

Study

CONSULAR DISCRETION IN THE IMMIGRANT VISA-ISSUING PROCESS*

A widespread belief exists that determinations to issue or refuse immigrant visas are sometimes arbitrary or unlawful. This Study, made possible by a National Science Foundation grant, examines the exercise of discretion by consular officers in issuing immigrant visas. First, the authors isolate those procedures and factors that determine eligibility to immigrate mandated by the Immigration and Nationality Act, particularly under the "public charge" and "fraud" provisions. Then, through interviews and questionnaires, the authors detail and compare the typical procedures and eligibility factors utilized by consular officers in the field. Next, the study concentrates on the effect of the individual consular officer's educational background, length of service, and age upon his refusal rates. The authors conclude by recommending ways to limit consular discretion.

INTRODUCTION

Informal and non-reviewable decisionmaking constitutes eighty to ninety percent of the administrative process.¹ These informal

* Unless otherwise noted, citations to interviews with consular personnel are cited as being with "consular officers" regardless of the rank of the interviewee. Also, portions of some interview citations are omitted to preserve the anonymity of the consular officer.

1. Davis, *Behavioral Science and Administrative Law*, 17 J. LEGAL EDUC. 137, 150 (1965). Discretionary decisions number in the billions annually. In comparison, the yearly number of civil and criminal cases commenced in all federal courts is under 100,000, and the number going to trial is under 12,000. The amount of thought involved in a discretionary decision varies from a fraction of a second to several years. K. DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 9 (1969).

determinations have been the focus of surprisingly little study.² Yet the impact of this informal process may be more important than the formal judicial process because such decisions affect thousands of individuals daily.

This Study examines the boundaries of individual decision-making in one narrow area of administrative law. It scrutinizes decisionmaking in the immigrant visa application process—specifically, the decision of an individual consular officer to grant or deny an immigrant visa to an applicant. In the area of immigration, the impact of any decision can be especially crucial to the individual involved. This Study investigates the discretion granted to consular officers by statute or by regulation and evaluates how individual officers utilize discretion throughout the decisionmaking process.

An administrative official exercises discretion whenever the effective limits on his power allow him to decide among several courses of action or of inaction. An individual officer's decision includes an interpretation of the facts giving rise to the discretionary problem and may cause an interpretation of unclear law.³ Differing values and influences can cause individual law-enforcers to reach widely disparate decisions. This disparity leads to nonuniform, unpredictable application of the law.

2. On the subject of discretionary justice, see generally ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION (1971); A. CASTBERG, PROSECUTORIAL DISCRETION: A CASE STUDY (1968); K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY (1969); K. DAVIS, DISCRETIONARY JUSTICE IN EUROPE AND AMERICA (1976); K. DAVIS, POLICE DISCRETION (1969); B. GROSMAN, THE PROSECUTOR: AN INQUIRY INTO THE EXERCISE OF DISCRETION (1969); M. KADISH & S. KADISH, DISCRETION TO DISOBEY: A STUDY OF LAWFUL DEPARTURES FROM LEGAL RULES (1973); R. POUND, CRIMINAL JUSTICE IN AMERICA (1930); G. STEINBERG, CRIMINAL PROSECUTION IN CONNECTICUT: A STUDY IN DISCRETION (1940); Davis, *Behavioral Science and Administrative Law*, 17 J. LEGAL EDUC. 137 (1965); Dill, *Discretion, Exchange and Social Control: Bail Bondsman in Criminal Courts*, 9 L. & SOC. REV. 639 (1975); Grant & Constable, *Immigration Law: Deportation*, 125 NEW L.J. 957 (1975); Panel, *Should People Stay at Home?*, 68 AM. SOC'Y INT'L L. PROC. 38 (1974); Roberts, *The Exercise of Administrative Discretion Under the Immigration Laws*, 13 SAN DIEGO L. REV. 144 (1975); Robertshaw, *Unreasonableness and Judicial Control of Administrative Discretion: The Geology of the Chertsey Caravans Case*, 1975 PUB. L. 113; Rosenblum, *On Davis on Confining, Structuring, and Checking Administrative Discretion*, in ADMINISTRATIVE DISCRETION 50 (C. Havighurst ed. 1974); Sofaer, *Judicial Control of Informal Discretionary Adjudication and Enforcement*, 72 COLUM. L. REV. 1293 (1972); Strauss & Baskir, *Controlling Discretion in Sentencing: The Clemency Board as a Working Model*, 51 NOTRE DAME LAW. 919 (1976); Note, *Administrative Law—Expansive Discretion Allowed Executive Branch in Admission of Politically Disfavored Aliens*, 22 BUFFALO L. REV. 499 (1973); Recent Development, *Immigration: The Criterion of "Otherwise Admissible" as a Basis for Relief From Deportation Because of Fraud or Misrepresentation*, 66 COLUM. L. REV. 188 (1966); Wright, Book Review, 81 YALE L.J. 575 (1972).

