The original documents are located in Box 68, folder "10/20/76 HR14535 Immigration and Nationality Act Amendments of 1976" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

THE WHITE HOUSE

WASHINGTON

October 21, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CAVANAUGH

SUBJECT: Signing Statement for H.R. 14535, the Immigration and Nationality Act Amendments of 1976.

Attached for your review is a signing statement of H.R. 14535, the Immigration and Nationality Act Amendments of 1976. It has been reviewed by Jim Cannon, Paul O'Neill, Brent Scowcroft and the Counsel's Office, Ken Lazarus.

Recommendation: I recommend you approve the statement and we release it on Thursday, October 21.

Approve _____ Disapprove _____

Attachment

APPROVED
OCT 20 1976

Posted 10/21/76
Statement issued

$ 10/20/76

THE WHITE HOUSE

WASHINGTON

October 20, 1976

ACTION

Last Day: October 20

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 14535 -- Immigration and Nationality Act Amendments of 1976

Posted 10/21/76

archives 10/21/76

Attached for your consideration is H.R. 14535, the Immigration and Nationality Act Amendments of 1976, sponsored by Representative Eilbert and six others.

Background

The Immigration and Nationality Act Amendments of 1965 ended the system of national origin quotas controlling immigration into the United States which had been in effect since 1924. The stated purpose of that Act was to establish a system of immigration which would facilitate the reunification of families and the admission into the United States of needed workers. The Act set a numerical ceiling of 170,000 per year, a 20,000-per-country limitation and a seven-point preference system for Eastern Hemisphere immigration. It set a ceiling of 120,000 per year on immigration from the Western Hemisphere but did not include the Western Hemisphere in either the preference system or the per-country limitation.

The result of the 1965 legislation was that all would-be immigrants from the Western Hemisphere were required to apply for visas on a first-come, first-serve basis, including close relatives of U.S. citizens and skilled foreign workers (two groups that would have received preference under the system in effect for the Eastern Hemisphere). Because application for admission from the Western Hemisphere far exceed the 120,000 limitation, the waiting period for immigrant visas for the Western Hemisphere is now almost three years. This has caused substantial hardship for those who would have otherwise qualified for preferred status and gained almost immediate entry into the United States.

The purpose of the enrolled bill is to bring our immigration procedures for the Western Hemisphere in line with those for the Eastern Hemisphere.

Summary of Provisions of the Bill

Among other things, the enrolled bill would:

- o apply the preference system currently applicable to Eastern Hemisphere immigrants to natives of countries of the Western Hemisphere (with minor modifications);
- o apply the 20,000-per-country limit to countries of the Western Hemisphere.
- o make Western Hemisphere immigrants eligible for adjustment of status to that of lawful permanent residents on an equal basis with Eastern Hemisphere immigrants;
- o apply the labor certification requirements equally to immigrants native to both hemispheres; and
- o provide that Cuban refugees covered under the Cuban Refugee Act of 1966 will not be charged to the Western Hemisphere quota (of 120,000 per year).

Discussion

The provisions of the bill, establishing a preference and per-country-limit system for the Western Hemisphere, have for several years been strongly endorsed and supported by the Administration as a means of achieving fair and equal treatment for people of all nationalities under our immigration laws. These provisions insure that the fundamental purposes of the Immigration and Nationality Act Amendments of 1965--the reunification of families and the admission of needed skilled workers into the U.S. -- will govern Western Hemisphere immigration. Moreover, the exemption of Cuban refugees from the Western Hemisphere quota will facilitate their adjustment to permanent resident status and is consistent with a pledge you made several months ago.

On the other hand, the interposition of the 20,000 per-country limitation will operate to reduce legal immigration from Mexico. Currently, natives of Mexico are using about one-third of the 120,000 limitation (or about 40,000); the enrolled bill would cut that number in half. Mexican-American groups have expressed concern that the effect of enactment of this bill will be to deter many interested Mexicans from lawfully immigrating to the United States, increase the number of illegal aliens and strain our relations with the Government of Mexico.

*It is estimated that up to one million Mexicans currently enter the U.S. illegally each year. Arguably, approval of the enrolled bill could add up to 20,000 (or 2%) to that number.

Agency Recommendations

The Departments of Justice and State recommend approval of the enrolled bill. Secretary Kissinger has also sent you a letter directly recommending you approve the bill. (See tab B)

The Department of Labor has no objection to approval of the bill.

The Office of Management and Budget recommends approval of the bill. (See enrolled bill report at Tab A)

Staff Recommendations

Max Friedersdorf	"Recommend approval. Representatives Roybal and Van Durkin have written in opposition to bill; Representatives Sonny Montgomery and Rangel have written in support. Senator Javits urges bill be approved; bill has opposition among Mexican-American community."
Counsel's Office (Kilberg)	"Approve signing on the merits"
NSC	Recommend approval

Recommendation

While there is some merit to each of the objections raised by the Mexican-American community, I believe that, on balance, the advantages of the bill far outweigh the disadvantages.

It should be noted that, while enactment of the bill will reduce the total number of Mexicans lawfully immigrating to the United States each year, it will facilitate the reunification of Mexican-American families by giving preference to Mexican nationals having close relatives in the United States.

It should also be noted that there are a substantial number of Americans having family members in other Western Hemisphere countries who believe that a fairer distribution of immigration visas is entirely appropriate.

I recommend approval of the bill.

Decision

Sign H.R. 14535 at Tab C.

STATEMENT BY THE PRESIDENT

I have signed H.R. 14535, the Immigration and Nationality Act Amendments of 1976. This legislation brings our immigration procedures for the Western Hemisphere into line with those for the Eastern Hemisphere. Among other things the enrolled bill would:

- apply the preference system currently applicable to Eastern Hemisphere immigrants to natives of countries of the Western Hemisphere (with minor modifications);
- apply the 20,000-per-country limit to countries of the Western Hemisphere;
- make Western Hemisphere immigrants eligible for adjustment of status to that of lawful permanent residents on an equal basis with Eastern Hemisphere immigrants;
- apply the labor certification requirements equally to immigrants native to both hemispheres; and
- provide that Cuban refugees covered under the Cuban Refugee Act of 1966 will not be charged to the Western Hemisphere quota (of 120,000 per year).

This legislation will also facilitate the reunification of Mexican American families by giving preference to Mexican nationals who are close relatives of United States citizens or lawful permanent residents, or who have needed job skills. I am concerned, however, about one aspect of the legislation which has the effect of reducing the legal immigration into this country from Mexico. Currently about 40,000 natives of Mexico legally immigrate to the United States each year. This legislation would cut that number in half.

The United States has a very special and historic relationship with our neighbor to the South. In view of

this special status we have with the Mexican government and the Mexican people, I will submit legislation to the Congress in January to increase the immigration quotas for Mexicans desiring to come to the United States.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 18 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14535 - Immigration and Nationality Act Amendments of 1976
Sponsor - Rep. Eilberg (D) Pennsylvania and six others

Last Day for Action

October 20, 1976 - Wednesday

Purpose

To establish uniformity in law regulating immigration from the Eastern and Western Hemispheres; to make certain amendments to the seven-category preference system and to labor certification standards; to bar issuance of immigrant visas to aliens who accept unauthorized employment in the United States; and to facilitate the granting of immigrant visas to Cuban refugees.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of State	Approval
Department of Labor	No objection

Discussion

Currently, the Immigration and Nationality Act provides for an annual ceiling of 120,000 "special immigrant" visas for natives of independent Western Hemisphere countries. Unlike Eastern Hemisphere immigration, immigration in this hemisphere is not regulated by a priority or preference system nor is there a limitation on the number of visas which can be made available to an individual country within the 120,000 ceiling. Eastern Hemisphere immigration, restricted to 170,000 visas per year

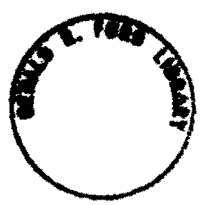
with a 20,000 per-country limitation (foreign state limitation), operates under a seven-point preference system designed to give top priority to reuniting families and to attracting aliens with needed skills to this country. Western Hemisphere immigration, however, operates entirely on a first-come, first-served basis without any foreign state limitation on visas or preferences in visa issuance. As a result, a U.S. citizen may petition for a preference classification for his unmarried daughter born in Germany, but not for his unmarried daughter born in Argentina.

The House Judiciary Committee report states that "as a direct result of the imposition... of the Western Hemisphere visa ceiling of 120,000 without a preference system [and without a foreign state limitation on visas], all intending immigrants from this hemisphere who fall under the numerical ceiling are presently experiencing a wait of more than two years for their visas." The current backlog on Western Hemisphere immigration is approximately 300,000 cases; in contrast, immigrant visas for the Eastern Hemisphere are immediately available under the relative preference categories for all countries except the Philippines and Korea.

A second major disparity in immigration law permits Eastern Hemisphere aliens admitted on temporary visas to obtain immigrant visas without having to leave the United States, provided that they meet other immigration requirements. Conversely, Western Hemisphere aliens in the United States on temporary visas, who wish to "adjust their status" and obtain immigrant visas to become permanent residents, must return to their countries of origin to obtain an immigrant visa. Consequently, these aliens become subject to the Western Hemisphere backlog and their return to the United States is delayed for more than two years. In this regard, the House Judiciary Committee concluded that "the current blanket prohibition against adjustment of status by Western Hemisphere natives does not appear to serve any useful purpose commensurate with the hardship and inconvenience it causes..."

Summary of H.R. 14535

The enrolled bill is premised on the principle that equity, uniformity, and family reunification should be the basis for U.S. immigration policy for both the Eastern and Western Hemisphere. The enrolled bill would also make certain other amendments



to immigration law to facilitate the more rapid adjustment of status of Cuban refugees and to clarify the statutory guidance governing "labor certification" determinations by the Department of Labor that are required for aliens who are not close relatives of citizens or permanent residents of the United States. Most of these provisions were strongly supported by the Administration in other bills. The Administration proposed the Western Hemisphere provisions.

-- Annual Limitations on Immigrant Visas by Hemisphere

The current Eastern and Western Hemisphere immigration ceilings, 170,000 and 120,000, respectively, would be retained, but quarterly limitations on the issuance of immigrant visas currently applicable to the Eastern Hemisphere under its ceiling would be similarly applied to Western Hemisphere immigration for administrative purposes.

-- 20,000 Foreign State Visa Limitation

A 20,000 foreign state annual limit on the number of immigrant visas would be made applicable to all countries, instead of only to Eastern Hemisphere countries; no such limitation now exists for the Western Hemisphere. This provision essentially rejects the concept of a "special relationship" between this country and Western Hemisphere countries as a basis for immigration law, in favor of uniform treatment for all countries.

-- Colonies and Dependencies

The annual visa allotment for colonies or dependent areas would be increased from 200 to 600; visas made available to colonies would continue to be chargeable to the mother country's annual visa limitation. However, visas issued to residents of the dependent areas would be charged to the ceiling of the hemisphere where the dependencies are located, instead of to the hemisphere of the mother country, as is the present case.

-- Preference System

The existing Eastern Hemisphere preference system with certain amendments would be extended to the Western Hemisphere. (The preference system establishes the order of priority in which immigrant visas will be granted to intending immigrants.) Two of the seven preference categories would be modified as follows:

(1) Third preference - members of the professions or persons of exceptional ability in the sciences or arts whose services are sought by U.S. employees.

In recognition of the current labor market situation in the United States, H.R. 14535 would add the pre-employment requirements as a condition to eligibility for an immigrant visa.

(2) Fifth Preference - brothers and sisters of U.S. citizens. This category would be modified to require that U.S. citizens also be at least 21-years-old in order to petition for immigrant visas for their siblings.

-- Visa Allocation Within a Single Country

Under current law the percentages allotted annually to each preference category are applicable to the Eastern Hemisphere as a whole and not to individual countries or dependencies. The enrolled bill would similarly apply this procedure to the Western Hemisphere. Within the 20,000 per-country visa limitation, visas are issued on a "first-come" basis and situations have arisen where a country's entire annual visa limitation has been exhausted by the higher categories of preferences, i.e., unmarried children of U.S. citizens and permanent resident aliens. Consequently, visas are not available to persons qualifying for the lower preference levels; for example, in the Philippines, there is a six-year wait for third preference visas and visas are unavailable there in the lower preference categories. A similar pattern exists in Mexico.

H.R. 14535 would provide a safeguard to prevent the perpetuation of such situations by requiring that when a country or its dependent area has exhausted the 20,000 visa limitation in the preceding year, the statutory visa preference category percentage limitation that applies to the hemisphere would also apply to the country, e.g., if the statutory percentage limitation for visa preference category "one" was 20 percent for the hemisphere, it would also be 20 percent for that same category in the particular country. The provision would neither increase nor decrease the total number of visas available to the country; it would also not require that the maximum number of visas available to the country be issued. It would only require that visas be made available to all preference categories in such countries, thereby assuring a fairer distribution of visas.

-- Labor Certification

Currently the Secretary of Labor is required to certify that immigrants entering the United States with occupational visas (professionals or scientists and artists of exceptional ability,

or skilled and unskilled workers in short supply) or with non-preference visas will (1) fill a particular occupational shortage in the labor market, and (2) not affect the working conditions of similarly situated American workers. If labor certification is not granted, the alien cannot be issued an immigrant visa.

The enrolled bill would retain the labor certification provision but require the Secretary to determine that "equally qualified" American workers are available in order to deny a labor certification for "members of the teaching profession or those who have exceptional ability in the arts and sciences." This provision is based on congressional concern that the Labor Department has enforced labor certification too rigidly against members of these professions, and, consequently, denied American colleges and universities the opportunity to acquire outstanding alien educators.

In its attached views letter, the Labor Department states that this provision may require certifying the admission of alien teachers where qualified U.S. teachers are available but "more qualified" alien teachers are involved; "the Department does not believe that aliens should be admitted if 'qualified' U.S. workers are available." Although we share the Labor Department's concern, we believe this change is largely problemmatic and can be favorably resolved on a case-by-case basis.

-- Adjustment of Status

Western Hemisphere natives admitted on temporary visas or paroled in the United States would be eligible to petition for immigrant visas while in the United States instead of being required to return to their countries of origin, delaying their return for two years. Current law permits only Eastern Hemisphere natives to adjust their status in the United States.

