data currently collected, with no new documentary requirements; (2) set staggered deadlines for the implementation of the system at air, sea, and land border ports of entry; (3) establish a task force to evaluate the implementation of the system and other measures to improve legitimate cross-border traffic; and (4) express a sense of Congress that federal departments charged with border management should consult with foreign governments to improve cooperation. (See CRS Report RS20627, *Immigration: Integrated Entry and Exit Data System*.)

Other Immigration-related Legislation

Naturalization and Immigrant Benefit Processing. Naturalization has become an issue in recent years because of instances of fraud, abuse, and mismanagement. Unprecedented numbers of people are seeking to naturalize, straining the system as INS attempts to reform it. The 105th Congress designated additional funding to restore integrity to, and improve, naturalization services in the FY1998 and FY1999 CJS appropriations acts. For FY2000, the conference agreement on a CJS appropriations bill (**H.R. 2670**) continued at full funding ($124 million) the FY1999 backlog reduction action teams and accompanying resources for naturalization. H.R. 2670 became part of Division B of **P.L. 106-113**. (See CRS Report RS20274, *Naturalization of Immigrants: Trends and Legislative Issues*.)

In addition, widespread concern over the growing backlogs and delays in processing naturalization and immigrant petitions has prompted legislation aimed at reducing the processing times of most petitions to no more than 90 days. Currently the processing of most immigration benefits is funded by fees paid by the beneficiaries. Language from **S. 2586** that would require the Attorney General to submit a plan to reduce the backlogs and improve petition processing, would establish an "Immigration Services and Infrastructure

Improvement Account," and would authorize the appropriation of such sums as may be necessary is incorporated into P.L. 106-313, the H-1B legislation that the President signed October 17, 2000.

Human Trafficking. The president signed legislation (**P.L. 106-386**, **H.R. 3244**) aimed at stopping human trafficking, particularly sexual trafficking in women and children. The "Trafficking Victims Protection Act" (H.R. 3244) was passed in different forms by the House and the Senate on May 9, 2000, and July 27, 2000, respectively. The act seeks to combat trafficking through prevention; prosecution and enforcement against traffickers; and protection and assistance to victims. P.L. 106-386, among other provisions, amends the INA to establish a new "T" nonimmigrant visa category for certain trafficking victims and allows for the adjustment to permanent resident status of T visa holders after 3 years of continuous physical presence in the United States. The House passed the conference report for H.R. 3244 (H.Rept. 106-939) on October 6, and the Senate did so on October 11, 2000. (See CRS Report RL30545, *Trafficking in Women and Children: The U.S. and International Response.)*

Noncitizen Victims of Family Violence. P.L. 106-386 also included provisions for noncitizen victims of domestic violence. During the past decade, various provisions were enacted to assist noncitizen victims of family violence who are the spouses or children of U.S. citizens or legal permanent residents. Multiple bills to extend additional protections to battered aliens in areas such as cancellation of removal, adjustment of status, and self-petitioning are before Congress. On July 12, 2000, the Senate Judiciary Committee reported the "Violence Against Women Act of 2000" (**S. 2787**), which contained a battered immigrant title. In the House, the Immigration Subcommittee held a hearing on a battered alien bill (**H.R. 3083**) on July 20. Provisions similar to H.R. 3083 also are included in H.R. 4966. Most importantly, the battered immigrant provisions were included in the conference report on H.R. 3244 (H.Rept. 106-939) that became P.L. 106-386. (See CRS Report RL30559, *Immigration: Noncitizen Victims of Family Violence*.)

Visa Waiver Pilot Program (VWPP). The statutory authority for the VWPP (INA § 217(f)) expired on April 30, 2000. In the interim, the Attorney General has exercised her parole authority to extend the program temporarily. The VWPP allows nationals from certain countries to enter the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. By eliminating the visa requirement, this program facilitates international travel and commerce and eases consular office workloads, but it also bypasses the first step by which foreign visitors are screened for admissibility when seeking to enter the United States.

