



1996 Immigration Legislation Summary

November 1, 1996

Deportation, Exclusion, & Review

"Summary Exclusion": Pushing for Speed Over Substance in the Deportation Process

[Effective April 1, 1997]

Asylum seekers: People who arrive at an airport or other port of entry with false or no documents, and who ask for asylum because they are fleeing religious or political persecution, are given an on-the-spot interview by a low-level immigration officer. The refugees must then immediately convince the officer that their fear of persecution is genuine, without the benefit of assistance from attorneys, translators, or family members. If the immigration officer does not believe their story, they will be instantly deported. The only chance to reverse a decision by an immigration officer is an administrative review by an immigration judge, which must be completed within at most seven days. During this time, the refugee is held in detention, and will have great difficulty in receiving assistance in preparing a convincing case.

Example: A Togolese woman fled her home country to escape forced genital mutilation—a subject which the woman found very intimidating and difficult to talk about. When her initial request to receive protection in the U.S. as a refugee is rejected by an immigration officer, she is placed in detention. Just three days later, without access to translators, family members, or attorneys who could help her present her case, she is unable to get the immigration judge to reverse the immigration officer's denial. The woman is sent back to her persecutors in Togo.

Non-asylum seekers arriving in the U.S.: Those who do not claim to be fleeing persecution may be deported immediately without any administrative hearing or judicial review to safeguard against erroneous decisions.

Example: The Nicaraguan-born wife of a U.S. citizen returned briefly to Nicaragua to attend the funeral of her father. However, her purse, including her green card, was stolen before her return to the U.S. Without proper documents, she is immediately sent back to Nicaragua without any opportunity to contest her deportation.

Persons here illegally: Individuals already in the interior of the U.S., accused of having entered the country within the past two years without passing through immigration, will be treated as though they were just arriving at the border. These people, who by virtue of their presence in the U.S. had up to now been covered by certain basic Constitutional safeguards of due process, will be subject to the same "summary exclusion" procedures as those who are stepping off a plane without the proper papers.

"Bars to Admissibility": Closing Off the Legal Avenues for People to Enter the U.S.

[Effective April 1, 1997]

People "unlawfully present" in the U.S. (i.e., those who stay in the U.S. beyond the expiration date of their temporary visa or who entered without inspection by the Immigration and Naturalization Service [INS]) for more than 180 days, but less than one year, are barred from reentering the U.S.

for three years. People "unlawfully present" in the U.S. for one year or more are barred from reentering for 10 years. This would include people who are trying to comply with the law, but whose application to extend or change their visa is significantly delayed. Exceptions exist to both the 3 and 10 year bars for minors, people granted asylum, beneficiaries under the INS "family unity" program, and battered spouses and children.

Example: A Canadian national with expertise in health services management was brought into the U.S. on a temporary visa to serve for several years as the manager for a group of local health clinics in rural Tennessee. After one year, the health clinics are bought out by a large health management corporation. The new company keeps the Canadian on as its regional manager, but neglects to file an amended petition with the INS as is required. Ten months pass before he is advised that his original visa was invalidated by the change in companies, and that he is now considered to be in the U.S. illegally. Because he cannot reenter the U.S. for three years, the Canadian loses his job, and the health clinics are left for months without a manager.

"Cancellation of Removal": Raising the Hurdles for Certain People to Avoid Deportation [Effective April 1, 1997]

This provision makes it more difficult for people found in the U.S. without lawful status to avoid deportation—even if they have been here for many years and have since become part of an American family. They must now show that they have been continuously present in the U.S. for 10 years (an increase from seven years); that they are of good moral character; and that their deportation would cause "exceptional and extremely unusual" hardship to a relative who is either a U.S. citizen or lawful permanent resident (a more difficult standard than the previous law's straight "extreme hardship" requirement).

Example: After the death of his mother, an 8-year-old Mexican boy was brought to this country by his lawful permanent resident grandmother without inspection by the INS. Nine years later, the boy is one of his high school's National Merit Scholars, and helps in the evenings to care for his grandmother. Under the new standards, since the boy has not been here for 10 years, he would be deported away from his only remaining family back to a country he no longer knows.

Long-term lawful permanent residents who commit an offense which makes them deportable, except for aggravated felons, may only avoid deportation if they have maintained continuous residence in the U.S. for seven years, at least five of which were in lawful resident status. This opportunity to avoid deportation is restored by the immigration reform law after having been previously removed by the anti-terrorism law.