In addition, aliens who accept unauthorized employment would be made ineligible to adjust their status. Alien crewmen and other aliens admitted in transit without a visa would likewise be ineligible to obtain immigrant visas in the United States. In this connection, the Department of Labor would have favored that additional groups (students, aliens holding temporary work-related visas, and intracompany transfers) be included in the bill's list of those prohibited from adjusting status; "inclusion of these additional groups would have further assisted in discouraging

such aliens from taking employment in the U.S. for the purpose of using such employment to facilitate an adjustment of status." We believe that the bill's provision making aliens who accept unauthorized employment ineligible for immigrant visas mitigates this concern.

-- Cuban Refugees

The enrolled bill would facilitate the granting of immigrant visas to Cuban refugees by declaring that visas issued to them are not chargeable to the Western Hemisphere ceiling. Approximately 60,000 applications for adjustment of Cuban refugee status are pending.

Finally, the bill contains a "savings clause" under which all Western Hemisphere natives who have qualified to immigrate under the currently applicable provisions of law prior to the effective date of the bill would remain qualified to immigrate and eligible to receive visas even after the implementation of the amendments contained in the bill. All such intending immigrants would be subject to the numerical limitations as amended by the bill, but at some point or other all would be afforded an opportunity to immigrate to the United States.

The enrolled bill would take effect on the first day of the month beginning sixty days after enactment.

Effect on Mexican Immigration

The application of the foreign state limitation to countries of the Western Hemisphere will operate to reduce immigration from Mexico, since the 20,000 limitation is below the number of immigrant visas issued in recent years to natives of Mexico. Under current law, natives of Mexico are using about one-third of the 120,000 limitation and the State Department estimates that this percentage would rise to almost half in the near future if H.R. 14535 were not approved.

Hispanic American groups have been quite concerned over the effect of this provision on Mexican immigration. They believe it will deter many people interested in entering the United States, cause an even greater flow of illegal aliens into this

country and possibly strain U.S. relations with Mexico. State notes in its attached views letter that approval of this bill would be of "considerable concern to the Government of Mexico and to the Mexican/American community in this country."

The factors which influenced the adoption of this provision were:

- A desire for equity. The House Judiciary Committee stated that it was rejecting " the concept of a 'special relationship' between this country and certain other countries as a basis for our immigration law, in favor of a uniform treatment for all countries."

- "The presence of large numbers of Mexican nationals in the United States illegally." (State views letter.)

- The fact that "large numbers of natives of Mexico have qualified to immigrate to the United States as parents of minor United States citizen children." (State views letter.)

We believe the provision is justified on several grounds:

1. As State notes, "(I)t is of fundamental importance that our immigration policy be based upon the principle of equal treatment under our immigration law regardless of country of birth and that it contain no element of discrimination for or against natives of any country."

2. The Department of Justice points out in its views letter that "the bill will make immigration easier for Mexicans who are close relatives of United States citizens or lawful permanent residents, or who have needed job skills. The bill will also facilitate immigration from other Western Hemisphere countries for these same groups."

3. Whether or not the reduction in number of visas available to Mexico will exacerbate illegal immigration is problemmatic. We have a continuing illegal alien problem despite increasing enforcement of immigration law; it will continue in spite of the imposition of the foreign state limitations.

4. The "savings clause" in the bill, described earlier in this memo, would preserve the pending status of applications for immigrant visas for large numbers of Mexicans, as well as natives of other Western Hemisphere countries.

In sum, we believe this provision in the bill has substantial justification and its effect on Mexican immigration into the United States can be alleviated to a considerable degree by other parts of the bill.

Recommendation

According to the Department of State, H.R. 14535 "largely completes the process ... of establishing a rational, fair and uniform immigration system for all those seeking to become permanent residents of the United States." We believe that this legislation provides long overdue reform to immigration law, and, accordingly, recommend that you approve H.R. 14535.

James T. Lynn
Director

Enclosures

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

OCT 14 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on H.R. 14535, an enrolled enactment to amend the Immigration and Nationality Act.

This bill would apply the preference system to immigration from the Western Hemisphere as well as the Eastern Hemisphere, modify the labor certification provision, permit adjustment of status for Western and well as Eastern Hemisphere aliens to that of aliens lawfully admitted for permanent residence without requiring such aliens to return to their home country, and require that aliens seeking admission under the third preference (members of professions or persons with exceptional ability in the sciences and arts) have a job offer.

Of concern to us is the manner in which the bill would change the labor certification provision, section 212(a)(14) of the Immigration Act.

That section now excludes entry of skilled and unskilled workers, unless the Secretary of Labor certifies that "there are not sufficient workers in the United States who are able, willing, qualified . . . ." The change would add, after the word "qualified": "or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts."

This provision may have the effect of requiring the Secretary of Labor to certify the admission of alien teachers in many instances where qualified U.S. teachers are available but "more qualified" alien teachers are involved.

Except in the case of certain persons of exceptional merit and ability, the Department of Labor does not believe that aliens should be admitted if "qualified" U.S. workers are available.

We note that under the bill the Secretary would not certify aliens for employment if there were sufficient workers of that type available for work at the place where the alien will work. In our view, the bill does not substantially differ from the Department's present interpretation of the permissible area of consideration for the determination of the availability of U.S. workers. However, we are concerned that this may be construed as permitting employers to ignore U.S. workers who are willing and available to relocate.

We generally support the provision that would give Western Hemisphere aliens in the U.S. the same opportunity to adjust status that is now afforded to Eastern Hemisphere aliens. We would have specifically favored, however, the addition of several groups to the bill's list of those prohibited from adjusting status. Those additional groups are: students, workers and intracompany transfers, defined in paragraphs (F), (H) and (L) of section 101(a)(15) of the Act. Inclusion of these additional groups would have further assisted in discouraging such aliens from taking employment in the U.S. for the purpose of using such employment to facilitate an adjustment of status.

Although we do not favor the changes to section 212(a)(14) of the Act as stated, we interpose no objection to Presidential approval.

Sincerely,

Acting Secretary of Labor

THE SECRETARY OF STATE

WASHINGTON

UNCLASSIFIED

MEMORANDUM FOR: THE PRESIDENT

From: Henry A. Kissinger HK

Subject: Western Hemisphere Immigration Bill - H.R. 14535

The bill H.R. 14535 which is currently before you for final disposition contains a series of provisions which have been supported by the Administration, some of them over many years. The significant provisions of the bill are --

(1) application to the Western Hemisphere of the system of preferences now applicable to immigrants from the Eastern Hemisphere;

(2) application to independent countries of the Western Hemisphere of the 20,000 per country limitation now applicable to Eastern Hemisphere countries; and

(3) extension to natives of the Western Hemisphere of the privilege (now available only to natives of the Eastern Hemisphere) of acquiring permanent residence through adjustment of status while in the United States.

All three of these provisions have been strongly supported by this Administration and the first two are included in the Administration's immigration bill in the 94th Congress, H.R. 10323.

The above provisions are both meritorious and necessary. They will abolish the existing Western

Hemisphere immigration system which is discriminatory when compared to the Eastern Hemisphere system and which contains many inducements to immigration fraud. They will essentially complete the process begun in 1965 of establishing a uniform, non-discriminatory immigration policy for the United States, and one under which the principle of family reunification is given meaningful effect. I consider the uniform non-discriminatory nature of the system to be of fundamental importance for our posture in the world community, especially so since the question of the world-wide movement of people is becoming an increasingly important one in world affairs.

Recommendation:

That you sign H.R. 14535 into law.

Approve _____ Disapprove _____

10/21

Ron -

For the Hill file, fyi.

KT

MEMORANDUM 5831

NATIONAL SECURITY COUNCIL

October 20, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: Jeanne W. Davis

SUBJECT: H.R. 14535

The NSC Staff concurs in the proposed enrolled bill H.R. 14535 - Immigration and Nationality Act Amendments of 1976.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 8

Date: October 18 Time: 900pm

FOR ACTION: Dick Parsons
Bobbie Kilberg
Max Friedersdorf
David Lissy

cc (for information):
Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19 Time: 100pm

SUBJECT:

H.R.14535-Immigration and Nationality Act Amendmen-s of 1976

ACTION REQUESTED:

_____ For Necessary Action
_____ For Your Recommendations
_____ Prepare Agenda and Brief
_____ Draft Reply
__X__ For Your Comments
_____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend Approval. Representatives Roybal & Van Deerlin have written in opposition to bill; Rep. Sonny Montgomery & Rangel have written in support. Senator Javits urges bill be approved; bill has opposition among Mexican-American community.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 18 Time: 900pm

FOR ACTION: Dick Parsons
Bobbie Kilberg
Max Friedersdorf
David Lissy

cc (for information):
Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19 Time: 200pm

SUBJECT:

H.R.14535-Immigration and Nationality Act Amendmen-s of 1976

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
__X__ For Your Comments
____ For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE
WASHINGTON

Dick: This letter just came in and should be a tab of the immigration bill memo.

Attached also are Bobbie's and Max's comments.

Judy

NSC recommends approval.

THE WHITE HOUSE

WASHINGTON

October 20, 1976

ACTION

Last Day: October 20

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 14535 -- Immigration and Nationality Act Amendments of 1976

Attached for your consideration is H.R. 14535, the Immigration and Nationality Act Amendments of 1976, sponsored by Representative Eilbert and six others.

Background

The Immigration and Nationality Act Amendments of 1965 ended the system of national origin quotas controlling immigration into the United States which had been in effect since 1924. The stated purpose of that Act was to establish a system of immigration which would facilitate the reunification of families and the admission into the United States of needed workers. The Act set a numerical ceiling of 170,000 per year, a 20,000-per-country limitation and a seven-point preference system for Eastern Hemisphere immigration. It set a ceiling of 120,000 per year on immigration from the Western Hemisphere but did not include the Western Hemisphere in either the preference system or the per-country limitation.

The result of the 1965 legislation was that all would-be immigrants from the Western Hemisphere were required to apply for visas on a first-come, first-serve basis, including close relatives of U.S. citizens and skilled foreign workers (two groups that would have received preference under the system in effect for the Eastern Hemisphere). Because application for admission from the Western Hemisphere far exceed the 120,000 limitation, the waiting period for immigrant visas for the Western Hemisphere is now almost three years. This has caused substantial hardship for those who would have otherwise qualified for preferred status and gained almost immediate entry into the United States.

The purpose of the enrolled bill is to bring our immigration procedures for the Western Hemisphere in line with those for the Eastern Hemisphere.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

To: J. Johnson 10-18-76 5:00 p.m.

OCT 18 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14535 - Immigration and Nationality Act Amendments of 1976
Sponsor - Rep. Eilberg (D) Pennsylvania and six others

Last Day for Action

October 20, 1976 - Wednesday

Purpose

To establish uniformity in law regulating immigration from the Eastern and Western Hemispheres; to make certain amendments to the seven-category preference system and to labor certification standards; to bar issuance of immigrant visas to aliens who accept unauthorized employment in the United States; and to facilitate the granting of immigrant visas to Cuban refugees.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of State	Approval
Department of Labor	No objection

Discussion

Currently, the Immigration and Nationality Act provides for an annual ceiling of 120,000 "special immigrant" visas for natives of independent Western Hemisphere countries. Unlike Eastern Hemisphere immigration, immigration in this hemisphere is not regulated by a priority or preference system nor is there a limitation on the number of visas which can be made available to an individual country within the 120,000 ceiling. Eastern Hemisphere immigration, restricted to 170,000 visas per year

THE SECRETARY OF STATE

WASHINGTON

UNCLASSIFIED

MEMORANDUM FOR: THE PRESIDENT

From: Henry A. Kissinger HK

Subject: Western Hemisphere Immigration Bill - H.R. 14535

The bill H.R. 14535 which is currently before you for final disposition contains a series of provisions which have been supported by the Administration, some of them over many years. The significant provisions of the bill are --

(1) application to the Western Hemisphere of the system of preferences now applicable to immigrants from the Eastern Hemisphere;

(2) application to independent countries of the Western Hemisphere of the 20,000 per country limitation now applicable to Eastern Hemisphere countries; and

(3) extension to natives of the Western Hemisphere of the privilege (now available only to natives of the Eastern Hemisphere) of acquiring permanent residence through adjustment of status while in the United States.

All three of these provisions have been strongly supported by this Administration and the first two are included in the Administration's immigration bill in the 94th Congress, H.R. 10323.

The above provisions are both meritorious and necessary. They will abolish the existing Western

Hemisphere immigration system which is discriminatory when compared to the Eastern Hemisphere system and which contains many inducements to immigration fraud. They will essentially complete the process begun in 1965 of establishing a uniform, non-discriminatory immigration policy for the United States, and one under which the principle of family reunification is given meaningful effect. I consider the uniform non-discriminatory nature of the system to be of fundamental importance for our posture in the world community, especially so since the question of the world-wide movement of people is becoming an increasingly important one in world affairs.

Recommendation:

That you sign H.R. 14535 into law.

Approve _____ Disapprove _____

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 18 Time: 900pm

FOR ACTION: Dick Parsons
Bobbie Kilberg
Max Friedersdorf
David Lissy

cc (for information):
Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19 Time: 100pm

SUBJECT:

H.R.14535-Immigration and Nationality Act
Amendmen-s of 1976

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
__X__ For Your Comments
____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

approve signing on the memo.

Kilberg 10/19/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

October 14, 1976

James T. Lynn, Director
Office of Management and Budget
Washington, D. C. 20530

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the enrolled bill, H.R. 14535, a bill "To amend the Immigration and Nationality Act, and for other purposes."

The bill makes several major changes in the existing law. First, and most importantly, the bill applies the preference system of section 203(a) of the Immigration and Nationality Act (8 USC 1153(a)), and the 20,000 individual country limitation of section 202(a) of the Act (8 USC 1152 (a)) to immigrants who are natives of the Western Hemisphere.

As has been pointed out by the Department in testimony and in several reports to Congressional Committees, one of the most persistent criticisms of our present immigration law is that it authorizes preferences in visa issuance for the Eastern Hemisphere, but not for the Western. As a result, a United States citizen may petition for a preference classification for his unmarried daughter born in Germany, but not for his unmarried daughter born in Argentina. The Department believes that the American concept of fairness calls for the remedial action this bill provides.

