

CHAPTER II

Immigration Policy

U.S. immigration policy is governed by five broad goals:

- The *social* goal of family unification
- The *economic* goal of increasing U.S. productivity and standard of living
- The *cultural* goal of promoting diversity
- The *moral* goal of promoting human rights
- The *national and economic security* goal of preventing illegal immigration

An “open borders” policy and encouragement to move to America characterized the early period of immigration. An immigrant’s decision to arrive may have been motivated by escape from war, poverty, persecution, famine, or may have followed the promises of “immigration agents” (recruiters). Major events of European history (such as World Wars I and II) and the atrocities connected with them also encouraged immigration to the States. Newcomers were largely Europeans and immigration legislation was aimed to preserve their racial, religious, and ethnic composition. Only later did race and ethnicity start to play a major role in legislation aimed at curbing immigration.

During the later part of the 20th century, immigration policy tried to face modern-day problems and limits were set on the number of immigrants belonging to certain categories.

The present U.S. immigration system is highly regulated, balancing economic and humanitarian needs. The system possesses numerical ceilings in virtually every category, yet ethnicity is no longer the defining characteristic of immigration law.

“US policy often reflects perceived threats to the U.S. economy, culture and foreign policy interests” (Zimmerman, 1995, pp 88-102).

IMMIGRATION LAW CHRONOLOGY (see also Appendix B)

1790

Naturalization was authorized for “free white persons” who have resided in the United States for at least two years and sworn loyalty to the U.S. Constitution.

The racial requirement would remain on the federal books until 1952, although naturalization was opened to certain Asian nationalities in the 1940s.

1798 Alien and Sedition Acts

This authorized the President to deport any foreigner deemed to be dangerous and make it a crime to speak, write, or publish anything “of a false, scandalous

and malicious nature” about the President or Congress. An amended Naturalization Act imposed a 14-year residency requirement for prospective citizens; in 1802, Congress would reduce the waiting period to five years, a provision that remains in effect today.

1819 Steerage Act

Congress enacted the first significant federal legislation relating specifically to immigration, it established the continuing reporting of immigration to the U.S.

1852

California imposed “Foreign Miner’s Tax” (\$3.00) for any miner who was not an intending citizen. In 1855, California imposed \$50.00 tax on newly arrived miners who were not intending citizens (only whites were eligible for naturalization). In 1862, California imposed a head tax of \$2.50 per month on resident Chinese immigrants.

1862 Homestead Act

The Act granted 160 acres of public land to anyone who claimed it, lived on it for five years, and made improvements such as building a home, fencing fields, or plowing and sowing crops. Although the land itself was free, it took backbreaking work and enough money for tools and food to tide the homesteader over until the farm began to produce.

1864

Congress first centralized control over immigration under the Secretary of State with a Commissioner. The importation of contract laborers was legalized in this legislation.

1868

The 14th Amendment to the U.S. Constitution granted citizenship rights to all persons born in the United States.

Congress modified citizenship law to include “aliens of African nativity and persons of African descent” as eligible for naturalization, with Asians remaining the only excluded group.

It repealed the 1864 law and abolished the Commissioner’s office and turned the regulation of immigration over to the individual states.

1875

Direct federal regulation of immigration was re-established by a law that prohibited entry of undesirable immigrants such as criminals, prostitutes, and convicts.

1882 Chinese Exclusion Act

This has been largely viewed as racist legislation. Native-born workers in western states began complaining about the impact of Chinese workers on wage rates during the 19th century. This act suspended the immigration of Chinese

laborers for ten years; the measure was extended and tightened in 1892 and Chinese immigration was permanently banned in 1902.

1882 Immigration Act

The result of a need to regulate immigration, the Act established a tax of 50 cents per immigrant and broadened restrictions on immigrations by adding classes of aliens ineligible to enter the U.S., including people likely to become public charges.

1885, 1887 – 88 Alien Contract Labor Laws

The admission of contract laborers was banned except where working for other immigrants or in positions for which there was no existing equivalent in the United States.

1891 Immigration Act

The nation's first comprehensive immigration law, the 1891 Act established the Bureau of Immigration as part of the Treasury Department. Later in 1903, control over the Bureau of Immigration passed to the newly formed Department of Commerce and Labor. Today the agency is known as the Immigration and Naturalization Service and since 1940 has been part of the Justice Department.

