REPORT TO THE COMMITTEE ON THE JUDICIARY [redacted]
HOUSE OF REPRESENTATIVES

Administration Of The Alien Labor Certification Program Should Be Strengthened

Department of Labor

Department of Justice

Department of State

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MWD-75-2

MAY 16, 1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-125051

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This is our report in response to your January 23, 1973, letter requesting us to review the alien labor certification program, section 212(a)(14) of the Immigration and Nationality Act, as amended, to determine its practicability and effectiveness in protecting the domestic labor market. This report concerns the impact of alien workers on the domestic labor force and administration of the certification program by the Departments of Justice, Labor, and State.

The labor certification program's success can best be measured by determining whether and to what extent immigrant workers have adversely affected the domestic labor force. The program was difficult to assess because the three Federal departments which deal with immigrating aliens did not maintain adequate and comparable data. However, judging from the data we were able to obtain, the program has had little effect because a large number of the aliens entering this country--many of whom could enter the labor force--were not required to obtain a certification.

We are recommending that the Congress decide whether American labor needs additional protection from alien workers and, if so, consider amending the Immigration and Nationality Act to expand coverage of the labor certification requirements so that control can be exercised over a greater number of incoming alien workers.

In addition, we noted certain weaknesses in the administration of the program. We are making recommendations

to the Secretary of Labor and the Attorney General to improve their internal management controls to make administration of the program more effective. These recommendations are set forth on pages 49 and 50.

Officials of the Departments of Justice, Labor, and State have been given an opportunity to review and comment on this report. Their views have been incorporated where appropriate. Comments of State officials have also been considered in preparing the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Labor; the Attorney General; and the Secretary of State.

This report should interest other committees, Members of Congress, and agency officials. Therefore, as you have agreed, we are distributing copies of this report accordingly.

Sincerely yours,

Comptroller General
of the United States

Contents

ABBREVIATIONS

GAO	General Accounting Office
INS	Immigration and Naturalization Service
DOL	Department of Labor
ES	employment service

COMPTROLLER GENERAL'S
REPORT TO
THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ADMINISTRATION OF THE ALIEN LABOR CERTIFICATION PROGRAM SHOULD BE STRENGTHENED

Department of Labor
Department of Justice
Department of State

D I G E S T

WHY THE REVIEW WAS MADE

GAO was asked to undertake a comprehensive review of the alien labor certification program because hearings in the 92d Congress revealed that various problems had developed. This program, authorized by the Immigration and Nationality Act, as amended, is administered by the Immigration and Naturalization Service (INS), Department of Justice; the Department of State; and the Department of Labor. GAO also sought to determine whether the program was effectively achieving its legislative objective of protecting the domestic labor force from alien worker competition.

FINDINGS AND CONCLUSIONS

An increasing number of aliens are legally and illegally entering the United States each year. INS records show that 4.3 million aliens legally entered the country in fiscal year 1970. By fiscal year 1974 the number of aliens admitted legally had increased to 6.5 million. Estimates of the number of illegal aliens in the country vary widely. However, INS estimates the number could be as high as 12 million. Many aliens admitted legally or coming in illegally either enter to obtain jobs or acquire jobs after entering in competition with American workers.

The Immigration and Nationality Act deals with meeting both long-term and temporary needs of American employers and protecting American workers. One provision of the act allows the Secretary of Labor to bar issuance of a visa to an alien seeking permanent employment when such immigration would adversely affect the American labor market.

Under this provision alien workers are prevented from entering the United States on a permanent basis unless the Secretary certifies that there are not sufficient domestic workers who are willing, able, qualified, and available to perform work at the place and at the time the alien applies for the visa or that entry would not adversely affect wages and working conditions.

This provision is known as the labor certification program. A 1965 amendment made labor certification a requirement for many aliens seeking permanent employment in the United States.

Previously only aliens seeking employment in certain firms or certain areas in specific occupations were subject to a labor certification. (See p. 4.)

In the course of immigration, aliens must deal with the State and Justice Departments. Those aliens seeking a labor certification must also deal with Labor, which is responsible for reviewing immigrant labor certification applications and determining which should be approved and denied. (See p. 6.)

The labor certification program's success is best measured by determining whether and to what extent immigrant workers have adversely affected the domestic labor force. GAO encountered difficulties in assessing the program because the three Federal departments dealing with immigrating aliens did not maintain adequate and comparable data. (See p. 12.)

Judging from data that GAO was able to evaluate, it appears that the program has had little effect because a large number of aliens entering this country--many of whom may enter the labor force--are not required to obtain a certification. (See p. 12.)

Aliens entering the country

State Department records show that about 3.1 million aliens (2.7 million nonimmigrants and 378,000 immigrants) were granted visas to enter the country in fiscal year 1973. INS records show that about 5.6 million aliens (5.2 million nonimmigrants and 400,000 immigrants) entered in fiscal year 1973. INS reports more admissions because its nonimmigrant admissions include aliens permitted to use their visas more than once.

Only about 50,000 of the aliens (13,000 immigrants and 37,000 nonimmigrants) entering the country in fiscal year 1973 were required by the act or by INS regulations to have a labor certification. (See p. 13.)

INS records show that about 370,000 immigrants entered the country in fiscal year 1971 and about 400,000 entered in fiscal year 1973. Immigrants requiring a labor certification decreased from about 19,000 in fiscal year 1971 to about 13,000 in fiscal year 1973. (See app. III.)

GAO's analysis of available records showed the possibility that some immigrants for whom certification was not required were competing or will be competing in the domestic labor market. (See p. 14.)

In fiscal year 1973 about 5.2 million nonimmigrants were admitted for a temporary stay. About 4.4 million of these nonimmigrants entered as tourists or transients enroute to another country. The remaining 800,000 included visitors for business, students, temporary workers, and foreign diplomats.

Under INS regulations only one category of nonimmigrants--temporary workers who have a specific job offer from an employer to perform temporary services or labor for which qualified domestic workers are not available--is subject to certification by Labor. Of the 800,000 nonimmigrants who entered the country during fiscal year 1973, only about 37,000 were temporary workers who received certifications from Labor. (See p. 15.) GAO also noted that some nonimmigrants, such as students, and persons of distinguished merit and ability can work legally and are not required to obtain certification from Labor. (See p. 16.)

Nonimmigrant temporary workers obtaining permanent employment

Employers desiring to employ aliens of distinguished merit and ability as temporary workers can file petitions with INS for admission of such workers without obtaining a labor certification. Some of these aliens who entered the country as nonimmigrant temporary workers with-

out labor certifications obtained permanent employment and were subsequently found by INS to be eligible for permanent resident status under the law.

INS records show that the number of nonimmigrants admitted into the United States as temporary workers under the distinguished merit and ability category increased from 8,941 in fiscal year 1969 to 15,670 in fiscal year 1973. (See p. 18.)

Aliens entering the United States have an impact on the domestic labor force

In the first 5 fiscal years (1965-69) after passage of the 1965 amendments to the act, the national unemployment rate averaged 4 percent. The national unemployment rate from 1970 to 1973 averaged 5.2 percent.

The total labor force increased during fiscal year 1973 by about 2.2 million persons. During the same year about 400,000 immigrants were admitted to this country. According to an official in Labor's Bureau of Labor Statistics, about 260,000 of these immigrants were expected to enter the labor force--which would represent about one-eighth of the labor force growth in 1973. (See p. 20.)

Need to improve controls over alien workers

Some aliens fail to work in the occupation for which their certification was obtained, others begin working in this country before certification, and some change jobs and occupations. As a result, some aliens are allowed to compete with American labor contrary to the intent of the act. For example:

--Of the 442 selected certification cases examined, 101 cases involved aliens working in this country before filing a certification application and 59 of these working aliens had visas forbidding them to work while in the United States. (See p. 31.)

--Labor regulations provide that certifications which are approved on the basis of employer-offered jobs only apply to the certified position. However, in several cases aliens had not reported to their certified positions as required. (See p. 32.)

In the 92 cases in which immigrants had reported to their certified job positions, 41 immigrants had left their jobs within a year. (See p. 33.)

A 1973 study, entitled "Immigrants and the American Labor Market," financed by Labor disclosed that a large percentage of the 2,701 immigrants studied who reported to their certified job positions left the job within a short time or changed occupations. (See p. 34.)

Need to document reasons for granting or refusing a certification

Labor's regional offices and State and local employment service offices were not adequately documenting the bases for the decisions under which aliens were granted or refused labor certifications. Consequently, for 147 of the 442 cases reviewed, GAO could not determine from Labor and employment service records, with reasonable certainty, the basis for the certification dispositions. (See p. 35.)

A study of the labor certification program completed in 1973 by the

Administrative Conference of the United States also disclosed a lack of documentation for the bases of certifications and recommended that Labor develop standards to improve the quality and degree of specificity of the record upon which certification is granted or denied. (See p. 39.)

Need to revise procedures to require determination that domestic worker is willing to take job sought by alien

Investigations made by most selected employment service offices on the sufficiency of domestic workers to perform jobs sought by aliens included determining the ability, qualifications, and availability of domestic workers but generally ignored whether they were willing to actually accept the employment in question.

From its review of the 442 selected case files, GAO found determinations of worker availability were made primarily on the basis of information in employment service office files relating to active applicants for employment assistance.

Employment service offices generally made no attempt to determine the willingness of the listed workers to accept the jobs sought by the aliens. As a result, some employers who were denied a labor certification for the aliens they requested could not find domestic workers willing to accept their job offers. (See p. 40.)

Need for improved monitoring

Monitoring of the labor certification program at the four Labor regional offices and employment service offices visited was not done in most cases, and when it was done it was usually inadequate. Although considerable potential for improving effectiveness of the program exists in a self-appraisal system established for employment service offices, offices visited generally were not making such evaluations. (See p. 45.)

RECOMMENDATIONS

GAO recommends that the Secretary of Labor direct the Assistant Secretary for Manpower to take the necessary action to

--strengthen established policies and procedures requiring Labor regional and employment service offices to (1) consider the willingness of domestic workers to accept the jobs when considering the availability of workers to perform jobs being requested by aliens and (2) adequately document their bases for making each certification determination and

--insure that appropriate and adequate monitoring is performed at all levels of operation of the program as required by Labor policies and procedures. (See p. 49.)

GAO also recommends that the Attorney General direct the Commissioner, INS, to

--have district offices take appropriate action against aliens denied a labor certification by Labor and residing and employed in this country and

--establish procedures requiring employers to notify INS district offices that aliens who receive certification from Labor report to the certified job. (See p. 50.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

Labor said that in general action was being taken or was planned to implement GAO's recommendations. Labor stated that it had been extremely difficult to deal objectively with the consideration of willingness of domestic workers. However, Labor, in response to a recommendation on this subject by the Administrative Conference Study, issued revised guidelines which it expects to improve the basis for decisions rendered by its regional offices--including the consideration of willingness.

GAO was informed in January 1975 by a Manpower Administration official that additional revisions were underway to further emphasize the need to document the willingness factor in making certification determinations.

Justice said that both GAO recommendations had merit, however, both would require a significant increase in INS personnel to be effectively implemented. Justice said it had requested an amendment to its fiscal year 1975 budget request which would furnish badly needed personnel to enhance its enforcement capability. GAO was informed in February 1975 that INS had received some of the additional personnel it requested and that INS had received approval to request an additional 750 enforcement personnel for fiscal year 1976.

Labor and Justice agree that there is a need for the Congress to consider strengthening the certification program to improve its effectiveness. They commented on their own and other proposals to revise and improve the labor certification program. The Department of State believes that GAO's findings point out the possibilities which exist under the act that many immigrants entering the United States without a certification are competing in the American labor market.

GAO recognizes there are various ways to revise the program and believes that how the program should be revised is a matter for the Congress to decide. (See apps. VI, VII, and VIII.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

Whether American labor needs additional protection from alien workers is a matter for the Congress to decide. If the Congress decides this added protection is needed, it should consider amending the Immigration and Nationality Act to require:

--That a labor certification be granted as a prerequisite for admission of aliens who seek admission as (1) special immigrants defined in section 101(a)(27)(A) (Western Hemisphere aliens) other than parents, spouses, and children of U.S. citizens and (2) preference immigrants described in section 203(a)(1) through (6) and nonpreference immigrants described in section 203(a)(8) (Eastern Hemisphere aliens).

--That aliens, including those of distinguished merit and ability, seeking to enter as temporary workers be subject to a labor certification review by Labor.

--That other aliens, such as students, temporarily living in the

United States who can secure permission from INS to work be subject to a labor certification. (See p. 27.)

If enacted the changes would remove the labor certification exemptions now accorded by the act to Western Hemisphere aliens who are parents, spouses, and unmarried minor children of aliens lawfully admitted to the United States as permanent residents. They would also remove the labor certification exemptions now accorded by the act to Eastern Hemisphere aliens entering the country through family relationships under the first, second, fourth, and fifth preferences. These changes would tend to lessen the emphasis placed on family relationships by the 1965 amendments to the act.

The changes, if enacted, would also have the effect of requiring labor certifications for a greater number of aliens entering the country as nonimmigrants on a temporary basis, such as aliens entering as temporary workers and students who can secure permission from INS to work.

CHAPTER 1

INTRODUCTION

INCREASING NUMBER OF ALIENS LEGALLY AND ILLEGALLY ENTERING THE UNITED STATES

The number of aliens legally admitted to the United States has been increasing. Records of the Immigration and Naturalization Service (INS), Department of Justice, show that in fiscal year 1970 about 4.3 million aliens entered the country--including 3.9 million nonimmigrants who were admitted for temporary periods and 373,000 immigrants who were admitted for permanent residency. In fiscal year 1974 the aliens admitted legally had increased to 6.5 million--including 6.1 million nonimmigrants and about 395,000 immigrants.

As discussed in later sections of this report, many of the legally admitted aliens--both immigrants and nonimmigrants--either enter the country to obtain jobs or acquire jobs after entering.

In addition to aliens admitted legally, there are large numbers of aliens that enter the country illegally. No precise or accurate estimate is available of the actual number of illegal aliens living in the country. For example, in a report[1] on certain proposed amendments to the Immigration and Nationality Act, the House Committee on the Judiciary stated:

> "The Committee is also aware that the number of illegal aliens in the United States has been rapidly increasing each year since 1965, and continues to do so.

