

THE PRESENT STATUS OF OUR IMMIGRATION LAWS AND POLICIES

E. P. HUTCHINSON¹

IN tracing the course of immigration law one finds a continual process of amendment. New problems of immigration arise from time to time to require new legislation, and administrative difficulties encountered in the enforcement of the existing law call for its modification. But the underlying immigration law and immigration policy are little affected. The pattern of regulation of immigration to the United States has been set by a few major acts, beginning with the original immigration act of 1882. Since that time there have been only four comprehensive immigration acts, those of 1891, 1903, 1907, and 1917, and for the most part these acts represented little marked change in immigration law and policy. Each succeeding act incorporated the substance of the preceding law, often with little or no change of wording, reaffirming and building on the earlier legislation rather than departing widely from it.

Status at World War II. At the outbreak of World War II immigration to the United States was still largely controlled by legislation of the first world war period. The basic law regulating the admission of aliens was the Immigration Act of 1917. Superimposed on but not superseding the 1917 act was the Quota Act of 1924. The 1917 act, passed at a time of heightened concern over problems of immigration and alienage, contained the most severely restrictive controls of immigration that had yet been adopted by Congress. Included in the act were additions to the number of excludable classes, the many times vetoed literacy test, and the Asiatic barred zone provisions. The Quota Act of 1924, containing the national origins quota formula, can also be regarded as a product of the first world war period for it was directly motivated by fear of excessive immigration after the war. The literacy test contained in the 1917

¹ Department of Sociology, Wharton School of Finance and Commerce, University of Pennsylvania.

act was presumably designed not only as a selective measure but also for restrictive purposes. That is, an apparent intent in the literacy test was to limit the volume of immigration, and especially that from certain less favored parts of Europe. Soon after the war, however, the test was found to be ineffective as a barrier to large-scale immigration. To provide such a barrier the first quota act was passed as a temporary measure in 1921, and was followed by the permanent Quota Act of 1924.

The 1917 and 1924 acts are still the basic immigration law of the United States. In spite of amendment since their enactment they have remained substantially unchanged from their original form. Their provisions with respect to exclusion, deportation and quota immigration are summarized below. A chronological list of subsequent legislation with respect to these three aspects of immigration law is also given in order to bring the summary up to date and to show the course of more recent legislation.²

Exclusion. By the original immigration act of 1882 it was required that "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge . . . shall not be permitted to land." Succeeding acts have departed somewhat from this phrasing, but have reaffirmed the excludability of such aliens and have added to the list of excludable classes. The following classes of immigrant aliens are now excludable.

A. EXCLUDABLE CLASSES OF IMMIGRANT ALIENS³ (Sec. 3, Immigration Act of 1917⁴ except as noted)

1. Idiots
2. Imbeciles

² The full detail of immigration law with respect to quota provisions and the excludable and deportable classes of aliens can not be given in the following brief summary. For the complete text of immigration law *see* United States Department of Justice, Immigration and Naturalization Service: IMMIGRATION AND NATIONALITY LAWS AND REGULATIONS. Washington, Government Printing Office, 1944. (Supplement I, 1945; Supplement II, 1946.)

³ The excludability of non-immigrant aliens (such as temporary visitors, returning resident aliens, etc.) is not identical with that of immigrant aliens.

⁴ 39 Stat. 875-878.

3. Insane persons
4. Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude
5. Contract laborers
6. Persons likely to become public charges
7. Paupers
8. Persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease
9. Polygamist, or persons who practice polygamy or believe in or advocate the practice of polygamy
10. Persons who have come in consequence of advertisements for laborers
11. Persons whose ticket or passage is paid for with the money of another, etc.
12. Epileptics
13. Persons who have had one or more attacks of insanity at any time previous
14. Professional beggars
15. Persons who disbelieve in or are opposed to organized government, etc.
16. Persons who are members of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, etc.
17. Prostitutes, etc.
18. Persons who directly or indirectly procure or attempt to procure or import prostitutes, etc.
19. Persons who are supported by or receive in full or in part proceeds from prostitution
20. Feeble minded persons
21. Persons certified by the examining physician as being mentally or physically defective, such physical defect being of a nature which may affect ability to earn a living
22. All children under 16 years of age, unaccompanied by one or both parents (with exceptions)
23. Persons of constitutional psychopathic inferiority
24. Persons with chronic alcoholism
25. Vagrants
26. Persons who have been excluded from admission and

deported in pursuance of law, and who again seek admission within one year, etc.

