

RECENT DEVELOPMENTS IN THE IMMIGRATION LAW OF THE U. S. A.

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Introduction

Untill a decade ago, in Japan the field of the immigration law attracted the interest of only a few specialists. But now the field become one that affects the many lawyers, scholars, businessmen and others.

In 1980, the Japanese Seminar of International Comparative Immigration Law was held in Tokyo and in Nagoya under the auspices of the Executive Committee for the Seminar on the International Comparative Immigration Laws, after then it has been continued.

The Executive Committee has been composed of the chairman — Yoshio Hagino, Professor of Law at Nanzan University — and 4 members — Gyo Hani, Director and Managing Editor, The Japan Times; Takeo Kosugi (since 1981 Hiroshi Ohtaka), Director General of Immigration Bureau, Ministry of Justice; Tatsuo Yamamoto, Counsellor, Minister's Secretariate, Minsitry of Justice.

The topic discussed at the Japanese Seminar on International Comparative Immigration Laws in 1980 was immigration law in U. S. A. and Japan, in 1981 U. S. A.-Canada-Japan comparative law was discussed, and in 1982 U. S, A.-Canada-Australia-Japan comparative law was dealt with.¹

This Seminar is closely related to changing world conditions. The political world is recently experiencing national unrest, international conflict, war, and revolution. Large portion of the world's population has been on the move, fleeing oppresion, seeking peace, hoping to find freedom.

The economic world is subjected to a similar insult. Today, we live in international marketplace.

Today's cultural and educational activities involve worldwide partici-

pation and worldwide audiences. Major universities are international in scope, attracting faculty and students from many countries.

The immigration laws must accomodate and must respond to these changing world conditions. It was the objective of this Seminar to examine our various immigration laws for the purpose of understanding how these laws affect the business and cultural visitor and to facilitate international movility of persons within the framework of these laws. The purpose of the Seminar is declared in the Prospectus of the Seminar as follows.²

“In accordance with the development of the international economic and cultural exchanges, foreign nationals visiting Japan and Japanese people visiting foreign countries have been increasing in number and the purposes of their visits also have become more and more varied. Of course, the visa and immigration procedures must be able to cope with such circumstances.

. This project is intended to increase mutual understanding about each immigration system and to contribute to the economic and cultural exchanges among these countries. . . . ”

This article will follow the discussions on the recent developments in the immigration law of the U. S. A. presented in the Seminar.

Major Attempts of Legislative Proposals

Major attempts has been underway in Congress to amend the immigration laws of the United States through 1982. On August 17th of 1982 the United States Senate passed the Simpson-Mazzoli Bill, a major immigration act dealing with a wide range of issues including the immigrant visa classifications, deportation proceedings and judicial review, asylum proceedings, legalization of aliens, and employers sanctions for those employers who engage in the employment of illegal aliens.³

On March 17th Senator Alan K. Simpson (R., Wyo.), Chairman of the Senate Subcommittee on Immigration and Refugee Policy and Representative Romano Mazzoli (D., Ky.), Chairman of the House Subcommittee on Immigration, Refugees and International Law introduced major immigration legislation in Congress. The Bill, which is called the “Immigration Reform and Control Act of 1982,” is 78 pages long and has undertaken the complete overhaul of immigration system.

The Bill has three major sections.⁴

The first contains provisions which, the sponsors hope, will increase control over illegal immigration; the aim of the second section is to "reform legal immigration in order to better serve the national interest"; and the third is to legalize the status of certain undocumented aliens.

Changes in Immigrant visa Categories

There are presently under consideration several measures to deal with problems in some of the immigrant visa categories. Then focus in this area is to streamline the process by which persons may enter the united states in the visa categories aimed at persons of special ability or specialized skills whose services are needed by United States employers. The present immigration law requires the employer to obtain a labor certification. Because the process is so time consuming and expensive, and requires so many steps, it is not unusual for an employer to wait for a year or more before the needed worker may be brought to the United States.⁵

The Bill streamlines the visa process for persons that were determined there was a shortage of such workers as on the list published by the Department of Labor. By reference to this list, the Immigration Service could readily determine whether the person falls into a job category qualifying him for the visa. It is hoped that the procedure will speed up the visa issuance process to a great degree, and be less costly to the employer.