"Limitation on Review": Congress Strips Away the Authority of the Courts

Judicial power to review erroneous INS decisions or to check abuses of power is severely restricted. While courts are still able to review discretionary grants of asylum, they are prohibited by the new law from holding the INS accountable for its decisions in almost every other discretionary area, including final orders of deportation. Courts are no longer even permitted to review many INS findings that would deny refugees the chance to apply for asylum.

Asylum

"Filing Deadline": Assigning a 'Limited Time Only' Offer to Refugee Protection

[Effective April 1, 1997]

All refugees seeking protection must now overcome language and cultural barriers, learn about U.S. asylum law, obtain legal help, compile documentation about their case, and file an application for asylum within one year of their date of arrival in the U.S. Refugees who miss the deadline will be sent back to their persecutors unless they can prove "extraordinary circumstances" that caused the delay in filing, or "changed circumstances" which materially affect their eligibility for asylum, such as the outbreak of a civil war in their home country. Furthermore, the deadline will distract many genuine refugees from the demanding task of proving their case to the tedious chore of proving they have been in the country less than one year.

"Safe Third Country" Prohibition: Arriving Refugees Encounter a Revolving Door

[Effective April 1, 1997]

Even legitimate refugees will not be eligible for asylum if they could be sent to a third country where their life or freedom would not be threatened, and with which the U.S. has a bilateral agreement.

Example: A Jewish refugee fled Russia to escape religious persecution. Upon arriving in the U.S., where he had family, he was told that he was ineligible for asylum since he could be sent to Israel. The refugee was put on a plane to Israel, where he knew no one.

Restrictions Against Employment of Undocumented Immigrants

Verification Pilot Programs: 'Big Brother' Lite

[Must be established by September 30, 1997]

Three separate pilot programs to confirm an individual's employment eligibility are to be set up in at least five of the states with the highest estimated population of undocumented immigrants. The programs, to run for four years, are likely to be established in CA, FL, IL, NY, and TX. After the program's completion, Congress will consider whether to reauthorize the program.

Participation in the pilot programs is voluntary for private employers, but will be mandatory for workers in the participating businesses. Thus, those employers who deliberately hire undocumented immigrants can simply opt not to participate in order to avoid scrutiny.

The INS must create a toll-free telephone confirmation system that can respond to requests for identification and employment eligibility verification. The INS and the Social Security Administration (SSA) must also establish databases capable of verifying workers. Though both agencies have had historical problems with the accuracy of their information and data retrieval systems, they will now somehow be expected to provide accurate, instantly-accessible information on every eligible American citizen and legal immigrant worker.

Documents Proving Identity and Work Authorization: 'Let Me See Your Papers'

[Must take effect by September 30, 1997]

The number of documents which a prospective employee can use to establish his or her identity and ability to work in the U.S. is significantly reduced, imposing a further bureaucratic hurdle on workers. U.S. citizens will no longer be able to use a birth certificate or a certificate of citizenship to establish eligibility.

Employment Discrimination: Victims of Discrimination are Given a New Burden

[Effective September 30, 1996]

A new intent standard places an almost impossible burden of proof on prospective employees trying to show that an employer has engaged in hiring discrimination. Even when an employer asks for more or different documents, or refuses to honor legitimate documents, during the work verification process, rejected workers must now show that the employer acted with the specific intent to discriminate.

Example: A U.S. citizen applies for a job, but the employer thinks that the prospective employee may be an undocumented immigrant, and insists that he see a green card. The prospective employee explains that he is a U.S. citizen who was born and raised in Texas, and neither has nor needs a green card. The employer, determined not to hire someone he thinks may be an undocumented worker, turns the job seeker away. Although the U.S. citizen was denied employment as a result of his skin color and last name, he has no recourse since he is unable to prove that the employer intended to discriminate.

1996 Immigration Legislation Summary: Restrictions on Benefits

Note: On August 22, 1996, President Clinton signed into law a highly controversial welfare reform bill which contain provisions creating a ban on public benefits to legal immigrants. As a result of the new welfare law, legal immigrants are no longer eligible in most cases to receive food stamps, SSI, TANF (formerly AFDC), or non-emergency medical care, even if they should fall on hard times through no fault of their own. Below are some modifications made to the new welfare law by provisions of the immigration reform law.