27. Stowaways

28. Natives of the so-called Asiatic barred zone

Exceptions: missionaries civil engineers teachers
 students lawyers chemists
 merchants physicians authors
 government officers artists
 ministers or religious teachers
 travellers for curiosity or pleasure
 legal wives of the above or their children
 under 16 years of age

29. Aliens over 16 years of age, physically capable of reading, who cannot read the English language, or some other language or dialect, including Hebrew or Yiddish

Exceptions: (a) the father or grandfather over 55 years of age, the wife, the mother, the grandmother, or the unmarried or widowed daughter of any admissible alien, or of any citizen of the United States

(b) any alien seeking admission to the United States in order to avoid religious persecution

(c) aliens who have been lawfully admitted and have five years of continuous residence, and who are returning within six months of the date of their departure

30. Otherwise admissible aliens who are accompanying and are essential for the protection of an excluded alien, provided that the excluded alien is certified as being helpless from sickness, mental or physical disability, or infancy

31. Anarchists and similar classes. Acts of October 16, 1918; July 5, 1920; June 28, 1940

32. Aliens previously deported under the Act of May 10, 1920 (subversive and other classes). Act of May 10, 1920

33. Aliens ineligible to citizenship

Exceptions: (a) certain classes of aliens admissible as nonquota immigrants

(b) the wife or the unmarried child under eighteen years of age of certain classes of aliens admissible as nonquota immigrants

(c) the Chinese wife of an American citizen who was married prior to May 26, 1924
Acts of May 26, 1924; June 13, 1930

34. Aliens with improper, fraudulent, or no documents, or whose status under immigration law is not as reported on the immigration visa. Acts of May 26, 1924; March 24, 1934; May 14, 1937; June 28, 1940

35. Aliens seeking to enter from foreign contiguous territory brought to such territory by a transportation company not complying with the requirements of the Immigration Act of 1924, unless the alien has resided in such territory more than two years. Act of May 26, 1924

36. Any alien previously arrested and deported from the United States, unless permission has been granted for application for admission. Act of March 4, 1929

37. Aliens who have fallen into distress or needed public aid from causes arising subsequent to their entry and who have been voluntarily removed from the United States at public expense. Act of May 14, 1937

38. Persons who have departed from the United States to avoid military service in wartime or during a period of national emergency. Act of September 27, 1944

Additional restrictions on the admission of aliens to the United States apply in times of war or national emergency.⁵

Deportation after Entry. Early in the history of Federal immigration legislation it was found necessary to reenforce the exclusion requirements with provision for deportation after entry. The 1882 act had merely directed the return of "foreign convicts except those convicted of political offenses . . . to the countries from whence they came." In 1888, however, the amendment of October 19 to the Act of February 23, 1887⁶ initiated a new policy of deportation of illegal entrants, limited to within one year after entry.

The Immigration Act of 1891 reaffirmed the deportability of illegal entrants within one year after entry, and further pro-

⁵ Acts of May 22, 1918; June 21, 1941.

⁶ 23 Stat. 332; 25 Stat. 567.

vided for the deportation of "any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein." The number of deportable classes of aliens has grown since then to include the following.