Investors

Another changes embodied in the Bill relate to foreign investors who create jobs for U. S. citizens and permanent residents. The Bill create an investor category for persons who invest at least \$250,000 in a United States business enterprise. Although present immigration law does not specifically provide for this type of visa, one of the existing visa categories has been administratively interpreted to include such a business investor. However, the demand for visas in higher preference categories has been so extensive that since 1978 there have not been

any visa numbers available to persons of this category; accordingly, no one has been able to obtain an investor visa. The investor visa contained in the Bill should stimulate foreign investment in the United States.

Temporary Workers

A third immigrant visa change contained in the Bill relates to temporary workers. Under present law, certain persons of distinguished merit and ability may come into the United States temporarily if their services are required by an employer. The Immigration Service has liberally interpreted this provision with respect to what constitutes "distinguished merit and ability." For several years, the Immigration and Naturalization Service has held that possession of a degree, a diploma, a certificate, or a similar award from an institution of learning, or possession of a particular type of license in a profession or skilled trade was sufficient to demonstrate the required merit and ability. This interpretation is advantageous to American employers because it has enabled professionals such as engineers to enter the United States without obtaining labor certifications.

Under the Bill, possession of a license, degree, or diploma would not necessarily support a finding that the person possesses the requisite exceptional ability. Additional evidence would be required. The Bill would seriously limit the Service's progressive position with respect to temporary workers.

Guest Workers

Another significant immigration proposal is contained in proposed legislation which would establish a guest worker program for Mexican nationals. This proposal is of particular interest to President Reagan who first raised the idea during the presidential campaign. His interest has derived essentially from two sources. One is his desire to provide a safety valve for the Mexican work force which has over a period of time experienced a high level of under employment and unemployment. The second source of his interest is his belief that Mexican workers constitute an essential part of the United States work force in certain

industries, such as agriculture and the service trades. For these two reasons, he has proposed to initiate a pilot guest worker program for Mexican nationals. The program will include up to 50,000 workers for two years. These workers will be able to obtain work visas and travel to States where there is a shortage of workers in specific occupations. If the program works properly, it may be expanded to include a much larger number of persons.

Waiver of Nonimmigrant Visas for Business and Tourist Visitors

Both the Senate and House Bills contain revisions of the nonimmigrant procedures by including so-called visa waiver provisions. Under present law, citizens of most countries, with the exception of Canadian nationals and some others, are required to obtain nonimmigrant visas before entering the United States. This visa requirement, however, is not imposed upon United States citizens by most countries of western Europe and certain other nations. Both the Senate and House Bills contain provisions which would allow nationals of certain countries to travel to the United States without obtaining such visas. This waiver visa program would apply on an experimental basis to nationals of a limited number of countries. Persons entering under the visa waiver program could remain in the United States for a limited period of time, probably less than 90 days, either as a visitor for business or as a visitor for pleasure. In order to obtain such a waiver, the visitor would be required to waive certain rights which exist under United States immigration law. This visa waiver program will foster increased mobility of citizens of participating countries.

Legalization of Illegal Aliens

The problem of illegal immigration has been the principal object of all recent proposals to reform the immigration laws of the United States. In the last several years, the illegal alien invasion of the United States has resulted in a U. S. illegal population which is estimated to range from three to twelve million people.⁶ The present Administration has adopted a far-reaching immigration program which includes the legal-

zation of certain of these illegal residents, a commitment to increase border enforcement and a prohibition against employing illegal aliens. A combination of legalization, border enforcement, and employer sanctions has been adopted by both the Senate and the House in their proposed Bills.

Under the present Senate Bill and House proposal, the legalization procedure would be carried out in two steps.

First, any illegal alien who has resided in the United States continuously since January 1, 1980, could apply for temporary resident status. A person receiving this temporary resident status would be entitled to "adjust" to permanent resident status after remaining in the United States for a period of three years, if he is not otherwise inadmissible and can demonstrate minimum English language competence.

Illegal aliens who have been residing continuously in the United States since January 1, 1977, would be able to apply for permanent resident status. The Senate Bill allows such persons to apply for legalized status within 18 months of the effective date of the legislation.