To the list of undesirables ineligible for immigration, Congress added in 1903 "polygamists, persons suffering from a loathsome or a dangerous contagious disease, and those convicted of a misdemeanor involving moral turpitude."

1906 Naturalization Act

The first language requirement, the ability to speak and understand English, was adopted for naturalization.

The renamed Bureau of Immigration and Naturalization was given the task of overseeing naturalization and of enforcing immigration laws.

At this time, the San Francisco School Board decreed that all persons of Asian ancestry must attend segregated schools in Chinatown. Japan, having become a major world power, interceded to exempt its citizens from the provision.

In California, anti-miscegenation laws were amended to bar marriage between whites and "Mongolians."

1907 – 8 "Gentlemen's Agreement"

An informal agreement between the United States and Japan, the Agreement curtailed Japanese immigration to the U.S. and added other immigrants to the excludable classes. It also increased the head tax on immigrants.

1911

A Federal Commission issued a 42-volume study of the foreign-born population alleging that the "new immigrants" from Italy, Greece, Poland, Hungary, and Russia were less skilled and educated, more clannish, slower to learn English,

and generally less desirable as citizens than the “old immigrants” from Ireland, Germany, England, and Scandinavia.

An alarmed establishment responded with a campaign to “Americanize” those Eastern and Southern Europeans, seeking to change their cultural traits, civic values, and especially their language. The U.S. government’s Bureau of Americanization encouraged employers to make English classes compulsory for their foreign-born workers. Most states banned schooling in other tongues; some even prohibited the study of foreign languages in the elementary grades.

1917

Over President Wilson’s veto, Congress enacted a literacy requirement for all new immigrants: the ability to read forty words in some language. The most significant feature in limiting the flow of newcomers was that it designated Asia (with the exception of Japan and the Philippines) as a “barred zone” from which immigration was prohibited.

1921 Quota Law

A new form of immigration restriction – the national-origins quota system – was established. Admissions from each European country were limited to 3 percent in the 1910 census. The effect was to favor Western and Northern Europeans at the expense of Southern and Eastern Europeans. Immigration from Western Hemisphere nations remained unrestricted, although most Asians continued to face exclusion.

1924 Immigration Act (The Johnson-Reed Act)

After four decades of high immigration beginning in 1880, Congress established the first numerical limits on immigration and created a system of quotas for immigrants based on national origins. The Act reduced admission to 2 percent of each nationality group’s representation in 1890 as well as setting the annual immigration ceiling to 165,000. This new national-origins quota system was even more discriminatory than the 1921 version.

According to the Immigration Act of 1924, known as the Asian Exclusion Act, all persons from the Asia Pacific Triangle (Japan, China, the Philippines, Laos, Siam/Thailand, Cambodia, Singapore - then a British colony - Korea, Vietnam, Indonesia, Burma/Myanmar, India, Ceylon/Sri Lanka, and Malaysia) were prohibited entry to the country if with the intention of permanent residence. The Act halted the immigration of all Asians and was deeply resented by the affected countries because it maintained that their people were undesirable because of race.

1934 The Tydings-McDuffe Act

It gave the Philippines Commonwealth status and declared Filipinos not born in the United States as aliens. An annual quota of 50 Filipinos was permitted to emigrate to the U.S.

1935 Repatriation Act

The Repatriation Act offered one-way tickets to resident Filipinos, under condition that they agreed not to return to the U.S. About 2,000 people accepted the offer.

1940 Alien Registration Act

The Act required all aliens (non-U.S. citizens) within the United States to register with the U.S. Government. They registered at Post Offices, and their registration forms were forwarded to the Immigration and Naturalization Service (INS) for processing. After processing, a receipt card (form AR-3) was mailed to each registrant as proof of their compliance with the law. The Alien Registration Act, however, did not discriminate between legal and illegal alien residents. All were registered, and all received AR-3's in return.

After World War II, the registration process ceased to take place at Post Offices and became part of regular immigration procedure. Aliens registered upon entry at the port, and the INS issued different documents to serve as their Alien Registration Receipt Cards. Visitors received an I-94c, temporary foreign laborers received an I-100a, and permanent residents received the I-151. This method not only reduced the number of forms handled by the INS, but helped to identify the immigration status of each alien. Thus the small, green, I-151 had immediate value in identifying its holder as a Lawful Permanent Resident (LPR), entitled to live and work indefinitely in the United States.