3. K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY 5 (1969).

Discretionary decisions having the force of law are made at relatively low levels in many administrative agencies. Often such decisions are for all practical purposes final. Although some observers believe that discretion is the principal source of creativity in government and in law, discretion without meaningful standards may reduce rather than enhance the quality of justice. According to Professor Kenneth Culp Davis, "[d]iscretionary power may be too broad or too narrow. When it is too broad, justice may suffer from arbitrariness or inequality. When it is too narrow, justice may suffer from insufficient individualizing."⁴ The greatest hope for improving the quality of justice lies in the area of discretionary decisionmaking.

Once it is acknowledged that discretionary power exists and that its effects can be devastating to the individual involved, the key question becomes: How can injustice to individuals resulting from the exercise of discretionary power be reduced? Professor Davis has proposed a framework that will limit unnecessary discretionary power and will structure and check desirable discretionary power.⁵

Confining discretion limits unnecessary power by establishing boundaries within which discretion can be contained. Administrative clarification of vague statutory standards through policy statements, adjudicatory opinions, or the exercise of rulemaking power are methods of confining discretion. Thus, confining discretion involves careful delimitation of an individual's power.⁶

Structuring discretionary power entails restraining the manner in which officers exercise discretion once the boundaries of discretion have been established. Many tools could help structure discretion. Published plans, policies, and rules clarify and regulate the procedure of the administrative agency. Published findings of fact and of reasons behind decisions explain discretionary decisions to the public. Articulation of a decision's underlying ra-

4. K. DAVIS, *ADMINISTRATIVE LAW CASES—TEXT—PROBLEMS* 449 (1973).

5. See Rosenblum, *On Davis on Confining, Structuring, and Checking Administrative Discretion*, in *ADMINISTRATIVE DISCRETION* 50 (C. Havighurst ed. 1974). These proposals have been enthusiastically accepted by at least one leading jurist, Judge J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit, who has stated that "[a]dministrative discretion was created by law, and there is no inherent reason why the law should be unable to control it." Wright, *Book Review*, 81 *YALE L.J.* 575, 597 (1972).

6. See K. DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 52-96 (1969), for a detailed discussion of confining discretion.

tionale not only helps to clarify the law for administrative officials but also serves the function of changing the exercise of discretion into the making of law. Finally, a system of fair informal procedure allows parties to be informed of the factors involved in making any decision and to be given an opportunity to respond before an agency renders a final decision.⁷

In addition to the methods of confining and of structuring discretion, review of officers' discretionary decisions can protect against the capricious exercise of discretionary power. Commonly, review is by a superior officer. Other methods of review include intervention by legislators, attorneys, private organizations, news media, courts, and administrative appellate tribunals.⁸

Because an adverse determination can have a drastic impact upon an individual's life, the immigration setting provides an important forum in which to study informal administrative decision-making. The Immigration and Nationality Act of 1952 (Act)⁹ gives the United States the world's most detailed and complex provisions pertaining to regulation of aliens applying for residence in a sovereign State.¹⁰ However, the statute's technicality invites misinterpretation or misapplication by those responsible for its enforcement.

The Act protects the domestic labor force by excluding unskilled or unwanted labor. It promotes public welfare through selection of "immigrants who are highly skilled or trained in some specialized field and whose training and experience might contribute to our national economy."¹¹ The Act purports to promote "family reunification" and to offer "a haven for the homeless, the fearful, and the oppressed of the world."¹²

Although the national policies enunciated may be desirable, application of the Act often has tragic consequences when individual applicants are excluded.

In terms of human misery, the potential impact of our immigration laws can hardly be overstated [T]he immigration laws operate directly

7. *See id.* at 97-141.

8. *See id.* at 142-61.

9. 8 U.S.C.A. §§ 1101-1503 (West 1970 & Supp. 1978).

10.

In addition to an immigration statute of 173 pages, . . . there are 185 pages of immigration regulations, . . . and 66 pages of visa regulations. In addition, a comprehensive review of the subject requires reference to thousands of pages of . . . [the] Foreign Affairs Manual of the State Department, 13 volumes of Administrative Decisions . . . and several hundred Interim Decisions.

Wasserman, *Grounds and Procedures Relating to Deportation*, 13 SAN DIEGO L. REV. 125, 125-26 (1975) (footnotes omitted).

