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JACK WASSERMAN*

The Undemocratic, Illogical and Arbitrary Immigration Laws of The United States

The immigration statutes of the United States are among the worst, longest, most ambiguous, complicated, illogical, undemocratic and arbitrary laws in the world.

The basic immigration controls of the United States are set forth in the Immigration and Nationality Act of 1952 (66 Stat. 163, 8 U.S.C. 1101), also known as the McCarran-Walter Act which has been amended twenty-seven times since its enactment. The 1965 edition of the statute covers 188 pages and comprises 4 titles, 13 chapters and 144 sections.[1] As companions to the statute we have 162 pages of Immigration Service regulations,[2] 99 pages of State Department rules,[3] 4 pages of Public Health rules,[4] and 17 pages of Labor Department regulations.[5]

The McCarran-Walter Act has been denounced as an "affront to the conscience of the American people,"[6] "worthy of Stalin and not of

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[1] See The Lehman Immigration Bill by Julius Edelstein, Federal Bar News, June, 1956, wherein it is stated that the McCarran-Walter Act "establishes cumbersome administrative procedures, duplicates and sometimes triplicates screening and investigative functions, is impossibly obscure and vague in some major respects, and at the same time prompts and prevents administrative judgment * * * ."

[2] 8 Code of Federal Regulations (1968 Ed.).

[3] 22 Code of Federal Regulations (1968 Ed.).

[4] 42 Code of Federal Regulations, Part 34 (1968 Ed.).

[5] 29 Code of Federal Regulations, Part 60 (1968 Ed.).

[6] Rev. Walter W. Van Kirk of National Council of Churches of Christ, October 28, 1952, before President's Immigration Commission.

America,"[7] a "nefarious discriminating measure,"[8] a betrayal of "our American traditions,"[9] and a "bacchanalia of meanness."[10]

Two Major Categories

Aliens are classified into two important categories, into non-immigrants and immigrants. Aliens seeking temporary entry into the United States on business or pleasure, in diplomatic status, as representatives of international organizations, employees of the foreign news media, as students, crewmen, as treaty traders or treaty investors, as workers of distinguished merit or ability, or workers to perform services not available here, or as industrial trainees, are considered non-immigrants.[11] These aliens seek temporary admission and are not subject to numerical limitations. All other aliens are considered applicants for permanent admission and must qualify as immigrants. Spouses, unmarried children under twenty-one of United States citizens, parents of United States citizens who are over twenty-one,[12] certain former United States citizens, ministers of religion, returning lawful residents and aliens employed abroad by the United States for more than 15 years are not subject to numerical limitations.[13] All other immigrants are subject to annual numerical limitations or quotas.

Quota Immigrants are normally chargeable to the country of their birth.[14] There is a numerical limitation for each fiscal year of 170,000 for natives of independent countries of the Eastern Hemisphere,[15] 120,000 for natives of Western Hemisphere countries.[16] Not more than 20,000 visa numbers may be issued in any fiscal year to natives of each independent Eastern Hemisphere country. There is no similar ceiling for

[7] Walter P. Reuther of United Auto Workers, October 28, 1952, before President's Immigration Commission.

[8] Brooklyn Borough President John Cashmore, October 12, 1952.

[9] Senator Kefauver and Averill Harriman in speeches in Detroit, October 12, 1952.

[10] Professors Henry M. Hart, Jr., and Louis L. Jaffe of Harvard Law School, October 28, 1952, before President's Immigration Commission.

[11] 8 U.S.C. 1101(a)(15).

[12] 8 U.S.C. 1151(b). These relatives are known as immediate relatives.

[13] 8 U.S.C. 1101(a)(27).

[14] 8 U.S.C. 1152. Exceptions are granted to accompanying children and spouses, to those born in a country different from his parents and to those born in the United States.

[15] 8 U.S.C. 1151. Not more than 45,000 quota numbers may be issued in any of the first three quarters of a fiscal year.