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[1]House Report 93-108, dated April 5, 1973.

"Although the number of illegal aliens in this country cannot be accurately measured, it is generally accepted that there are presently between one and two million aliens illegally in the United States."

The Committee's report also stated that the number of illegal aliens removed from the United States annually is greater than the number of aliens admitted as lawful permanent residents under the act.

INS records show that the number of illegal aliens apprehended by INS has increased from about 212,000 in fiscal year 1968 to about 506,000 in fiscal year 1972 and that the number apprehended in fiscal year 1972 exceeded by 121,000 the number of aliens legally admitted as immigrants in that year.

In fiscal year 1973 INS apprehended 656,000 illegal aliens--an increase of 150,000 over the previous fiscal year. In fiscal year 1974 the number of illegal aliens apprehended by INS increased to about 800,000.

According to INS, these illegal aliens are generally industrious, hard-working people who enter this country to obtain jobs, accumulate savings, and return home with their savings or send them home. INS, however, does not have complete statistical information regarding the types of employment engaged in by illegal aliens.

Many illegal aliens do get jobs. For example, information compiled by INS shows that, of the estimated 506,000 illegal aliens apprehended in fiscal year 1972, 440,825 or about 87 percent were either employed or seeking employment. Of the 193,000 working when they were found, about 90,000 were working in agriculture and 103,000 were working in industry and other occupations.

In October 1974 the Attorney General stated that estimates of the number of illegal aliens in the country "usually range from four to seven million--but the Immigration and Naturalization Service says it could be as high as 12 million." He stated that illegal aliens hold millions of jobs. The Attorney General estimates that if INS received additional resources (money and manpower) illegal aliens who

now hold at least 364,000 jobs in industry, nearly that many in agriculture, and some 300,000 in service trades could be deported.

IMMIGRATION AND NATIONALITY ACT

Protection of the American labor force was one of the major factors in decisions of the Congress to restrict immigration through legislation. Legislation dealing with alien workers was first enacted in 1885 and was supplemented by alien contract labor laws and subsidiary legislation. On June 27, 1952, the Congress passed the Immigration and Nationality Act (8 U.S.C. 1101) which revised the provisions of earlier acts dealing with aliens, immigration, and naturalization.

The act defines a number of specific classes of nonimmigrants, including visitors, students, exchange aliens, temporary workers, and foreign government officials. All aliens not falling within one of the defined classes of nonimmigrants are classified as immigrants.

Several provisions of the 1952 act, as originally enacted, illustrate the congressional concern for meeting the long-term and temporary needs of American employers and for protecting American workers. For example:

--One provision (section 203(a)(1)(A)) covering aliens wishing to immigrate to the United States for permanent residence under a national-origins quota system provided that a preference shall be given to certain eligible highly skilled individuals whose services were determined by the Attorney General to be needed urgently in the country.

--Another provision (section 212(a)(14)) allowed the Secretary of Labor to bar the issuance of an immigrant visa to certain aliens seeking permanent employment when such immigration would adversely affect the American labor market. Under this provision such aliens were to be excluded from entering the United States on a permanent basis if the Secretary of Labor certified that sufficient domestic workers who were willing, able, and qualified,

and available to perform similar work at the place and at the time the alien applied for the visa or that entry would adversely affect wages and working conditions. This provision is popularly referred to as the labor certification program.

--A third provision (section 214(c)) provides that the Attorney General, after consulting with appropriate Government agencies (including the Department of Labor (DOL)) on the effect of the admission, will determine whether aliens wishing to enter the United States to perform certain kinds of temporary employment can be admitted.

Under the 1952 act, as originally enacted, INS and the Department of State have primary responsibility for admitting aliens. DOL responsibilities were generally limited to (1) issuing certifications of availability of qualified workers or certifications of adverse effect with respect to aliens destined for certain firms or to certain geographic areas in specified occupations, whenever conditions within the firms or occupations warranted such certifications, and (2) advising the Attorney General on the effect on the labor force of admitting certain aliens for temporary employment.

In 1965 the Congress amended the 1952 act to, among other things, change the types of and number of immigrants admitted and to revise the certification provisions.

AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT

The amendments passed in 1965 (79 Stat. 911), in part, related to the immigration and admission of aliens to unify families and to the strengthening of controls to protect American workers. The amendments established certain numerical limits for aliens wishing to enter from various countries and from each hemisphere. The numerical limits do not apply to admission of parents, spouses, and children of U.S. citizens. However, in the case of parents, the U.S. citizen must be at least 21 years of age. Also the act defines children as unmarried persons under 21 years of age.

The limit for aliens wishing to enter from countries in the Western Hemisphere or the Canal Zone is set at 120,000 a year without any limits by country. Visas are issued simply on a first-come-first-served basis. The amendments classified these aliens as "special immigrants."

The limit for aliens wishing to enter from countries in the Eastern Hemisphere was set at 170,000 a year with each country limited to no more than 20,000 immigrant visas and conditional entrants (refugees). The amendments also established a system of preference priorities for use in allocating visas to aliens from Eastern Hemisphere countries with each preference classification allowed a certain percentage of the total visas available.

The Eastern Hemisphere preference-priority system has seven preference classifications and a nonpreference classification. Family reunification and attraction of skilled workers are to be primary considerations for immigration. The first, second, fourth, and fifth preference classifications relate to family ties. The closer the family tie, the higher the preference. Aliens who are members of a profession or persons of exceptional ability in the sciences or arts are to be given third preference. Skilled and unskilled workers in short supply are to be given sixth preference and refugees the seventh preference. The nonpreference classification applies to all aliens not included in the seven preference classifications. (See app. II for detailed descriptions of the preference and nonpreference classifications.)

Under the 1965 amendments a DOL certification was made a requirement for admission of Eastern Hemisphere aliens classified as third and sixth preference and nonpreference. A labor certification is also required for admission of all aliens from the Western Hemisphere (and the Canal Zone) except those who are parents, spouses, or children of U.S. citizens or of aliens lawfully admitted to the United States for permanent residence.

The amendments provide that aliens subject to labor certification requirements shall be excluded from admission

unless the Secretary of Labor determines and certifies to the Secretary of State and the Attorney General that

--when the alien applies for the visa and admission to the United States, there are not sufficient domestic workers who are able, willing, qualified, and available at the place where the alien would perform the work and

--the employment of the alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

AGENCIES RESPONSIBLE FOR ALIENS

Aliens desiring entry into the United States must deal with the State and Justice Departments. Those seeking a labor certification must also deal with DOL.

The Department of State, through its consulates and embassies, is the usual point of initial contact. It determines the type of visa to be issued--temporary, permanent, visitor, immigrant for employment, or member of family of a U.S. citizen or aliens lawfully admitted for permanent residence.

INS is responsible for approving all persons seeking entry into the United States and for insuring that all admissions, temporary or permanent, are in accord with the provisions and intent of the act. It is also responsible for insuring compliance with the act after the alien is in the United States.

DOL is responsible for processing and reviewing labor certification applications and determining whether they should be approved or denied.

PROCEDURES FOR ALIENS SEEKING ENTRY INTO THE UNITED STATES

Seeking permanent residence

Generally an alien first seeks information on immigration from the American consulate, which represents the

Department of State and which grants visas for entry into the United States.

Western Hemisphere aliens subject to numerical limits are classified as special immigrants and are granted visas for permanent residency on a first-come-first-served basis.

Eastern Hemisphere aliens subject to the numerical limits can enter the United States under the seven preference and nonpreference classifications. INS must approve a petition to give an Eastern Hemisphere alien a classification under any of the first six preferences before a consular office may issue a preference immigrant visa. If the numerical limits have not already been exceeded, an application for an immigrant visa generally takes about 4 months to process, including the submission of the necessary documents by the applicant.

INS also approves seventh preference petitions for alien refugees who enter the country without visas. These aliens are considered conditional entrants for 2 years, after which they may apply for permanent residency.

If an alien seeks entry through a nonpreference classification, he is not required to obtain approval from INS before receiving the visa.

Only Eastern Hemisphere aliens seeking third preference, sixth preference, or nonpreference classifications and certain Western Hemisphere aliens are required to obtain labor certification from DOL before receiving a visa. (See p. 5.)

Since more aliens from certain countries want to come to the United States than can be admitted under the numerical limits set by the Congress, there are always qualified aliens waiting for a visa. Some may receive priority dates which require waits of up to 5 years.

Seeking temporary admittance

The act defines a number of specific classes of aliens who may be admitted into the United States as nonimmigrants including (1) temporary workers, (2) tourists, (3) students, (4) transients enroute to another country, or (5) officials of foreign governments. The act provides that the admis-

sion into the United States of any alien as a nonimmigrant shall be for such time and under such conditions as INS may prescribe.

The act authorizes INS to consult with other Federal agencies, including DOL, before admitting nonimmigrant temporary workers.

The three broad categories of temporary workers and the administrative controls over their entry are as follows:

Category	Administrative control
Workers of distinguished merit and ability	Admitted by INS decision
Other workers (skilled and unskilled)	Admitted by INS decision but with consultation with DOL in each case
Industrial trainees	Admitted by INS decision

INS regulations implementing the act require INS to consult with DOL only with regard to skilled or unskilled workers seeking temporary admission. With each petition for such workers sent to INS, the petitioning employer is required to submit a labor certification or a statement by DOL stating why certification will not be issued. INS will deny the petition if DOL denies the application for certification and the petitioner cannot establish satisfactorily that qualified workers are unavailable domestically to perform the required services.

The act allows aliens who have been admitted into the United States under temporary admittance visas to apply for permanent residency. The act provides that Eastern Hemisphere aliens can apply without returning home by requesting that INS adjust their status. The act, however, requires Western Hemisphere aliens to leave the United States to acquire a visa. Western Hemisphere aliens can acquire permanent residency only by returning to the United States with visas issued to them as immigrants.

ADMINISTERING THE LABOR CERTIFICATION PROGRAM

DOL is responsible for the protection of wages, working conditions, and job opportunities of domestic workers. These responsibilities are discharged, in part, through the processing of labor certification applications from aliens (or their representatives, including prospective employers) wishing to obtain an immigrant visa to work in this country.

In December 1970 responsibility for processing most labor certifications was delegated to the 10 DOL regional offices. The National Office handles applications involving airline stewardesses, farmworkers, logging industry workers, sheepherders, miners, and certain construction workers.

The regional offices work with over 2,400 employment service (ES) offices, which are part of the Federal-State employment security program. According to a DOL official, the decentralization was intended to permit maximum responsiveness to the conditions of the labor market in the various geographical areas.

DOL's administrative costs for the certification program--including the activities performed by ES offices--were estimated by a DOL official to be about $3.5 million for fiscal year 1973 and about $2.7 million for fiscal years 1974 and 1975.

DOL regional offices and ES offices

Each DOL regional office employs a certifying officer who approves or denies labor certification applications, a reviewing officer responsible for reviewing appeals of certification denials, and their supporting staffs.

The regional offices interpret policy and provide guidance to ES offices on the application of the act and provide information on matters affecting labor availability and mobility, salaries, training facilities, and related matters.

The ES offices--through their normal functions of job placement, occupational analyses, and labor market analyses--provide the appropriate regional offices information necessary to determine the availability of domestic workers for occupations in which certification applications have been received and the possible adverse effects of the alien labor.

Processing applications

The act states that Eastern Hemisphere aliens seeking third preference, sixth preference, or nonpreference classifications (see p. 5) and certain Western Hemisphere aliens are required to obtain a labor certification.

To assist processing certification applications, DOL has published two occupational schedules. Schedule A--a precertification list--consists of occupations generally in short supply nationwide. Schedule B--the noncertification list--includes low-skill occupations requiring little or no education, training, or experience for satisfactory job performance and for which domestic workers are available or can be readily trained.

An alien whose category of employment appears on schedule A generally qualifies for a certification without a job offer or DOL review. His eligibility may be determined either by INS (in the case of Eastern Hemisphere aliens within the United States seeking adjustment of status) or by the American consulate (in the case of Western Hemisphere aliens and Eastern Hemisphere aliens outside the United States).

A labor certification is also granted without a job offer to an alien from the Eastern Hemisphere who has qualified for admittance under the third preference classification--member of a profession or a person of exceptional ability in the sciences or arts. Such an alien files his application for certification with INS or with the American consulate abroad. After determining that the alien does not qualify for schedule A processing, INS or the consulate forwards the application to the DOL regional office in the area in which the alien intends to work. The DOL certifying officer determines whether the certification can be granted under the act. After determining whether to deny or grant the certification, DOL returns the application to INS or the consulate.

A specific job offer is a prerequisite for all other aliens who request certification. The alien's application must be filed by the prospective employer or the employer's representative at the ES office serving the area where the alien will be employed. The ES office reviews the application and gathers information on the availability of domestic workers and the prevailing wages and working conditions of the kind of job offered in the area of the alien's intended employment. The ES office forwards the application and information gathered to the appropriate DOL regional office.

At the regional office the certifying officer uses the information submitted by the ES office plus any other applicable available data to determine whether a certification will be granted or denied. DOL returns the approved or denied application to the employer.

DOL has published rules and regulations in the Code of Federal Regulations (29 C.F.R. 60) which set forth instructions and procedures for aliens and employers to follow in requesting a certification. DOL has also issued policies and procedures for its regional offices and ES offices to use in processing and reviewing alien applications for certifications. ES offices usually supplement these procedures with their own program guidelines or handbooks.

CHAPTER 2

ASSESSING THE IMPACT OF

THE LABOR CERTIFICATION PROGRAM

The labor certification program's success is best measured by determining whether and to what extent immigrant workers have adversely affected the domestic work force. However, the program cannot be accurately assessed because the responsible departments have not developed adequate and comparable statistical data on aliens (including those granted visas with certifications) admitted into the country.

We attempted, however, to evaluate the effect that the program has had on precluding competition by aliens with American labor by examining available statistical data for the past several fiscal years and by examining selected samples of calendar year 1972 labor certification decisions--the most current and complete records available at the time of our fieldwork. Four of DOL's 10 regional offices and selected State and local ES offices were included.