Battered Alien Exception to Benefits Restrictions

[Effective September 30, 1996]

This provision amends the welfare law to permit certain legal immigrant domestic violence victims to qualify for public benefits. In order to qualify, the alien spouse or child must not be living in the same household as the batterer, and there must be a substantial connection between the domestic violence and the need for the benefits.

Verification Exemption for Nonprofit Charitable Organizations

[Effective September 30, 1996]

This provision amends the new welfare law so that nonprofit-charitable organizations providing any federal, state, or local benefits are not required to verify the immigration status of an applicant. For example, church soup kitchens will not have to ask to see someone's papers before giving them a hot meal.

Delay of Food Stamp Cutoff

[Effective September 30, 1996]

Amends the new welfare law so that legal immigrants who were already receiving food stamp benefits when the welfare law was enacted (8/22/96) will be able to keep that benefit until at least April 1, 1997, but will still be cut off no later than August 22, 1997.

Sponsors' Financial Requirements

[Effective March, 1997]

This provision amends the new welfare law to require that U.S. citizens and lawful permanent residents earn at least 125% of the poverty level in order to sponsor an immigrant relative to come to the U.S. For a family of four, 125% of the poverty level is \$19,500.

The person who petitions to have an immigrant come to the U.S. must sign a legally enforceable affidavit of support which shows their income level is high enough to ensure that the immigrant will not become a public charge and require government benefits. People who sign an affidavit of support are "sponsors." Petitioners who earn less than 125% of the poverty level are allowed to have another person who does meet that requirement co-sign the affidavit of support on behalf of the immigrant. That additional sponsor will share joint liability.

The affidavit of support remains legally enforceable against the sponsor(s) until the immigrant becomes a citizen or is credited with having worked 40 quarters or 10 years.

Deeming Exemption for Indigent Immigrants

[Effective September 30, 1996]

Immigrants are barred from receiving federal, means-tested public benefits for their first five years in the U.S. After that time, access to those benefits is subject to "deeming." [Deeming occurs when all of the sponsor's financial resources are presumed ("deemed") to be available to the immigrant for purposes of determining whether the immigrant is poor enough to get a public benefit.] This provision amends the new welfare law so that an immigrant who is at risk of going hungry or becoming homeless, after the five-year bar expires, and whose sponsor refuses or is unable to assist him or her, may qualify for public benefits for up to 12 months without being subjected to deeming. For the first five years, needy immigrants are out of luck.

Border Control

Increase in Border Patrol Agents: A Buildup That Is Rapid, But Could Also Be Reckless

The number of Border Patrol agents is increased by 1,000 per year for the next five years, despite assertions by the INS that 700 was the maximum number of agents they could safely recruit and train in any year.

Construction of Border Barriers: Creating a Triple-Layer Fence

The law mandates the construction of a triple-tiered fence and system of roads along the border near San Diego.

Violation of Environmental Laws: An Odd Casualty in the War on Illegal Immigration

The INS is given a dangerously broad and permanent waiver of two of our nation's most important environmental protection laws—the Endangered Species Act and the National Environmental Policy Act. When constructing roads and fences along the border, the INS is excused from the requirement to produce an Environmental Impact Statement for public review, and is free to ignore potential threats to endangered animals and plants in the area. This sanctioned disregard for critical environmental considerations is unnecessary to accomplish the construction.

Interior Enforcement, Criminal Penalties, and Document Fraud

INS Investigators

The law authorizes an increase of 300 investigators per year for the next three years beginning in FY 1997 to investigate violations involving alien smuggling and the unlawful hiring of undocumented immigrants.

Criminal Penalties for Alien Smuggling

[Effective September 30, 1996]

The law establishes a number of new offenses and increased penalties relating to alien smuggling. People caught smuggling an undocumented immigrant into the U.S. can be imprisoned for up to 10 years for a first or second offense, and for up to 15 years for any further offenses. Employers who, within one year, deliberately hire 10 or more undocumented immigrants who the employer knows were brought into the U.S. illegally may be fined or imprisoned for up to five years.

Criminal Penalties for Document Fraud

[Effective September 30, 1996]

This provision raises the maximum prison term for people convicted of document fraud to 15 years. Prison terms for document fraud are increased to 20 years if done in connection with a drug-trafficking crime, and to 25 years if done in connection with an act of international terrorism.