[16] For the opposing views on limiting Western Hemisphere immigration, see *Report of the Select Commission on Western Hemisphere Immigration* (January 15, 1968).

independent foreign states of the Western Hemisphere.[17] Aliens born in colonies in either hemisphere are subject to annual numerical limitations of 200.[18] There may be no discrimination in visa issuance based upon place of birth except as prescribed by the statute.[19] Article 2 of the Universal Declaration of Human Rights to which we subscribe forbids distinctions based upon the international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty.

Eastern Immigrants Require "Preferences"

Eastern Hemisphere natives, subject to numerical limitations, must qualify under preferences in order to enter the United States. There are no preferences for Western Hemisphere natives. Preferences are allocated with priority dependent upon the date of filing the preference application, as follows:[20]

First Preference. Unmarried sons and daughters[21] of United States citizens. This preference is limited to 20% or 34,000 annual numbers.[22] This preference is current for all countries.[23]

Second Preference. Spouses, unmarried sons and daughters of aliens lawfully admitted for permanent residence. This preference is limited to 20% or 34,000 annual numbers plus any numbers not required for first preference. This preference is current except for some colonies.

Third Preference. Members of the professions or who because of their exceptional ability in the sciences or the arts will substantially benefit the national economy, cultural interests or welfare of the United States. This preference is limited to 10% or 17,000 annual numbers. This preference is oversubscribed for those with a priority date after June 15, 1967.

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[17] 8 U.S.C. 1152. The 120,000 annual Western Hemisphere limitation is the only quota restriction.

[18] 8 U.S.C. 1152(c). Aliens born in Hong Kong, British Honduras, Cape Verde Islands, British Virgin Islands, are examples of those discriminated against by this restriction.

[19] 8 U.S.C. 1152.

[20] 8 U.S.C. 1153. There are no preference classes for independent countries of the Western Hemisphere.

[21] The statute uses the term "children" to designate those who are under 21 and unmarried.

[22] All preferences are limited in addition by the annual country quota of 20,000 or the colonial quota of 200.

[23] Department of State Visa Bulletin, September 13, 1968.

Fourth Preference. Married sons and daughters of citizens of the United States. This preference is limited to 10% or 17,000 annual numbers plus any unused numbers left over from the first three preferences. This preference is current except for some colonies.

Fifth Preference. Brothers and sisters of citizens of the United States. This preference is limited to 24% or 40,800 annual numbers plus numbers not used for the first four preferences. This preference is heavily oversubscribed for Italians and some colonies and for others who have a priority date after June 1, 1968.

Sixth Preference. Skilled or unskilled workers who perform labor not of a temporary or seasonal nature for which a shortage of employable and willing persons exists in the United States.[24] This preference is limited to 10% or 17,000 annual numbers and is oversubscribed for those with a priority date after February 15, 1968. It is unavailable for those born in colonies, Greece, Italy, the Philippines and Portugal.

Seventh Preference. Refugees. This preference is limited to 6% or 10,200 annual numbers. This preference is current except for those born in colonies, Greece, Italy, the Philippines and Portugal.

Non-Preference. Numbers not used by the seven preference categories. This category is unavailable.

Other Bars to Admission

In addition to numerical limitations, there are some thirty-one additional categories which bar the admission of aliens to the United States.[25] There are mental, health, economic, criminal, moral, labor, documentary, selective service, educational, exchange visitor, subversive, and other disqualifications prescribed by law. Excluded from admission to the United States are mental defectives, homosexuals, drug addicts, chronic alcoholics, those affected with any dangerous

[24] 8 U.S.C. 1182(a)(14) provides that aliens seeking to enter the United States for skilled and unskilled labor are excluded unless the Secretary of Labor certifies to the Secretary of State and Attorney General that (A) there are not sufficient workers in the United States able, willing, qualified and available at the place to which the aliens are destined, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. Under this labor exclusion provision of the statute all aliens in the third preference and sixth preference categories are required to present labor clearances or be exempt therefrom in conformity with 28 C.F.R., Part 60. The labor exclusion provisions do not apply to those entering under the first, second, fourth, fifth, or seventh preferences. They do not apply to Western Hemisphere natives who are the parents, spouses, or children of United States citizens or of permanent resident aliens.