The imposition of the 20,000 per country limitation on all countries will have the effect of reducing total immigration from Mexico. However, the bill will make immigration easier for Mexicans who are close relatives of United States citizens or lawful permanent residents, or who have needed job skills. The bill will also facilitate immigration from other Western Hemisphere countries for these same groups.

In reporting on the bill the House Judiciary Committee stated that they were rejecting "the concept of a 'special relationship' between this country and certain other countries as a basis for our immigration law, in favor

of a uniform treatment for all countries." The Department concurs in this view.

The Department recognizes that there are a large number of Mexicans who have resided in the United States illegally for a long period of time and whose deportation would now be a great hardship as well as a large expense to the Immigration and Naturalization Service. In connection with another bill introduced in the 94th Congress, S. 3074, the Department favored an update of section 249 of the Act (8 USC 1259) to allow qualified aliens who had resided here since prior to July 1, 1968, to adjust status to that of a lawful permanent resident. A similar provision was contained in H.R. 8713. The Department believes that this mechanism is preferable to a special "Mexican quota" to deal with the large number of Mexicans here illegally. It is also noted that Mexicans who have been physically present in the United States for more than seven years, who are ineligible for immigrant visas, and whose deportation would result in "extreme hardship" to themselves or their United States citizen or lawful permanent resident spouse, parent or children may qualify for suspension of deportation under §244(a)(1) of the Act (8 USC 1254(a)(1)).

In accordance with the policy of equal treatment for Western Hemisphere immigrants, the bill also eliminates the present preclusion of adjustment of status to permanent resident under §245 (8 USC 1255) for natives of the Western Hemisphere.

In addition, the bill contains a bar to adjustment of status for aliens, other than immediate relatives, who have continued in or accepted unauthorized employment. This provision will serve to discourage prospective adjustment applicants from seeking unauthorized employment and will definitely be useful in dealing with the large illegal alien problem.

The Department has consistently taken a position in favor of equalization of treatment for Eastern and Western Hemisphere natives and strongly supported both this bill and an earlier version, H.R. 981, which passed the House in the 93rd Congress.

The bill also provides that Cuban refugees who are granted permanent resident status shall not be charged against the numerical limitation. While the Attorney General has interpreted current law to authorize such action and we are not now counting such refugees, clear statutory provision for this procedure is desirable.

In addition to the provision mentioned above, H. R. 14535 contains several other provisions favored by the Department. For the foregoing reasons, the Department recommends Executive approval of H. R. 14535.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 14 1976

Dear Mr. Lynn:

I refer to the communication of October 12, 1976, from Mr. Frey of your Office transmitting for comment the enrolled bill, H.R. 14535, "To amend the Immigration and Nationality Act, and for other purposes."

This bill is similar to H.R. 10323, the Administration's immigration bill, and contains one of the two fundamental reforms of our immigration system which this Department and the Administration has been seeking since 1970. In that period the Administration has itself sponsored four immigration bills which would have accomplished this change and has consistently supported legislation designed to bring it about.

When the Immigration and Nationality Act was amended in 1965 the provision establishing a 120,000 limitation on immigration by natives of independent countries of the Western Hemisphere was inserted into the Act of October 3, 1965, through legislative maneuvering and without time for adequate consideration of the implications thereof. After the provision became effective on July 1, 1968, it soon became apparent that the lack of a system of preferences for the Western Hemisphere and of a system of foreign state limitations resulted not merely in two separate hemispheric systems of immigration but in systems which were discriminatory in their treatment of intending immigrants depending upon their place of birth.

One example will illustrate this discrimination. A naturalized United States citizen of Italian descent has two brothers - the older born in Italy; the younger born in Argentina after their parents migrated from Italy to Argentina. The citizen sibling now wishes to facilitate the immigration

The Honorable
James T. Lynn,
Director,
Office of Management
and Budget.

of his brothers to the United States. Because of the existence of the preference system for the Eastern Hemisphere, the sibling born in Italy is entitled to fifth preference status as the brother of a United States citizen. Because of his entitlement to that status he is not subject to the provisions of section 212(a)(14) of the Act--the labor certification provision--and, given the current levels of demand for immigration, will be entitled to immediate consideration of his immigrant visa application. On the other hand, because there is no system of preferences for the Western Hemisphere and because of the other rules governing qualification to immigrate applicable to natives of independent countries of the Western Hemisphere, the brother born in Argentina will receive no benefit under the immigration law from his citizen sibling and will be subject to the provisions of section 212(a)(14). Moreover, even if he is able to meet the requirements of that section of law, he will experience a waiting period of over two years before his turn for immigration will be reached.

H.R. 14535 would eliminate irrational, unjustifiable discriminations such as the one I have described by applying to independent countries of the Western Hemisphere the same system of preferences and foreign state limitations as is now applicable to the Eastern Hemisphere. As a result, all intending immigrants to the United States will be placed on an equal footing in this respect before the immigration law. Since the United States continues to be one of the world's major countries of immigration (if not the major country of immigration), the Department believes that it is of fundamental importance that our immigration policy be based upon the principle of equal treatment under our immigration law regardless of country of birth and that it contain no element of discrimination for or against natives of any country.

The application of the foreign state limitation to countries of the Western Hemisphere will operate to reduce immigration from Mexico, since the 20,000 limitation is below the number of immigrant visas issued in recent years to natives of Mexico under the system which has existed since the 1965 amendments to the Immigration and Nationality Act. Under this system natives of Mexico are using about one-third of

the 120,000 limitation and indications are that this percentage could rise to almost one-half in the near future if H.R. 14535 does not become law. This situation has the effect, of course, of reducing immigration from the other countries of the Western Hemisphere. Other factors which affected this decision included the presence of large numbers of Mexican nationals in the United States illegally and the fact that, because of geographical proximity, large numbers of natives of Mexico have qualified to immigrate to the United States as parents of minor United States citizen children. This provision is, as I have mentioned, one which H.R. 14535 would remove from the immigration law. Although this bill is supported by important segments of American society, its approval is of considerable concern to the Government of Mexico and to the Mexican/American community in this country.

In addition to this most fundamental reform of our immigration laws, H.R. 14535 also contains several other provisions of significance. First, the provision of law governing eligibility to acquire permanent residence by adjustment of status within the United States would be amended to remove the existing prohibition against its use by natives of the Western Hemisphere. This absolute prohibition has existed since 1965 and has caused hardships to many Western Hemisphere natives whose home countries are as far from the United States as those of Western Europe whose natives have been eligible to make use of the adjustment of status procedure. The bill would substitute for this prohibition a prohibition against the adjustment of status of an alien other than an immediate relative who had worked illegally in the United States prior to applying for adjustment. This new provision not only is a more rational one, it also could prove to be a factor in the effort to control unauthorized employment of aliens in the United States.

Also, the provisions of the bill would eliminate the existing provision under which a native of an independent country of the Western Hemisphere can qualify to immigrate to the

United States by becoming the parent of a minor United States citizen. This benefit, which does not now extend to other intending immigrants and which was never extended to any intending immigrants prior to 1965, has proven to be a major inducement to unauthorized entry and stay in the United States. The Administration has sought its removal from the immigration law also since 1970.

In addition, the bill would increase the numerical limitation on immigration by natives of dependent areas--colonies and other possessions of a governing country geographically separated from the governing country--from 200 to 600 annually. This amendment also is one which the Administration has sought since 1970, as being necessary to relieve natives of these dependent areas of unjustifiably severe restrictions on their opportunities to immigrate to the United States.

Finally, the bill contains a "savings clause"--also recommended by the Administration in H.R. 10323--under which all Western Hemisphere natives who have qualified to immigrate under the currently applicable provisions of law prior to the effective date of the bill will remain qualified to immigrate and eligible to receive visas even after the implementation of the amendments contained in the bill. All such intending immigrants will be subject to the numerical limitations as amended by the bill, but at some point or other all will be afforded an opportunity to immigrate to the United States.

In summary, H.R. 14535 neither increases nor decreases overall annual immigration to the United States but it makes very significant reforms in the existing system of selection of immigrants, and largely completes the process begun in 1965 of establishing a rational, fair and uniform immigration system for all those seeking to become permanent residents of the United States. The Department is gratified that the Congress has at last seen fit to approve a measure containing so many provisions which the Administration has sponsored as a matter of policy for over six years. Accordingly, we strongly urge enactment of this legislation.

Sincerely yours,

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94–1553

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

SEPTEMBER 15, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. EILBERG, from the Committe on the Judiciary, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 14535]

The Committee on the Judiciary, to whom was referred the bill (H.R. 14535) to amend the Immigration and Nationality Act, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 10, line 7, after the words "specified in," insert: "paragraphs (1) through (6) of"

Page 10, lines 14 and 15, strike out "subject to the numerical limitation specified in section 201(a)(2)" and insert in lieu thereof: "born in the Western Hemisphere".

Page 10, lines 20 and 21 strike out "subject to the numerical limitation specified in section 201(a)(2)" and insert in lieu thereof: "born in the Western Hemisphere".

PURPOSE

The purpose of the bill is to eliminate the inequities in existing law regarding the admission of immigrants from countries in the Western Hemisphere. Toward ths end, it extends to the Western Hemisphere the seven-category preference system (with minor modifications), the 20,000 per-country limit, and the provisions for adjustment of status currently in effect for Eastern Hemisphere countries.

HISTORICAL BACKGROUND

The Immigration and Nationality Act, as amended, provides for an annual ceiling of 120,000 "special immigrant" visas for natives of

the independent countries of the Western Hemisphere and their alien spouses and children.[1] Unlike Eastern Hemisphere immigration, immigration in this hemisphere is not regulated by a priority or preference system, and there is no per-country limitation. Eastern Hemisphere immigration, restricted to 170,000 visas per year, with a 20,000 per-country limit, operates under a seven-point preference system designed to give top priority to reuniting families and to attracting aliens with needed skills to this country.

Western Hemisphere immigration, on the other hand, operates entirely on a first-come, first-served basis, without any per-country limitation. The only restriction is that an alien entering the country to perform skilled or unskilled labor must obtain a certification from the Secretary of Labor indicating that his entry will not adversely affect the American labor market. Parents, spouses, and children of U.S. citizens or of aliens legally admitted for permanent residence are exempt from this requirement.

As a direct result of the imposition in 1968 of the Western Hemisphere ceiling of 120,000 without a preference system, all intending immigrants from this hemisphere who fall under the numerical ceiling are presently experiencing a wait of more than two years for their visas.[2] This backlog has beeen accumulating steadily since the ceiling went into effect in 1968.

Beginning with the first permanent quota restrictions imposed on immigration to this country by the Immigration Act of 1924, and continuing through the Immigration and Nationality Act of 1952, the McCarran-Walter Act, immigration from other Western Hemisphere countries had been numerically unrestricted. The current numerical restriction on Western Hemisphere immigration is the result of the far-reaching 1965 amendments to the Immigration and Nationality Act.

To a considerable extent, passage of the provision for a ceiling on Western Hemisphere immigration came about because a sufficient number of those opposed to it agreed to accept it as the price that had to be paid in order to insure passage of legislation abolishing the national origins quota system which dated back to the 1920's. This latter goal was the primary purpose of the 1965 legislation since its inception, and this emphasis accounts in large part for the very limited consideration given to the actual implementation of the Western Hemisphere ceiling during the 1965 debate.

A ceiling of 120,000 annually for Western Hemisphere immigration, to go into effect July 1, 1968, was incorporated in the bill as the result of an amendment adopted in the Senate.

The reasons for the establishment of the controversial quota on Western Hemisphere immigration were summarized in the Senate report on H.R. 2580, which became Public Law 89–236, as follows:

> The committee has become increasingly concerned with the unrestricted flow of immigration from the nonquota countries

[1] Immigration and Nationality Act of 1952, as amended, Sec. 101(a)(27)(A), (8 U.S.C. 1101(a)(27)(A)); Act of Oct. 3, 1965 (Public Law 89–236), Sec. 21(e).

[2] According to the Department of State bulletin, "Availability of Immigrant Visa Numbers for September 1976," visa numbers allocated for September issuance under the Western Hemisphere limitations were for applicants with priority dates earlier than April 1, 1974.

> which has averaged approximately 110,000 admissions over the past 10 years. Last year the nonquota admissions from Western Hemisphere countries totaled 139,284, and the evidence is present that the increase will continue. Not only is the committee concerned with the volume of the immigration, but it has difficulty with reconciling its decision to eliminate the concept of an alien's place of birth determining the quota to which he is charged with the exemption from the numerical limitation extended to persons born in the Western Hemisphere. To continue unrestricted immigration for persons born in Western Hemisphere countries is to place such aliens in a preferred status compared to aliens born in other parts of the world which the committee feels requires further study. (Senate Report 748, 89th Congress, 1st session, pp. 17–18.)

A study was conducted by the Select Commission on Western Hemisphere Immigration, established by the 1965 legislation. It recommended postponement of the effective date of the numercial restriction on Western Hemisphere immigration from July 1, 1968 to July 1, 1969. It was their hope that labor certification, rather than a fixed numercial ceiling, might "provide that measure of immigration control the Congress may deem needful," and they requested a year for further study of this possibility. However, legislation implementing this recommendation was not enacted, and the 120,000 ceiling went into effect on July 1, 1968.

Since the establishment of the Western Hemisphere immigration ceiling, there has been no concerted attempt or public pressure to abolish it. In this regard, the Committee notes the recommendation made in 1972 by the President's Commission on Population Growth and the American Future, that "immigration levels not be increased."[3] It is apparent from the estimated current Western Hemisphere backlog of approximately 300,000 active cases that immigration would have risen above the current level without the ceiling. The total number of immigrants entering this country in fiscal year 1975 from all countries was 386,194. Total annual immigration over the past ten-year period has ranged from a low of 323,040 in fiscal year 1966 to a high of 454,448 in fiscal year 1968.[4]

Attention is more appropriately focused on two aspects of the immigration law which received little discussion during the 1965 debate: the absence of a preference system and per-country limit for the Western Hemisphere. As previously noted, this is in contrast to immigration from the Eastern Hemisphere which is subject to an overall annual numerical ceiling of 170,000, a 20,000 per-country limitation and a seven-point preference system. This system enables certain categories of immigrants, most notably close relatives of U.S. citizens and permanent resident aliens, and those possessing talents and skills in short supply in this country, to be given preference over others.

