REPORT TO THE CONGRESS

Need To Reduce Public Expenditures For Newly Arrived Immigrants And Correct Inequity In Current Immigration Law

Department of Justice
Department of State

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

This report (1) discusses the need to reduce the likelihood that large expenditures of public funds will be made to support newly arrived immigrants, (2) describes various ways aliens have violated immigration laws and, while in illegal status, have obtained equity, which, in part, assists them in becoming legal immigrants, and (3) recommends administrative and legislative changes needed to alleviate these problems.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of the report are being sent to the Director, Office of Management and Budget, the Attorney General, and the Secretary of State.

Comptroller General
of the United States

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ABBREVIATIONS

AFDC	Aid to Families with Dependent Children
ATD	Aid to the Disabled
GAO	General Accounting Office
INS	Immigration and Naturalization Service
OAA	Old Age Assistance

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

NEED TO REDUCE PUBLIC EXPENDITURES FOR NEWLY ARRIVED IMMIGRANTS AND CORRECT INEQUITY IN CURRENT IMMIGRATION LAW

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D I G E S T

GAO found that the Departments of State and Justice, and the Congress, must act to reduce the likelihood of newly arrived immigrants receiving public assistance.

Large expenditures of tax moneys--Federal and State--have been made to support immigrants and their families within 5 years after entry.

In some cases an unavoidable event (accident, illness) occurred after the entry, which caused a need for public assistance; but this was true in only 10 percent of the welfare cases GAO examined.

GAO could not obtain a reasonably accurate figure of the amount of funds involved in public assistance payments to newly arrived immigrants; States simply do not accumulate such data. However, GAO believes the funds are substantial.

Information from locations visited by GAO in California, Massachusetts, and New York and information solicited from other locations supported that newly arrived immigrants are receiving public assistance.

For example, GAO's analysis of 195 randomly selected immigrant welfare cases in Los Angeles County showed that 86 (44 percent) applied for assistance within 5 years after U.S. entry. More than half of these applied within 2 years. GAO estimated that newly arrived immigrants and their families were receiving $19.6 million annually in welfare payments in Los Angeles County. (See pp. 11 and 12.)

The Immigration and Nationality Act provides that no one be admitted as an immigrant who is likely to become a public charge.

An applicant is excludable from admission if likely to need public assistance.

The act provides for deporting those who, within 5 years of entry, become public charges from causes shown to have arisen before entry. (See p. 3.) For deportation purposes, an immigrant--although wholly supported by public assistance--is considered deportable only if he is legally liable to repay the supporting State or local authority. Thus, most forms of public assistance are not applicable for deportation purposes.

Sponsors' affidavits of support do not protect taxpayers from having to support many newly arrived immigrants, because various courts have judged the affidavits to be only moral obligations.

The Departments of Justice and State generally concurred with GAO's recommendations aimed at improving the screening of immigrant visa applicants and remedying certain postentry problems and said they have taken or will be taking action to implement the recommendations. (See pp. 31 to 32 and 41 to 42.)

If the Congress wishes to reduce the likelihood of newly arrived immigrants receiving public assistance, the Congress should amend the Immigration and Nationality Act to:

--Define "public charge" as public expenditures directly supporting immigrants unable to earn an adequate living, irrespective of whether the immigrants are legally liable to repay the public support. Or, alternatively, establish immigrant entry as being conditional upon the immigrant demonstrating self-sufficiency in the United States for a specified time before permanent-resident status is granted. The Congress, in considering the above, should clarify whether partial support for the general welfare of low-income persons should be defined within the meaning of public charge.

--Make the affidavit of support a legally enforceable financial obligation. (See pp. 42 and 43.)

The Congress should also act to correct an inequity in the current immigration law.

Immigration visa applicants generally are subject to numerical ceilings for the Eastern and Western Hemispheres. In January 1975 Western Hemisphere aliens had to wait 2 years for a visa. Immediate relatives (spouses and children of U.S. citizens

and parents of U.S. citizens over the age of 21) are not subject to the ceilings and visas are considered immediately available.

Aliens illegally in the U.S. are qualifying for a visa by one or more of the following actions:

--Marrying a U.S. citizen (this allows immigration without regard to numerical ceilings and labor certification requirements).

--Marrying a permanent-resident alien (this exempts applicants from labor certification requirements).

--Giving birth to a child in the U.S. (this exempts Western Hemisphere applicants from labor certification requirements).

--Obtaining work experience and a job offer (this helps the applicant overcome public charge exclusion provisions of the law). (See p. 44.)

Consular officers in Mexico estimated that in 75 to 90 percent of their immigrant applicant cases, the adult aliens in the family have illegally resided in the United States.