11. S. KANSAS, IMMIGRATION AND NATIONALITY ACT ANNOTATED 24 (1953).

12. Rodino, *Foreword*, 13 SAN DIEGO L. REV. i, i-ii (1975).

and exclusively on human beings, flesh and blood, men, women and children, whose hopes for future happiness in a realistic sense frequently depend on their ability to enter, or remain in, this land of freedom and opportunity.¹³

Such potential for hardship has led to the promulgation of ever-increasing avenues of relief from the Act's application.¹⁴ Some provisions for relief are embodied in the statute itself, while personal interpretations of the Act and individual judgments of various decisionmakers can afford other relief. Each form of relief has a common grain: The decisionmaker must exercise an element of administrative discretion to benefit the alien.¹⁵

The Act contains a number of exclusionary provisions.¹⁶ Two of these provisions in which the authors believed discretionary power to exist were investigated in depth. One provision provides for denial of a visa application if the consular officer believes an alien is likely to become a public charge.¹⁷ The other provision provides for visa denial if the alien presents insufficient documentary evidence.¹⁸ This Study hypothesized that individual consular officers' different interpretations of the Act, regulations promulgated pursuant to it, and other interpretative materials would lead to inconsistent results in the issuance of immigrant visas. That in 1975 these two provisions accounted for approximately ninety-five percent of all visa denials¹⁹ evidences the importance of controlling discretion under them.

This Study outlines the factors affecting a consular officer's decision and considers the proper role of discretion in the issuance or denial of immigrant visas. Recommendations for the control and structuring of existing discretionary power follow this analysis.

13. Roberts, *The Exercise of Administrative Discretion Under the Immigration Laws*, 13 SAN DIEGO L. REV. 144, 144 (1975).

14. The statute provides waivers of exclusion for certain individuals. Immigration & Nationality Act § 212(g)-(i), 8 U.S.C. § 1182(g)-(i) (1976) [the Immigration and Nationality Act is hereinafter cited as I. & N. Act].

15. Roberts, *The Exercise of Administrative Discretion Under the Immigration Laws*, 13 SAN DIEGO L. REV. 144, 146 (1975).

16. I. & N. Act § 212(a)(1)-(32), 8 U.S.C.A. § 1182(a)(1)-(32) (West 1970 & Supp. 1978).

17. *Id.* § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1976).

18. *Id.* § 221(g), 8 U.S.C. § 1201(g) (1976).

19. U.S. DEPT OF STATE, REPORT OF THE VISA OFFICE 76 (1975) [hereinafter cited as VISA OFFICE REPORT].

METHODOLOGY

The authors conducted the research for this Study by using a multi-method approach, rare in traditional legal analysis.²⁰ First, the authors examined the relevant exclusionary provisions of the Act and the regulations. Second, several hypotheses were tested empirically through the use of a questionnaire sent to consular officers throughout the world. Third, intensive interviewing and observation of consular officers in the field allowed an assembly of data concerning personal behavior and impressions.

The research was initiated by mailing questionnaires to approximately 360 consular officers worldwide.²¹ The questionnaire was designed to elicit the following information: (1) whether specified subjective factors, such as the appearance or the demeanor of an applicant, influence a consular officer's decision to grant or deny a visa;²² (2) whether a correlation exists between officer workload and favorable application decisions;²³ (3) what factors influence an officer's decision of eligibility under the public charge provision;²⁴ (4) the effect, if any, of experience or education upon the visa-issuing process;²⁵ (5) what guidelines or materials the consular officer consults in making his determination;²⁶ and (6) what type of review of the consular officer's decision is available and whether it is used in practice.²⁷

The questionnaire consisted both of objective questions limiting the officer to one of several alternative responses²⁸ and of open-

20. The National Science Foundation believed that traditional legal research would benefit from the application of social science research methods. The researchers attended a four-day training seminar in statistical research methods sponsored by the National Science Foundation in Madison, Wisconsin. Professors Richard Abel of the University of California, Los Angeles, and Stewart Macaulay of the University of Wisconsin, Madison, greatly aided the authors in preparing the strategy both for the use of the questionnaires and in interviewing techniques.

21. The final version of the questionnaire is printed as Appendix A. The questionnaire was revised once after the conference in Wisconsin, *see* note 20 *supra*, again upon the advice of members of the State Department's Visa Office, and once again upon the advice of Dr. Richard Hofstetter, computer analysis advisor for this Study. The authors mailed questionnaires to consular officers in July and August, 1977.

The questionnaires were sent to each consular officer at each immigrant visa-issuing post worldwide. However, because the Visa Office of the State Department could not state the number of immigrant visa-issuing officers assigned to each post, there is no way of declaring with certainty the percentage of response.

22. *See* Appendix A, questions 4, 6-7.

23. *See id.* questions 2-3.

24. *See id.* questions 8 & 9; I. & N. Act § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1976).

25. *See* Appendix A, question 16.

26. *See id.* questions 11-12.

27. *See id.* questions 14-15.

28. *See id.* questions 2, 3, 6, 7, 9, 11-16.

ended questions allowing the officer to elaborate.²⁹ Upon receipt of completed questionnaires, researchers examined the answers to the open-ended questions and assigned corresponding numerical values to similar answers for purposes of computer analysis. The objective questions were similarly coded. Researchers designed a computer program to provide frequency statistics on each question and to allow cross-tabulation of variables to determine whether any significant trend resulted.³⁰ For example, the computer program correlated the length of time each officer had spent in the Foreign Service with his response to the question identifying his major problems as an immigrant visa officer. As a result, the authors could determine whether any significant differences in the perception of major problems existed between newer officers and those with more experience.