On April 11, 2000, the House passed the "Visa Waiver Permanent Program Act" (**H.R. 3767**). H.R. 3767 would make the VWPP permanent and includes provisions designed to strengthen the documentary and reporting requirements. On October 3, 2000, the Senate passed H.R. 3767 with an amendment. The Senate-passed version is slightly different than the House-passed bill in terms of the VWPP. It also includes several miscellaneous provisions, one of which would modify Section 641 of IIRIRA that establishes a program to collect information on nonimmigrant foreign students. The House passed the Senate version of H.R. 3767 on October 10, and the bill has been signed by the President (P.L. 106-396). Also, **H.R. 2961**, passed by the House on July 18, 2000, allows for an extension of stay of nonimmigrant aliens entering under the VWPP who require medical treatment. It passed the Senate on

October 19 and was signed by the President (P.L. 106-406). (See CRS Report RS20546, *Immigration: Proposals to Reauthorize and Make Permanent the Visa Waiver Pilot Program*.)

Syrian Jews. The House passed a bill, **H.R. 4681**, on July 11, 2000, that provides for the adjustment of status of certain Syrian nationals who are Jewish. The Senate approved this legislation on October 19, and the President signed it (P.L. 106-378).

Use of Social Security Numbers on Driver's Licenses. P.L. 106-69, § 355, repeals § 656(b) of IIRIRA. Section 656(b) prohibited federal agencies from accepting state-issued driver's licenses or comparable documents for identification purposes after October 1, 2000, that did not contain a social security number (unless the state qualified for an exemption) and meet other standards. The repeal of § 656(b) reflects the fear that it could have become the basis for a "national ID card."

Adoption. P.L. 106-395 (H.R. 2883) confers automatic U.S. citizenship on certain foreign-born children adopted by U.S. citizens. It also includes provisions aimed at protecting certain immigrants from removal due to bad moral character findings because they falsely claim citizenship or registered to vote. **P.L. 106-139** provides that an adopted alien under age 18 may be considered a child under the INA if adopted with or after a sibling who is under age 16. Congress also enacted **P.L. 106-279 (H.R. 2909),** the Hague Convention on Adoption, that includes immigration provisions that pertain to adoption.

National Interest Waiver for Alien Physicians. P.L. 106-95 and P.L. 106-113 include identical amendments to the INA requiring the Attorney General to issue a "national interest waiver" of the job offer requirement for alien physicians seeking permanent admission as employment-based second preference immigrants. The alien physicians must agree to work in a medically underserved area designated by the HHS Secretary or in a Veterans Affairs facility, and do so for 5 years, and a federal agency or state public health department must previously have determined that their work in the area or facility is in the public interest.

Hmong Naturalization. P.L. 106-207 seeks to facilitate the naturalization of Hmong and other Laotian refugees who served in special guerilla units in Laos (and their spouses or widows) by easing applicable naturalization requirements. The law exempts them from the English language requirement and provides them with special consideration concerning the required examination in U.S. government and history. The House hass subsequently passed **H.R. 5234** on September 25 that would extend provisions to certain widows not covered by P.L. 106-207.

Miscellaneous Nonimmigrant Amendments. P.L. 106-95 amends the "L" nonimmigrant category for intracompany transfers (i.e., employees of international corporations) to provide that international management consulting firms that break off from other international accounting firms may continue to use L visas, provided they maintain the qualifying worldwide organizational structure. P.L. 106-104 amends the INA to extend for an additional 2 years the "S" nonimmigrant category for alien witnesses and informants providing information on organized crime and terrorist operations.

Other Provisions in the Consolidated Appropriations Act. P.L. 106-113 authorizes the Secretary of State to charge fees relating to affidavits of support, and states the

Department's policy regarding processing of immigrant relative visa applications within 30 to 60 days of receipt. It also prohibits the use of funds appropriated by it for providing visas to citizens or nationals of countries determined by the Attorney General under INA § 243(d) to deny or unreasonably delay accepting the return of their citizens or nationals.