B. CLASSES OF ALIENS DEPORTABLE AFTER ENTRY
(Sec. 19, Immigration Act of 1917⁷ except as noted)

Deportable for Causes existing at Time of Entry:

1. Any alien who at time of entry was a member of one or more of the classes excluded by law (*see* list of excludable classes above)
2. Any alien who enters in violation of law
3. Any alien who, after being excluded or arrested and deported as a prostitute, or as a procurer, etc., reenters the United States
4. Any alien who was convicted or who admits the commission prior to entry of a crime or misdemeanor involving moral turpitude
5. Any alien who enters without inspection
6. Anarchists and similar classes. Acts of October 16, 1918; June 28, 1940
7. Any alien who obtains an immigration visa through fraud by contracting marriage solely for that purpose. Act of May 14, 1937

Deportable for Causes Arising After Entry:

8. Any alien found advocating anarchy
9. Any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing
10. Any alien sentenced to imprisonment for a term of one year or more because of commission in the United States of a crime involving moral turpitude within five years after entry, or any alien sentenced more than once for such term of imprisonment at any time after entry
11. Any alien engaged in or connected with the practice of prostitution, etc.

⁷ 39 Stat. 889-890.

12. Any alien who shall import or attempt to import any persons for the purpose of prostitution

13. Aliens convicted of violation of certain wartime and neutrality acts or interned during wartime. Act of May 10, 1920

14. Any alien violating his status or terms of admission. Acts of May 26, 1924; April 29, 1943; February 14, 1944

15. Any alien convicted of violation of any law regulating traffic in narcotics. Acts of February 18, 1931; June 28, 1940

16. Any alien who at any time within five years after entry shall have aided any other alien to enter or to try to enter the United States in violation of law, etc. Act of June 28, 1940 (Alien Registration Act)

17. Any alien who shall have, on more than one occasion, aided any other alien to enter or to try to enter the United States in violation of law, etc. Act of June 28, 1940

18. Any alien convicted of possessing or carrying certain weapons in violation of law. Act of June 28, 1940

19. Any alien who, at any time within five years after entry, shall have been convicted of violating certain provisions of the Alien Registration Act of 1940 (concerning fraudulent registration), or any alien who shall have been convicted at any time of more than one such violation. Act of June 28, 1940

Control of Immigration by Quota. The provisions of the Immigration Act of 1924, with amendments, for the control of immigration by means of the national origins quota system are summarized below under three topics: the national origins quota formula, the nonquota classes that are exempt from quota limitation of the number to be admitted, and preference under the quota law.

C. QUOTA PROVISIONS

(Immigration Act of 1924⁸ except as noted)

National Origins Quota Formula:

“The annual quota of any nationality . . . shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin bears to the number of inhabitants in continental United

⁸ 43 Stat. 153.

States in 1920, but the minimum quota of any nationality shall be 100."

Nonquota Classes:

1. The unmarried child under 21 years of age or the wife of a citizen of the United States, provided that the marriage shall have occurred prior to issuance of visas (as amended by the Acts of May 29, 1928; July 11, 1932)

2. An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad

3. An immigrant born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, or his wife, and his unmarried children under 18 years of age

4. 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 any religious denomination, or professor . . . ; and his wife, and his unmarried children under 18 years of age

5. An immigrant born in the United States who has lost his United States citizenship and is a citizen or subject of a nonquota country, or is not a citizen or subject of any country but is coming from a nonquota country

6. The husband of a citizen of the United States, provided that the marriage occurred prior to July 1, 1932. Acts of May 29, 1928; July 11, 1932

7. A woman who was a citizen of the United States and lost her citizenship by marriage to an alien, or by loss of United States citizenship by her husband, or by marriage to an alien and residence in a foreign country. Acts of May 29, 1928; July 3, 1930

8. A former citizen of the United States who is also a national of a foreign state and who has lost his citizenship in the United States by entering or serving in the armed forces of a foreign state. Act of October 14, 1940

9. A former citizen of the United States, expatriated through the expatriation of a parent or parents; provided that he has not acquired the nationality of another country by any affirmative

act and that he comes to the United States before reaching the age of 25. Act of October 14, 1940

Quota Preference:

10. Quota immigrants who are the fathers or mothers of citizens of the United States who are 21 years of age or over

11. Husbands of citizens of the United States by marriages occurring on or after July 1, 1932 (as amended by Act of July 11, 1932)

12. Quota immigrants who are skilled in agriculture, together with their wives and children under 18 years of age (limited to nationalities whose quota is 300 or more per annum)

13. Quota immigrants who are the unmarried children under 21 years of age, or the wives, of lawfully admitted alien residents of the United States

14. Under the Chinese quota a preference up to 75 per cent of the quota is given to Chinese who are born and resident in China. Act of December 17, 1943

15. Under the quota for races indigenous to India a preference up to 75 per cent of the quota is given to persons born and resident in India or its dependencies. Act of July 2, 1946

Wartime Legislation. The second world war brought little change in the immigration laws and policies of the United States. The legislation remaining on the statute books from the time of the preceding war, together with earlier legislation, was adequate to meet most wartime needs. Immigration was at a low ebb during the war, and the quota act gave assurance that there could not be any large-scale immigration after the war. Furthermore, the wartime powers of the executive were sufficient to meet all special needs, such as for wartime travel regulation and for the control of enemy aliens. In large measure, such special wartime needs were met by presidential proclamation, executive order, and administrative regulation.

There is further reason why little special legislation was needed during the war. In spite of the apparent minuteness with which the controls on immigration are set by Congress, there nevertheless remains within the control mechanism a rather wide range of administrative discretion. Because of this

discretion there is in fact a considerable flexibility in the application of the immigration laws. The flexibility arises in part from a direct granting of discretionary powers to administrative officers. Flexibility also arises from the occasional use in the immigration laws of general phrases such as "likely to become a public charge," "endanger the public safety," and "moral turpitude" which permit some latitude of interpretation.

Whatever the reasons, immigration laws changed relatively little during the recent war years. The changes that took place with respect to exclusion, deportation, and quota controls are listed above. Only three wartime measures deserve special mention as involving significant developments in immigration law and policy. These are:

1. The Alien Registration Act of 1940;
2. The measures authorizing and facilitating the temporary admission of laborers;
3. The Act of December 17, 1943, repealing the Chinese exclusion acts.

The Alien Registration Act, enacted more than a year before the entry of the United States into the war and at a time when fears of fifth column activities were high, was designed to provide the government with additional powers to suppress subversive activities and to undertake the surveillance of aliens. The Act defined certain activities as subversive, provided penalties for such activities, and authorized the deportation of certain subversive classes. The Act also required the registration and fingerprinting of all aliens 14 years of age and over who remained in the United States for thirty days or longer, and of all aliens entering the United States.

A second wartime development was the temporary admission of agricultural laborers, railroad track workers, and others from Western Hemisphere countries. Authority for such admission was found in the fourth and ninth provisos of section 3 of the Immigration Act of 1917.⁹ Explicit authorization was provided

⁹ Waiver of the contract labor laws for the admission of skilled labor if labor of
(Continued on page 171)

by the Joint Resolution of April 29, 1943, amended and extended by the Joint Resolutions of December 23, 1943, and February 14, 1944. A similar relaxation of the immigration laws on a temporary basis in order to meet labor shortages in the United States was made during the first world war.

A third wartime measure and a notable reversal of immigration law and policy was the repeal of the Chinese exclusion acts. Eligibility for naturalization, and thereby for permanent admission to the United States,¹⁰ had been limited to "white persons, persons of African nativity or descent, and descendents of races indigenous to the Western Hemisphere."¹¹ Members of the Chinese race had been specifically excluded as immigrants since 1882. Early in the war, however, the repeal of Chinese exclusion came to be strongly urged in justice to an ally and in answer to enemy propaganda. By the Act of December 17, 1943, the Chinese exclusion acts were repealed, members of the Chinese race were made eligible to naturalization in the United States, and were given an immigration quota of 105 per annum under the national origins quota formula.