To complement the statistics produced by the questionnaires, the authors conducted intensive personal interviews with immigrant visa-issuing officers in Foreign Service offices throughout Canada and Mexico. During the months of July and August, 1977, one author observed and interviewed officers at Canadian offices in Halifax, Montreal, Toronto, Winnipeg, and Vancouver.³¹ Simultaneously, the other author visited Mexican posts in Ciudad Juarez, Monterrey, Mexico City, Guadalajara, and Tijuana.³²

In addition to participating in personal interviews, the consular officers at each office visited permitted the authors to observe office procedure and visa-application interviews. Although the authors believed the questionnaire results would be useful for

29. See *id.* questions 1, 3, 4, 5, 8, 10, 15(h)-(j).

30. The computer program is entitled *Statistical Package for the Social Sciences* and was developed by Dr. Richard Hofstetter and personnel at the Social Science Research Laboratory at San Diego State University. The authors would like to thank those who helped with the preparation of the questionnaire for computer analysis and with the interpretation of the results after the questionnaires were coded and analyzed.

31. The offices in Canada were observed as follows: Halifax, July 8-12; Montreal, July 14-20; Toronto, July 22-28; Winnipeg, Aug. 3-5; and Vancouver, Aug. 8-10.

32. The offices in Mexico were observed as follows: Ciudad Juarez, July 8-14; Monterrey, July 18-22; Mexico City, July 24-Aug. 2; Guadalajara, Aug. 8-12; and Tijuana, July 7-Aug. 5. Members of the Visa Office of the State Department were helpful to the authors throughout the preparation of this Study. Messrs. William Morgan, Carl Shepherd, Marvin Groeneweg, and Ms. Murrow Morris spent several days briefing the authors on the applicable law and procedure for the issuance of visas. Mr. Morgan of the Visa Office also sent a telegram to all Foreign Service posts stating that the project had State Department approval and encouraging cooperation of the consular officers.

general comparisons on a worldwide basis, they also believed that more honest, accurate, and thoughtful information could be obtained through the observation of personal contact in the field.³³

The Visa Office of the United States Department of State supplied the authors with a third source of data, consisting of information concerning consular officers and visa statistics. The Visa Office also provided the authors with copies of guidelines and materials used by consular officers in the field.

With the multi-method strategy, the strengths of each approach buttress the weaknesses of the others. The questionnaire provides systematic worldwide coverage, but it retains the weaknesses of an unknown response rate and of the authors' inability to control the situations in which it was administered. The interviews in Mexico and in Canada, although providing a comprehensive survey of all officers within the two countries, could be atypical for immigrant-visa purposes because of the proximity of these two countries to the United States. Information from the State Department is useful because it is based on experience, personal knowledge, and statistics, but one must examine it critically because the Visa Office's interest in its officers may have resulted in biased observations.

THE CONSULAR OFFICER'S ROLE IN THE VISA-APPLICATION PROCESS

Congress has delegated various aspects of the immigration laws' administration to the State Department and to the Justice Department. As a result, agents of the two departments must work together in close harmony to ensure that the law is adequately enforced.

Congress has delegated supervision of alien entry into the United States and enforcement of the Act to the Attorney General³⁴ and upon his delegation to the Commissioner of the Immigration and Naturalization Service (INS).³⁵ The execution of the Act is committed to various officials under authority of the Commissioner.³⁶ The INS ascertains the right of each alien to reside in the United States. This job includes eliminating undesirable aliens at the port of entry,³⁷ approving visa petitions filed by rela-

33. To avoid possible bias resulting from interviewing only officers and employees of the State Department, the authors also solicited the views of several immigration attorneys.

34. I. & N. Act § 103(a), 8 U.S.C. § 1103(a) (1976).

35. *Id.* § 103(b), 8 U.S.C. § 1103(b).

36. 8 C.F.R. pt. 2 (1978).