There is an inequity created when people who are in this country illegally can subsequently derive benefits from their illegal acts while bona fide immigrants are denied early admission.

GAO believes the incentive for establishing a relative relationship--while in the United States illegally--could be reduced (1) if a citizen child's parents were exempted from the labor certification requirement only when the child became 21 years old and (2) by imposing a waiting period before granting immigrant status, if such status was established while an illegal alien.

If the Congress wishes to eliminate the preferential treatment accorded to aliens who acquire qualifications for entitlement to immigrant status while in violation of immigration laws, then the Congress should enact legislation to:

--Impose a mandatory waiting period before allowing such aliens to immigrate, if the

basis for such status was acquired while the alien was in violation of immigration laws.

--Remove the labor certification exemptions now accorded by the act to Western Hemisphere immigrants who are parents of a child, under the age of 21, born in the United States. (See p. 51.)

CHAPTER 1

INTRODUCTION

The Immigration and Nationality Act (8 U.S.C. 1101) prescribes the conditions for admission and stay of immigrant and nonimmigrant aliens. It defines "alien" as any person not a U.S. citizen or national. The law classifies an admissible alien as either an immigrant or a nonimmigrant. An immigrant--the subject of this report--is admitted to the United States for permanent residence. He can work and engage in lawful activities and may eventually apply for naturalization. He may be subject to deportation for unlawful activities or for becoming a public charge. Nonimmigrants such as visitors, foreign diplomats, and temporary workers are generally persons coming to the United States for temporary periods.

SOURCE AND RESIDENCE OF IMMIGRANTS

In the last 5 years about 1.9 million immigrants were admitted for permanent residence in the United States. The Commission on Population Growth and the American Future[1] reported in March 1972 that immigration accounted for about 16 percent of the total U.S. population growth between 1960 and 1970. Noting that about 400,000 immigrants enter each year, the report stated that the importance of immigration as a component of population growth has increased greatly as declining birth rates diminish the level of natural increase. Currently, one in every five new Americans is an immigrant.

Immigration patterns have changed dramatically since the last major immigration legislation was passed in 1965.

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[1]The Commission was established pursuant to Public Law 91-213, approved March 16, 1970, to examine American population growth and the impact it will have upon the American future.

Shift in Immigration Patterns

From	Fiscal year 1965	Fiscal year 1974	Percentage change
Asia	20,683	130,662	up 532
Oceania	1,512	3,052	up 102
Mexico	37,969	71,586	up 89
Africa	3,383	6,182	up 83
Central and South America	81,395	94,513	up 16
Europe	113,424	81,212	down 28
Canada	38,327	7,654	down 80
Total	296,693	394,861	up 33

The five countries having the most immigrants admitted in fiscal year 1974 were Mexico, the Philippines, Korea, Cuba, and China and Taiwan combined.

Half of the 4.1 million permanent-resident aliens in 1974 reported their residence as California, New York, or Texas. Seventy-two percent of the immigrants live in only 7 of the 50 States:

State	Number	Percent
California	1,015,379	25
New York	709,972	17
Texas	305,991	7
Florida	278,262	7
New Jersey	247,895	6
Illinois	243,190	6
Massachusetts	163,595	4
	2,964,284	72
All other States	1,136,016	28
Total	4,100,300	100

ADMINISTRATION OF THE LAW

Since 1875 when the first immigration exclusion act was passed, the Congress has been concerned with the quality of prospective immigrants. The Congress has emphasized the need to select immigrants based on ability and to exclude those likely to be supported at public expense. When the Congress abolished the national origins quota system in 1965, it endorsed the principle of equity and gave priority to reuniting families and attracting aliens with needed skills.

The Immigration and Nationality Act authorizes the Attorney General and the Secretary of State to administer and enforce the immigration laws. This is primarily carried out by the Immigration and Naturalization Service (INS) and the Bureau of Security and Consular Affairs, Department of State. This review evaluates the Department of State's and INS' success in preventing large expenditures of public funds to support newly arrived immigrants within 5 years after entry. In a previous report, "More Needs to Be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States" (B-125051, July 31, 1973), we said that illegal aliens are receiving welfare payments under programs funded by the Federal and State governments.

IMMIGRANT QUALIFICATIONS

Initially the applicant must qualify for entitlement to an immigrant visa by having a relative who is a U.S. citizen or permanent resident or by possessing certain job skills. An exception is made for certain people because of persecution or disaster. After receiving entitlement to a visa, the applicant is screened by a consular or INS officer on his background--health, criminal, moral, economic, subversive, or other.