However, because the Western Hemisphere has no preference system and no per-country limit, in effect, the United States has two different immigration laws for the two hemispheres. For example, under

[3] "Population and the American Future", The Report of the Commission on Population Growth and the American Future, March 1972, p. 117.

[4] U.S. Department of Justice, Immigration and Naturalization Service, 1975 Annual Report, p. 31.

the provisions determining Eastern Hemisphere immigration, the 22-year-old British citizen daughter of a U.S. citizen or the Spanish wife of a permanent resident alien would receive preferential treatment compared to other intending immigrants whose relational ties were more distant, or who were entering under the occupational preferences. However, the 22-year-old Brazilian daughter of a U.S. citizen or the Canadian wife of a permanent resident alien would be required to line up behind the other intending immigrants from this hemisphere—now numbering close to 300,000—and to wait more than two years for a visa. In contrast, immigrant visas for the Eastern Hemisphere are immediately available under the relative preference categories for all countries except the Philippines and Korea.

A further difference in the immigration law as it relates to the two hemispheres is in the application of the adjustment of status provision, which permits certain aliens legally in the United States to adjust to immigrant status without leaving the country. As amended in 1965, the Immigration and Nationality Act prohibits all natives of Western Hemisphere countries from adjusting their status from that of a nonimmigrant to that of an alien lawfully admitted for permanent residence.[5] Previously, following enactment of legislation in 1958,[6] this privilege had only been denied to natives of countries contiguous to the United States and specified adjacent islands.

The legislative history of the 1965 Act indicates that the further restriction of the privilege of adjustment of status originated as a House Judiciary Committee amendment and was not initially intended to operate in conjunction with an overall numerical ceiling on Western Hemisphere immigration. The provision was retained in the bill reported by the Senate Judiciary Committee, along with the ceiling of 120,000 which was to go into effect July 1968 unless further Congressional action was taken. Since the numerical ceiling effectively restricts Western Hemisphere immigration, the current blanket prohibition against adjustment of status by Western Hemisphere natives does not appear to serve any useful purpose commensurate with the hardship and inconvenience it causes natives of Western Hemisphere countries who, unlike their Eastern Hemisphere counterparts, must return to their country of origin to obtain an immigrant visa from a Consular Officer.

In short, when repealing the national origins quota system, the 89th Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling, nor did it sufficiently integrate the ceiling into the immigration law as a whole. The result, competely unforeseen and unintended, has been considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration. It is the express purpose of this legislation to correct this situation. As the Honorable Joshua Eilberg, Chairman of the Judiciary Subcommittee on Immigration, Citizenship, and International Law, commented during hearings on a related bill passed by the House in 1973:

> It should be remembered that, with the abolition of the national quota system in 1965, Congress endorsed the principles of equity and family reunification as the basis of our immigration policy for the Eastern Hemisphere. It remains the unfinished business, therefore, of this subcommittee and the Congress to extend these principles to the natives of the Western Hemisphere.

[5] Sec. 245; 8 U.S.C. 1255.
[6] Act of August 21, 1958; P.L. 85-700; 72 Stat. 699.

History of Legislation

PRIOR TO THE 93D CONGRESS

The Subcommittee on Immigration, Citizenship, and International Law (formerly Subcommittee No. 1), has been aware of the situation regarding Western Hemisphere immigration for a number of years. The problem was discussed as early as April, 1968 during a series of hearings subtitled "Review of the Operation of the Immigration and Nationality Act as Amended by the Act of October 3, 1965" (*Immigration*, 90th Congress, 2d Session, 1968, Serial No. 23).

In the Ninety-first Congress, omnibus immigration bills concerning Western Hemisphere immigration reform were considered during five days of hearings in July and August, 1970. (*Immigration*, 91st Congress, 2d Session, 1970, Serial No. 32).

While the illegal alien issue was the primary focus of the extensive hearings conducted during the Ninety-second Congress, the Subcommittee was cognizant of that problem in the context of the broader issue of regulation of Western Hemisphere immigration, and much of the data developed during the course of the illegal alien hearings was of direct relevance to it. (*Illegal Aliens*, 92nd Congress, 1st and 2d Sessions, 1971–1972, Serial No. 13).[7]

93D CONGRESS

H.R. 981, an omnibus immigration reform bill with emphasis on the equalization of the immigration law as it relates to the two hemispheres, was introduced by the Honorable Peter W. Rodino, Jr., Chairman of the Committee on the Judiciary, on January 3, 1973. Seven days of hearings were held on H.R. 981, between March 28 and June 14, 1973. Testimony was received from Members of Congress, as well as from representatives of the Executive agencies involved (State, Justice, and Labor), organized labor, the Association of Immigration and Nationality Lawyers, the Commission on Population Growth and the American Future, voluntary agencies concerned with immigration problems, and expert and public witnesses (*Western Hemisphere Immigration*, 93d Congress, 1st Session, 1973, Serial No. 8).

The hearings were followed in July, 1973 by three mark-up sessions on the legislation, and by full Committee consideration of the Subcommittee amendment to H.R. 981. This amendment, in the nature of a substitute, was approved unanimously by voice vote and ordered reported to the House on July 24, 1973 (H. Rept. No. 93-461). H.R. 981 passed the House of Representatives on September 26, 1973 by a vote of 336 yeas to 30 nays.

The primary focus of H.R. 981 as reported and passed was the application of a preference system and 20,000 per-country limits to

[7] For a discussion of Committee action relating to illegal aliens through the 94th Congress, see House Report No. 94-506, pp. 2-4.

the Western Hemisphere. The bill also included additional provisions relating to the admission of refugees and alien workers.

94TH CONGRESS

Similar, although not identical, bills which closely resembled the House-passed version of H.R. 981 were introduced on the opening day of the 94th Congress. These were H.R. 981 and H.R. 367, introduced by the Chairmen of the Committee on the Judiciary and the Subcommittee on Immigration, Citizenship, and International Law, respectively. Hearings were held on H.R. 367, H.R. 981, and H.R. 10323, the Administration bill, on September 25 and 30, October 9 and 29, and December 11, 1975, and on March 18, 1976. Testimony was received from twenty-seven witnesses, including Members of Congress, representatives of the Departments of State, Justice, Labor, and the Bureau of the Census, AFL–CIO, and religious and ethnic groups, and other expert and public witnesses (*Western Hemisphere Immigration*, 94th Congress, 1st and 2nd Session, 1976, Serial No. 34).

Subcommittee mark-up on May 26, 1976 resulted in a clean bill, H.R. 14535, which was ordered favorably reported to the full Committee. The bill was cosponsored by the entire Subcommittee and the Chairman of the full Committee. H.R. 14535 focuses exclusively on the equalization of the provisions of the immigration law relating to the entry of immigrants from the two hemispheres. As such, it is more narrowly drawn than the House-passed bill (H.R. 981) in the 93d Congress or the bills considered in hearings during the 94th Congress. The full Committee ordered H.R. 14535 favorably to the House, with minor technical amendments, by a unanimous voice vote on September 2, 1976.

Need for Legislation

According to the U.S. Department of State's Bureau of Security and Consular Affairs, numbers allocated for September 1976 issuance under the Western Hemisphere limitation are for applicants with priority dates earlier than April 1, 1974.

The current active Western Hemisphere waiting list was estimated by the State Department at 298,690 as of January 1976. As noted above, this situation compares very unfavorably with the Eastern Hemisphere, where visas are current for relative preferences for all countries except the Philippines and Korea. In short, we are causing intending immigrants from this hemisphere considerable difficulty in being reunited with members of their family who are U.S. citizens or permanent resident aliens. In addition, the State Department has reported serious concern about the adverse effect our current immigration law has had on our foreign relations in this hemisphere, particularly with Canada.

General Information and Analysis of Legislation as Amended

H.R. 14535 is limited to that aspect of the immigration law in most urgent need of reform, the inequitable regulation of Western Hemisphere immigration. The bill focuses exclusively on the equalization of the provisions of law regulating the entry of immigrants from the two

hemispheres. It is noncontroversial remedial legislation supported by, among others, the Administration, organized labor, and the voluntary agencies traditionally concerned with immigration and refugee matters.

The Committee believes that a preference system governing Western Hemisphere immigration is urgently needed and that this bill constitutes an essential first step in a projected long-term reform of U.S. immigration law. This situation remains today as described by Chairman Rodino in 1973:

> In view of the hardships we are unintentionally causing would-be immigrants from this hemisphere, . . . it seems possible that further reform of the immigration law will have to be a two-step operation, with the first step being immediate enactment of legislation supplementing the 1965 act by extending its Eastern Hemisphere provisions with only essential modifications to the Western Hemisphere.

H.R. 14535 is limited exclusively to the first step outlined by the Chairman: "extending . . . [the] Eastern Hemisphere provisions with only essential modifications to the Western Hemisphere." This basic goal has universal support.

A unified worldwide immigration system in some form is the ultimate goal after the Western Hemisphere situation has been resolved, and after there has been some opportunity to observe the operation of the preference system and per-country numerical restriction in that hemisphere. The State Department has consistently opposed legislation which would establish an immediate worldwide ceiling on the grounds that they are unable to predict its effect on either hemisphere. In recognition of the fact that we are engaged in a continuing experiment with respect to Western Hemisphere immigration, the bill retains separate hemisphere ceilings as an interim measure until we have had sufficient experience to proceed to the establishment of a worldwide ceiling. The ceilings under this proposed legislation are unchanged from the present law: 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere.

REFERENCE SYSTEM

The existing Eastern Hemisphere preference system, with two minor modifications described below, is extended to the Western Hemisphere. The Committee feels that the problems with the present preference system have not been so severe as to make its extensive revision a top priority issue at this time. This view was expressed by Administration witnesses who again cited the difficulty in predicting developments in the Western Hemisphere as a reason for not instituting major changes at this time.

The modified preference categories are as follows:

First preference (unmarried sons and daughters over 21 of U.S. citizens): 20 percent of the respective hemispheric limitation in any fiscal year;

Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 20 percent

of the limitation, plus any numbers not required for first preference;

Third preference (members of the professions or persons of exceptional ability in the sciences and arts whose services are sought by U.S. employers): 10 percent of the limitation;

Fourth preference (married sons and daughters of U.S. citizens): 10 percent of the limitation, plus any numbers not required by the first three preference categories;

Fifth preference (brothers and sisters of U.S. citizens 21 or over): 24 percent of the limitation, plus any numbers not required by the first four preference categories;

Sixth preference (skilled and unskilled workers in short supply): 10 percent of the limitation;

Seventh preference (refugees): 6 percent of the limitation;

Nonpreference (other immigrants): numbers not used by the seven preference categories.

The third preference category is modified to limit it to those members of the professions, scientists, and artists whose services are sought by employers in the United States. The Committee concurs with the Administration's recommendation that a requirement of prearranged employment is appropriate in view of the current labor market situation in the United States. Under current law, members of the professions, scientists, and artists may petition for third preference entry on the basis of their qualifications, without the need for a prospective employer.

The fifth preference category is modified to require that U.S. citizens be 21 or over in order to petition for the fifth preference entry of their siblings. This amendment is consonant with the requirement in current law that U.S. citizens be 21 or over in order to confer immediate relative immigrant status on their alien parents.

Under the current law, the labor certification provision is applicable to Eastern Hemisphere third and sixth preference immigrants, and to those nonpreference immigrants who are coming here "for the purpose of performing skilled or unskilled labor". It is presently applicable to all immigrants coming here to work who enter under the Western Hemisphere numerical limitation except for the parents, spouses, or children of U.S. citizens or of aliens lawfully admitted to the United States for permanent residence. H.R. 14535, as amended, retains the labor certification provision in a slightly amended form, and extends it equally to third, sixth, and nonpreference applicants from both hemispheres.

20,000 PER-COUNTRY LIMIT

H.R. 14535 establishes a 20,000 per-country limit on the number of immigrant visas available annually, applicable to all countries. A 20,000 per-country limit is currently in effect for all countries in the Eastern Hemisphere, while there is no Western Hemisphere per-country limit.

During the 94th Congress, a general consensus has been reached that the 20,000 per-country limit should be extended to all countries of the world, including those geographically contiguous to the United States. Such a provision is included in the Administration's immigration bill, H.R. 10323, in contrast to Administration support during the 93rd Congress of a 35,000 allotment for the contiguous countries. Quoting from a joint statement in May 1976 by the Departments of State and Justice:

> Based on a review of existing data, a uniform ceiling for each country * * * would be preferable. This would permit an equitable distribution of immigration from throughout the hemisphere and from throughout the world. Problems with illegal immigration will exist whether immigration from Mexico is limited to 20,000 or 35,000 per year or not at all. While permitting 35,000 immigrants a year from Mexico would ease their demand slightly, this would only increase the waiting lists and the demand throughout the rest of the hemisphere (1976 Hearings, pp. 362–363).

The decision by this Committee to limit all countries to 20,000 has been based primarily on the desire that this legislation mark the final end of an immigration quota system based on nationality, whether the rationale behind it be the alleged national origins of our citizenry, as it was in the past, or geographical proximity—the argument previously advanced for preferential treatment of Canada and Mexico. The proposed legislation rejects the concept of a "special relationship" between this country and certain other countries as a basis for our immigration law, in favor of a uniform treatment for all countries.

COLONIES AND DEPENDENCIES

Under the present provisions of the Immigration and Nationality Act, natives of colonies or dependent areas, with the exception of immediate relatives of U.S. citizens, are subject to subquotas derived from their mother country. The subquotas are limited to 1 percent (or 200) of the maximum number of 20,000 visas available to any foreign state in the Eastern Hemisphere. The visa waiting list for Eastern Hemisphere dependencies located in the Western Hemisphere totalled 23,510 as of January 1, 1976. In the Eastern Hemisphere, Hong Kong has a considerable backlog.

In a provision aimed at providing a more reasonable allocation of visas, H.R. 14535 would raise the annual allotment for the dependencies to 600. It further provides that the visas made available to the dependencies would continue to be charged to the per-country limit of the mother country, as is currently the case. They would also be charged to the ceiling of the hemisphere where the dependencies are located, rather than the hemisphere of the mother country.