37. Aliens who have no right to enter the United States or whose entry would not be in the best interest of the United States are considered undesirables. [1975] INS ANN. REP. 2. See Roberts, *The Exercise of Administrative Discretion*

tives of applicants, deciding whether to prosecute an alien, and deciding whether to grant relief from deportation. All these functions involve elements of discretionary decisionmaking.³⁸

The Department of State is responsible for administration of the immigration laws abroad. The Bureau of Security and Consular Affairs within the Department of State is under the direct jurisdiction of the Deputy Undersecretary of State for Administration. The INS Commissioner and the Undersecretary maintain continuous liaison to ensure coordinated, uniform, and efficient administration of the Act and of all other immigration and nationality laws.³⁹

Within the Bureau of Consular Affairs is the Visa Office. The Visa Office's main responsibility is to ensure proper and efficient issuance of visas at overseas Foreign Service posts. With few exceptions, each alien who desires to visit or to immigrate to the United States must obtain a visa from a United States consular officer stationed at an appropriate Foreign Service post abroad.⁴⁰ The consular officers who issue the visas are directly under the authority of the Visa Office, which trains the officers,⁴¹ continually instructs them in the Act's interpretation, provides advisory

Under the Immigration Laws, 13 SAN DIEGO L. REV. 144 (1975). Mr. Roberts has well-summarized the results and the effects of discretion as exercised by the INS:

In the absence of carefully considered and clearly articulated standards for the exercise of the various types of discretionary powers, the resulting decisions must necessarily vary with the personal attitudes and biases of the individual decisionmakers. Adjudicators with hard-nosed outlooks are likely to be more conservative in their evidentiary appraisals and in their dispensation of discretionary bounties than their counterparts with more permissive philosophies.

Id. at 147-48.

38. Roberts, *The Exercise of Administrative Discretion Under the Immigration Laws*, 13 SAN DIEGO L. REV. 144, 147-48 (1975).

39. Jurisdiction of the State and Justice Departments is complementary in most respects although in certain instances a duplication of effort appears to exist. See note 66 *infra*. INS officers are often stationed at a number of Foreign Service posts abroad to carry out certain functions that come within their responsibility.

40. I. & N. Act § 101(a)(16), 8 U.S.C. § 1101(a)(16) (1976). Lawful residents and aliens returning to the United States may qualify for an adjustment of status, a procedure for entry in lieu of the visa requirement.

41. The Department has recently opened its Rosslyn training center in Arlington, Virginia. The immigrant visa portion of this six-week program includes intensive study of the statute and regulations, frequent testing, the use of a *Self-Instructional Study Guide* that includes factual hypothetical situations for the officer's analysis, and frequent role-playing between experienced consular officers and the trainees simulating the immigrant-visa interview. Interview with John Coffman, Program Director, in Arlington, Virginia (June 12, 1977).

opinions upon request, and prepares regulations⁴² concerning all phases of the issuance of immigrant and non-immigrant visas.

The consular officer's position is the most powerful of any official in the Visa Office. He makes the initial and the final determination on whether a visa will be granted. These actions can have a significant effect on the alien who is applying for permission to reside in or to visit the United States. If the consular officer refuses to issue a non-immigrant visa, the alien merely foregoes the chance to visit the United States.⁴³ In contrast, when the consular officer denies an immigrant visa, the applicant foregoes the opportunity to live in the United States and might be forced to remain apart from family and loved ones. Because of the harsher effect of an immigrant visa denial, more stringent guidelines have been enacted for that situation than for the denial of a non-immigrant visa.⁴⁴ In both instances, however, elements of discretion persist.

The consular officer exercises discretionary power in deciding whether any of the thirty-two grounds for excluding an immigrant visa application apply to a particular case.⁴⁵ If the officer con-

42. These regulations are promulgated by the Secretary of State and implement the immigration laws. The regulations are published at 22 C.F.R. § 42 and in the *Federal Register*.

43. Any immigrant (with the exception of Canadians) desiring temporary admission to the United States must obtain a non-immigrant visa from an American consular officer. See I. & N. Act § 101, 8 U.S.C.A. § 1101 (West 1970 & Supp. 1978) (regulates the issuance of non-immigrant visas). The Act recognizes that a distinction may be made between immigrants and non-immigrants in the application of certain exclusionary provisions. Non-immigrating aliens are granted only temporary admission. Subjecting such aliens to some of the grounds for exclusion is not only unnecessary for the protection of the interests of the United States but would needlessly restrict the free travel of aliens. See S. KANSAS, IMMIGRATION AND NATIONALITY ACT ANNOTATED (1953) for an informative discussion of the Act's more lenient provisions applicable to non-immigrant visa applicants.

44. See generally 22 C.F.R. § 42 (1977).

45. I. & N. Act § 212(a)(1)-(32), 8 U.S.C.A. § 1182(a)(1)-(32) (West 1970 & Supp. 1978). These provisions exclude aliens on grounds of health, morality, criminal convictions, political activities, and economics. That discretionary authority exists is evidenced by consular officers' inconsistent opinions on the subject. One consular officer at Halifax, Canada, believes that no discretion exists in the immigrant visa process. If an alien shows the proper documentation, this officer believes that a visa should be issued. The officer prefers immigrant visa work to non-immigrant visa work because the former is more regulated and because if an officer need make neither discretionary decisions nor value judgments, he cannot be condemned for a wrong decision. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977). On the other hand, in Toronto, Canada, it is the opinion of the vice-consul that a great deal of discretion is involved. The law is so vague that whenever the law does not state "you must" or "you must not," the consular officer uses his discretion to issue or deny the visa. Even if the law does state "you must" or "you must not," a savings clause may negate the absolute language. Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977). One immigration attorney believes that when an officer makes a decision regarding certain exclusionary provisions of the Act, "the discretion, attitude, perspective, call it what you will, of the Consul is the deter-

cludes that the alien falls within one of the thirty-two categories, the visa application must be denied.⁴⁶ No judicial review of the officer's decision is available to the alien, and in most cases, the officer's opinion has the effect of a final determination.⁴⁷