Efforts under the existing laws and regulations to preclude competition by aliens with American labor through labor certifications have apparently had little effect because of the large number of aliens entering this country--many of whom enter the labor force--who are not required to obtain such a certification.

ALIENS ENTERING COUNTRY TO WORK

Department of State records show that about 2.6 million aliens (2.2 million nonimmigrants and 366,000 immigrants) were granted visas to enter the United States during fiscal year 1972, and about 3.1 million (2.7 million nonimmigrants and 378,000 immigrants) were granted visas in fiscal year 1973. INS admission records show that about 4.9 million aliens (4.5 million nonimmigrants and 385,000 immigrants) were admitted to the country in fiscal year 1972, and about 5.6 million aliens (5.2 million nonimmigrants and 400,000 immigrants) were admitted in fiscal year 1973. (See app. III.)

The differences in these reported figures were identified by an INS official as resulting from INS' reporting substantially more admissions because its nonimmigrant admissions included aliens who were permitted to use their nonimmigrant visas more than once to enter the United States.

INS records show that about 57,000 aliens (18,000 immigrants and 39,000 nonimmigrants) in fiscal year 1972 and about 50,000 (13,000 immigrants and 37,000 nonimmigrants) in fiscal year 1973 were subject to a labor certification. Statistical data was not available to accurately determine the number of the remaining aliens (immigrants and nonimmigrants) admitted to this country with the intention of entering the domestic work force who were not subject to the certification requirement.

Immigrants entering the labor force

Although the number of immigrants entering the country has increased over the last few years, the number of immigrants entering the country with labor certifications has decreased.

In fiscal year 1970 DOL received 70,510 applications for certifications from aliens. DOL approved 42,661 of these applications. INS and the Department of State found an additional 54,441 aliens qualified for certifications under DOL's occupational schedules, for a total of 97,102 approvals in fiscal year 1970. In fiscal year 1973, however, only 33,204 certifications were approved by the 3 agencies. INS and the Department of State found 9,976 aliens qualified under DOL schedules, and DOL approved 23,228. DOL had received a total of 43,660 applications in 1973.

DOL officials said the drop in certification requests was because (1) employers did not want to wait the long period it takes an immigrant to obtain a visa and enter the country and (2) workers were available in the United States--including immigrants who entered the country to join their families.

The decrease in the number of certifications issued does not necessarily mean that the number of immigrants who may enter the domestic labor force is decreasing. INS records show that the number of immigrants entering the country has increased from about 373,000 in fiscal year 1970 to about 400,000 in fiscal year 1973. (See app. III.) Many immigrants, once they are admitted to this country, compete for jobs.

Aliens who are eligible to enter the country on the basis of family relationships and thus are not subject to labor certification requirements must provide reasonable assurances that they will not become public charges. A prearranged job offer is one form of assurance. The aliens' prearranged job offers are reviewed by the American consulates or by INS to determine whether the jobs are adequate for that purpose. However, the act does not require INS, the Department of State, or DOL to determine whether there are qualified domestic workers available for the job or whether the filling of the job will result in an adverse effect on the domestic labor force.

Neither Department of State nor INS officials could provide us with statistics on the number of such aliens admitted who claimed job offers as a basis for their support.

Immigrants admitted in certain occupations with domestic workers available

Analysis of available records shows the possibility that some immigrants who are admitted to this country are competing in occupational fields in which domestic workers are available.

For example, during fiscal year 1973, 457 aliens wishing to teach in this country were granted certifications, while another 949 aliens wishing to teach were denied certifications. Most of the denials were based on availability of sufficient domestic workers with teaching skills to fill the requested jobs. DOL records showed that for the most part there was an adequate supply of teachers to fill jobs in each of its 10 regions.

Of the 400,000 immigrants who entered the country during fiscal year 1973, 3,860 listed their occupation as teaching. If the aliens in this occupation had been required to secure a certification, they probably would have been denied certification unless they were uniquely qualified to teach a certain specialized subject or in a specified area.

Similar situations can occur in other occupations. In fiscal year 1973, for example, a total of 560 aliens were granted certifications to work as engineers, but at least 1,916 aliens were denied certifications primarily because of the availability of domestic workers. During the same period a total of 4,419 aliens with engineering backgrounds were admitted to the country.

Nonimmigrants entering the labor force

INS records showed that in fiscal year 1973 about 5.2 million nonimmigrants were admitted to the United States for a temporary stay. About 4.4 million of the nonimmigrants entered as tourists or transients enroute to another country. The remaining 800,000 primarily included students, temporary workers, foreign government officials, and temporary visitors for business.

Under INS regulations only one category of nonimmigrants--temporary workers who have a specific job offer to perform temporary services or labor if qualified domestic workers are not available--are subject to certification by DOL. Also, the prospective employer of the alien, not the alien himself, must apply for a certification.

Of the 800,000 nonimmigrants who entered the country during fiscal year 1973 for a temporary stay, only about 37,000 were temporary workers who were required to receive certifications from DOL.

The table in appendix IV shows the total number of nonimmigrants admitted to this country by category in fiscal year 1973, those who were permitted to work, and those who required a certification.

We noted that many nonimmigrants were working. Some students were granted permission by INS to work part time throughout the year or full time during the summer. Other students and visitors were working full-time jobs although their visas did not allow them to do so.[1]

Another situation that allows nonimmigrants to enter the country without going through the certification process is discussed below.

NONIMMIGRANT TEMPORARY WORKERS OBTAINING PERMANENT EMPLOYMENT

Some aliens enter the country as temporary workers under a nonimmigrant visa, not requiring a labor certification, and later obtain permanent employment and permanent resident status.

Aliens of distinguished merit and ability can apply for visas from American consulates as temporary workers. These temporary workers are covered by section 101 (a)(15)(H)(i) of the act which defines a temporary worker of this type as

> "* * * an alien having a residence in a foreign country which he has no intention of abandoning * * * who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability * * *."

Aliens admitted to the country under temporary visas granted under this provision are not subject to DOL's labor certification review. Before 1970 the act provided that such aliens could be admitted only to perform services of a temporary nature. In April 1970 Public Law 91-225 amended section 101(a)(15)(H)(i) to allow such aliens to perform services of a permanent nature.

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[1]See our report to the Congress entitled "Better Controls Needed to Prevent Foreign Students From Violating the Conditions of Their Entry and Stay While in the United States" (GGD-75-9, Feb. 4, 1975).

According to the House Judiciary Committee's report (H. Rept. 91-851, Feb. 24, 1970) on the bill enacted as Public Law 91-225, the amendment was needed because the limitation had caused difficulties in program administration, produced hardships, and had been a source of friction with universities, hospitals, international organizations, and other potential employers of specially qualified aliens in the United States. The report said the restriction resulted in the exclusion of such aliens of "distinguished merit and ability" as professors and doctors whose temporary services were urgently needed in permanent positions in various institutions.

The report also stated:

"There are ample interpretations of the terms 'distinguished merit and ability' in judicial decisions and administrative decisions. Distinguished merit and ability implies a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person so described is prominent or has a high level of education in his field of endeavor."

* * * * *

"To be eligible for admission as a nonimmigrant under section 101(a)(15)(H)(i), the beneficiary must have a residence in a foreign country which he has no intention of abandoning. He must be a person of distinguished merit and ability, and he must be coming to the United States temporarily to perform his exceptional services."

* * * * *

"This amendment is not intended to enlarge the scope of section 101(a)(15)(H), but merely to lift the restriction on the temporary nature of the employment of services. The existing petition procedure and criteria to establish 'distinguished merit and ability' and interpretation of 'exceptional service' is intended to continue in force."

INS procedures provide that a temporary worker of distinguished merit and ability may be eligible for a nonimmigrant visa despite the fact he has applied for immigration and filed an application to secure a certification from DOL. INS has also long held that a person who qualifies as a member of a profession qualifies as a person of distinguished merit and ability as that term applies to a visa issued under section 101(a)(15)(H)(i). If the person additionally is to temporarily perform specified services which require his professional abilities, INS considers him qualified for classification under section 101(a)(15)(H)(i).

As a result of INS' policy and procedures:

--Aliens are being admitted to this country and working under the nonimmigrant temporary visa issued under section 101(a)(15)(H)(i) while also applying for permanent residence which indicates an intent to abandon their foreign residence.

--Employers are hiring aliens such as accountants, college and private school teachers, and nurses and medical technologists to work in positions of a permanent nature and are completely avoiding the labor certification process.

It appears that potential immigrants from countries with long waiting periods for permanent visas find that receiving a visa under section 101(a)(15)(H)(i) is a good method for entering the United States and obtaining employment without waiting as long as 5 years.

INS statistics show that the number of nonimmigrants admitted to the United States as temporary workers under the distinguished merit and ability category has been increasing since enactment of Public Law 91-225. For example, the number of such nonimmigrants entering the country increased from 8,941 in fiscal year 1969 to 15,670 in fiscal year 1973.

INS reviews the qualifications of aliens requesting visas under section 101(a)(15)(H)(i) to determine that the alien is a person of distinguished merit and ability and is coming to this country temporarily to perform services requiring those qualifications. INS, however, does not investigate the validity of the job offer.

Also, since applications from these types of aliens are not subject to DOL's labor certification review, no one determines whether (1) qualified domestic workers are available who would be willing and able to take the job offered the alien or (2) there will be an adverse effect on the wages and working conditions of domestic workers similarly employed.

The effect of this situation can be demonstrated by six aliens' applications, selected by us, which the New York INS district office approved in fiscal year 1973 under section 101(a)(15)(H)(i). The positions listed were supervisor-accountant; teacher, special education; director, experimental schools improvement; laboratory technician; assistant general manager; and registered nurse.

We asked the manpower specialist who processes professional job offer cases in DOL's New York regional office if he would have issued a certification. The DOL specialist advised us that he would have denied the first four of the six cases either because of the availability of domestic workers to fill the jobs or because the wages to be paid the alien were lower than the prevailing wages.

Of the cases he would not deny, the specialist said one (the assistant general manager) was a borderline case and the other one (the registered nurse) involved a schedule A occupation which was categorically eligible.

In addition, a 1973 report from an independent research study (financed by DOL) on immigration and the American labor market[1] stated that, on the basis of a sample of 390 selected immigrant cases of Eastern Hemisphere aliens who resided in the United States and subsequently adjusted their status from nonimmigrant to immigrant, about 30 percent had stated their occupations as being in some profession. Also, when comparing the stated occupations of aliens adjusting their status to all other aliens immigrating to this country,

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[1]The study is titled "Immigrants and the American Labor Market" prepared by David S. North and William G. Weissert and the Trans Century Corporation of Washington, D.C. See DOL Manpower Research Monograph No. 31, 1974.

the report said the adjusters were more than twice as likely to be professional as other immigrants.

IMPACT OF ALIENS ON DOMESTIC LABOR FORCE

The number of immigrants and nonimmigrants entering this country has been increasing in recent years and has had an impact on the domestic labor force.

In the first 5 fiscal years (1965-69) after passage of the 1965 amendments to the act, the national unemployment rate averaged 4 percent. The national unemployment rate from 1970 to 1973 averaged 5.2 percent. Some groups suffer from much higher rates. In 1973, for example, the unemployment rate was 9.4 percent for blacks and other nonwhite workers, 5.1 percent for female workers, 9.4 percent for workers in the construction industry, 9 percent for nonfarm laborers, and 15.3 percent for 16- to 19-year-old workers.

In light of these statistics, it is important to examine the impact of immigrants on the labor force. The total labor force increased during fiscal year 1973 by about 2.2 million persons (from 88.9 million in July 1972 to 91.1 million in July 1973). During the same year about 400,000 immigrants were admitted to this country.[1] According to an official in DOL's Bureau of Labor Statistics, about 260,000 of these immigrants are expected to enter the labor force--which would represent about one-eighth of the labor force growth for 1973.

If the number of immigrants who enter the labor force remains at a comparable level over the next decade, these persons will probably account for an increasing proportion of labor force growth. According to Bureau of Labor Statistics projections, the labor force will grow on the average by about 1.6 million persons annually between 1972 and 1980 and by 1.2 million persons annually between 1980 and 1985.

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[1] INS records show that during fiscal year 1974 about 395,000 immigrants and 6.1 million nonimmigrants were admitted to this country. The national average unemployment rate for fiscal year 1974 was 5 percent. The rate increased to 8.2 percent in January 1975.

At a constant rate of 260,000 a year, immigrants would account for about one-sixth of labor force growth between 1972 and 1980 and for about one-fifth between 1980 and 1985.

In addition, during fiscal year 1973, about 5.2 million nonimmigrants were admitted into the United States. This figure included about 37,000 temporary workers granted a labor certification and others who did not require a certification to work--such as temporary workers of distinguished merit and ability and students. (See app. IV.) Although the nonimmigrants do not remain in the country permanently, while they are here, those permitted to work become part of the labor force and compete with American workers.

The impact of alien workers on the labor force was also reported in the independent research study made in 1973 of immigration and the American labor market (see p. 19). In commenting on the significance of immigrants, the study said that if one compared the new immigrant workers (about 200,000 in fiscal year 1972) with the total labor force (89 million in 1972) one could easily conclude that "immigrants are simply a drop in the proverbial bucket." The study said, however, that newly arriving immigrant workers accounted for about 12 percent of the annual increase in the labor force during fiscal years 1969-72.

The study concluded that:

> "One worker in eight is a significant share of itself, and the impact is greater in some areas than this proportion suggests because immigrants are not distributed evenly around the country; * * * immigrants tend to live near the seacoasts and to gather in certain States and in urban areas.
>
> "Immigrants are distributed unevenly not only around the country but also through the occupational structure. The two extremes of the American occupational prestige scale, physicians and maids, are both overrepresented among the immigrants, * * *."

The study also stated that, when considered in occupational groups, the immigrants of 1970 represented more

professional and technical workers (29.4 percent), more household workers (6.7 percent), and more farmlaborers (2.7 percent) than the Nation as a whole, which had, respectively, 14.2 percent, 2 percent, and 1.7 percent of its employed work force in these categories.

LEGISLATIVE PROPOSALS TO AMEND ACT AND REVISE LABOR CERTIFICATION PROGRAM

Various legislative proposals have been introduced in the Congress that would amend the act to revise the labor certification program and the conditions for the immigration and admission of aliens. One such bill, House bill 981 introduced in the 93d Congress, was passed by the House of Representatives on September 26, 1973. The Senate did not act on House bill 981.