[25] 8 U.S.C. 1182.

contagious disease,[26] those likely to become a public charge, those convicted or who admit the commission of a crime involving moral turpitude,[27] those convicted and sentenced for any two crimes to imprisonment for an aggregate of five years or more, prostitutes,[28] polygamists, those coming to the United States to engage in unlawful commercialized vice or any immoral sexual act, those seeking to enter the United States for the purpose of performing skilled or unskilled labor unless the Secretary of Labor certifies that there are not sufficient workers in the United States who are able, willing, qualified and available at the place to which they are destined and that their employment will not adversely affect wages and working conditions of workers similarly employed here,[29] those previously deported, stowaways, those who have sought to enter by fraud,[30] those without proper passports or entry documents,[31] those ineligible for citizenship,[32] those convicted of possession or traffic in narcotics or marihuana or who are suspected of illicit traffic in such drugs,[33] those entering the United States from contiguous territory or adjacent islands on nonsignatory transportation lines unless they resided for two years in such territory or adjacent islands,[34] those (other than returning

[26] Waivers may be granted for aliens who are mentally retarded or who have tuberculosis where they have immediate relatives or unmarried sons or daughters in the United States. 8 U.S.C. 1182(g).

[27] Political offenses and a single misdemeanor classified as a petty offense is excepted. Foreign pardons are not given recognition.

[28] Included are those who may have reformed but who practiced prostitution no matter how far distant in the past. *Matter of G*, 5 I & N Dec. 559 (1954).

The criminal grounds of exclusion and prostitution may be waived where the alien has immediate relatives in the United States, or a son or daughter and there is extreme hardship to such relative. A finding must be made that entry would not be contrary to the best interests of the United States.

[29] Exempted from the labor requirements are alien relatives who qualify as immediate relatives or in the relative preferences (for Eastern Hemisphere natives), those coming here as refugees, investors, fiancees, students, as members of the armed forces, for religious employment, or who seek no employment at all.

[30] A waiver may be granted for aliens with immediate relatives in the United States. 8 U.S.C. 1182(i).

[31] Documents may be waived for returning residents. 8 U.S.C. 1181(b).

[32] This class encompasses many aliens who claimed draft exemption under treaties with the United States. Lapenieks v. Immigration and Naturalization Service, 389 F. 2d 343 (9th Cir., 1968), cert. denied May 27, 1968. See 42 Op. Attorney General No. 28, and Moser v. United States, 341 U.S. 41 (1951). The Ambassador of Switzerland has objected to the inclusion in this category of inadmissibles of Swiss citizens who are exempt from United States Selective Service laws by treaty and who are subject to criminal penalties under Swiss law if they serve.

[33] A conviction at any time for smoking a marihuana cigarette is a bar to admissibility. *Matter of Gardos*, 10 I & N Dec. 261 (1963); Gardos v. Immigration and Naturalization Service, 324 F. 2d 179 (2nd Cir., 1963).

[34] A signatory transportation line is one that has entered into contracts with the Attorney

residents) who are over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect,[35] anarchists, communists, those affiliated with subversive organizations, those whose entry into the United States would be prejudicial to the public interest or endanger the welfare, safety or security of the United States, those who probably would engage in unlawful subversive activities in the United States,[36] those accompanying a helpless excluded alien, those who have at any time assisted for gain another alien to enter the United States illegally, those who have not resided abroad for two years following a visit to the United States as an exchange visitor,[37] and those who have contracted a previous fraudulent marriage for the purpose of evading the immigration laws.[38] The President is also authorized by proclamation to bar the entry of all aliens or any class of aliens whose entry is deemed detrimental.[39] The Attorney General may require the Secretary of State to suspend the issuance of visas in a country which denies or unduly delays acceptance of its citizens or residents as deportees.[40]

Returning residents, with limited exceptions,[41] are subject to the excluding provisions of the law.[42]

General for entry and inspection of aliens coming through contiguous territory or adjacent islands. 8 U.S.C. 1228.