Another aspect of the immigration law and policy which is related to the legalization program in the eyes of many members of Congress is the control of United States borders, and interior enforcement of United States immigration laws. In their view, a legalization program should not be entered into until there is more effective control of United States borders, particularly the southern border with Mexico. It is thought, if legalization program will be enacted, that most of the persons entering in this way will obtain fraudulent documents showing that they entered before the qualifying date. In short, a legalization program could cause more persons to enter the United States in the hope of obtaining resident status.

Employer Sanctions Program

Both the Senate and House Bills contain provisions for "employer sanctions," imposing civil and criminal penalties on employers who knowingly hire illegal aliens.

The president, the attorney general, and the Congress all have stated

that the majority of persons who enter and remain illegally in the United States do so because they are seeking employment. Both the Senate and the House Bills recognize that eliminating the economic incentive to enter the United States will result in far fewer illegal aliens entering this country. The Senate Bill would make it illegal for an employer to hire a person without proof of legal work authorization. For most employers, this Bill requires that the employee must present proof of United States citizenship, permanent resident status, lawful temporary resident status, or work authorization. Under the Senate Bill, if an employer does not obtain such proof of work authorization, he will be subjected to substantial civil and criminal fines and penalties.

This legislation also contains provisions making it illegal to obtain false work authorization documents. Thus, if an alien purchased false documents or obtained documents belonging to another person, and presented these documents in support of entering the United States, or obtaining employment, he and the providers of such false document could be imprisoned or fined.

The imposition of civil and criminal penalties on both the employers and the illegal aliens attempts to deter employers from hiring illegal aliens and to deter illegal aliens from accepting such employment. At the present time, there is no penalty whatsoever from employing illegal aliens.

The Refugee and Asylum Programs

The United States has enthusiastically committed itself to the provisions of the United Nations protocol and has enacted enabling legislation with respect to refugees and asylum claimants. Nevertheless, serious problems still exist. Historically, the United States had received from 2,000 to 6,000 asylum applications each year. Two years ago this number increased to some 16,000 applications. Last year, in excess of 60,000 people claimed asylum. At the present time there are in excess of 110,000 asylum cases backlogged in our immigration system. The government's ability to respond to these claims and to properly adjudicate their validity has been sorely tested.

The Administration and both houses of Congress have recognized

this problem and have attempted to reduce the backlogs and eliminate the administrative and legal impediments to a quick and fair resolution of asylum claims.

Both bills before Congress include new administrative procedures to expedite and improve the processing and adjudication of asylum claims. The Senate bill provides asylum claimants with an administrative appeal to a newly formed U. S. immigration board. There would be no judicial review except the existing remedy of habeas corpus.

The House bill substantially expands judicial review of asylum determinations to include in certain instances statutory habeas corpus and court of appeals review in all cases.

The difference between the Senate and House approaches had to be resolved at the conference level before a final bill could be passed and sent to the President for enactment into law.

All parties to this process realize, however, that the asylum and refugee procedures must be simplified. All parties acknowledge that if the resources of the Immigration Service are consumed by refugee and asylum processing and adjudication, they will not be available to service the others seeking immigration benefits, including the international business community.⁷

Conclusion

The House of Representatives adjourned at the end of the lame duck (post-election) session of Congress without taking a final vote on the Simpson-Mazzoli Bill. Therefore, the Bill died. Almost 300 amendments of the Bill (over 80 pages) by Congressmen had been printed in the Congressional Record on Thursday, December 9, 1982. After eight and a half hours of deliberations the House, in effect, ran out of time due to the press of other matters.⁸

Anyway, in the implementation of an immigration policy, there is an inherent tension between enforcing the law to prevent illegal immigration on the one hand, and enforcing the law to permit legal immigration on the other hand. If, to the extent, the resources of a government are devoted to preventing illegal immigration, these resources will be unavailable to serve those desiring to enter a country legally, within

the framework of that country's immigration laws. Often, legal entrants who should receive the benefits of governmental service become frustrated with bureaucratic obstacles and delays and thus become critical of the particular country's immigration policies. Such frustration, however, can be lessened, if not eliminated, by a thorough understanding of a country's immigration laws and practices and a full, complete, and strict compliance with those laws and practices.⁹

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- 2 Proceedings of the Japanese Seminar on International Comparative Immigration Laws, 1980, 1981, 1982.
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- 6 Inman, note 3, supra.
- 7 Supra.
- 8 United States Immigration News, vol. II, No. 51 (Dec. 17, 1982).
- 9 Supra.