House bill 981 would have extended and applied the existing seven preference classifications and priority system for aliens from the Eastern Hemisphere to aliens seeking admission from the Western Hemisphere countries. The bill would have retained the 120,000 annual ceiling for aliens wishing to enter from countries in the Western Hemisphere but would have established a limit of 20,000 per country similar to the ceiling in effect for countries in the Eastern Hemisphere. Under the existing law visas for aliens from Western Hemisphere countries are issued simply on a first-come-first-served basis.

House bill 981 also would have revised the labor certification provisions to reflect the extension of the preference system to aliens from Western Hemisphere countries. Under the current law the labor certification provisions are applicable to Eastern Hemisphere third and sixth preference immigrants and to nonpreference immigrants. It is applicable also to certain immigrants who enter under the Western Hemisphere numerical limit. House bill 981 would have extended tha labor certification provisions equally to third, sixth, and nonpreference applicants from both hemispheres. Reference to Western Hemisphere natives as "special immigrants" would also have been deleted.

In addition, House bill 981 would have added new language requiring the Secretary of Labor to submit quarterly

reports to the Congress containing complete and detailed statements of facts pertinent to the labor certification procedures. These reports were to include lists of occupations in short supply or oversupply, regionally projected manpower needs, and up-to-date statistics on the number of labor certifications approved or denied. In its report[1] on House bill 981, the House Committee on the Judiciary stated that this information was not being received from DOL; however, the information that had been received from independent sources indicated a considerable and disturbing lack of uniformity in the program's administration in different parts of the country.

The report stated that:

> "In general, the Committee is of the opinion that the current administration of this provision by the Department of Labor has not been satisfactory. The labor certification program is a complex one--partly because of the complexity of the immigration law itself and partly because of the failure of the Department of Labor to explain adequately the program to the public or even to the Congress, with whom it has been generally uncooperative. As a result, the program is operating with little in the way of public understanding, and the Department of Labor's efforts to implement this program have been attacked by courts and commentators alike as being arbitrary, unfair and violative of the Freedom of Information Act."

In this regard the Committee's report noted that in May 1973 the Administrative Conference of the United States approved fairly extensive recommendations aimed at correcting procedural deficiencies in the labor certification of immigrant aliens. DOL has informed the Committee it was taking action to implement these recommendations. (See p. 39.)

House bill 981 also would have amended section 101(a)(15)(H)(ii) of the act to permit entry of aliens into the United States for a temporary period to perform services or

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[1]House Report 93-461, dated September 11, 1973.

labor which may be either temporary or permanent in nature. Under the present law nonimmigrant workers entering under section 101(a)(15)(H)(ii) may be admitted only to perform temporary labor or services which are not of a permanent, ongoing nature. The period of stay of an alien classified as a nonimmigrant worker under section 101(a)(15)(H)(ii) would have also been limited to an initial period of 1 year which could be extended by the Attorney General for up to 1 additional year. The present law contains no specific time limit on the period of stay.

House bill 981 would have further required nonimmigrants entering under section 101(a)(15)(H)(ii) to obtain a labor certification from DOL as a precondition for entry into the United States. Under the existing regulations nonimmigrants are subject to labor certifications only when requested by INS.

CONCLUSIONS

The success of the certification program can best be measured by determining whether and to what extent alien workers have adversely affected the domestic labor work force. However, the three Federal departments who deal with immigrating aliens did not maintain adequate and comparable data. Nevertheless, it appears from the data that we were able to obtain and evaluate that the program has had little influence on protecting the American labor force because the program only controlled a limited number of aliens.

In contrast, the Department of State and INS decide on whether the remaining aliens--immigrants and nonimmigrants--enter or are denied entry to the country. Thus, Department of State and INS decisions have a greater impact on the labor market since all immigrants and many nonimmigrants who enter the country are permitted to work while they are here and those permitted to work compete with American workers. Also, they do not make the type of reviews and decisions that would be made under the certification program. Although INS can request a DOL certification for some of the nonimmigrants admitted to the country as temporary workers, INS has requested certifications for a very limited number of such nonimmigrants.

INS also controls, through the family preference classifications, the entry of aliens who may eventually enter the labor market and compete with American workers.

The number of aliens--immigrants and nonimmigrants--entering the country to work has increased. If the increase remains constant, alien workers entering the country will continue to significantly affect the domestic labor force. These factors should be considered in light of the relatively high unemployment rates experienced by this country in the last several years.

AGENCY COMMENTS AND OUR EVALUATION

The Department of State said that our conclusion that many immigrants admitted during fiscal years 1970 through 1973 were permitted to compete for jobs in the domestic labor market was undoubtedly valid. The Department agrees that our findings point out the possibilities, and indeed the probabilities, which exist under the law that many immigrants entering the United States without a labor certification are competing and will compete in the American labor market.

DOL stated that it has taken the position that the American worker needs protection collectively but not individually. DOL questions whether the American work force needs additional protection from alien workers; however, since the report infers possible expansion under present procedures, DOL believes that it would be in order for the report to make reference to its legislative proposal. This would change the labor certification process from the present individual application for each intending immigrant to one which is based on the application of labor market data to identify supply and demand as the control over or selection of alien workers. (A description of DOL's proposal is presented in app. VII.)

The Department of Justice questioned the advisability of extending the labor certification requirement to additional classes of immigrants. It said, as we indicated in this report, some immigrants never reported to the employer who obtained their labor certification and many immigrants who did report changed jobs or occupations shortly after admission

to the United States. It said it did not consider it advisable to extend the labor certification requirement to additional classes of immigrants because such an extension would merely result in additional fraudulent attempts to circumvent the added restrictions.

Justice said it advocated the labor certification requirements expressed in House bill 9409 and in section 2 of House bill 981, 93d Congress, in lieu of our recommendations. Justice considers these requirements to be easily implemented alternatives to correct the problems of the alien labor certification program. House bill 9409 would have amended the act so that provisions of section 212(a)(14) would apply to third, sixth, and nonpreference aliens only when the Secretary of Labor certified that no shortage of qualified workers existed in the United States at the time of the visa application or that employment of aliens would be inconsistent with U.S. manpower policies and programs. In addition, contrary to present requirements, the bill would have required third preference aliens to have an employer petitioning for their services and would have prohibited unskilled workers from qualifying for sixth preference classification.

Section 2 of House bill 981 would have amended section 101(a)(15)(H)(ii) of the act to require the Secretary of Labor to make a determination with regard to "unavailability" and "adverse effect" before an alien could qualify as a nonimmigrant worker. Justice said that whether a similar amendment should be made with regard to aliens defined in section 101(a)(15)(H)(i)--temporary workers of distinguished merit and ability--is a matter for the Congress to determine. Justice said, however, such an amendment would reverse the liberalization of this section which occurred on April 7, 1970, when Public Law 91-225 (84 Stat. 116) was enacted.

Justice agrees, however, that in the absence of the labor certification requirement it is probable that many members of the professions for whom immigrant visas are not readily available may be using the provisions of section 101(a)(15)(H)(i) to gain entry into the United States as apparent nonimmigrants. Justice also said that to some extent this phenomenon was already observable. It said, for example, a large number of Filipino nurses were coming to

the United States as "(H)(i) nonimmigrants" because immigrant visas in the third and sixth preference categories were oversubscribed for natives of the Philippines.

Justice said that, as a matter of policy, the Congress may wish to consider whether labor certifications should be required for nonimmigrant students or other nonimmigrant classes before Justice grants them permission to work or whether nonimmigrant students should be allowed to work at all.

We recognize that there are alternative ways to amend the act--such as those proposed by House bill 981--to revise the labor certification program to insure that American labor is adequately protected from alien workers. We also recognize that how the program should be revised is a matter for the Congress to decide.

We believe, however, that the findings and issues raised in our report are valid and point out how little impact and influence the labor certification program in its present form has in protecting the American worker. We believe that they should be considered along with Justice's and DOL's recommendations in developing changes to improve the alien labor certification program.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Whether American labor needs additional protection from alien workers is a matter for the Congress to decide. If so, consideration should be given to expanding the coverage of the program requirements under the current act so that control can be exercised over a greater number of incoming alien workers.

Such changes in coverage should be applied to both immigrants and nonimmigrants and might be provided for through amendments to the Immigration and Nationality Act which would broaden the classes of alien applicants required to obtain labor certification. If enacted the changes would remove the labor certification exemptions now accorded by the act to Western Hemisphere immigrants who are parents, spouses, and unmarried minor children of aliens lawfully admitted to the United States as permanent residents. They would also remove the labor certification exemptions now accorded by the

act to Eastern Hemisphere immigrants entering the country through family relationships under the first, second, fourth, and fifth preferences. These changes would tend to lessen the emphasis placed on family relationships by the 1965 amendments to the act.

The changes, if enacted, would also have the effect of requiring labor certifications for a greater number of aliens entering the country as nonimmigrants on a temporary basis, such as aliens entering as temporary workers and students who can secure permission from INS to work.

Our suggested changes are as follows:

--Section 212(a)(14) of the act should be amended to require a labor certification as a prerequisite for admission of aliens who seek admission as (1) special immigrants defined in section 101(a) (27)(A) (Western Hemisphere aliens) other than parents, spouses, and children of U.S. citizens, and (2) preference immigrants described in section 203(a)(1) through (6) and nonpreference immigrants described in section 203(a)(8) (Eastern Hemisphere aliens).

--Section 101(a)(15) of the act should be amended so that (1) aliens seeking to enter as temporary workers, including those of distinguished merit and ability, are subject to a labor certification review by DOL and (2) other aliens, such as students, temporarily visiting who can secure permission from INS to work are subject to a DOL labor certification review.

CHAPTER 3

PROGRAM ADMINISTRATION NEEDS IMPROVEMENT

DOL and INS need to improve internal management controls to make the administration of the program more effective in meeting its legislative intent. For example:

--INS district offices generally have not taken action against aliens which DOL identified as working before receiving a certification in violation of their visas to enter the country.

--INS does not follow up to insure that aliens report to the jobs for which their certification was obtained.

--DOL's instructions did not require its regional offices and ES offices to determine whether available and qualified domestic workers were willing to perform the job for which certification had been requested. As a result, some employers who were denied a certification for the aliens they requested could not find domestic workers willing to accept their job offers.

--DOL and ES offices are not adequately documenting the bases for decisions under which aliens were granted or refused certifications. About one-third of the 442 cases reviewed were not adequately documented.

At the selected DOL regional and ES offices we visited, monitoring of the program was not done in many cases, and when such appraisals were done they were usually inadequate.

In addition, neither the act nor INS nor DOL regulations require aliens to remain in their certified jobs; consequently, many aliens leave their certified jobs which may result in competition with domestic workers for other jobs.

NEED TO IMPROVE CONTROLS OVER ALIEN WORKERS TO PREVENT COMPETITION WITH DOMESTIC WORKERS

Some aliens fail to work in the occupation for which their labor certification was obtained, others work before their certification, and some change their jobs after certification.

To examine the procedures and practices under which aliens are admitted into this country under a certification, we randomly selected 442 certification cases handled in calendar year 1972 by 4 DOL regional offices. Calendar year 1972 was selected because this was the latest year for which information was readily available at the time of our fieldwork.

The 442 cases selected for review covered 5 States. The table below shows the States along with pertinent information on the selected cases. The weaknesses in the controls found in our review of the selected cases are described in the sections following.

State	Total cases (note a)	Sample cases	Number of sample cases where certification by DOL was Denied	Approved
Florida	2,054	108	63	45
Texas	1,879	106	68	38
California	4,759	109	67	42
New York	13,382	79	29	50
New Jersey	6,740	40	7	33
Total	28,814	442	234	208

[a] Represents total cases handled during calendar year 1972.

Aliens working in the country before labor certification

Aliens wishing to immigrate to the United States can enter under a visa issued by the Department of State. Aliens can be issued various types of visas, such as temporary, permanent, visitor, immigrant for employment, or member of family of a U.S. citizen. The visa issued to the alien may also be subject to certain restrictions, such as prohibiting him from working while in the United States. Violation of these restrictions could result in the alien's visa being revoked and the alien being deported.

The 442 selected labor certification cases showed that in 191 cases the aliens involved were already residing in this country and in 101 cases were working before filing an application for a certification. Because the applications failed to show the required information, we were unable to determine the status of the remaining 90 of the 191 aliens residing in the country.

Of the 101 cases

--42 had visas allowing them to work and

--59 had visas forbidding them from working while in the United States (most of these aliens entered as temporary visitors for pleasure).

Of the 59 aliens working in violation of their visas, 41 had been working an average of 15 months before DOL decided on their applications for certification. Information was not available on the length of time the remaining 18 aliens were working before DOL made its decision. Forty of the 59 aliens were certified for entry by DOL and, of the 40, 18 were already working at the job for which their applications were approved.

DOL procedures require that DOL regional offices advise the INS district offices of aliens whose certifications have been denied and who are employed or may be residing in the country. Our review at three of the four DOL regional offices showed that the denial cases were being referred to the INS offices as required. At the fourth DOL regional office, our review of the files showed no evidence that referrals were being made as required. However, a DOL regional official said he sometimes notified the INS office by telephone.

In most cases INS took no action against the aliens reported to them by DOL. At one INS district office, for example, although INS records show that they received many denials from DOL, we were able to locate only three such letters in the INS case files. We were unable to determine from information in these files whether INS had taken action on the basis of the data DOL provided. The Investigations Unit in this INS office had many DOL letters that had not been filed or investigated.

INS officials at this office stated that their investigative workload was too heavy and they did not have time to investigate low-priority cases, such as those referred by DOL. These officials said that such cases had not proven fruitful in developing fraud cases nor were they really good leads in locating illegal aliens.

Need to improve procedures to insure that immigrants report to certified jobs

DOL regulations provide that certifications which are approved on the basis of employer-offered jobs apply only to the certified positions.

Of the 208 cases in our random sample, which had been approved by DOL, 157 involved cases in which the employer had secured certifications for alien employees. Our review showed that in 65 of the cases the immigrant worker had not yet reported to the certified position. In 60 of the 65 cases, the immigrant had not reported because he or she had not yet arrived in this country. Most of these aliens either were awaiting assignment of a visa number or had decided not to immigrate to this country.