It should be emphasized that these amendments in no way increase the total number of immigrant visas available under the law.

VISA ALLOCATION

Under present law, the percentages allotted annually to each preference category are applicable to the Eastern Hemisphere as a whole, and not to the individual countries in the Eastern Hemisphere. Within the 20,000 per-country limit, visas are distributed to applicants from each country on a first-come, first-served basis according to preference pri-

ority. An unintended result has been that, in a country with a particularly heavy demand on the higher preferences, visas do not become available to the lower preference categories. This is the case today with the Philippines, where visas are currently available only for the first two preferences; there is a six year wait for third preference applicants, and visas are unavailable for the remaining preference categories. A similar pattern exists for a number of the dependencies, and may develop for certain Western Hemisphere countries, notably Mexico. Such oversubscription also results in an inequitable distribution of visas under the preference category in question among the other countries in the same hemisphere.

Experience with the operation of the preference system in the Eastern Hemisphere since it went into full effect on July 1, 1968 has shown that preference backlogs of the kind described above have developed because of an inadequate number of visas to meet the overall demand from a country, as in the case of many of the dependencies; or because of a high demand in a given country for a specific preference category. The two most notable examples of the latter situation are the Italian backlog for fifth preference (brothers and sisters of U.S. citizens) which developed temporarily until the backlog which had developed under the national origins quota system was absorbed; and the current high demand from the Philippines for third preference visas, due largely to the number of medical doctors wishing to enter from that country.

Section 3(3) of H.R. 14535 is intended as a safeguard against the potentially inequitable results of such preference backlogs. It would amend the Immigration and Nationality Act to provide that, in addition to being applicable on a hemisphere-wide basis, visa percentage allotments for preference categories will also be applicable to any country or dependent area to which the maximum number of visas were made available in the preceding year. Based on visas made available during fiscal year 1975, this visa distribution formula would have been automatically triggered for FY 1976 for the Philippines, Korea, and a number of the dependencies.

This provision would not increase or decrease the total number of visas available to those countries to which it applied; nor is it intended to require the issuance of the total number of immigrant visas (20,000) available to such country. Its purpose is to insure a fairer distribution of visas under the preference system for those countries whose overall visa demand regularly exceeds the number available, or for those with a particularly high demand for visas under a specific preference category.

LABOR CERTIFICATION

The labor certification provision set forth in Section 212(a)(14) of the Immigration and Nationality Act is intended to protect the domestic labor force. That section provides for the excludability of certain categories of aliens unless the Secretary of Labor issues a certification indicating (1) that there are not sufficient U.S. workers who are "able, willing, qualified, and available" in the alien's occupational category and (2) that the alien's employment will not adversely affect the wages and working conditions of similarly-situated American workers.

Under the current law, the labor certification provision is applicable to Eastern Hemisphere third and sixth preference immigrants, and to those nonpreference immigrants who are coming here "for the purpose of performing skilled or unskilled labor". It is presently applicable to all immigrants coming here to work who enter under the Western Hemisphere numerical limitation except for the parents, spouses, or children of U.S. citizens or of aliens lawfully admitted to the United States for permanent residence.

This legislation retains the labor certification provision with one minor modification and extends it equally to third and sixth and nonpreference applicants from both hemispheres.

The Committee continues to be disturbed by the administration of the labor certification requirement by the Department of Labor and plans to review this entire program during the next Congress. The Committee, however, is particularly troubled by the rigid interpretation of this section of law as it pertains to research scholars and exceptional members of the teaching profession. More specifically, the Committee believes that the Department of Labor has impeded the efforts of colleges and universities to acquire outstanding educators or faculty members who possess specialized knowledge or a unique combination of administrative and teaching skills. As a result, this legislation includes an amendment to section 212(a)(14) which requires the Secretary of Labor to determine that "equally qualified" American workers are available in order to deny a labor certification for members of the teaching profession or for those who have exceptional ability in the arts and sciences.

The Committee expects the Department of Labor to work closely with persons of specialized competence from industry, government and institutions of higher education in developing appropriate standards and criteria to carry out the purpose of this amendment. In addition, consideration should be given to the establishment of an "ad hoc" advisory group, which would be consulted by the Secretary of Labor in difficult cases.

CUBAN ADJUSTMENTS

Section 8 of H.R. 14535 provides that Cuban refugees who are present in the United States on or before the date of enactment of this legislation and who thereafter adjust their status to that of permanent residents shall not be charged to the 120,000 Western Hemisphere ceiling.

As background, legslation was enacted in 1966 [8] in direct response to the problem posed by the legal status of a growing number of Cuban refugees who, under the provisions of the immigration law, were unable to adjust their status to that of aliens admitted for permanent residence without first leaving the country and applying for readmission on an immigrant basis. The 1966 Act athorized the Attorney General to adjust the status of a Cuban refugee who arrived here after January 1, 1959 to that of permanent resident alien after he has been physically present in this country for two years. Refugees who adjust their status under the provisions of this Act are presently counted

[8] Act of November 2, 1966; P.L. 89-732; 80 Stat. 1161.

against the overall annual 120,000 ceiling on Western Hemisphere immigration. Both the majority of the Select Commission on Western Hemisphere Immigration and the State Department have recommended that the Cuban adjustees not be charged to the ceiling, primarily on the grounds that this special humanitarian program of the United States Government should not be conducted at the expense of other Western Hemisphere countries, as is presently the case.

There are approximately 60,000 pending applications for adjustment by Cuban refugees. However, the total number of Cuban refugees in the U.S. has stabilized. The Cuban airlift was formally terminated on April 6, 1973, at the request of the Cuban Government, and the Department of Health, Education, and Welfare has been in the process of phasing down the Federal Cuban Refugee Program reimbursements to the States, under the Migration and Refugee Assistance Act of 1962 (P.L. 87–510).

The effect of Section 8 would be to make available approximately 20,000 to 25,000 additional visas to Western Hemisphere countries each year for the next few years. Additionally, the Cuban refugees whose applications are currently pending could be adjudicated rapidly, thereby allowing them to enjoy the benefit of adjustment of status now rather subjecting them to delay due to the unavailability of visas under the Western Hemisphere ceiling.

ADJUSTMENT OF STATUS

Section 6 of this bill makes several amendments to Section 245 of the Immigration and Nationality Act, which presently authorizes Eastern Hemisphere natives to adjust their status from that of nonimmigrant to that of permanent resident alien without leaving the United States to secure an immigrant visa.

The primary purpose of Section 6 is to restore adjustment of status eligibility to Western Hemisphere aliens. The present disqualification, enacted in 1965, has created many hardships and often leads to unnecessary expense by requiring aliens to return to their country of origin to obtain an immigrant visa from a U.S. consular official. This provision would remove this inconsistency and would provide equal treatment to all individuals regardless of their place of birth.

Secondly, aliens who are not defined as immediate relatives and who accept unauthorized employment prior to filing their adjustment application would be ineligible for adjustment of status. The Committee believes that this provision would deter many nonimmigrants from violating the conditions of their admission by obtaining unauthorized employment. Similar provisions were included in legislation which passed by the House of Representatives during the 92d and 93rd Congresses.

Finally, Section 6 would disqualify from adjustment those aliens who have been admitted in transit without visa. A Justice Department regulation presently prescribes such ineligibility and the validity of this regulation was upheld by the Court of Appeals for the Second Circuit in *Mak* v. *INS*, 435 F. 2d. 728 (1970). Therefore, this provision would merely confirm existing administrative procedures.

SECTION-BY-SECTION ANALYSIS OF H.R. 14535

SECTION 1

The short title of the Act is the "Immigration and Nationality Act Amendments of 1976".

SECTION 2

The present separate hemispheric ceilings of 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere are retained. Provision for both ceilings is incorporated into Section 201(a) of the Immigration and Nationality Act, which currently provides only for the Eastern Hemisphere ceiling.

The amended Section 201(a)(1) sets forth the Eastern Hemisphere ceiling, from which are exempted, as under the present law, both special immigrants defined in the amended Section 101(a)(27) and immediate relatives of U.S. citizens defined in Section 201(b). Added to those aliens chargeable to the Eastern Hemisphere ceiling are "aliens born in any . . . dependent area located in the Eastern Hemisphere". Immigrants from the dependencies are currently chargeable to the ceiling of the hemisphere where the mother country is located.

Section 201(a)(2) incorporates the Western Hemisphere ceiling of 120,000 now contained in Section 21(e) of the Act of October 3, 1965 (79 Stat. 921). The categories of exemptions and inclusions under this ceiling are identical to those specified under Section 201(a)(1) for the Eastern Hemisphere. To facilitate administration, not more than 32,000 aliens subject to this numerical ceiling may be admitted in each of the first three quarters of any fiscal year. This corresponds to the per-quarter restriction of 45,000 on aliens entering under the Eastern Hemisphere ceiling, retained from the present law.

The inclusion of the Western Hemisphere ceiling in Section 201, in conjunction with language in the amended Sections 202 and 203, has the twofold effect of extending equally to both hemispheres the 20,000 per-country limitation contained in Section 202 and the preference system set forth in Section 203. No separate treatment is provided for Canada and Mexico.

This section also repeals obsolete subsections 201(c)–(e) of the present law, which relate to the 1965–1968 transition period provided by the 1965 amendments (79 Stat. 911) to the Immigration and Nationality Act.

SECTION 3

Section 202(c) is amended to increase the numerical limitation on immigration from dependent areas of foreign states to 600 a year, and to provide that such visas will be chargeable to the hemisphere ceiling in which the dependent areas are located, although they will continue also to be charged to the mother country. Under the present law, the dependencies are limited to 1 percent of the maximum annual foreign state allotment of 20,000, or to 200 visas. These visas are chargeable against both the subquota of the mother country and the total ceiling of the hemisphere in which the mother country is located.

The section also adds a new Section 202(e) which provides that whenever the maximum number of visas or conditional entries has been made available to natives of a foreign state (20,000) or dependent area (600) in any fiscal year, in the following fiscal year visas or conditional entries will be made available and allocated to that foreign state or dependent area according to the priorities and percentages set forth in the preference system, as modified by this legislation.

Section 202(a) is amended by the deletion of an obsolete proviso relating to the 1965–1968 transition period provided by the 1965 amendments (79 Stat. 912) to the Immigration and Nationality Act.

SECTION 4

Section 203(a) is amended to apply the existing preference system for the Eastern Hemisphere to natives of the Western Hemisphere. The preference system in the present law is retained, with modifications of the third and fifth preference categories. The definition of third preference, the occupational preference for members of the professions and those with exceptional ability in the sciences and the arts, is amended by the addition of the requirement that their services be sought by an employer in the United States. Fifth preference is amended to require that U.S. citizens must be 21 or over to petition for the entry of brothers and sisters.

Section 203(e) is amended to require the Secretary of State to terminate the registration of any alien who fails to apply for an immigrant visa within one year after notification of availability of the visa. The alien's registration will be reinstated if he establishes within two years after notification that his failure to apply was due to circumstances beyond his control. Under the present law the Secretary of State is authorized, at his discretion and according to prescribed regulations, to terminate the registration on a waiting list of any alien who fails to evidence his continued intention to apply for a visa, but such discretionary authority has been exercised very infrequently.

SECTION 5

Section 212(a)(14) of the Immigration and Nationality Act, the labor certification requirement, is retained in its present basic form with several modifications. Part (A) of the labor certification requirement is amended to require that domestic workers must be *equally* qualified for certification to be denied in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts. Part (A) is also amended by the deletion of the phrase "in the United States" following reference to "sufficient workers", to emphasize the intent that the Secretary of Labor certify on the basis of whether there are sufficient workers "at the place" where the alien is going, rather than in the United States as a whole.

Section 212(a)(14) is also amended to reflect the extension of the preference system to natives of the Western Hemisphere under Sections 2 and 4 of this Act. Reference to Western Hemisphere natives as "special immigrants" is deleted as is the exemption from labor certification currently granted natives of the Western Hemisphere who

are closer relatives of U.S. citizens and permanent residents. Under the amended law, labor certification is required of immigrant aliens from both hemispheres entering under the two occupational preferences (203(a)(3) and (6)), and under the nonpreference category (203(a)(8)) if they are entering to work.

SECTION 6

Under Section 245 of the Immigration and Nationality Act, natives of the Eastern Hemisphere are presently allowed to adjust their status from that of a nonimmigrant to that of an immigrant without leaving the United States to obtain a visa, provided such aliens are otherwise eligible and an immigrant visa is immediately available at the time the application for adjustment is approved. Section 6 would also permit natives of the Western Hemisphere who are otherwise eligible to enter as immigrants to adjust their status without leaving the United States. In addition, it designates the date used in determining the availability of a visa number as the date the application is filed, rather than the approval date.

Under present law, alien crewmen are precluded from adjustment of status. Section 6 would add two additional categories of aliens who are denied adjustment of status, the first being aliens who enter the United States in transit without visa, a group already barred by regulation. Aliens, other than immediate relatives, who hereafter continue in or accept unauthorized employment prior to filing an application for adjustment of status would also be ineligible.

SECTION 7

This section makes technical and conforming changes in the Immigration and Nationality Act. Specifically, it deletes the classification of Western Hemisphere immigrants as "special immigrants" under Section 101(a)(27)(A) of that Act, as well as all cross-references to that classification; and it repeals Section 21(e) of the Act of October 3, 1965 (P.L. 89–236; 79 Stat. 921), which is rendered obsolete by Section 2 of this Act.

SECTION 8

This section amends the Act of November 2, 1966, "An act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes" (P.L. 89–732; 80 Stat. 1161; 8 U.S.C. 1255, note). A new Section 5 is added to that Act to provide that Cuban refugees who adjust their status to that of permanent resident alien pursuant to its provisions will not be charged to any numerical limitation, provided they were physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976. At present, refugees who adjust their status to that of permanent resident alien, pursuant to the Act of November 2, 1966, are classified as "special immigrants" under the terms of the Immigration and Nationality Act (Sec. 101(a)(27)(A)), and as such are chargeable to the 120,000 annual ceiling on Western Hemisphere immigration (Act of October 3, 1965, sec. 21(e)).