Although limited discretion exists to *refuse* a visa, the consular officer utilizes broader discretion to *issue* a questionable or borderline visa.⁴⁸ It takes considerably more time and paperwork to deny a visa than to issue one, and the Visa Office looks upon numerous denials with disfavor. Moreover, visa issuances are seldom, if ever, reviewed.⁴⁹ Consequently, in questionable cases a consular officer may issue visas to avoid excess work or the disap-

mining factor." Letter from William B. Taffet to Kim R. Anderson (Oct. 31, 1977) (on file with the *San Diego Law Review*). Such varying views of discretion lead to the conclusion that each consular officer defines his own limits of discretion within the law and exercises his authority within the confines of that definition.

46. The Act provides that all those who fall within a class of excludable aliens "shall be ineligible to receive visas." I. & N. Act § 212(a), 8 U.S.C. § 1182(a) (1976). In a separate provision, the Act states that no visa shall be issued if it appears to the consular officer that the applicant is ineligible to receive a visa under the thirty-two grounds of exclusion. *Id.* § 221(g), 8 U.S.C. § 1201(g).

The issuance of the visa is further subject to quantitative restrictions that the alien must overcome to immigrate. A bill recently signed into law has replaced the prior discriminatory quotas, which established numerical limits by hemispheres, allotting 170,000 to the Western Hemisphere and 120,000 to the Eastern Hemisphere. The new measure allows a worldwide ceiling of 290,000 and helps to eliminate discrimination based upon place of birth or residence. Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907 (amending 8 U.S.C. §§ 1151-1153 (1976)). The quota is exclusive of immediate relatives and of special preferred immigrants. Immediate relatives are defined as the "children, spouses, and parents of a citizen of the United States." I. & N. Act § 201(b), 8 U.S.C. § 1151(b) (1976). Special preferred immigrants include those who are ministers of religion, former citizens of the United States, and United States government employees. *Id.* § 101(a)(15), 8 U.S.C. § 1101 (a)(15) (1976). In addition to the numerical maximums, the immigration law imposes a ceiling of 20,000 immigrants per year from each country within either hemisphere. *Id.* § 202(a), 8 U.S.C. § 1152(a) (1976) (Eastern Hemisphere). The Immigration and Nationality Act Amendments of 1976, Pub. L. 94-571, § 3, 90 Stat. 2703 (amending I. & N. Act § 202(c), 8 U.S.C. § 1152(c) (1976)), extend this requirement to countries of the Western Hemisphere.

47. On the limitations of administrative review, see notes 156-70 and accompanying text *infra*.

48. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977). According to this officer discretion is exercised whenever a visa is issued. This officer believes that he uses his discretion to issue many visas that would be denied by other officers at his post.

49. The exception to the non-reviewability of issued visas is the second determination at the border by the INS. It has been suggested that a process of review of these issued visas be investigated. See COMPTROLLER GENERAL OF THE U.S., NEED TO REDUCE PUBLIC EXPENDITURES FOR NEWLY ARRIVED IMMIGRANTS AND CORRECT INEQUITY IN CURRENT IMMIGRATION LAW, REPORT TO CONGRESS 29-32 (1975). However, others believe that the man-hours and funds required to undertake such

proval of his superiors.⁵⁰

Although the consular officer is directly responsible for issuing or denying visas, each Foreign Service office employs many local employees who contribute significantly to the visa decision.⁵¹ For example, local employees often are delegated the routine tasks of ascertaining whether the applicant falls within his country's quota⁵² or of answering congressional inquiries regarding the status of certain applications. However, in some instances local employees have effective power to deny a visa by failing to grant discretionary jurisdiction to hear a case⁵³ or by causing a "quasi-refusal" for lack of documentation.⁵⁴

Before the would-be immigrant receives an appointment for an interview with a consular officer, the applicant must follow a time-

a review render it impracticable. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977).

50. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977).

51. These local employees are nationals of the State in which the Foreign Service office is located.

52. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977).

53. At one consulate in Canada a local employee has the job of screening applications for hearing. Although the Canadian posts accept "stateside" cases (those involving aliens residing in the United States) when immediate relatives are involved, consular officers can exercise their discretion to accept cases involving more distant relatives. When one of the authors was in this consulate, a local employee denied a hearing to a fifth preference petition (brother or sister) supported by a congressional inquiry. She stated that to grant jurisdiction would only open "Pandora's box" and "flood" the office with applicants. The decision caused the applicant to return to her native country (China) to obtain the visa.