In the five remaining cases the alien had not reported for the certified position although evidence was available in the INS files and from data supplied to us by prospective employers showing that they had entered the country. In four of the cases neither the DOL regional nor INS district office were aware that the immigrant had not reported to his certified job.

INS procedures do not require that a followup be made to determine that the immigrants have reported to work and, according to INS regional officials, they do not follow up.

DOL stated that once it issued the labor certification its role was completed. DOL also said it had no way of knowing if INS or the Department of State had approved the alien's admission to the United States nor did it have the authority to follow up and act if the alien failed to report to his job.

CHANGING OF JOBS BY IMMIGRANTS

There is no way to insure that the recently admitted alien worker will not change his occupation shortly after arrival. In fact, our review and the 1973 study on immigration and the American labor market (see p. 19) disclosed that many immigrants leave their certified jobs for work in other areas and other occupations.

The act is silent on the length of time an alien must remain at the job for which he has been certified. In addition, DOL regulations (29 C.F.R. 60.5 (f)) pertaining to aliens whose certifications are approved on the basis of employer-offered jobs state as follows:

> "The terms and conditions of the labor certification shall not be construed as preventing an immigrant properly admitted to the United States from subsequently changing his occupation, job, or area of residence."

Past decisions by the Department of Justice's Board of Immigration Appeals have held that immigrants with certifications who have entered the United States in good faith were not required to stay in a specified job or occupation for a stipulated time.

Of the 442 cases in our sample, 157 were approved on the basis of employer-offered jobs, and in 92 of the approved cases the immigrants had reported to the job position for which they were certified.

In the 92 cases we found that within 1 year 41 immigrants had left their jobs. Twenty-seven left their jobs within 6 months.

The significance of these figures is put in perspective when consideration is given to the fact that the universe of the approved certifications of the 5 States represents 89 percent of the total approved certification applications in 4 of DOL's 10 regional offices and 58 percent of the national total of approved certification applications in calendar year 1972.

We attempted to determine whether the immigrants who took another job remained in the same occupation and area. The immigrants had left their certified jobs in 26 of 41 cases, and their employers either did not know where the immigrants had gone or did not answer our questionnaire. In the remaining 15 cases most of those who changed had moved to jobs in the same kind of work in the same approximate area or were not working. In one case the immigrant, who was certified as a specialty cook, took a job in another occupation, engineering, after working for 7 months as a cook.

The study of immigration and the American labor market also showed that a large percentage of the immigrants who reported to their certified job positions left their positions within a short period as well as changed occupations. The study covered 2,701 immigrants during 1970-72 and showed the following:

Occupational Changes Among Selected Labor Certification Beneficiaries and Other Immigrants, 1970-72

	Other immigrants		Labor certification beneficiaries		Total
Changed occupations	1,129	(71.4%)	635	(56.7%)	1,764
Did not change occupation	453	(28.6%)	484	(43.3%)	937
Total	1,582		1,119		2,701

A majority of the labor certification beneficiaries changed occupations in the 2-year period, but some who stayed in the same occupation moved across county lines--presumably to a new job. Of the 484 certification beneficiaries who stayed in their occupations, the study was able to obtain geographical mobility data on 475. Of these, 162 moved across county lines between their arrival in fiscal year 1970 and January 31, 1972.

The interpretation provided in the study is that out of a total of 1,119 certification beneficiaries only 313 were in the same occupation, in the same county, 2 years later.

According to the study, certification beneficiaries tend to be more mobile than other immigrants after their arrival in this country. In 1972, 37 percent of those with certifications were living in a different county than the one they said they intended to live in when they completed their visa application. Of those without certification, only 20 percent were living in a different county than the intended one.

The study concluded that:

> "One of the principal concerns of the critics of the labor certification program is that although the purpose is to meet certain skill shortages, there is no way to guarantee that the newly admitted worker will not change occupations shortly after arriving. (The obvious alternative, to admit immigrants with labor certifications on the condition that they stay in a specified job, or occupation, for a stipulated time, is criticised [sic] as smacking of 'indentured servitude', [sic] although the immigration system works in precisely this way with temporary foreign workers.)"

As shown above, aliens are free to compete openly in the labor market for any type of employment. This would include occupations for which no certification could, or would, be issued. A list of occupations for which DOL will not certify is shown in appendix V. Under the existing program, efforts to administer and enforce the provisions of the act in regard to these alien workers cannot effectively preclude competition with American labor as intended by the act.

NEED TO DOCUMENT REASONS FOR GRANTING OR REFUSING CERTIFICATION

DOL regional and ES offices were not adequately documenting the bases for the decisions under which aliens were granted or refused certifications. Consequently, for 147 of the 442 cases reviewed, we could not determine from DOL

and ES offices' records, with reasonable certainty, the basis for the certification dispositions.

DOL regional offices are responsible for making decisions on certification requests on the basis of information supplied by ES offices. DOL instructions for ES offices to use in processing applications require that information be secured on (1) current and potential available workers, (2) current prevailing wages, (3) sources of availability and wage data, and (4) adverse effect of the job offer. DOL regional offices use this information as the basis for granting or denying the certification.

From an analysis of available records and information provided to us by the selected ES offices, we identified the bases for the certification disposition for 295 of the cases reviewed as follows:

Basis for disposition documented	Total cases
Workers not able, available, or qualified and no adverse effect (certification granted)	124
Workers are available, able, and qualified or possible adverse effect (certification refused)	171
Total	295

For the 147 remaining cases, the documentation in the individual case files and the information provided by ES offices was not sufficient to enable us to determine the specific bases for decisions under which certification was granted or refused. We found:

--In 100 cases sufficient documents and data were not available to determine the reasons for granting or refusing the certification.

--In 24 cases the data available in the file did not support the decision to grant or refuse the certification.

--In 23 cases the decision to grant or refuse the certification appeared questionable compared to previous decisions involving similar situations at the same offices.

An example of the lack of documentation for the information provided DOL is demonstrated in the following findings in one State:

--Availability: In 28 of the 38 cases we reviewed, the ES offices merely checked the appropriate box on the transmittal letter indicating that availability had been determined. No further documentation was provided.

--Wage rates: In 25 of the 38 cases, the ES offices merely checked the appropriate box that the wages offered the alien were prevailing. No further documentation was provided.

Personnel at several ES offices in another region told us that they did not screen the applicant files to determine whether the applicants were qualified and available for the job positions. Instead they simply counted the number of applications filed under an occupational code in the Dictionary of Occupational Titles. They considered this count to be the number of applicants available. This procedure could result in reporting an inflated number of available applicants. For instance, the same occupational code is used for a carhop, busboy, and formal waiter; and a soup cook, apprentice cook, pizza baker, and foreign food specialty cook have the same code.

At an ES office in this region, DOL granted an application because, among other reasons, the available information provided by the local office stated that no domestic workers were qualified for the job requested by the alien. Information in the local office's file indicated that 18 domestic applicants were qualified for the job. However, the local office had interviewed only 8 of the applicants who stated that they did not qualify. The remaining 10 applicants never reported for their interviews for the local office to determine their availability and willingness to accept the job.

Several examples of questionable decisions involving live-in maids were noted in three regions. At 1 regional office the questionable decisions involved 17 aliens seeking certification for jobs as live-in maids in a large metropolitan area. To make its determinations DOL used information supplied by ES and Bureau of Labor Statistics surveys--which were based on contacts with employers and advertisers to determine the number of responses to newspaper advertisements. The surveys indicated an availability of domestic workers for this occupation. Although this information was available, the DOL regional office approved 9 of the 17 applications.

We discussed seven of the approved cases with the DOL manpower specialist who handled them. He advised us that four applications were approved because the areas were not covered by the survey; two cases involved special consideration as hardship cases, such as the employers being very ill, and one case involved a revalidation which was automatically approved. It appears that these seven cases probably would not be approved in the future because the official stated the surveys were enlarged to cover the other areas and DOL's policies on cases involving hardship cases and revalidation had been revised to have these considered the same as regular applications.

Approval rates fluctuated widely between regions. Comparison of certification approval rates for calendar year 1972 showed that the DOL New York regional office had an approval rate of 70 percent while the other three regional offices in our review had approval rates between 38 and 45 percent. DOL records show that the overall approval rate for such certification nationally was 58 percent.

Labor supply and demand conditions may vary from one region to another, and our review did not identify any specific policy or procedural factors in the New York regional office which would fully explain the reasons for this difference. An official of this region advised us that this difference could be attributed directly to the large number of immigrants hiring lawyers to prepare the applications.

State officials told us that the quality of the processing of certification applications was lacking because of insufficient funds and personnel.

Administrative Conference study

During calendar year 1973 the Administrative Conference of the United States completed a study of DOL's certification program. The Administrative Conference was established by the Administrative Conference Act of 1964 (5 U.S.C. 571) to study the efficiency, adequacy, and fairness of administrative procedures used by agencies to carry out their programs.

One of the Administrative Conference's findings was that adequate documentation of the basis of certifications was lacking. In a report issued in late 1973, it recommended that the Manpower Administration's National Office develop standards to improve the quality and degree of specificity of the record upon which certification is granted or denied.

In responding to the Conference study, the DOL Manpower Administration stated it agreed that more precise and definitive information--supported by adequate details--was needed concerning the basis for denial of a certification. As a result, in December 1973 the Manpower Administration's National Office issued a memorandum instructing its regional offices to record additional detailed information on the bases for its certifications. The National Office issued new forms to standardize the certification format.

The National Office memorandum also directed the regional offices to forward copies of the new forms to the ES offices with instructions that they complete all items on the forms. The memorandum stated further that, in notifying the ES offices of these requirements, it should be made clear that they were not requesting more information or levying more work than in the past but what was required was documentation of the efforts, factfinding, and considerations which have been given each case but which were not always noted or documented.

NEED TO REVISE PROCEDURES TO REQUIRE DETERMINATION THAT DOMESTIC WORKER IS WILLING TO TAKE JOB SOUGHT BY ALIEN

Under the act aliens cannot be admitted into the United States to perform work unless DOL has determined that there are not sufficient domestic workers who are able, willing, qualified, and available at the time of the alien's application for a visa and at the place at which the alien is to perform the work.

DOL's procedures, however, do not require ES offices to determine that domestic workers are willing to perform the work requested by the alien. The procedures provide only that the local ES offices primarily gather information on availability of qualified and able workers, prevailing wage rates, and adverse effect of the job offer.

Investigations made by most of the selected local ES offices on the sufficiency of domestic workers to perform jobs sought by aliens included determining the ability, qualifications, and availability of domestic workers but generally ignored whether they were willing to actually accept the employment in question. From our review of the 442 selected case files, we found that determinations of worker availability were made primarily on the basis of information in ES office files relating to active applicants for employment assistance.

In one case we found that a DOL regional office had denied a labor certification for an alien seeking entry as a foreign specialty cook because a review of the ES job applicant files showed 225 cooks listed--including 6 with a small amount of experience in preparing the specific foreign foods. The employer seeking the certification for the alien protested the decision claiming that no domestic workers were willing to accept the job. The employer requested the ES office to arrange interviews for cooks listed in its files with the employer on specific dates. None of the listed cooks contacted the employer for an interview on the scheduled dates.

DOL regional officials subsequently reversed the denial and granted the certification on the basis that domestic workers were not available in the occupation requested by the employer.

Several U.S. district court decisions have supported the fact that DOL and the ES offices may not be considering the willingness and qualification of available workers when denying a request for a certification. In a case[1] in which a U.S. district court overturned the denial of a certification of a parochial school teacher the court held:

> "Denial of labor certification as secondary school teacher to alien on ground that available job market information would not warrant certification of unavailability of United States workers at prevailing wage in area in which position was located was improper where, although administrator's investigation revealed that qualified job applicants were available there was nothing to indicate that anyone other than petitioner was interested in the vacancy. * * * although the Administrator found that there might be qualified and available applicants, there is nothing to indicate that those applicants would be 'able and willing' to work for the Archdiocese."

In another decision a U.S. district court[2] in October 1972 overturned a DOL denial of application based on availability of domestic workers and stated that it doubted whether a count of applications on file at a local office met the criteria of available workers in the United States as set forth in section 212(a)(14) of the act. The court stated:

> " * * * the record contains no basis for the defendant's apparent determination that there were American job seekers in the Chicago area 'able, willing, qualified and available' to perform the plaintiffs' professions * * * The record at most establishes that on the dates in question there were a certain number of people who had in the past

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[1] Golabek v. Regional Manpower Administrator, U.S. Department of Labor, 329 F. Supp. 892 (E.D. Pa. 1971).

[2] Bitang et. al. v. Regional Manpower Administrator, U.S. Department of Labor, 351 F. Supp. 1342, 1344-45 (N.D. Ill. 1972).

listed their names with ISES (Illinois State Employment Service) as seeking work and whose names had not been removed. There was no showing that the persons listed fell within the federal standards of 'able' or 'qualified' or even were still 'available.'"

In a third case[1] involving denial of certification on the same grounds, another U.S. district court found for the plaintiff on the specific ground that no determination of "willing" had been made. The court found:

"[T]he record does not reveal that the Manpower Administrator made a determination that there were those who were 'willing and able' to accept a job with Digilab. The fact that a National Registry lists only two hundred possible qualified engineers in the entire country available for the job in question does not in the court's eyes establish a necessary record of sufficient workers in the United States who are 'qualified,' 'available,' 'able' and 'willing.'"

ES offices sometimes determined the number of workers available through external sources, such as union locals, if no applications were available in the active files. In some instances the ES office made this information on prospective workers directly or indirectly available to the employer requesting certification, and the employer reported the applicants were not willing to perform the job. For example:

--An ES office in a memorandum to a DOL regional office transmitting an employer's certification application for a waiter captain reported that such applicants were available. Two unions informed the ES office that qualified applicants were available and one union referred six persons. The union making the referrals further stated that the employer did not hire any of the applicants and did not give reasons for the actions. DOL denied that certification on the basis of availability and adverse effect on domestic workers.

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[1]Digilab v. Secretary of Labor, 357 F. Supp. 941,942 (D. Mass. 1973).