The act provides that the consular and immigration officers admit as immigrants only those not likely to become a public charge or who post a suitable bond,[1] which

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[1]Commonly referred to by the Department of State and INS as a public charge bond.

could be used to reimburse public funds spent if the immigrant becomes a public charge. The act further provides for deporting immigrants who, within 5 years after entry, become public charges from causes shown to have arisen before entry. In many cases, consular and INS officers require promises of support from U.S. citizens or permanent residents so the immigrant will not become a public charge. These promises, or affidavits of support, although not required by the act, are used to show in part that the immigrant is not likely to become a public charge.

DEFINITION OF PUBLIC CHARGE

Court decisions and administrative interpretations of congressional intent have given more than one meaning to the term "public charge" for admission and deportation purposes, depending upon the particular section of immigration law. Since the term is not defined in the act, the Congress apparently intended to leave its interpretation to the administrative officials and the courts.

Admission

An applicant is excluded from admission, as a public charge, if likely to need public assistance, designed and intended to support persons unable to provide for themselves, such as Aid to Families with Dependent Children (AFDC), the former Old Age Assistance (OAA), and Aid to the Disabled (ATD) programs. The OAA and ATD programs were transferred to the Supplemental Security Income Program effective January 1, 1974. We refer to the two former programs in our report, since most case analyses involving program recipients were made before the transfer. However, if the public support is partial and considered to be for the general welfare of low-income persons--as in the case with food stamps, subsidized housing, vocational training, etc.--the applicant is not considered excludable, although he may be excluded on the basis of other economic factors.

Deportation

An immigrant, although wholly supported by public assistance, is considered deportable only when legally liable to repay the supporting State or local authority.

A Board of Immigration Appeals ruling in 1948 set three criteria for deportation as a public charge: a liability for payment or creation of a debt, a demand for payment, and a failure to pay. Since several forms of public assistance such as AFDC, OAA, and ATD generally do not require repayment, immigrants supported by such programs are not deportable. However, in some States immigrants are legally liable to repay certain welfare benefits, such as medical services and general relief, which are funded primarily by local governments, and may be deported for failure to repay.

In 1970 a Federal district court applied the definition of public charge used in deportation proceedings to the forfeiture of bonds. INS has since revised the bond form so that the bond agreement is enforceable against immigrants supported at public expense regardless of whether the immigrant is legally liable to repay.

FEDERAL PUBLIC ASSISTANCE

Historically, public and/or private charity cared for the needy, aged, blind, disabled, and mothers and their young children within each community. Almshouses were established to institutionalize the needy, but many communities also or alternatively provided financial assistance to individuals maintained in their own homes.

The Social Security Act, passed in 1935, provided Federal participation in public assistance programs for the first time. Initially, the welfare rolls were relatively small. By the mid-1950s, however, with post-World War II migration from rural areas to cities, the number of welfare recipients rose markedly, particularly in the AFDC category. In 1956 the Social Security Act was amended to specifically authorize social services for public assistance recipients. The Federal contribution was to be 50 percent of the cost of services.

The Public Welfare Amendments of 1962 emphasized services. On signing the amendments into law, President Kennedy declared:

"I have approved a bill which makes possible the most far-reaching revision of our Public Welfare program since it was enacted in 1935. This measure embodies a new approach--stressing services in addition to support, rehabilitation instead of relief, and training for useful work instead of prolonged dependency. Our objective is to prevent or reduce dependency and to encourage self-care and self-support--to maintain family life where it is adequate and restore it where it is deficient."

The welfare rolls continued to climb, and in 1967 a new approach to the problem was tried. The Work Incentive Program was enacted to make job training and placement available to women as well as men and provided, for women only, certain economic incentives such as free child care and allowance for work-related expenses.

In fiscal year 1955, $2.4 billion was spent on the three public assistance programs included in our review; Federal spending was approximately $1.3 billion. In fiscal year 1973, total spending for these programs increased to $9.2 billion, with the Federal share over $5.1 billion. Thus, these public assistance programs have grown greatly from colonial times when assistance was provided by public and/or private charity.

Effective January 1, 1974, the adult categories--aged, blind, and disabled--were transferred from the shared Federal-State welfare program to a fully federalized program known as Supplemental Security Income. AFDC remains a Federal-State welfare program.

SCOPE OF REVIEW

We reviewed the Immigration and Nationality Act's provisions prescribing conditions for entry of aliens who as immigrants are likely to become public charges and for deportation of those immigrants who do become public charges. We examined the policies, procedures, and practices at American consulates for issuing immigrant visas. During our review of conditions for entry and issuance of immigrant visas, we identified certain immigrants who

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