SECTION 9

Section 9(a) contains a savings clause aimed at preserving the entitlement to immigrant status and order of consideration of aliens from the Eastern Hemisphere who have filed a petition with the Attorney General prior to the effective date of this legislation. Section 9(b) provides that Western Hemisphere aliens who filed prior to the effective date of this legislation are deemed entitled to nonpreference immigrant status under Section 203(a)(8), and accorded their previously established priority date. They are further entitled, if eligible, to preference status under Section 203(a) of the Immigration and Nationality Act, as amended by Section 4 of this Act; any petitions filed to accord them such preference status shall be deemed upon approval to have been filed as of the previously established priority date. The numerical limitation to which such aliens are to be charged will be determined by Sections 201 and 202 of the Immigration and Nationality Act, as amended by this Act.

SECTION 10

The effective date of this legislation is established, which is on the first day of the first month after the expiration of 60 days following the date of enactment.

Departmental Position

The Departments of State and Justice support the objective of this legislation which is to establish a preference system for intending immigrants from the Western Hemisphere. No reports have been received on H.R. 14535. Reports, however, were requested and received on an earlier version of this legislation, H.R. 981. These reports are as follows:

Department of Justice,
Washington, D.C., May 3, 1976.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice on H.R. 981, a bill "To amend the Immigration and Nationality Act, and for other purposes."

The bill would extend to the Western Hemisphere the seven category preference system and the 20,000 per country limit (except Mexico and Canada who would be granted a 35,000 per country limit) on the number of immigrant visas available annually, which is currently in effect for the Eastern Hemisphere. The bill also amends the refugee section of current law, as well as the provisions relating to the admission of certain temporary workers.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is amended to permit entry of aliens into the United States for a temporary period of time to perform services or labor which may be either temporary or permanent in nature. The period of stay of an alien classified as an "H-2" nonimmigrant worker would be limited to an initial

period of one year, and may be extended by the Attorney General for up to one additional year.

A determination by the Secretary of Labor regarding the unavailability of U.S. workers would be required as a precondition for the entry of "H-2" workers, as it is currently for certain categories of immigrants.

The Department of Justice supports the one year limitation but defers to the Department of Labor on the proposed eligibility of "H-2" nonimmigrant workers for employment in jobs of a permanent nature.

As amended by the bill, section 201(a)(1) of the Immigration and Nationality Act sets forth the Eastern Hemisphere ceiling, from which are exempted both "special immigrants" defined in the amended section 101(a)(27) of the Immigration and Nationality Act and "immediate relatives" of U.S. citizens defined in section 201(b) of that Act. Added to those aliens chargeable to the Eastern Hemisphere ceiling are "aliens born in any . . . dependent areas located in the Eastern Hemisphere."

As amended by the bill, section 201(a)(2) of the Immigration and Nationality Act incorporates the Western Hemisphere ceiling of 120,000 now contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921). The categories of exemptions and inclusions under this ceiling are identical to those specified under section 201(a)(1) of the Act for the Eastern Hemisphere. To facilitate administration, not more than 32,000 aliens subject to this numerical ceiling may be admitted in each of the first three quarters of any fiscal year. This corresponds to the per-quarter restriction of 45,000 on aliens entering under the Eastern Hemisphere ceiling, retained from the present law.

The Department of Justice supports these provisions but defers to the Congress regarding the specific numerical limitations.

Section 202(a) of the Immigration and Nationality Act is amended by the deletion of an obsolete proviso relating to the 1965–68 transition period provided by the 1965 amendments to the Immigration and Nationality Act (79 Stat. 912) and substitutes in lieu of the remaining proviso the 35,000 Mexican and Canadian exception to the 20,000 per state per year immigrant visa restriction.

The bill also amends section 202(c) of the Immigration and Nationality Act by increasing the numerical limitation on immigration from dependent areas of foreign states to 600 a year, and to provide that such visas shall be chargeable only to the hemisphere ceiling in which the dependent areas are located.

The Department of Justice defers to the Department of State regarding the merits of continuing the Mexican and Canadian exemptions to the uniform immigrant visa limitations on foreign states and the limitations and chargeability of visas for dependent areas.

Section 203(a) of the Immigration and Nationality Act is amended by the bill to apply the existing preference system for the Eastern Hemisphere to natives of the Western Hemisphere. The preference system in the present law is retained, except for the redefinition of the term "refugee" in section 203(a)(7).

To be eligible for seventh preference refugee status under the amended definition, aliens must be outside the country of which they

are nationals or if they have no country of nationality, outside the country in which they have habitually resided. They must satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country that they are unable or unwilling to return home because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion; that they are not nationals of the country in which they are making their application; and that they are not firmly resettled in any country.

While the Department supports the basic tenets of this provision, it believes that the "well-founded fear of persecution" should be limited to the "well-founded fear of persecution in the opinion of the Attorney General." The Department believes that failure to add "in the opinion of the Attorney General" would make it extremely difficult to administer since it would be entirely subjective with the alien claiming refugee status whether his fear of being persecuted was well-founded.

In addition, the Department believes the word "unwilling" should be deleted so that only those who cannot, rather than those who desire not to return will be included.

The definition of "refugee" has been amended to conform with the U.N. Protocol Relating to the Status of Refugees, to which the U.S. has acceded. This definition differs from the definition contained in the present law in its extension of eligibility to refugees from any country. The amended language also broadens the definition of persecution, and eliminates catastrophic natural calamity as a basis for eligibility.

The distinction between the immigrant visas granted aliens under the other preference categories, and conditional entry for refugees is retained. The amended section 203(a)(7) of the Act contains a proviso authorizing the use of not more than one half of the visa numbers made available for refugees (i.e., one half of 6% of the respective hemisphere ceilings) to adjust the status of aliens admitted conditionally or paroled into the United States. To be eligible, aliens must meet the definition of refugee contained in this subsection, and have been physically present in the United States for two years.

Section 203(e) of the Immigration and Nationality Act is amended to require the Secretary of State to terminate the registration of any alien who fails to apply for an immigrant visa within one year after notification of availability of the visa. Such aliens are permitted one additional year to acquire a visa if they can demonstrate that their failure to apply within the prescribed time was due to circumstances beyond their control.

With regard to the refugee and termination of registration provisions of this section, the Department defers to the Department of State.

Section 212(a)(14) of the Immigration and Nationality Act, the labor certification requirement, is amended by the addition of a new reporting requirement. The Secretary of Labor is required to submit quarterly reports to the Congress including, but not limited to, 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.

Section 212(a)(14) is also amended to reflect the extention of the preference system to natives of the Western Hemisphere under section 3 and 5 of this bill. Reference to Western Hemisphere natives as "special immigrants" is deleted, as is the exemption from labor certification currently granted natives of the Western Hemisphere who are close relatives of U.S. citizens and permanent residents. Under the amended law, labor certification is required of immigrant aliens from both hemispheres entering under the two occupational preferences (203(a)(3) and (6)) of the Immigration and Nationality Act, and under the nonpreference category (203(a)(8)) of the same Act.

The bill amends Part (A) of the labor certification requirement by deleting the phrase "in the United States" following the reference to "sufficient workers", to emphasize the intent that the Secretary of Labor certify on the basis of whether there are sufficient workers "at the place" where the alien is going rather than in the United States as a whole. The Department of Justice defers to the Department of Labor regarding the provisions of this section.

A new paragraph (9) is added to section 212(d) of the Immigration and Nationality Act, providing specific authority for the parole of alien refugees by the Attorney General. Subparagraph (9) is in addition to subparagraph (5) of section 212(d), retained from the present law, which authorizes the Attorney General, at his discretion, to temporarily parole in aliens "for emergent reasons or for reasons deemed strictly in the public interest."

Aliens so paroled may retroactively adjust their status to that of permanent residents two years after their entry, provided they are found admissible upon inspection and examination by an Immigration and Naturalization Service officer. Under the terms of section 203(a)(7), these aliens may adjust their status. However, their adjustment is not contingent upon the availability of visa numbers under this preference. The law states that refugees paroled in under section 212(d)(9) may adjust their status "notwithstanding the numerical limitations specified in this Act" (sec. 212(d)(9)(D) of the Immigration and Nationality Act). The Department favors enactment of this section.

Section 7 of the bill which does not amend the Immigration and Nationality Act, establishes a program under which certain aliens now in the U.S. Virgin Islands may adjust their status to that of permanent resident aliens. Eligibility is limited to nonimmigrant aliens (H–2 workers) in possession of indefinite labor certfications valid for employment in the U.S. Virgin Islands, and their spouses and minor unmarried children. Beneficiaries must have resided in the U.S. Virgin Islands for at least five years. Applications for adjustment of status may be filed for a period of three years. The number of visas issued and adjustments made is restricted to 3,000 during any one fiscal year. Visas are to be issued and adjustment made without regard to any numerical limitations contained in the Immigration and Nationality Act, and irrespective of section 245(c) of that Act, which prohibits aliens who are natives of countries of the Western Hemisphere and the adjacent islands to adjust their status. The Department of Justice supports this section but defers to the Department of State and Congress regarding the number of qualifications for adjustment of status by aliens in the U.S. Virgin Islands.

Section 8 of the bill amends the Act of November 2, 1966, "An act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes" (P.L. 89–732; 80 Stat. 1161; 8 U.S.C. 1255, note). A new section 5 is added to that Act to provide that Cuban aliens pursuant to its provisions will not be charged to any numerical limitation, provided they were physically present in the United States on or before the effective date of the statute.

The Department of Justice supports this section but defers to the Department of State and Congress regarding the cut-off date.

Section 9 of the bill makes technical and conforming changes in the Immigration and Nationality Act. Specifically, it deletes the classification of Western Hemisphere immigrants as "special immigrants" under section 101(a)(27)(A) of that Act, as well as all cross-reference to that classification; and it repeals section 21(e) of the Act of October 3, 1965 (P.L. 89–236; 79 Stat. 921), which is rendered obsolete by section 3 of this bill.

Section 10(a) of the bill contains a savings clause aimed at preserving the entitlement to immigrant status and order of consideration of aliens from the Eastern Hemisphere who have filed a petition with the Attorney General prior to the effective date of this legislation. Section 10(b) provides that Western Hemisphere aliens who filed prior to the effective date of this legislation are deemed entitled to non-preference immigrant status under section 203(a)(8) of the Immigration and Nationality Act, and accorded their previously established priority date. They are further entitled, if eligible, to preference status under section 203(a) of the Immigration and Nationality Act, as amended by section 5 of this bill. The numerical limitation to which such aliens are to be charged will be determined by section 201 and 202 of the Immigration and Nationality Act, as amended by this bill.

The Department of Justice supports this section but defers to the Congress and Department of State regarding the specific eligibility requirements.

Section 11 of the bill sets a 60 day delayed effective date before this bill becomes operational. The Department favors a delayed effective date but suggests a 90 day delay rather than a 60 day one.

The department agrees that enactment of this legislation will bring the equity of the Eastern Hemisphere immigration system to the Western Hemisphere and would finally abolish the no-country limit, first-come, first-served immigration system which now applies to the Western Hemisphere.

As a technical matter, it should be noted that on page 1 and again on page 10, the bill refers to the "Immigration and Nationality Act Amendments of 1973" rather than 1975.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

DEPARTMENT OF STATE,
Washington, D.C., September 22, 1975.

HON. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of March 7, 1975, enclosing for the Department's study and report a copy of H.R. 981, "A bill to amend the Immigration and Nationality Act, and for other purposes."

Section 1 of the bill contains the short title thereof. The Committee may wish to change line 4 on page 1 by substituting "1975" for "1973".

Section 2 of the bill would amend section 101(a)(15)(H)(ii) of the Act to remove the existing requirement that the services to be performed by the alien be temporary in nature, to require determination as to the availability of American workers for the proposed employment to be made by the Secretary of Labor rather than by the Attorney General, as is now the case, and to limit the period of stay of an alien admitted in H–2 status to a maximum of one year initially with the possibility of extensions of stay for a maximum of one additional year.

It has been the Department's understanding that an important purpose of this proposal is to facilitate the importation of seasonal farm workers, especially for employment in the Southwest. If this is the case, the Department has some question whether this proposal will serve that purpose. As we understand it, the issue which has raised difficulties in this area is not whether the jobs to be filled were temporary or permanent in nature, but whether domestic workers are available for this employment. If our understanding of this situation is a correct one, we question whether removing the requirement that the services to be performed be temporary in nature will alter the existing situation one way or another.

Moreover, the Department also foresees certain broader and, in our judgment, potentially undesirable effects of this proposal. By removing the requirement that the Services to be performed be temporary in nature, this proposal would open the way for establishment of a system of importation of temporary foreign labor for nonagricultural employment not unlike the German "guest worker" system or other such systems in other Western European countries. In effect, an alien worker admitted in this status would be tied to his job because his right to remain lawfully in the United States would be conditioned upon his continuing to perform the services specified in the petition approved to accord him temporary worker status. In addition, the limitation on an alien's stay as a temporary worker to a maximum of two years—one year initially, with extensions of stay up to an additional year—could be rendered meaningless by having the alien depart the United States at the end of the second year for a period of days or weeks and then return to begin another period of two years.

As a related matter, the Department foresees difficult questions arising from the natural desire of such a worker who was married to have his spouse and children accompany him to the United States or to join him subsequent to his arrival. Such a spouse or child would be classifiable as an H–4 nonimmigrant derivatively from the H–2 worker.

Additional children who might be born to such families while in the United States would acquire citizenship at birth and that fact, plus the potential long-term nature of their stay in the United States, could give rise to equitable considerations leading to demands for according to such families permanent resident status.

For these reasons, the Department has reservations about the establishment of such a system in the United States and would urge that the experience of European countries with this system and the social implications of its establishment in the United States be very carefully examined and considered before final action is taken on this proposal. Further, we respectfully defer to the judgments of the Department of Labor on the merits of affording nonimmigrant workers access to employment that is permanet in nature.

Section 3 would amend section 201 of the Act to incorporate therein provision for the 120,000 annual numerical limitation on immigration by natives of independent countries of the Western Hemisphere and to establish a quarterly limitation of 32,000 on such immigration. This proposed amendment would have the effect of making the provisions of sections 202 and 203 of the Act applicable to such aliens as well. In addition, subsections (c), (d), and (e) of section 201 would be repealed as obsolete.