The employer's attorney appealed the decision on the basis that none of the qualified applicants were willing to accept the job. Consequently, the regional office reversed its decision.

Generally ES and DOL regional officials said they found it very difficult to determine whether available workers were willing to accept an available position and that this determination was subjective. They believed that the job offer relating to the certification application was intended for the alien in most cases and the prospective employer was not interested in a domestic worker to fill his job offer.

The Administrative Conference of the United States, in its study of the certification program, also commented on the problem of lack of adequate data in the DOL and ES files to support the availability (including the willingness) of domestic workers to actually take jobs which aliens are seeking and on the overturning of DOL's decisions mentioned in court cases, including the Bitang case cited above. The Conference study recommended DOL improve the quality of records upon which certifications are denied or granted.

In addition, the Chairman, House Committee on the Judiciary, in 1974 expressed his and the Committee members' concern over DOL's policy to concentrate its investigations on the availability of workers similar to the alien requesting the job and to ignore their willingness to actually accept the employment in question.[1] The Chairman brought out the need for DOL to issue more specific regulations and procedures on the matter of willingness of workers to accept jobs. He also commented on the soundness of the Administrative Conference's recommendation and the need for DOL to act on it.

The Chairman also noted that

"House bill, H.R. 981, amending the Immigration and Nationality Act, passed the House of Representatives

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[1]Rutgers Law Review, Volume 27, Winter 1974, Number 2, "The Impact of Immigration on the American Labor Market" by the Honorable Peter W. Rodino, Jr.

on Sept. 26, 1973 with only minor modifications of the present labor certification provision. Part (A) of the labor certification requirement was amended by deleting the phrase 'in the United States' following the reference to 'sufficient workers.' This was done to emphasize the legislative intent that the Secretary of Labor certify on the basis of sufficiency of workers 'at the place' where the alien is going rather than in the United States as a whole."

House bill 981 was not acted on by the Senate.

As indicated on page 39 of this report, the DOL Manpower Administration, in response to the Administrative Conference study's recommendation, issued revised procedures instructing its regional offices to secure and document added detailed information on the basis for their certifications. The revised procedures required the offices to provide more details on the reasons for denying a certification on the basis of availability of workers including showing (1) whether the employer was willing to accept referrals from the active applicants file or to hire a U.S. worker, (2) the number of referrals made to the employer and the results, and (3) what recruitment efforts the employer made to hire a U.S. worker.

The new forms to be completed also require the DOL regional and ES offices to include more specific information on availability and the willingness of persons and job applicants, contacted by them or referred to the employer requesting the certification, to take the job for which the alien is seeking certification.

We were advised in January 1975 by a Manpower Administration official that additional revisions to its policies and regulations were underway. These proposed revisions would further emphasize to regional and ES offices the need and requirement to adequately consider and document the availability of domestic workers (including the willingness factor) in making certifications. The procedures will also require employers to fully document the reasons that domestic workers are not available and willing to accept the jobs.

NEED FOR IMPROVED MONITORING

Monitoring of the labor certification program at the four DOL regional offices and ES offices we visited was not done in most cases, and when it was done it was usually inadequate.

The Deputy Manpower Administrator's Office in DOL's National Office is responsible for monitoring regional office operations of the program. The National Office has delegated responsibility for monitoring the program's operations at the State and local levels to the Regional Manpower Administrators. Monitoring is intended to (1) insure compliance with departmental policies and procedures, (2) identify the strengths and weaknesses of the program, and (3) recommend program and administrative improvements when necessary. Generally monitoring is accomplished through on-site inspections and reviews of required reports.

To aid regional offices in carrying out their monitoring responsibilities, the Manpower Administration in 1971 issued a Comprehensive Regional Monitoring Handbook. The handbook provides the basic principles, procedures, and requirements the regional offices must follow in establishing a regional monitoring system. However, the handbook only applies to manpower programs and delivery systems and does not cover the regional offices' labor certification program activities.

DOL program monitoring

We reviewed the monitoring and appraisal activity by the DOL National Office and the four regional offices we visited for fiscal years 1968-73. The following table is a summary of appraisals performed during these years by DOL personnel.

	New York region II		Atlanta region IV	Dallas region VI	San Francisco region IX
Appraisal of DOL regional office by DOL National Office	Several		None	None	None
	New York	New Jersey	Florida	Texas	California
Appraisal of State ES headquarters by DOL regional office	Several	Once	Once	None	None
Appraisal of local ES offices by DOL regional office	None	None	Once	None	None

The National Office did no monitoring at three of the four DOL regional offices reviewed. An official in the New York regional office said that several times a year the chief of the National Office's Immigration Division or a member of his staff would visit the regional office to review procedures and activities. However, no reports or written comments on these trips had been received by the New York office since 1968.

The above table also shows that regional office monitoring in the State and local ES offices reviewed was not being performed in over half the cases. The appraisals that were made indicated that in many cases the appraisals were not adequate. For example, the DOL region II office confined its reviews of the New York and New Jersey labor certification programs to

--telephone contacts,

--occasional visits to the ES headquarters,

--a bimonthly meeting with lawyers who specialized in immigration cases, and

--advisory opinions and comments on State manuals and procedures.

In addition the Office of Administration and Management Services in DOL's New York office examined the Immigration Unit's performance in fiscal year 1973 in areas of workload, staffing, and procedures. One of the points brought out in the examination was the Unit's failure to evaluate the ES offices' performance in the program.

Since 1968 the DOL regional office in Atlanta has made only one appraisal of the Florida State ES headquarters and one of a local office.

One DOL regional official, who acknowledged that the information received from ES offices was generally inadequate, advised us that his office did not appraise ES operations because the National Office did not specifically request such appraisals.

Another regional official said that he considered the region's review of the certification information received from the ES offices as an approval of their procedures. At selected local offices in this region, investigations of availability of domestic workers were limited to a review of their active job applicant files.

DOL officials advised us that the lack of sufficient personnel was the reason for the lack of monitoring of the program.

States' self-appraisals

The National Office has also established an ES self-appraisal system. Under the system the State and local offices are required to make self-appraisals of their activities at least twice during each fiscal year. DOL guidelines state that, if a local office is experiencing significant problems, additional appraisals should be considered for effective management control.

The State offices are also responsible for making onsite reviews at local ES offices at least once every 2 years. If self-appraisal reveals a number of deviations, the guidelines say an onsite review should be made as soon as possible. The purpose of the self-appraisal system, according to DOL, is to improve all levels of ES operations.

In three of the five State ES offices we visited, the self-appraisals of labor certification program activities were not being made. In the remaining two States, the self-appraisals appeared to be less than adequate. For example, in New York an internal review section periodically reviews the operation of the State's certification operation. The reviews appeared to be concerned with staffing and flow of work and not basic program effectiveness.

Three of the State offices were not making onsite visits to local offices to review certification operations. In one of the two other States, onsite reviews were being made only at some of the local offices.

Self-appraisals of certification operations were not being made at many local ES offices. In 1 State only 1 of the 15 local offices sampled had made an appraisal of its program.

State officials said they did not have sufficient resources and time to perform appraisals and the quality of the processing of certification applications was lacking because of demands placed on available resources by higher priority programs.

CONCLUSIONS

Weaknesses and problems exist in DOL's processing and approving alien certification requests under the certification program. Improvements are needed in program administration and management controls--not only to make the program more effective but also to insure that it meets its legislative intent of protecting the American labor market from competition resulting from certain immigrating aliens.

DOL's policies and procedures did not require that regional offices and ES offices adequately document the bases

for granting or denying certifications. Nor did the procedures require the regional and ES offices to make determinations that domestic workers were willing to perform the job being requested by the alien. Also, certification determinations made by regional offices and the investigative practices of ES offices had not been adequately monitored.

We recognize that in December 1973 DOL, as a result of the recommendation made by the Administrative Conference of the United States, issued revised guidelines which it expects to improve the documentation of the investigative data developed by the States and the bases of the decisions to grant or deny certifications rendered by the regional offices. This action should prove beneficial to the program's operation.

A Manpower Administration official advised us in January 1975 that further revisions to Administration policies and regulations were underway.

INS should require its district offices to take appropriate action relating to aliens DOL reported to them as having been denied a certification. Procedures should also be established to require employers to notify INS district offices that aliens who receive DOL certification actually report to the certified jobs.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To further improve the management of the program, we recommend that the Secretary direct the Assistant Secretary for Manpower to take the necessary action to

--strengthen established policies and procedures requiring DOL regional and ES offices to (1) consider willingness of domestic workers to accept the jobs when considering availability of workers to perform jobs being requested by aliens and (2) adequately document their reasons and bases for making each certification determination and

--insure that appropriate and adequate monitoring is performed at all levels of operation of the program as required by DOL policies and procedures.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General direct the Commissioner, INS, to (1) have INS district offices take appropriate action against aliens who are denied DOL certification and who are residing and/or employed in this country and (2) establish procedures requiring employers to notify INS district offices that aliens who receive certification actually report to the certified job.

AGENCY COMMENTS AND OUR EVALUATION

DOL concurred with our recommendations concerning documentation of certification determinations and appropriate and adequate monitoring. In regard to documentation, DOL said that a standardized form was developed a year ago for use by the ES offices and DOL regional offices and that the form required specific data and documentation to show the data and bases for a labor certification. DOL believes that this requirement should help overcome the criticisms noted by us. DOL also said that revisions to these regulations were being considered to further clarify the process.

In its comments on monitoring, DOL stated that the National Office staff provided ongoing monitoring through such means as daily telephone contacts with regional staff, periodic reports from the field, reviews of decisions, and annual meetings. DOL agreed, however, that there has been insufficient monitoring of the program on a regular and formal basis. It said that plans were being made to improve this function using the resources available.

In regard to consideration of willingness of domestic workers to accept jobs, DOL said that it has been extremely difficult to deal objectively with this factor in making the labor certification. DOL believes that where it can identify a source or sources of resident applicants in an area who are identified as qualified and seeking work in an occupation it is reasonable to assume, unless proven otherwise, that they are willing to take a job that offers the prevailing wages and working conditions.

DOL believes that the only way that it could be determined and substantiated that a resident worker is willing to

take a job at the initial decision is for the employer to offer it to the applicant and have the applicant accept and actually occupy the job for a time. According to DOL, this is impractical. Also, DOL believes it would be contrary to the Congress' view that the certification program not add notably to DOL's workload since it already had much of the data and information needed to arrive at decisions.

We agree that this proposal would be impractical and burdensome and we are not advocating that DOL adopt this procedure. We recognize that consideration of willingness of domestic workers to accept jobs is difficult to objectively deal with. We recognize also that, as a result of recommendations by the Administrative Conference of the United States, DOL issued revised guidelines which it expects to improve the basis for decisions rendered by the regional offices--including the consideration of the willingness of workers to perform jobs requested by the aliens.

In addition, DOL's Manpower Administration is considering revisions to its policies and procedures to further emphasize the need to give adequate consideration to the willingness factor in determining availability of workers when making certification determinations.

We believe that the revised procedures and proposed new procedures, along with the new requirements for improved documentation and planned improvements in monitoring, should help strengthen DOL's management of the certification program.

In its comments concerning the first recommendation to the Attorney General, the Department of Justice stated that it would be desirable to investigate DOL leads on individual aliens just as it would be desirable to investigate numerous other individual leads. However, Justice said INS must use its limited manpower in the most effective manner and has found that its area control investigation operations are much more effective in yielding large numbers of illegal aliens than are its investigations of individual leads such as those furnished by DOL. Given its limited manpower, Justice believes INS should continue to conduct its ongoing, high-yield area control enforcement operations rather than allocate manpower to the objective of the first recommendation.

Justice said that the second recommendation could be implemented; however, it was not convinced that the increased workload would be productive in the absence of any penalty on employers for failing to comply with INS requests for information. In addition, the increased workload generated by this added function would be considerable. For example, INS would be required to send each employer a notification of the alien's admission; track each case for followup action; process each response; and, more particularly, investigate each case where the employer either failed to reply or replied that the alien did not report to the job. With its current manpower INS could not adequately support such a program.

Justice concluded both proposals had merit, however, both would require a significant increase in INS personnel to be effectively implemented. According to Justice, without more personnel INS is not in a position to implement these recommendations without adversely affecting its current investigative and enforcement operations. Justice said INS has requested an amendment of its fiscal year 1975 budget request which would furnish badly needed personnel to enhance its enforcement capability.

An INS official advised us in February 1975 that INS had received some of the additional enforcement personnel it had requested. He also said that the Office of Management and Budget had approved INS' request for an additional 750 enforcement personnel for fiscal year 1976.

CHAPTER 4

SCOPE OF REVIEW

We tried to (1) evaluate how DOL and INS were administering the labor certification program, authorized under the Immigration and Nationality Act, (2) determine whether the program was effectively meeting its legislative objectives, particularly concerning the protection of the domestic labor force, and (3) determine what program revisions--including legislative amendments--were needed.

We (1) reviewed the legislative history of the program, (2) evaluated the regulations, policies, and procedures established by DOL, INS, and ES offices to administer and operate the program, (3) randomly selected 442 certification cases handled in calendar year 1972 and reviewed them for compliance with the act and applicable regulations and operating procedures, and (4) examined the impact of the program relative to achieving its legislative objectives.

Our review was performed primarily at the Manpower Administration regional offices in San Francisco, Atlanta, New York, and Dallas; at the headquarters of the ES offices in Sacramento, California; Tallahassee, Florida; Trenton, New Jersey; Corona, New York; and Austin, Texas; at selected local ES offices in those States; and at INS district offices in San Francisco, Los Angeles, Miami, Newark, New York, and Dallas.

In addition, we obtained information from officials of the Washington headquarters of DOL's Manpower Administration, the Department of State, and the Department of Justice.

We also received responses to questionnaires from 188 employers, who had requested certifications during calendar year 1972 in the 5 selected States.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20515

January 23,1973

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Staats:

This is to request, on behalf of the Committee, a comprehensive investigation and study of the organization, management, operation and efficiency of the Immigration and Naturalization Service of the Department of Justice.