According to William B. Taffet, a former immigration judge for the Justice Department, this Canadian office had no jurisdiction to accept other than first or second preference stateside cases and acceptance of this fifth preference case was beyond the consulate's jurisdiction. Letter from William B. Taffet to Paula L. Lehmann (Aug. 15, 1978) (on file with the *San Diego Law Review*).

54. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977). In Winnipeg, a local employee was in effect making decisions whether prospective immigrants provided evidence sufficient to show they would not be public charges. See I. & N. Act § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1976). If an alien could not document his application to the employee's satisfaction, he was informed that he could not immigrate. These applicants neither entered the consulate nor were interviewed by a consular officer. Thus, the Visa Office's statistics did not include their "refusals." If an alien advanced to the interview stage, he almost certainly would obtain his visa.

The extremely low rate of refusals at the Winnipeg post illustrates the effectiveness of this process. However, the Visa Office halted the pre-screening of applicants in 1977. The effects of the change in procedure should be seen in an increase in refusals at this post because applicants will come for their interviews without prior review of their documents. The halting of the pre-screening process may also lead to the inconvenience of a second trip for the applicant if his visa is refused on his first visit. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977).

consuming application procedure.⁵⁵ Upon completion of a preliminary questionnaire,⁵⁶ the consulate staff informs the alien of any preliminary requirements needed to comply with the numerical restrictions on immigration. For example, certain relatives receive priority under the preference system.⁵⁷ At this point, the consulate staff informs the applicant whether he may apply for preferred status under the preference system and if so, which visa petitions verifying the claimed relationship he should file.⁵⁸ In addition, certain applicants must apply to the Department of Labor for a labor certification.⁵⁹

After establishing his status and filing the appropriate petitions, the alien is informed of the documents he must assemble to file

55. For an overview of the immigration procedure, see Comment, *How to Immigrate to the United States: A Practical Guide for the Attorney*, 14 SAN DIEGO L. REV. 193 (1976).

56. Form OF-222, 22 C.F.R. § 42.115(a) (1977).

57. If an immigrant does not qualify as an immediate relative or a special immigrant, he may be issued a visa under the preference system on a first-come, first-served basis. The Act delineates seven preference categories for worldwide immigrants. I. & N. Act § 203(a)(1)-(7), 8 U.S.C. § 1153(a)(1)-(7) (1976). The Immigration and Nationality Act Amendments of 1976, Pub. L. 94-571, §§ 2, 4, 90 Stat. 2703 (amending I. & N. Act §§ 201, 203, 8 U.S.C. §§ 1151, 1153 (1970)), extend to the Western Hemisphere the preference system previously applicable only to the Eastern Hemisphere. In order of preference, the categories include: (1) unmarried sons and daughters over 21 years of age of United States citizens; (2) spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence; (3) members of the professions or persons of exceptional ability in the sciences and arts; (4) married sons and daughters of United States citizens; (5) brothers and sisters of United States citizens, provided such citizens are at least 21 years of age; (6) skilled and unskilled workers in short supply in the United States; (7) refugees, non-preference-other immigrants; numbers available for applicants not used by the other seven preference categories. For specific percentages of the total number of visas allocated to each preference category, see I. & N. Act § 203(a)(1)-(7), 8 U.S.C. § 1153(a)(1)-(7) (1976).

58. An applicant may not obtain preferred status as a relative of a United States citizen or resident alien unless that relative files an INS petition on the applicant's behalf. The INS is responsible for verifying the claimed relationship. After the INS has approved the petition, it is sent to a consular officer who then determines whether to issue a visa. See Comment, *How to Immigrate to the United States: A Practical Guide for the Attorney*, 14 SAN DIEGO L. REV. 193, 213-15 (1976).

59. The act excludes from admission any alien intending to perform skilled or unskilled labor unless he receives exempt status. I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1976). See Rubin & Mancini, *An Overview of the Labor Certification Requirement for Intending Immigrants*, 14 SAN DIEGO L. REV. 76 (1976). The 1976 amendment to the Act extended the exemptions to this requirement by making the Western Hemisphere exemptions the same as the Eastern Hemisphere exemptions. Immigration and Nationality Act Amendments of 1976, Pub. L. 94-571, § 5, 90 Stat. 2703 (amending I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1970)).

with the visa application.⁶⁰ The consular office assesses whether a visa number is available under the numerical limitations and, if one is not available, how long the applicant must wait for an opening. When the applicant has notified the consular office that he has obtained all the required documents, he receives a formal application and an appointment for an interview with the consular officer.⁶¹ At the appointed time a local employee of the consular office screens the accumulated documents, fills in available information, and prepares the papers for review by the consular officer.⁶²