Section 4 would amend section 202(a) and (c) of the Act. Section 202(a) would be amended to provide that the limitation on immigration from any single contiguous foreign state should be 35,000, rather than 20,000, which would be retained as the limitation on all other foreign states.

Section 202(c) would be amended to raise the limitation on immigration by natives of dependent areas from 200 to 600 annually and to provide that such immigration be charged solely and directly against the overall limitation on immigration from the hemisphere in which the area is located rather than against the foreign state limitation of the governing country.

The Department strongly supports the proposed incorporation of the Western Hemisphere numerical limitation into section 201, as well as the application of the preference system and foreign state limitations to such immigration which will result therefrom. In addition, the Department also strongly favors the increase in dependent area immigration and the proposal to cease charging such immigration against the governing country's foreign state limitation.

With respect to the proposal to accord a higher foreign state limitation to Canada and Mexico, the Department no longer believes that this is desirable or necessary, even though we have in the past favored separate treatment for these two countries. We continuously review all policy positions such as this in order to avoid becoming settled into what may become outmoded positions. We have now concluded that the considerations which impelled us to favor separate treatment for Canada and Mexico are no longer of sufficient weight to overcome the violation of the general principle of equality of treatment for immigration purposes which has been the basis of our immigration policy since 1965. In part, this change of view stems from the Committee's action in including in H.R. 8713 (the illegal alien bill) a provision for "amnesty" for aliens in the United States illegally, the principal beneficiaries of which would appear to be natives of Mexico.

Section 5 would amend section 203 of the Act in several ways. Section 5(1) would make editorial amendments to section 203(a) necessitated by the proposals contained in section 3 of the bill.

Section 5(2) would amend section 203(a)(7) to eliminate from the definition of "refugee" contained therein the ideological and geographical qualifications now included. The resulting definition of "refugee" for the purpose of conditional entry into the United States would substantially conform to that contained in the United Nations Protocol Relating to the Status of Refugees, to which the United States is a party. In addition, the existing provision for granting conditional entry to aliens uprooted by catastrophic natural calamity and unable to return to their former places of abode would be eliminated. The Department favors this proposed amendment of section 203(a)(7), subject to deletion of the word "unwilling" so that only those who cannot return, rather than those who simply desire not to return, will be included. Furthermore, we believe that the determination as to whether the fear of persecution is "well founded" should be made by the Attorney General.

Section 5(3) would amend section 203(e) by inserting therein provision for cancellation of an alien's registration on an immigrant visa waiting list under certain circumstances. Under this provision, an alien registered on an immigrant visa waiting list would face cancellation of his registration if he failed to pursue his application within one year after notification that his turn had been reached making it possible for him to do so. The alien would be accorded one additional year during which he could seek restoration of his registration by establishing that his failure to pursue his application had been due to reasons beyond his control. If the alien failed to come forward during the additional year or if he did so but was unable to establish that his failure to pursue had been due to circumstances beyond his control, the cancellation of his registration would become final and any petition approved to accord him an immigrant status would be revoked.

The issue of registrants on immigrant visa waiting lists (often referred to as "insurance registrants") who do not pursue their applications when given an opportunity to do so is a long-standing and difficult one. The presence of such applicants on waiting lists adds to the recordkeeping and other administrative burdens on consular offices abroad and can create false impressions of the magnitude of active demand for immigration. The Department is, therefore, sympathetic with the objective of this proposed amendment. On the other hand, the Department foresees that there may well be difficulties in the implementation of this proposal and that its implementation could itself add to the administrative burdens on consular officers.

For this reason, the Department several years ago established an administrative procedure which achieves the purposes sought by this proposal but without incurring the potential difficulties which this proposal might entail. Consular officers have been instructed to separate all pending immigrant visa applications into two categories—active and inactive. Among those cases considered to be "inactive" are those in which the alien has failed to respond to an invitation to pursue his case within one year after the invitation is sent to him. Records pertaining to "inactive" cases are stored separately from those pertaining to "active" cases and are generally not maintained in the working areas of consular offices. Thus, the administrative burdens associated with

maintenance of such records are avoided and there remain only isolated cases in which available storage space is constricted. Furthermore, all summary reports of total registered demand for immigration are maintained by the two categories—active and inactive—and it is thus possible to identify without difficulty total active registered demand for immigration and, thus, to have a meaningful idea of its magnitude.

Since this administrative procedure involves neither physical destruction of records and associated documents nor the loss by an alien of any entitlement under the law, it is our belief that it is preferable to the procedure proposed in section 5(3) of the bill. We are, therefore, opposed to the enactment of this section.

Section 6(1) would make two amendments to section 212(a)(14) of the Act. First, the sentence contained in that section which enumerates the classes of immigrants to which the section is applicable would be amended to delete any separate reference to natives of independent countries of the Western Hemisphere, retaining only the language making this section applicable to third and sixth preference and to nonpreference applicants.

While this amendment is in the nature of a conforming amendment and flows naturally from the application of the preference system to the Western Hemisphere, its impact will be beneficial far beyond its apparently routine nature. By virtue of this amendment Western Hemisphere natives will cease to receive any benefit from becoming the parents of a minor United States citizen child. Historically, the Congress has, with this one exception, refrained from permitting an alien to qualify for immigration on the basis of such parentage and this proposed amendment will restore this situation, a move which the Department strongly favors.

Second, there would be added to section 212(a)(14) a requirement that the Secretary of Labor submit quarterly to the Congress detailed reports on its implementation of the provisions of this section. The Department will defer to the comments of the Department of Labor with respect to this proposal.

Section 6(2) would add to section 212(d) of the Act a new paragraph (9) to provide for the parole of alien refugees. Under this proposal, the Secretary of State could recommend to the Attorney General the parole of all or a portion of any group of aliens who were refugees as defined in section 203(a)(7) of the Act if he found it to be in the national interest to do so. Upon receipt of such recommendation, the Attorney General could, after appropriate consultation with the Congress, parole into the United States the aliens whose parole the Secretary had recommended.

After their admission on parole, the status of the paroled aliens would be similar to that of an alien paroled under the existing parole authority of section 212(d)(5) of the Act. Provision would be made for the acquisition of permanent residence by aliens paroled under this provision after two years' physical presence in the United States. Acquisition of permanent residence by aliens under this procedure would not be limited by or charged against the numerical limitations on immigration.

The Department strongly supports this proposal, which is virtually identical to one included in H.R. 9409, 93d Congress, the Administration's immigration bill. Upon further consideration of the proposal, however, we have two recommendations for modification thereof. First, we believe that the provision for prior consultation with the Congress should be clarified by providing explicitly that this consultation is to be carried out jointly by the Secretary and the Attorney General. Second, we would recommend that the word "regulations" appearing at line 15 of page 7 of the bill, in proposed section 212(d)(9)(B), be changed to read "conditions" and that provision be made for the participation of the Secretary in the formulation of the conditions under which parole will be granted. It is the Department's opinion that a requirement for published regulations could result in an unnecessary rigidity in the procedure and the requirements for parole which might inhibit timely and appropriate action in individual situations. Moreover, the participation of the Secretary in the formulation of the conditions under which parole would be granted would ensure that not only domestic, but also international conditions would be given due consideration in this respect.

Section 7 would establish a special program to facilitate the acquisition of permanent residence, through either the immigrant visa or the adjustment of status process, by aliens currently in the United States Virgin Islands in H–2 temporary status who are beneficiaries of valid unexpired indefinite labor certifications for employment in the United States Virgin Islands, and who have resided continuously in the Virgin Islands for at least five years. The spouse and minor unmarried children of such aliens would also be eligible for this benefit.

Eligible aliens would be required to initiate their applications, pursuant to this provision not later than the last day of the third fiscal year following enactment of the bill, although adjudication of the applications would not be required to be completed within that time. Provision is also made restricting issuance of immigrant visas under this provision to a maximum of 3,000 per year. The issuance of immigrant visas or the granting of adjustment of status to beneficiaries of this provision would not be subject to the numerical limitations on immigration specified in the Immigration and Nationality Act.

The Department favors this proposal but has some question with respect to the limitation on immigrant visa issuance to 3,000 annually. Since all of the principal aliens and at least some of their dependents are physically present in the United States Virgin Islands, it would seem that most of the beneficiaries will apply for adjustment of status rather than for immigrant visas. The Department, thus, fails to see what purpose will be served by this limitation. Should it be desired to restrict the total of eligible aliens acquiring permanent residence by either means to 3,000 annually, there should be a clarification of the matter.

Section 8 would amend the Act of November 2, 1966, to provide that adjustments of status granted pursuant to section 1 of that Act to Cuban refugees not be subject to or charged against the numerical limitations on immigration in the case of any Cuban refugee in the United States as of the effective date of this bill.

The Department strongly supports this proposal, which would remove what has been, in effect, a mortgage on the 120,000 Western Hemisphere numerical limitation. The requirement that visa numbers be allocated from the 120,000 for use in connection with adjustments

of status by Cuban refugees has aggravated the oversubscription of the Western Hemisphere limitation by reducing it to an effective 100,000 to 105,000. Thus, qualified applicants from other countries of the Western Hemisphere have suffered because of special provisions for Cuban refugees whose entry into the United States was sought and encouraged by the United States Government for political and humanitarian reasons outside the field of immigration policy. The inequity of this with respect to other qualified Western Hemisphere applicants is apparent and both can and should be eliminated by this proposal.

Morover, application of the preference system to the Western Hemisphere without enactment of this proposal at the same time could result in the pre-emption by Cuban refugees of at least half of all Western Hemisphere seventh preference (refugee) numbers for many years. This fact, coupled with the possibility that Western Hemisphere nonpreference numbers could become and remain unavailable, could delay for a considerable period the acquisition of permanent residence by those Cuban refugees who have not yet done so.

Section 9 would make a series of editorial amendments necessitated by other changes proposed in this bill, including repeal of section 21(e) of the Act of October 3, 1965, which currently establishes the 120,000 limitation on Western Hemisphere immigration and which would become obsolete by virtue of section 3 of this bill which incorporates such provision into the Immigration and Nationality Act itself.

The Department has two comments with respect to the other editorial amendments contained in section 9.

Section 9(a) would amend section 101(a)(27) by repealing present subparagraph (A) and by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively. Although the present language of subparagraph (A) relating to natives of independent countries of the Western Hemisphere would be rendered obsolete by the proposal contained in section 3 of this bill, the Department would suggest the insertion of the definition of "immediate relative" now contained in section 201(b) in its place. This would have two administratively beneficial results. First it would preserve the existing designations of the other subparagraphs of section 101(a)(27) thereby eliminating any possibility of administrative confusion which might result from their redesignation. Also, it would incorporate into a single section of law the definitions of all classes of immigrants not subject to numerical limitations on immigration and would result in the use of the single term "special immigrant" to refer to all such classes. While none of these considerations are of substantive significance, the Department believes that administrative benefits which would result merit adoption of this proposal.

Should this technical change be made, the technical changes proposed in sections 9 (b) through (e) of the bill should be reviewed to ensure that they conform to the revised language of section 9(a).

Section 9(f) would make an editorial amendment to the second proviso to section 349(a)(1) of the Act. This proviso, although contained in Title III of the Act which relates to nationality and naturalization, provided nonquota immigrant status to persons who lost United States nationality prior to January 1, 1948, through the nationalization in a

foreign state of one or both parents. An alien beneficiary of this provision was required to apply for a visa and for admission into the United States within one year following the effective date of the Act or not later than December 24, 1953. Since this provision has, therefore, been inoperative since that time, it would appear that this editorial amendment is not required and, furthermore, that consideration might be given to repealing the proviso on the ground that it is now obsolete.

Section 10 contains a "savings clause" including a provision for natives of independent countries registered on immigrant visa waiting lists as of the effective date of the bill. Under this latter provision all such aliens would become nonpreference applicants and would, of course, also be potentially classifiable under any preference classification to which they might be entitled, upon the filing and approval of an appropriate visa petition.

The Department favors inclusion of a "savings clause" of this type because of the substantial changes which would be occasioned by enactment of this bill, but suggests that a provision be included therein similar to one included in section 10 of H.R. 10522. 93rd Congress, the subject of the Department's letter of July 18, 1974. In that section provision was made whereby the filing date of any petition to accord preference status to a beneficiary of the "savings clause" would be deemed to be the alien's registration date previously established by him. Adoption of this additional provision would provide to an alien beneficiary thereof an early priority date under the applicable preference classification and would, therefore, take into account the length of time the alien had been waiting for his turn to be reached under the heavily oversubscribed Western Hemisphere limitation. Should there be a sudden rush to file visa petitions for natives of independent countries of the Western Hemisphere immediately upon the application of a preference system to such aliens, this feature would ensure that those who had been waiting longest received priority consideration among all the new petition beneficiaries.

Section 11 would provide that the effective date of the bill be the first day of the first month beginning more than sixty days following enactment. The Department favors a delay in the effective date, but would recommend a ninety-day rather than a sixty-day period in order to permit more orderly implementation of the provisions thereof.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for
Congressional Relations.

ESTIMATE OF COST

In testimony before the Committee, the Immigration and Naturalization Service estimated that enactment of this legislation would result in a recurring annual cost of approximately $1.3 million. The Congressional Budget Office has estimated that enactment of this bill will result in additional manpower costs to the Immigration and Nat-

uralization Service of $1.4 million in FY 1977; $1.5 million in FY 1978; $1.6 million in FY 1979; $1.6 million in FY 1980; and $1.7 million in FY 1981. Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee states that it concurs with the cost estimates that have been submitted by the Congressional Budget Office.

Budgetary Information

Clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budgetary authority. Pursuant to Clause 2(1)(3)(C) of Rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 7, 1976.

1. Bill No.: H.R. 14535.
2. Bill title: Immigration and Nationality Act of 1976.
3. Bill purpose: The bill requires that visas for Western Hemisphere immigrants be allocated based on the seven-category preference system currently being used for Eastern Hemisphere immigrants. Currently, visas are issued in the Western Hemisphere in chronological order, based upon the date of application approval. The preference allocation sets priorities and limitations for certain classifications of immigrants (e.g., the first 20 percent of the visas are available to unmarried sons and daughters of U.S. citizens).