[35] Parents, grandparents, spouses, daughters and sons of citizens or legal residents and refugees are exempt.

[36] A financial contribution is presumed to constitute affiliation. 8 U.S.C. 1101(e)(2). Past membership or affiliation, no matter how distant or brief, is a ground for exclusion from the United States. Exempt from this bar are those who are involuntary members or affiliates, those whose connection occurred when under 16 years of age, those whose membership or affiliation was necessary to obtain employment, food rations or other essentials. Those who establish five years of active opposition to the subversive ideology are also excused. 8 U.S.C. 1182(a)(27)(I).

According to President Truman's veto message, some of these provisions "are worse than the infamous Alien Act of 1798 passed in time of national fear and distrust of foreigners." *House Document* 520, 82nd Cong., 2nd Sess., p. 6.

[37] 8 U.S.C. 1182(e). Waivers will be granted only in cases of exceptional hardship to an American or legally resident spouse or child or where a waiver is recommended to the Secretary of State by an interested United States Government agency.

[38] 8 U.S.C. 1154(c) provides that no visa petition shall be approved for an alien who previously had been accorded nonquota or preference status by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws. This will effectively bar an alien who is in this category.

[39] 8 U.S.C. 1182(f).

[40] 8 U.S.C. 1253(g).

[41] See Rosenberg v. Fleuti, 374 U.S. 449 (1963).

[42] Except for subversive grounds, waivers may be granted to resident aliens returning after a temporary absence to an unrelinquished domicile of seven consecutive years. 8 U.S.C. 1182(c).

Procedure for Entering

An alien who seeks a visa makes application at an American Consulate abroad. A biographical information form is filed. He thereafter is required to submit an application for a labor certification, if appropriate,[43] and a petition to the Immigration Service to classify him as a nonquota or preference immigrant.[44] When these steps are completed he submits photographs, and birth, marriage, military, police and financial or employment certificates. He is fingerprinted and security, as well as other checks, are pursued.[45] Upon completion of these procedures the alien is given a medical examination by the Public Health Service or physicians designated by the American Consul.[46] The alien then completes the final visa form, Form FS-510, a four-page visa application. When approved, it becomes his visa, valid for a period of four months.[47] His entry, however, is still not guaranteed. Upon arrival in the United States, the Immigration Service inspects him and may reexamine his qualifications.[48] Once admitted by the Immigration Service, he acquires permanent residence. However, until the alien acquires citizenship, he may be subjected to deportation proceedings where his entry and qualifications for a visa may be reexamined anew.[49]

Conclusion

Our immigration statute and the procedures prescribed under it are far too complicated, oppressive, obsolete and unyielding.[50] The redundant and long drawn out routines for securing entry into the

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[43] 29 C.F.R., Part 60.

[44] 8 U.S.C. 1154.

[45] The American Consul will seek information about the alien from the Immigration Service and other consuls where the alien has been in the United States and in other countries. In this connection the Consul will require the alien to submit additional forms (DSP-70) setting forth information as to his residence outside his home country.

[46] The alien is required to have a chest x-ray and blood tests.

[47] 8 U.S.C. 1201.

[48] 8 U.S.C. 1225, 1226.

[49] There are approximately 700 grounds of deportation applied retroactively and prospectively and no statute of limitations is prescribed. 8 U.S.C. 1252. Deportation may also be predicated upon misconduct subsequent to entry.

[50] "The law is unjust, unfair, capricious and arbitrary in its handling of aliens, whether applicants for admission or those already here. * * * The law is needlessly cruel and replete with extreme punishments for relatively minor acts of commission or omission." Edelstein, *supra*, note 1.

United States are neither warranted nor necessary. Our immigration laws need revision, simplification and modernization to conform to the jet age, to more humane considerations, to greater flexibility and realism, to the best interests of the United States and to our declared foreign policies.