In addition, hearings conducted in the last Congress by the Immigration and Nationality Subcommittee of this Committee revealed that various problems had developed in the administration of section 212(a)(14) of the Immigration and Nationality Act, as amended by the Immigration and Naturalization Service and the Department of Labor. Therefore, this Committee also requests a review to determining its practicability and effectiveness in protecting the domestic labor market.

Prior to undertaking these studies, I would suggest that your investigators consult with the staff of the Immigration and Nationality Subcommittee in order to clarify the purpose and scope of these studies.

Sincerely yours,

PETER W. RODINO, JR.
Chairman

PWR:eh

APPENDIX II

ALIEN PREFERENCE CLASSIFICATION

PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT

The 1965 amendments to the Immigration and Nationality Act established certain numerical limits for aliens wishing to enter the United States.

The limit for aliens wishing to enter from countries in the Western Hemisphere is set at 120,000 a year without any limits by country. Visas are issued on a first-come-first-served basis.

The limit for aliens wishing to enter from countries in the Eastern Hemisphere is set at 170,000 a year with each country having a quota of no more than 20,000 visas. The amendment also established the following system of seven preference classifications and a nonpreference classification to allocate visas for the Eastern Hemisphere countries.

Preference classification	Type of immigrant
First preference	Unmarried sons and daughters of U.S. citizens: 20 percent of 170,000.
Second preference	Spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence: 20 percent of 170,000, plus any number not required for first preference classification.
Third preference	Members of the professions or persons of exceptional ability in the sciences or arts: 10 percent of 170,000.
Fourth preference	Married sons and daughters of U.S. citizens: 10 percent of 170,000, plus any numbers not required by the first 3 preference classifications.

Preference classification	Type of immigrant
Fifth preference	Brothers and sisters of U.S. citizens: 24 percent of 170,000, plus any numbers not required by the first 4 preference classifications.
Sixth preference	Skilled and unskilled workers in short supply in the United States: 10 percent of 170,000.
Seventh preference	Refugees: 6 percent of 170,000.
Nonpreference	Any alien not entitled to above and numbers not used by the preceding 7 preference classifications.

IMMIGRANT AND NONIMMIGRANT ALIEN ADMISSIONS INTO

THE UNITED STATES FOR FISCAL YEARS 1970-73

	Fiscal years			
	1970	1971	1972	1973
Immigrants:				
Aliens who intend to work in the United States or show work experience in native country:				
Aliens from Eastern Hemisphere granted DOL certification	18,928	18,818	18,300	13,070
Others (notes a and b)	148,900	134,304	138,941	143,407
	167,828	153,122	157,241	156,477
Housewives, children, and others with no occupation or occupation not shown (note b)	205,498	217,356	227,444	243,586
Total immigrants	373,326	370,478	384,685	400,063
Nonimmigrants (note c):				
Aliens granted DOL certification	69,288	37,606	39,324	37,343
Aliens not needing DOL certification	606,718	629,103	684,834	771,323
	676,006	666,709	724,158	808,666
Visitors for pleasure and others not permitted to work	3,262,352	3,373,539	3,764,710	4,379,240
Total nonimmigrants	3,938,358	4,040,248	4,488,868	5,187,906
Total	4,311,684	4,410,726	4,873,553	5,587,969

a/Includes some aliens with certifications, but data not available on how many.

b/Includes some aliens who may work in the United States but do not need certifications.

c/See appendix IV for explanation of nonimmigrants permitted to work.

SOURCE: Report of the Commissioner of INS to the Attorney General for the year ended June 30, 1973.

NONIMMIGRANT ALIENS ADMITTED TO

THE UNITED STATES IN FISCAL YEAR 1973

Type of aliens	Aliens granted a DOL certification to work	Aliens not needing a DOL certification	Aliens not permitted to work
Temporary workers and trainees:			
Workers of distinguished merit and ability	-	15,670	-
Other temporary workers	37,343	-	-
Industrial trainees	-	4,010	-
Spouses and children	-	-	9,873
Officials of:			
Foreign governments (note a)	-	57,568	-
North Atlantic Treaty Organization (note a)	-	3,252	-
Representatives of:			
Foreign information media (note a)	-	5,565	-
International organizations (note a)	-	29,724	-
Treaty traders and investors (note a)	-	41,281	-
Visitors temporarily here for business (note a)	-	441,505	-
Exchange visitors (note a)	-	63,648	-
Fiances of U.S. citizens and their minor children	-	9,514	-
Intracompany transferees:	-	8,893	-
Spouses and children	-	-	8,505
Students (note b):	-	90,693	-
Spouses and children	-	-	9,319
Visitors for pleasure and transit aliens	-	-	4,351,543
Total (note c)	37,343	771,323	4,379,240

a/Includes spouses and children who, with certain exceptions, are not permitted to work.

b/Students under certain circumstances are permitted to work.

c/Excludes 789,418 immigrants who are returning to the United States. INS classifies these as nonimmigrants.

SOURCE: Report of the Commissioner of INS to the Attorney General for the year ended June 30, 1973.

APPENDIX V

CURRENT LIST OF OCCUPATIONS FOR WHICH DOL WILL NOT APPROVE A CERTIFICATION (note a)

Assembler
Attendants, parking lot
Attendants (service workers, such as personal service attendants, amusement and recreation service attendants)
Automobile service station attendants
Bartenders
Bookkeepers II
Busboys
Cashiers
Chauffeurs and taxicab drivers
Charwomen and cleaners
Clerks, general
Clerks, hotel
Clerks and checkers, grocery stores
Clerk typists
Cooks, short order
Counter and fountain workers
Electric truck operators
Elevator operators
Floormen, floorboys, and floorgirls
Groundskeepers
Guards and watchmen
Helpers, any industry
Household domestic service workers
Housekeepers
Housemen and yardmen
Janitors
Keypunch operators
Kitchen workers
Laborers, farm
Laborers, mine
Laborers, common
Loopers and toppers
Maids, hotel and motel
Men-of-all-work
Material handlers
Nurses' aides and orderlies
Packers, markers, bottlers, and related
Porters
Receptionists
Sailors and deckhands
Sales clerks, general
Sewing machine operators and handstitchers
Street railway and bus conductors
Telephone operators
Truckdrivers and tractor drivers
Typists, lesser skilled
Ushers, recreation and amusement
Warehousemen

a/According to DOL officials, this list has not been revised since February 1971 because of the unskilled nature of the jobs involved and the persistent availability of U.S. workers for such unskilled jobs.

DEPARTMENT OF STATE

Washington, D.C. 20520

August 8, 1974

Mr. J. K. Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Fasick:

The Secretary has requested that I reply to your letter of July 3, 1974, which transmitted a draft copy of the General Accounting Office report entitled "Assessment of the Administration and Impact of the Alien Labor Certification Program".

The draft report was reviewed in the Office of Security and Consular Affairs, U. S. Department of State, and the Department's comments are enclosed. We appreciate having had the opportunity to review and comment upon the draft report.

Sincerely yours,

Richard W. Murray
Deputy Assistant Secretary
for Budget and Finance

Enclosure.

APPENDIX VI

DEPARTMENT OF STATE

ADMINISTRATOR

BUREAU OF SECURITY AND CONSULAR AFFAIRS

WASHINGTON

AUG 2 1974

Department of State Comments on
GAO DRAFT REPORT: "Assessment of the Administration and Impact of the Alien Labor Certification Program"

The Department's review of the Report disclosed no findings, conclusions or recommendations which would be affected by any actions already taken or contemplated by the Department. Some specific comments about the conclusions in the Draft Report are deemed to be warranted.

The conclusion in Chapter 2 of the Draft Report under the heading titled "Immigrants entering the labor force" (pages 24 and 25) that many of the immigrants admitted during fiscal years 1970 through 1973 are permitted to compete for jobs in the American labor market is undoubtedly valid. For example, during fiscal year 1973 immigrant visas were issued to 81,227 aliens born in independent countries of the Western Hemisphere who were statutorily exempt from the labor certification requirement. Moreover, there is no labor certification requirement in the law for aliens eligible to enter the United States on the basis of family relationships to United States citizens or permanent resident aliens. Thus, the examples given on page 26 of the Draft Report relating to teachers and engineers serve only to point up the possibilities, and indeed the probabilities, which exist under the law that many immigrants entering the United States without a labor certification are competing and will compete in the future in the American labor market.

The labor certifications shown as having been approved during fiscal years 1970 through 1973 by the Immigration and Naturalization Service and the Department related to applicants found qualified to fill positions in occupations on skills lists certified by the Department of Labor as being in short supply in the United States.

GAO note: Page numbers refer to pages of the draft report.

On page 25 of the Draft Report it is accurately stated that when evidence of a prearranged job offer is presented in support of assurances that an alien not subject to the labor certification requirement will not become a public charge, no evaluation is made by the Consul or the INS of the availability of domestic workers for the job or the possible adverse effect to the domestic labor force. Such evaluations would, of course, require the participation of the Department of Labor and would in effect involve an application of the labor certification process to aliens not now subject to that process under the specific provisions of Section 212(a)(14) of the Immigration and Nationality Act, as amended. An application of the labor certification process in such instances would in many cases result in the exclusion of family members of United States citizens and permanent resident aliens contrary to the unification of family concepts of the law. The Department believes that this involves a policy matter for the Congress to decide and that it should be mentioned as a matter for the consideration of the Committee (page 64 of the Draft Report).

Barbara M. Watson
Administrator
Bureau of Security and
Consular Affairs

APPENDIX VII

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

AUG 20 1974

Mr. Gregory J. Ahart
Director, Manpower and Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

Enclosed are the Department of Labor comments on the GAO draft report, "Assessment of the Administration and Impact of the Alien Labor Certification Program" (B-125041).

Our comments are divided into three parts. The first covers our reaction to the recommendations made to the Secretary of Labor contained on page 8. The second is a copy of the DOL statement before the House Immigration and Nationality Subcommittee of the Judiciary Committee on June 7, 1973, in which we recommended a major change in our role under the immigration law. This is presented partly as reflective of our views toward the current labor certification provisions and partly to set forth our position with respect to the recommendations on page 9, made to the Committee that consideration might be given to expanding the current labor certification process to control the entry of additional classes of immigrants and nonimmigrants. The third section covers our comments and suggestions concerning specific sections of the report.

We trust that our views are of assistance to you in developing the final report.

Sincerely,

Fred G. Clark

FRED G. CLARK
Assistant Secretary for
Administration and Management

Enclosure

GAO note: Page numbers refer to pages of the draft report.

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Department of Labor Comments on GAO Draft Report

Assessment of the Administration and Impact of the Alien Labor Certification Program (B-125051)

I. "Recommendations to the Secretary of Labor" (page 8):

"The Secretary should direct the Manpower Administration to take the necessary action to

a. "...establish policies and procedures requiring regional, State and local ES offices to (1) consider 'willingness' of domestic workers to accept the jobs when considering availability of workers to perform jobs being requested by aliens"

Comments

As DOL pointed out during the hearings on H.R. 981 in June 1973, it has been extremely difficult to deal objectively with the subjective factors of Section 212(a)(14) of the Act (commonly known as the labor certification requirement). This part requires a determination by the Secretary of Labor as to the availability of qualified, able and willing U.S. workers. We have determined that, in keeping with the normal operations of the labor market and the intent of Congress as stated during the hearings on the 1965 amendments to the Act, when the DOL can identify a source or sources of resident applicants in an area who are identified as qualified and seeking work in an occupation it is reasonable to assume, unless proven otherwise, that they are willing to take a job that offers the prevailing wages and working conditions. If the employer then actively and objectively recruits in that source and had already exhausted other sources normally used for that kind of worker, DOL will reconsider to decision.

The only way that it could be determined and substantiated that a resident worker is willing to take a job at the initial decision is for the employer to offer it to the applicant, have the applicant accept and actually occupy the job for a time. This is impractical and we believe, contrary to Congress' view of the process when it was stated in hearings that the labor certification would not add notably to DOL's workload since they already had much of the data and information needed to arrive at decisions.

b. "adequately document their reasons and bases for making each certification determination"

Comments

A year ago, we developed a standardized form requiring specific data and documentation to be used by the State employment security agencies and by our regional offices. The data and basis of the decision are noted

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on the form, which becomes an integral part of the case file, and transferred to the notice of decision which is sent to the employer, alien or attorney as may be appropriate.

As noted in the GAO report this should help overcome these criticisms. Beyond that, revisions to the regulations are under consideration which will further clarify the process.

c. "insure that appropriate and adequate monitoring is performed at all levels of operation of the labor certification program as required by DOL policies and procedures"

Comments

There has been insufficient monitoring of the program on a regularized and formal basis complete with reports. Plans are underway to improve this function within the resources available.

We would suggest, however, that there is more monitoring than may have been evident to the investigators. For example, the national office staff is in daily telephone contact with regionl offices requesting information on cases for Congressional inquiries or responding to requests for technical assistance. Both situations reveal problems, adherence to standards and policies, etc., and provide an ongoing monitoring. Periodic reports provide information on workloads, types of cases being received, numbers of reviews, and approval rates. Copies of decisions of cases reviewed (appealed) are monitored by the national office for conformity to procedures and policies. National office staff hold annual meetings with regional staff and later attend meetings of regional staff with State agency personnel. All of these situations provide means of auditing and monitoring the program on an ongoing basis.

II. "Matters for Consideration of the Committee" (page 9)

The Department of Labor has taken the position that the American worker needs protection collectively but not individually. The Department of Labor questions whether the American work force needs additional protection from alien workers. However, since the report infers possible expansion under present procedures, we believe that it would be in order for the report to make reference to our legislative proposal. This would change the labor certification process from the present individual application for each intending immigrant to one which is based on the application of labor market data to identify supply and demand as the control over or selection of alien workers. The attached statement of Robert J. Brown before the House Subcommittee on June 7, 1973, details the need for change and the specific proposal.

GAO note: The deleted comments relate to matters which have been revised in the final report.

U.S. Department of Labor
Manpower Administration
U.S. Employment Service
Washington, D.C.
August 7, 1974

APPENDIX VII

STATEMENT BY
ROBERT J. BROWN, ASSOCIATE MANPOWER ADMINISTRATOR
FOR U. S. EMPLOYMENT SERVICE, MANPOWER ADMINISTRATION
U. S. DEPARTMENT OF LABOR
BEFORE
SUBCOMMITTEE NO. 1 (IMMIGRATION AND NATIONALITY)
HOUSE JUDICIARY COMMITTEE

June 7, 1973

Mr. Chairman and members of the subcommittee, my name is Robert J. Brown, I am Associate Manpower Administrator for the U. S. Employment Service, which is a major organizational component of the Manpower Administration, U. S. Department of Labor. The Department's responsibilities under section 212(a)(14) of the Immigration and Nationality Act are administered through our office and through the affiliated State Employment Security agencies.