The bill also sets a 20,000 limit on the number of visas that can be issued in any Western Hemisphere country. (Eastern Hemisphere countries are already subject to this limitation.) Dependent areas or colonies of both Eastern and Western Hemispheres are also subject to a maximum allocation of 600 visas. Furthermore, the bill excludes from the Western Hemisphere quota those Cuban refugees who qualify for an adjustment to legal permanent resident status under P.L. 89–732.

4. Cost estimate: This bill would require the following additional manpower costs for the Immigration and Naturalization Service:

[Dollars in millions]

Costs:	
Fiscal year 1977	1.4
Fiscal year 1978	1.5
Fiscal year 1979	1.6
Fiscal year 1980	1.6
Fiscal year 1981	1.7

These costs fall within budget function 750.

5. Basis for estimate: Most of the costs for the Immigration and Naturalization Service is for additional professional and clerical employees to adjudicate Western Hemisphere preference petitions. It is estimated that 42 adjudications officers would be needed to process 120,000 preference petitions, assuming an average rate of approximately .6 manhours [1] per

[1] Obtained from averaging fiscal year 73- fiscal year 75 data on Justice Department workform G–23.

visa adjudication. Based in a GS–11 salary of $20,000, the resulting added manpower cost would total $840,000 annually.

Additional clerical staff of 35 employees would also be required, assuming a clerical requirement of approximately .5 manhours per vist adjudication. At an average salary level of GS–4 (9,800), the resulting cost is estimate at $343,000. An additional $220,000 would be required for employee benefits and overhead.

No additional costs have ben estimated as a result of the possible increase in Cuban refugee adjustments, since INS would not require any additional manpower for this purpose. This is based on an INS estimate that with current staffing levels, 30,000 refugees a year could have their status adjusted to legal permanent resident, compared to the recent average of 16,708 [2] per year. It is not expected that the number of Cuban refugee adjustments will exceed the INS capacity if the bill is passed.

It is also estimated that there would not be any additional net costs for the consular offices of the Department of State, upon enactment of this bill. The change in treatment of Cuban refugees would open up approximately 17,000 additional slots for Western Hemisphere immigrants, but additional visa revenues ($20 per visa) would offset any additional manpower costs required to issue additional visas.

6. Estimate comparison: None.
7. Previous CBO estimate: None.
8. Estimate prepared by James V. Manaro.
9. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

Oversight Statements

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee states that it has exercised close oversight with regard to the administration of the Immigration and Nationality Act by both the Departments of State and Justice. In fact, during the 94th Congress that Subcommittee on Immigration, Citizenship and International Law held 32 days of hearings to review the implementation of the Immigration and Nationality Act by these departments. This Committee will continue that close oversight and will carefully monitor the implementation of H.R. 14535.

Clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

Inflationary Impact Statement

Pursuant to Clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will have no inflationary effects on prices and costs in the operation of the national economy.

[2] From Immigration and Naturalization annual reports FY 1970-FY 1976.

Committee Recommendation

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 14535, as amended, do pass.

Changes in Existing Law

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (new matter is printed in italic, existing law in which no change is proposed in roman):

Section 201 of the Immigration and Nationality Act

Sec. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), and [of the] immediate relatives of United States citizens *as* specified in subsection (b) of this section, *(1)* the number of aliens *born in any foreign state or dependent area located in the Eastern Hemisphere* who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, [(i)] shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and [(ii)] shall not in any fiscal year exceed a total of 170,000[.] *; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000.*

(b) The "immediate relatives"[19] referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.

[(c) During the period from July 1, 1965, through June 30, 1968, the annual quota of any quota area shall be the same as that which existed for that area on June 30, 1965. The Secretary of State shall, not later than on the sixtieth day immediately following the date of enactment of this subsection and again on or before September 1, 1966, and September 1, 1967, determine and proclaim the amount of quota numbers which remain unused at the end of the fiscal year ending on June 30, 1965, June 30, 1966, and June 30, 1967, respectively, and are available for distribution pursuant to subsection (d) of this section.

[(d) Quota numbers not issued or otherwise used during the previous fiscal year, as determined in accordance with subsection (c) hereof, shall be transferred to an immigration pool. Allocation of numbers from the pool and from national quotas shall not together exceed in any fiscal year the numerical limitations in subsection (a) of this section. The immigration pool shall be made available to immigrants otherwise admissible under the provisions of this Act who are unable to obtain prompt issuance of a preference visa due to oversubscription of their quotas, or subquotas as determined by the Secretary of State. Visas and conditional entries shall be allocated from the immigration pool within the percentage limitations and in the order of priority specified in section 203 without regard to the quota to which the alien is chargeable.

[(e) The immigration pool and the quotas of quota areas shall terminate June 30, 1968. Thereafter immigrants admissible under the provisions of this Act who are subject to the numerical limitations of subsection (a) of this section shall be admitted in accordance with the percentage limitations and in the order of priority specified in section 203.]

Section 202. (a) of the Immigration and Nationality Act

Sec. 202. (a) No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in section 101(a)(27), section 201(b), and section 203: *Provided*, That the total number of immigrant visas and the number of conditional entries made available to natives of any single foreign state under paragraphs (1) through (8) of section 203(a) shall not exceed 20,00 in any fiscal year [: *Provided further*, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968].

Section 202. (c) of the Immigration and Nationality Act

Sec. 202. (c) Any immigrant born in a colony or other component or dependent area of a foreign state *overseas from the foreign state*, [unless] *other than* a special immigrant, as [provided] *defined* in section 101(a)(27), or an immediate relative of a United States citizen, as [specified] *defined* in section 201(b), shall be chargeable [,] for the purpose of [limitation] *the limitations* set forth in [section] *sections 201(a)* and 202(a) to the [foreign state, except that the number of persons born in any] *hemisphere in which* such colony or other component or dependent area [overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state] *is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year.*

Section 202(e) of the Immigration and Nationality Act

Sec. 202. (e) Whenever the maximum number of visas or conditional entries have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any

dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas and conditional entries, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe, in a number not to exceed 6 per centum of the number specified in this subsection, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not

nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term 'general area of the Middle East' means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: Provided, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

(8) Visas so allocated but not required for the classes specified in paragraphs (1) through (7) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.

SECTION 203(a) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 203. (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States[.] *and whose services in the professions, sciences, or arts are sought by an employer in the United States.*

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States[.] *provided such citizens are at least twenty-one years of age.*

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employment and willing persons exists in the United States.

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section [201 (a) (ii)] *201(a) (1) or (2)*, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided*, That immivisas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

(8) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6) and less the number of conditional entries and visas made available pursuant to paragraph (7), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of secton 212(a) (14).

(9) A spouse or child as defined in section 101(b) (1) (A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa or to conditional entry under paragraphs (1) through (8), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.

SECTION 203(e) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 203. (e) For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is

authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. [The Secretary of State, in his discretion, may terminate the registration on a waiting list of any alien who fails to evidence his continued intention to apply for a visa in such manner as may be by regulation prescribed.] *The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availabity of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.*

SECTION 212 (a) (14) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (a) (14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers [in the United States] who are able, willing, qualified (*or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts*), and available at the time of application for a visa and admission to the United States and at the place [to which] *where* the alien is [destined] to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall not [to special immigrants defined in section 101(a) (27) (A) (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence),] to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a) (8);

SECTION 245 OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 245. (a) The status of an alien [other than an alien crewman,] who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is [approved.] *filed.*

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under [sec-

tion] *sections 202(e) or* 203(a) within the class to which the alien is chargeable for the fiscal year then current.

(c) [The provisions of this section shall not be applicable to any alien who is a native of any country of the Western Hemisphere or of any adjacent island named in section 101 (b)(5).] *The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201 (b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; or (3) any alien admitted in transit without visa under section 212 (d)(4)(C).*

SECTION 101 (a)(27) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 101. (a)(27) The term "special immigrant" means—

[(A) an immigrant who was born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him: *Provided*, That no immigrant visa shall be issued pursuant to this clause until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14);]

[(B)] *(A)* an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

[(C)] *(B)* an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

[(D)] *(C)*(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or

[(E)] *(D)* an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment, in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

SECTION 204 (f) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 204(f). The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).

SECTION 211 (b) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 211. (b) Notwithstanding the provisions of section 212(a)(20) of this Act in such cases or in such classes of cases and under such

conditions as may be by regulations prescribed, returning resident immigrants, defined in [section 101(a)(B)] *section 101(a)(27)(A)*, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

SECTION 212 (a)(24) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (a)(24) Aliens (other than aliens described in [section 101(a)(27)(A) and (B)] *section 101(a)(27)(A) and aliens born in the Western Hemisphere* who seek admission from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 238(a) and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

SECTION 241 (a) (10) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 241. (a)(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238(a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival ([other than an alien who is a native-born citizen of any of the countries enumerated in section 101(a)(27)(A) and an alien described in section 101(a)(27)(B)] *other than an alien described in section 101(a)(27)(A) and aliens born in the Western Hemisphere*);

SECTION 244. (d) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 244. (d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made, and unless the alien [is entitled to a special immigrant classification under section 101(a)(27)(A), or] is an immediate relative within the meaning of section 201(b) the Secretary of State shall reduce by one the number of nonpreference immigrant visas authorized to be issued under section 203(a)(8) for the fiscal year then current.

○

H. R. 14535

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend the Immigration and Nationality Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration and Nationality Act Amendments of 1976".

SEC. 2. Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), and immediate relatives of United States citizens as specified in subsection (b) of this section, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and shall not in any fiscal year exceed a total of 170,000; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000."; and

(2) by striking out subsections (c), (d), and (e).

SEC. 3. Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(1) by striking out the last proviso in subsection (a);

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section 201(b), shall be chargeable for the purpose of the limitations set forth in sections 201(a) and 202(a), to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year."; and

(3) by inserting at the end thereof the following new subsection:

"(e) Whenever the maximum number of visas or conditional entries have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas and conditional entries, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

"(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

"(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

"(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

"(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

"(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

"(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

"(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe, in a number not to exceed 6 per centum of the number specified in this subsection, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted

by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term 'general area of the Middle East' means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided*, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

"(8) Visas so allocated but not required for the classes specified in paragraphs (1) through (7) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.".

SEC. 4. Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

(1) by striking out "201(a)(ii)" each place it appears in paragraphs (1) through (7) of subsection (a) and inserting in lieu thereof in each such place "201(a) (1) or (2)";

(2) by striking out the period at the end of paragraph (3) of subsection (a) and inserting in lieu thereof a comma and the following: "and whose services in the professions, sciences, or arts are sought by an employer in the United States.";

(3) by striking out the period at the end of paragraph (5) of subsection (a) and inserting in lieu thereof a comma and the following: "provided such citizens are at least twenty-one years of age."; and

(4) by striking out the second sentence of subsection (e) and inserting in lieu thereof the following: "The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.".

SEC. 5. Section 212(a)(14) of such Act (8 U.S.C. 1182(a)(14)) is amended to read as follows:

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(8);".

SEC. 6. Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended to read as follows:

"SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

"(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 202(e) or 203(a) within the class to which the alien is chargeable for the fiscal year then current.

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; or (3) any alien admitted in transit without visa under section 212(d)(4)(C).".

SEC. 7. (a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

(b) Section 204 of such Act (8 U.S.C. 1154) is amended to add a new subsection (f), to read as follows:

"(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).".

(c) Section 211(b) of such Act (8 U.S.C. 1181(b)) is amended by striking out "section 101(a)(27)(B)" and inserting in lieu thereof "section 101(a)(27)(A)".

(d) Section 212(a)(24) of such Act (8 U.S.C. 1182(a)(24)) is amended by striking out "101(a)(27) (A) and (B)" and inserting in lieu thereof "101(a)(27)(A) and aliens born in the Western Hemisphere".

(e) Section 241(a)(10) of such Act (8 U.S.C. 1251(a)(10)) is amended by striking out the language in the parentheses and inserting in lieu thereof the following: "other than an alien described in section 101(a)(27)(A) and aliens born in the Western Hemisphere".

(f) Section 244(d) of such Act (8 U.S.C. 1254(d)) is amended by striking out "is entitled to special immigrant classification under section 101(a)(27)(A), or".

(g) Section 21(e) of the Act of October 3, 1965 (Public Law 89–236; 79 Stat. 921), is repealed.

SEC. 8. The Act entitled "An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes", approved November 2, 1966 (8 U.S.C. 1255, note), is amended by adding at the end thereof the following new section:

"SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States

on or before the effective date of the Immigration and Nationality Act Amendments of 1976."

SEC. 9. (a) The amendments made by this Act shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date.

(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921), who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act, as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act, as amended by this Act.

SEC. 10. The foregoing provisions of this Act, including the amendments made by such provisions, shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE October 21, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have signed H.R. 14535, the Immigration and Nationality Act Amendments of 1976. This legislation brings our immigration procedures for the Western Hemisphere into line with those for the Eastern Hemisphere. Among other things the enrolled bill would:

- apply the preference system currently applicable to Eastern Hemisphere immigrants to natives of countries of the Western Hemisphere (with minor modifications);
- apply the 20,000-per-country limit to countries of the Western Hemisphere;
- make Western Hemisphere immigrants eligible for adjustment of status to that of lawful permanent residents on an equal basis with Eastern Hemisphere immigrants;
- apply the labor certification requirements equally to immigrants native to both hemispheres; and
- provide that Cuban refugees covered under the Cuban Refugee Act of 1966 will not be charged to the Western Hemisphere quota (of 120,000 per year).

This legislation will also facilitate the reunification of Mexican American families by giving preference to Mexican nationals who are close relatives of United States citizens or lawful permanent residents, or who have needed job skills. I am concerned, however, about one aspect of the legislation which has the effect of reducing the legal immigration into this country from Mexico. Currently about 40,000 natives of Mexico legally immigrate to the United States each year. This legislation would cut that number in half.

The United States has a very special and historic relationship with our neighbor to the South. In view of this special status we have with the Mexican government and the Mexican people, I will submit legislation to the Congress in January to increase the immigration quotas for Mexicans desiring to come to the United States.

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