Recently Proposed Legislation. The first world war period marked a turning point in the immigration policy of the United States. Up to that time the trend of policy had been toward an increasingly careful and rigorous selection of immigrants. That trend continues, but with the quota acts of the early 1920's qualitative selection was supplemented by numerical limitations covering most but not quite all potential immigrants (*see* nonquota classes above).

The debate on questions of immigration policy has continued since that time, but the two basic principles of present immigration policy appear to be firmly fixed. These are, *first*, a careful selection of immigrants, and *second*, a limitation of the number to be admitted. There is at the present time no pros-
like kind unemployed is not to be found in the United States; and authorization of the Commissioner of Immigration and Naturalization, with approval of the Attorney General, to issue rules and prescribed conditions for the temporary admission of otherwise inadmissible aliens.

¹⁰ *See* excludable class 33 above.

¹¹ Section 303, Nationality Act of 1940 (54 Stat. 1140).

pect of any departure from these two principles of control. The possibility of modification within the framework of selection plus restriction remains, however. The discussion of immigration policy has continued in Congress and elsewhere and there have been many proposals for new immigration legislation. Since Congressional bills afford perhaps the best indication of the trend of views with respect to immigration policy, it is useful as a guide to contemporary trends of policy to look at the immigration bills that have been introduced in Congress in recent years.

Special immigration problems arising out of the war have been the subject of a number of recent bills in the 79th Congress. Prominent among them are the following three types of bill.

1. There have been a number of bills to facilitate the immigration of alien wives and husbands of members of the armed services. Legislation to this effect has already been passed in the Act of December 28, 1945. Similar action with respect to fiancées of members of the armed services has been taken.¹²

2. Several bills to facilitate the entry as immigrants of displaced persons have been introduced, to supplement the measures already taken under presidential directive of December 22, 1945.¹³

3. Other bills introduced in the recent session of Congress would bar nationals of former enemy countries from the United States, especially those who bore arms against the United States or who were members of certain totalitarian organizations.¹⁴

Other proposals for legislation have dealt with more fundamental questions of immigration policy. During the recent war years two modifications of immigration policy were most widely recommended. One was for liberalization of the immigration laws in order to eliminate elements of racial discrimination inconsistent with our declarations of national objectives. The

¹² Act of June 29, 1946.

¹³ For example, H. R. 7218 (Klein); H. R. 7213 (Woodhouse); H. J. Res. 363 (Luce).

¹⁴ H. R. 6869 (Gossett); H. R. 3773 (Izac); H. R. 3663 (Gossett).

other was for further restriction of immigration, with wartime emergencies and postwar reconversion problems cited as reasons for such action. Proposals of the same character have continued to appear after the war.

A number of bills to permit the immigration and naturalization of members of races now excluded and ineligible for citizenship have been introduced in the recent sessions of Congress. At least sixteen such bills in favor of natives of India were introduced in the 79th Congress. By the Act of July 2, 1946, Filipinos and members of races indigenous to India were made eligible for admission and naturalization. Minimum quotas of 100 per annum were assigned to both peoples under the national origins quota formula. Five or more bills of similar intent with respect to Koreans were also introduced in the recent session of Congress.

Another very considerable group of bills is made up of those calling for drastic and general reductions in immigration quotas. Some of the bills call for a percentage reduction or a complete suspension of immigration for a specified period, such as for five years after the war.¹⁵ Others would make a suspension of immigration mandatory whenever the number of unemployed in the United States exceeds a specified figure, usually set at 1,000,000 but sometimes put as low as 100,000.¹⁶ Action on these bills in the 79th Congress was forestalled by the hearings on immigration questions conducted under House Resolution 52, but similar bills undoubtedly will be introduced in the next Congress.

¹⁵ Including S. 1758 (Maybank); H. R. 414 (Gossett).

¹⁶ For example, H. R. 3286 (Rankin); S. 1020 (Stewart); S. 240 (Stewart).