Following passage of the Internal Security Act of 1950, new regulations issued by the INS rendered Alien Registration Receipt Card Form I151 even more valuable. As noted above, the AR-3 Alien Registration Receipt Card (issued primarily in the early 1940s) bore no relation to an alien's legal or illegal status. Effective April 17, 1951, regulations allowed those holding AR-3 cards to have them replaced with a new Form I151 (the green card). Just as I151's were only issued to Lawful Permanent Residents entering through ports, only aliens with legal status could have their AR-3 replaced with an I151. Aliens who applied for replacement cards but could not prove their legal admission into the United States, and for whom the INS had no record of legal admission, did not qualify for LPR status and might even be subject to prosecution for violation of U.S. immigration laws.

1943

Congress created a guest-worker program allowing temporary agricultural workers from North, South, Central America, and Mexico (Bracero Program) into the United States to help in the fields. The program ended in 1964.

In the same year the Chinese Exclusion Act was repealed (Magnuson Act).

1946

The Philippines became independent and U.S. citizenship was offered to all Filipinos living in the United States, not just servicemen.

1948 Displaced Persons Act

The first U.S. policy was adopted for admitting persons fleeing persecution. It permitted 205,000 refugees to enter the United States over a period of two years (later increased to 415,000).

1950 The Internal Security Act

Enacted over President Truman's veto the Act barred admission to any foreigner who might be engaged in activities "which would be prejudicial to the public interest, or would endanger the welfare or safety of the United States."

1952 The McCarran-Walter Act

This act retained the national-origins quota system. For the first time, however, Congress provided for minimum annual quotas for all countries, opening the door to numerous nationalities previously excluded. Naturalization required the ability to read and write, as well as speak and understand English.

This Act is contained in the U.S. Code, which is a collection of all the laws of the United States. The Act collected and codified many existing provisions and reorganized the structure of immigration law. It is still the basic body of immigration law.

1953 The Refugee Relief Act (RRA)

The RRA was adopted on August 7, 1953 and amended in August 1954. Major refugee admissions occurred outside the national origins quota system during the 1950s. The act authorized the admission of 214,000 refugees from war-torn Europe and escapees from Communist-dominated countries. Thirty percent of the admissions through this act were Italians, followed by Germans, Yugoslavs, and Greeks.

1965 Immigration and Nationality Act Amendments

This law repealed the system of quotas based on national origins in an effort to make the selection of immigrants fairer. It established an eligibility system based on "family reunification" and employment skills.

Each country, regardless of ethnicity, received an annual quota of 20,000, under a ceiling of 170,000. From Western Hemisphere nations, which were still not subject to country quotas (changed by Congress in 1976), up to 120,000 might immigrate. Annual ceilings for quota admissions rose over the years, to 700,000 in 1990.

1978

The separate ceilings for Eastern and Western Hemispheric immigration were combined into one worldwide limit of 290,000.

1980 Refugee Act

For the first time the terms "refugee" and "asylee" were defined. The worldwide limit was reduced from 290,000 to 270,000. The Refugee Act removed refugees

as a preference category and established clear criteria and procedures for their admission.

1986 Immigration Reform and Control Act

This act was an attempt to curtail illegal immigration through a system of fines for employers who deliberately hired undocumented workers. The effort has largely failed for lack of enforcement, and illegal immigration has continued. The law also granted amnesty to 2.7 million people living in the country illegally since 1982. As citizens, they might bring in all immediate relatives without any wait and without numerical limits, further increasing immigration.

1990 Immigration Act

The “back door” of illegal immigration had been shut through the 1986 act so Congress proceeded to further open the “front door” of legal immigration by tripling the numerical limits (675-700,000) for employment-based immigration and substantially easing limits on family-based immigration. It also changed exclusion and deportation regulations and granted temporary protected status to refugees from war-torn countries.

The McCarran-Walter Act of 1952 was amended so that people could no longer be denied admittance to the State on the basis of their beliefs, statements, or association.

1994 “Proposition 187”

Proposition 187, passed in California, forced public agencies, such as schools, law enforcement, social service agencies, and health care facilities to determine the immigration status of those whom they served, to deny services to those they suspected (or confirmed) were undocumented, and to report them to the INS.

The Proposition, however, being considered as unconstitutional for several reasons, is not in effect today.