Section 212(a)(14) requires a certification by the Secretary of Labor for admission of certain aliens, that there are not sufficient workers in the United States who are able, willing, qualified and available at the place to which the alien is destined to perform the work the alien is seeking, and that there will be no adverse effect on the wages and working conditions of American workers similarly employed.

Several years of experience under the Immigration and Nationality Act and the findings of two research projects convince us that substantial changes are needed in the

existing labor certification provisions. Under the current law the emphasis is on the making of individual determinations regarding the filling of specific jobs with specific alien applicants. This requires the use of criteria to determine whether a U.S. worker is able, willing and available for a specific employment opportunity and qualified in the eyes of the employer. The primary consideration for the admission of alien workers should be based upon the application of labor market data to identify whether demand and supply of workers meeting acceptable standards for a particular occupation are in balance or that one exceeds the other.

It is important to note that most immigrants are exempt from labor certification because of the special allocation of visas for close relatives. Our estimates, which are supported by independent research, indicate that only 12 to 15 percent of the 300,000 to 400,000 immigrants admitted annually are beneficiaries of labor certification. Moreover, of those who enter with labor certification, 57 percent change occupations within two years or less. This situation underlines the inadequacy of the existing provisions requiring a specific job offer from an employer and the relationship of the criteria in the law to individual jobs to be filled. Despite

the relatively small number of immigrants who enter each year with labor certification, amounting to about five-hundreths of one percent of the civilian labor force, the provisions of section 212(a)(14) have made some contribution to the orderly flow of workers from abroad. However, as I will shortly point out, modification of section 212(a)(14) could significantly improve the method of selecting aliens with needed skills.

An unacceptable alternative that has frequently been advanced is a return to the pre-1965 provisions. We believe such a return would be a step backward because the pre-1965 law gave only the illusion of protecting the resident labor force. Prior to 1965, aliens who were otherwise qualified for permanent immigrant status were free to enter the United States for employment unless the Secretary of Labor acted to prevent their entry. The effect of the pre-1965 provisions was to make the Department of Labor's role largely advisory in nature.

The authority and responsibility of the Department of Labor at that time was contained in Section 212(a): "Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States."

* * *

"(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) sufficient workers in the United States who are able, willing, and qualified are available at the time (of application for a visa and for admission to the United States) and place (to which the alien is destined) to perform such skilled or unskilled labor, or (B) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed . . . unless their services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants . . ." (emphasis supplied)

The pre-1965 exclusionary authority was usually exercised only if it came to the attention of the Department that immigrant workers might be jeopardizing the American job market. This information might be received in the form of a complaint from an individual who believed an immigrant was being employed to replace him, from a union concerned for its members, or from an American consulate abroad when 25 or more applications from one employer had been received.

On receipt of information of this nature, the Department reviewed the facts based upon labor market information provided by its regional offices, and if warranted, prepared exclusionary notices to the State Department and to the Immigration and Naturalization Service. These agencies, in turn,

notified their respective consulates and district offices. This was a time-consuming, as well as an inefficient, method of affording protection to American workers. Consequently, exclusionary certifications were seldom used. There were only 56 certifications issued in the eight-year period between 1957 and 1965.

Our experience, therefore, led us to conclude that the "pre-65" law afforded little protection to the U.S. labor market; was unresponsive to changing economic conditions; and did not provide a means of selecting aliens for employment based on needed skills and abilities in advance of their entry for employment.

We propose instead to exclude aliens from admission into the United States for employment in occupations for which the Secretary of Labor determines and certifies to the Secretary of State and to the Attorney General that (a) there is not a shortage of qualified workers in the United States at the time of application for the visa, or (b) the employment of aliens would be inconsistent with United States manpower policies and programs. Such an amendment to section 212(a)(14) would provide authority based upon an economic analysis of the labor market situation, rather than upon the concept of individual labor certification requiring a finding of unavailability

of United States workers and adverse effect upon wages and working conditions.

We would implement these provisions by establishing and publishing periodically a list of occupations for which the Secretary of Labor has determined that there is not a shortage of workers in the United States. Over the past few years, our experience has indicated that a relatively small number of occupations, perhaps 100 or so, represent more than 80 percent of the applications we receive for alien labor certification. We propose first of all to establish a more comprehensive system of determining current and potential supply and demand throughout the Nation in these high-volume occupations. This system would enable us to determine, both on a current basis as well as in terms of the employment outlook, whether or not the local labor supply is likely to be sufficient to meet forseeable demands over the the next six months to a year.

This system would be geared to take account of such developments as possible defense layoffs, skills or potential skills of returning Vietnam-era veterans, anticipated employment and unemployment developments nationally and the specific outlook for industries which represent the key employers for the occupations in question. The occupational coverage would

also be flexible, so that we could adjust it to take account of changing economic trends, imbalances in demand and supply of resident workers, and shifts in occupations of immigrants entering for employment.

Second, as I indicated, our proposal envisions that this list take account of the changes in supply of workers resulting from the operations of specific manpower policies and programs. In some instances, the local occupational supply can be expected to expand because of the operations of special manpower training and retraining programs sponsored by the Department of Labor or cooperating agencies. We will need to look, too, at the possibility of transferability of skills, when major layoffs occur, such as during the situation several years ago resulting from defense and aerospace cutbacks affecting scientists, engineers, and technicians. Finally, we need to give particular emphasis to the operations of various affirmative action and equal employment opportunity programs, established both by law and administrative regulations. We must make certain that the objectives of these programs to broaden the spectrum of job opportunities available to minority workers and women are not undercut by an inflow of immigrant workers.

These considerations, and the supporting data developed in this connection, would be used as a basis for implementing our proposal. Such implementation would involve the publication periodically (quarterly or semi-annually) in the Federal Register of a list of occupations for which the Department has determined there is not a shortage of qualified workers within the United States. Aliens seeking admission in occupations not on the exclusionary list would be required to present documentation of their qualification to the U.S. Counsul or Immigration Officer.

Our proposal would eliminate the time-consuming procedures required for the Department of Labor to process individual job offers for alien employment. Under the present certification procedure, every alien whose occupation is not in the professions, sciences, and arts must have an employer file a job offer with the nearest local office of the State employment service. In some instances, it is also necessary to obtain documentation from a prospective employer of an alien in the professions, sciences, and arts to support his claim of exceptional qualifications.

After a review of the local labor supply and prevailing wages and working conditions by the public employment office, the employer's application is forwarded through the State central office to the Regional Manpower Administrator's

office of that jurisdiction for determination. If certified, the application is returned to the employer when a sixth preference petition will be filed with the Immigration and Naturalization Service, or forwarded directly to the U.S. Consulate if nonpreference numbers are available, or if the alien is a native of the Western Hemisphere.

We believe that the changes we propose in the labor certification process will provide a more efficient and effective means for immigrant workers to enter the United States, for employers to recruit aliens whose skills or abilities are in short supply, and to do so more quickly and economically

I will be glad to respond to questions that you may have on our proposal for modification of section 212(a)(14).

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AMENDMENT TO THE LABOR CERTIFICATION PROVISION OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * *

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor [unless] in occupations for which the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there [are not sufficient] is not a shortage of qualified workers in the United States [who are able, willing, qualified, and available] at the time of application for a visa [and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and] or (B) the employment of such aliens [will not adversely affect the wages and working conditions of the workers in the United States similarly employed] would be inconsistent with United States manpower policies and programs. The exclusion of aliens under this paragraph shall apply [to special immigrants defined in section 10(a) (27) (A)] to preference immigrant aliens described in

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section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a) (8); (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence).

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

OCT 16 1974

Mr. Victor L. Lowe
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the draft report titled "Assessment of the Administration and Impact of the Alien Labor Certification Program." The response encompasses our views on the recommendations made to the Attorney General, on matters presented for consideration by the House Committee on the Judiciary, and on certain facts or conditions stated in the report.

The report recommends that the Attorney General direct the Immigration and Naturalization Service (INS) to:

1. Have its district offices take appropriate action against aliens who are denied a labor certification by the Department of Labor (DOL) and who are residing and/or employed in this country.

2. Establish procedures requiring employers to notify INS district offices that aliens who receive certification from DOL actually report to the certified job.

Both proposals have merit, however, both would require a significant increase in INS personnel to be effectively implemented. Until such an augmentation of personnel is forthcoming, INS is not in a position to implement these recommendations without adversely affecting its current investigative and enforcement operations. INS has requested an amendment of its fiscal year 1975 budget request which, if granted, would furnish badly needed personnel to enhance its enforcement capability.

GAO note: Page numbers refer to pages of the draft report.

Concerning the first recommendation, we recognize that it would be desirable to investigate DOL leads on individual aliens just as it would be desirable to investigate numerous other individual leads. However, INS must use its limited manpower in the most effective manner and has found that its area control investigation operations are much more effective in yielding large numbers of illegal aliens than are its investigations of individual leads such as those furnished by DOL. Given its limited manpower, we believe INS should continue to conduct its ongoing high yield area control enforcement operations rather than allocate manpower to the first recommendation.

The second recommendation could be implemented, however, we are not convinced that the increased workload would be productive in the absence of any penalty on employers for failing to comply with INS requests for information. In addition, the increased workload generated by this added function would be considerable. For example, INS would be required to send each employer a notification of the alien's admission; track each case for follow-up action; process each response; and, more particularly, investigate each case where the employer either failed to reply or replied that the alien did not report to the job. With its current manpower, INS could not adequately support such a program.

GAO's second recommendation is based on the information presented on pages 45 and 46 of the draft report. Page 45 shows that aliens failed to proceed to their certified jobs in only 5 of 157 job offer cases (actually 5 of 97 cases, since 60 of the 157 aliens had not yet arrived in the United States). Of the 92 cases where aliens proceeded to the job, GAO reported that 41 immigrants had left these jobs after 1 year, and more than 27 of these immigrants had left their jobs within 6 months. Had the employers notified INS that the 92 aliens "actually reported to the certified job," as suggested by GAO's recommendation, 30 percent of the data would be outdated within 6 months and 45 percent of the data would be outdated within 1 year. Accordingly, we believe that the example used by GAO to support its recommendation also vividly points out the short-lived value of requiring such employer reports.

GAO suggests that the Congress give consideration to amending the Immigration and Nationality Act, so that:

1. Section 212(a)(14) of the Act requires a labor certification as a prerequisite for admission of aliens seeking permanent residence and employment in the United States, exclusive of parents, spouses, and minor children of the United States citizens.

2. Aliens receiving a labor certification from the DOL be required to retain the certified job for "a specific period of time."

3. Section 101(a)(15) of the Act requires (a) aliens seeking to enter as temporary workers of distinguished merit and ability be subject to a labor certification review by DOL and (b) other aliens temporarily visiting who can secure permission from INS to work, such as students, be subject to a DOL labor certification review.

We question the advisability of extending the labor certification requirement to additional classes of immigrants. As indicated on pages 45 and 46 of the GAO report, some immigrants never report to the employer who obtained their labor certification, and many immigrants who do report change jobs or occupations shortly after admission to the United States.

(See GAO Note on p. 84)

Based on our preceding comments, we do not consider it advisable to extend the labor certification requirement to additional classes of immigrants. It would merely result in additional fraudulent attempts to circumvent the added restrictions. Moreover, extending the certification requirement would significantly increase the number of aliens going through the certification process who do not stay in their "certified" jobs for any substantial period of time.

(See GAO Note on p. 84)

In lieu of the above recommendations, we advocate the labor certification requirements expressed in H.R. 9409 and in Section 2 of H.R. 981, 93rd Congress. We consider these requirements as more implementable alternatives in meeting the problems of the alien labor certification program.

H.R. 9409 would amend Section 212(a)(14) of the Immigration and Nationality Act so that provisions of the section would become applicable to third, sixth, and non-preference aliens only when the Secretary of Labor certified that no shortage of qualified workers existed in the United States at the time of the visa application, or that employment of aliens would be inconsistent with United States manpower policies and programs. In addition, contrary to present requirements, the bill would require third preference aliens to have an employer petitioning for their services, and would not allow unskilled workers to qualify for sixth preference classification.

Section 2 of H.R. 981, 93rd Congress, amends section 101(a)(15)(H)(ii) of the Immigration and Nationality Act to statutorily require the Secretary of Labor to make a determination of "unavailability" and "adverse effect" before an alien could qualify as a nonimmigrant worker.

Whether a similar amendment should be made with regard to aliens defined in section 101(a)(15)(H)(i), temporary workers of distinguished merit and ability, is a matter for Congress to determine. Such an amendment would reverse the liberalization of this section which occurred on April 7, 1970, when P.L. 91-225 (84 Stat. 116) was enacted. On page 4 of Report No. 91-851 submitted by the House Committee on the Judiciary in connection with this legislation (S.2593), the Committee indicated its desire to make it easier for "exceptionally skilled aliens, such as professors and doctors" to enter the United States as temporary workers of distinguished merit and ability. However, in the absence of the labor certification requirement, it is probable that many members of the professions for whom immigrant visas are not readily available may be using the provisions of Section 101(a)(15)(H)(i) to gain entry to the United States as ostensible nonimmigrants. To some extent this phenomenon is already observable. For example, a large number of

Filipino nurses are coming to the United States as "(H)(i) nonimmigrants" because immigrant visas in the third and sixth preference categories are oversubscribed for natives of the Philippines.

As a matter of policy, the Congress may wish to consider whether labor certifications should be required for nonimmigrant students or other nonimmigrant classes before INS grants them permission to work, or whether nonimmigrant students should be allowed to work at all.

(See GAO Note on p. 84)

GAO note: The deleted comments relate to matters which have been revised in the final report.

We appreciate the opportunity to comment on the draft report. Please contact us if you have any questions.

Sincerely,

Glen E. Pommerening
Assistant Attorney General
for Administration

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