The Good News: What Was Dropped From the Bill

Cuts in Legal Immigration: Preventing an Attack on American Families

Provisions in both the original House and Senate versions of the immigration reform bill proposed drastic cuts in the number of legal immigrants permitted to rejoin their families in the U.S. As initially introduced, the House and Senate bills would have slashed family immigration by approximately 30 - 40%—delaying reunification or permanently separating hundreds of thousands of Americans from their spouses, parents, children, and siblings. As the debate on these two bills progressed, however, more and more pressure mounted to consider the issues of legal and illegal immigration separately. An odd, but powerful alliance—Democrats and Republicans, labor and big business, civil rights groups and conservative think tanks, ethnic organizations and anti-tax groups, religious groups and high-tech companies—came together in opposition to the cuts in legal immigration.

On March 14, 1996, the Senate Judiciary Committee split the proposed legal immigration cuts off from the rest of the Senate bill in a resounding, bipartisan vote. On March 21, 1996, the House soundly rejected proposed cuts by a wide margin during a floor vote. The death knell came on April 24, 1996, when the Senate crushed an amendment during its floor debate that attempted to reintroduce cuts in legal immigration back into the bill.

"Gallegly Amendment": Taking Innocent Children Out of the Line of Fire

A highly controversial amendment which would have given states the authority to kick undocumented kids out of public schools and onto the streets was tacked onto the immigration reform bill on the House floor. This amendment was being used by the GOP primarily as an election year wedge issue to hurt President Clinton's chances of winning California's 54 electoral votes. President Clinton threatened to veto the immigration reform bill if this amendment was in it. The amendment was also vigorously opposed by every major Chief of Police and law enforcement organization, and proved so divisive among Republicans themselves that it was dropped from the bill at the last moment during consideration by the joint House-Senate conference committee.

200% Income Requirement: Keeping the Door Open for Families of Low-Income Americans

Aside from the cuts in visa numbers, the bill also contained a back-door method to cut legal immigration. It required that anyone sponsoring a family member earn an income of at least 200% of the poverty level for a family size which included the sponsor, the sponsor's family plus the sponsored immigrant. That income requirement was actually set above the median income levels of Americans in many occupations, essentially eliminating family immigration for the middle and lower classes. According to INS data, this provision would have resulted in a cut of at least 30% in legal, family-based immigration. The provision was replaced during the conference committee with a requirement for sponsors to have 125% of the poverty level.

Deportation for Learning: Allowing Immigrants to Take Positive Steps Toward the American Dream

The welfare bill bans legal immigrants from receiving virtually all government benefits. One of the only exceptions is educational services, such as English classes, Head Start, and student loans. Nevertheless, the immigration bill would actually have punished the immigrants for obtaining these services. If an immigrant received any assistance from a government subsidized program for an aggregate of 12 months within his or her first seven years of residence in the U.S., he or she would be deported. At the insistence of the White House, this provision was dropped at the very end of the congressional session.

Refugee Cap: Preserving America's Role As a Human Rights Leader

A provision in the original House version of the immigration bill, which would have arbitrarily cut annual refugee admissions by over one-half, was defeated on the House floor. Noting that current refugee admission levels are not a problem, the Senate Immigration Subcommittee rejected a similar provision several months earlier.

Benefits Restrictions: Saying 'Enough is Enough' After the Welfare Reform Law

The immigration bill would have placed even more punitive restrictions on the use of public benefits for legal immigrants than those already imposed by the recently-passed welfare law. For example, the bill would have made an immigrant sponsor entirely responsible for the cost of emergency medical services paid for by Medicaid. If the sponsor could not pay the government back for these costs—or for the cost of any other benefit provided to an immigrant—the immigrant would never be allowed to naturalize. Another provision would have cut reimbursement to health providers for the treatment of HIV-infected immigrants whose sponsor's income would be deemed available to them. The vast majority of these restrictive benefits provisions were taken out as a result of last-minute negotiations between the Administration and Congress at the end of the congressional session.

National Verification System and I.D. Card: Saying 'No' to Big Government and Big Brother

The original versions of the immigration bill would have mandated massive programs for the verification of employment eligibility, and the establishment of a national verification system within 8 years—regardless of whether any of the programs were determined to be effective. It would also have set the country on course for the establishment of a national ID card. This version of the verification system was modified during Judiciary Committee consideration, and later abandoned by the conference committee in favor of a voluntary system.