1996 Illegal Immigration and Immigrant Responsibility Act

This immigration legislation greatly scaled back the eligibility of legal immigrants for an array of federal benefits, including food stamps and welfare payments. It also expedited the deportation of illegal immigrants and those convicted of crimes and raised the income requirements for those who sponsor immigrants.

1996 Personal Responsibility and Work Opportunity Act

The Act established restrictions on the eligibility of legal immigrants for means-tested public assistance (e.g. food stamps, Supplemental Security Income) and broadened the restrictions on public benefits for illegal aliens and non-immigrants.

1997

A new Congress mitigated some of the overly harsh restrictions passed by the previous Congress. In the Balanced Budget Agreement with the President, some public benefits were restored for some elderly and disabled immigrants who had been receiving them.

1998

Congress continued to mitigate some of the provisions passed by the previous Congress in 1996. The legislation partially restored eligibility to legal aliens some benefits that had been restricted in 1996.

2000

In December 2000, President Clinton signed a bill (known as the Life Act) to allow illegal immigrants, who were otherwise eligible for a green card, to stay in the United States pending adjustment of their status.

This amounted to the temporary revival of Section 245(i) of the Immigration and Nationality Act, which stipulates that immigrants present in the U.S. at the time of the bill's signing, without violations or other disqualifying factors, could adjust their status to that of permanent resident providing they had a family member or employer to sponsor them.

2001

President Bush urged an extension of the deadline for illegal aliens to apply for legal residency in the USA without first having to return to their country of origin. Section 245 (i) had created a four-month window for immigrants to seek legalization without having to return to their countries to apply for a U.S. visa. Without this law, illegal immigrants were required to return to their countries of origin to file their paperwork. Those who leave after being in the United States for longer than a year are barred from returning for 10 years. The window closed at the end of April 2001.

Citing estimates that 200,000 eligible applicants failed to meet the deadline, Bush drafted a letter to congressional leaders urging an extension of the program because: "the four-month window was far from adequate for many applicants to take advantage of 245(i)."

On **September 6**, 2001, the U.S. Senate passed a limited extension of INA §245(i). This Section 245(i) allows certain immigrants who have worked without authorization or who are out-of-status but are otherwise eligible to apply for permanent residence to do so from within the United States, rather than from their home countries where they would face possibly draconian immigration consequences (the three and ten-year bars). House of Representatives leaders have agreed to the Senate compromise. The compromise bill would extend §245(i) until either April 30, 2002 or 120 days after the date on which interim or final regulations are published. Further, the legislation will require from the applicant to prove that the familial relationship still exists or his/her

application for a labor certification was filed before August 15, 2001. The compromise did away with the physical presence requirement included in previous versions.

After the **September 11** terrorist attack on the U.S., Congress shifted debate and there was a broad agreement that pending legislation that might ease restrictions on unauthorized foreigners may not be enacted. The Senate approved the extension of the 245(i), but the House of Representatives did not act and is not likely to act soon.

On **October 26**, 2001 President Bush signed H.R.3162, the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (**USA Patriot Act**). The final bill includes measures to both enhance immigration enforcement and to provide humanitarian and other assistance to foreign nationals affected by the September 11, 2001 attack on the United States. In addition to the immigration measures, it provides law enforcement agencies with new surveillance authority, enhances criminal penalties for those engaged in terrorist activities, and increases information sharing between law enforcement agencies.

Immigration related provisions of the bill include:

- Enhanced enforcement (inter alia a threefold increase in Border Patrol and immigration inspection personnel in each state along the northern border, plus an increase in information sharing between immigration service agencies and law enforcement agencies)
- Expansion of terrorism-related inadmissibility and removal grounds
- Mandatory detention of those certified as terrorists allowed for seven days before bringing immigration or criminal charges (previously 2 days)
- Expedient implementation of an automated entry-exit control system for all airports, seaports, and land border points of entry with the focus on biometric technology (fingerprints etc.) and tamper-resistant documents
- Full implementation of the student visa-monitoring program as contemplated in the 1996 Act
- Measures in machine-readable passports and the visa waiver program, restrictions on possessions of biological agents by foreign nationals, restrictions on consulate protected imports
- Special Immigrant Status and other relief for family members of attack victims
- Relief for individuals who missed deadlines, or were unable to depart the U.S. because of the attacks