After what may be months of preparation, the applicant is ready for his initial encounter with a United States consular officer. The interview is normally short and routine.⁶³ The consular officer examines the documentation to ensure that the alien is not excludable under one of the thirty-two grounds enumerated in the Act.⁶⁴ If the consular officer is satisfied that the applicant is not excludable, the applicant swears to the accuracy of the petition and/or application. The visa is then issued upon the payment of a fee,⁶⁵ and the alien and his family have four months

60. The Act lists the documents the alien must file with the visa application. I. & N. Act § 222(b), 8 U.S.C. § 1202(b) (1976). See 22 C.F.R. § 42.111(b) (1977). These documents include a police certificate from the appropriate authorities in all areas in which the applicant has resided for over six months since the age of 16, military or prison records, and an original birth record. Although not statutorily mandated, a consular officer may require the alien to produce a marriage certificate, a divorce certificate, or other documents that the consular officer deems necessary to verify an applicant's relationship to a spouse or children or identity. See *id.* § 42.111(b)(5).

61. The formal application is executed on Form OF-230. 22 C.F.R. § 42.115(b) (1977). The alien then receives a formal appointment, scheduled months in advance because of large demand. In Toronto, consular officers interview as many as 75 applicants daily. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977).

62. Often the local employee who examines the papers will note on the application whether documents are missing or suspicious. This preliminary review of the documents is a great help to the consular officer, who usually has time only for a cursory examination. One of the authors observed this procedure in Winnipeg and in Vancouver, Canada.

63. The average interview lasts five to 10 minutes. Most consular officers think that by the time the application reaches the interviewing stage, issuance of a visa is normally routine. Interview with consular officer at the United States consulate in Halifax, Canada (July 8, 1977). One officer estimated that 13% of the cases are decided at the interview stage. Interview with consular officer at the United States consulate in Montreal, Canada (July 20, 1977). Another officer believes that in five percent of the cases, visas are issued or refused based upon the consular officer's impression of an applicant during the interview. Interview with consular officer at the United States consulate in Montreal, Canada (July 20, 1977).

64. See I. & N. Act § 212(a)(1)-(32), 8 U.S.C.A. § 1182(a)(1)-(32) (West 1970 & Supp. 1978).

65. The visa fee is \$20, in addition to a five-dollar fee for the visa application. 22 C.F.R. § 42.121 (1977).

from that date to enter the United States.⁶⁶

If the consular officer finds the alien to be excludable by the provisions of the Act, a different procedure results. The officer must document all permanent refusals. The consular officer forwards these documents to the post's principal consular officer for review.⁶⁷ In addition, the State Department informally reviews a visa denial if requested to do so by an attorney, a Member of Congress, or an interested party.⁶⁸ Upon a finding of error, the Visa Office will issue an advisory opinion to the consular officer. The advisory opinion considers all the facts and advises the officer whether to issue the visa. The opinion is binding on conclusions of law but not on conclusions of fact. However, consular officers generally comply with the opinion.⁶⁹

Although an applicant may be denied a visa by the consular officer on grounds of prostitution or criminal conviction,⁷⁰ on grounds of fraud in seeking entry,⁷¹ or on certain medical grounds,⁷² the INS frequently grants waivers of excludability to immediate relatives of United States citizens.⁷³ Consular officers disfavor these provisions because they defeat the impartial application of the Act's exclusionary provisions.⁷⁴

66. I. & N. Act § 221(c), 8 U.S.C. § 1201(c) (1976). The alien has one final obstacle to overcome, for even an alien with a valid visa may still be determined inadmissible by an immigration officer at the border. The consular officer's decision to grant a visa is not binding on the border officer, who is empowered to make an independent determination of the alien's qualifications and documentation.

67. 22 C.F.R. § 42.130(b) (1977).

68. *Id.* § 42.130(b), (c). See 1 C. GORDON & H. ROSENFELD, *IMMIGRATION LAW AND PROCEDURE* § 3.11b, at 3-71 (rev. ed. 1977).

69. 22 C.F.R. § 42.130(b), (c) (1977).

70. I. & N. Act § 212(a)(10), (12), 8 U.S.C. § 1182(a)(10), (12) (1976).

71. *Id.* § 212(i), 8 U.S.C. § 1182(i).

72. *Id.* § 212(g), 8 U.S.C. § 1182(g).

73. *Id.* § 212(h)-(i), 8 U.S.C. § 1182(h)-(i).

74. Many officers believe that denying a visa that will receive a routine waiver wastes time and effort. Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977). An alien who is denied a visa by a consular officer or a waiver by the INS may in rare instances obtain admission through congressional passage of a private bill. This procedure requires the alien to petition Congress to enact a private bill waiving his admissibility deficiencies. Congress infrequently enacts these bills; the alien must usually demonstrate compelling equities. The 90th Congress enacted into law only 218 of the 7,293 private immigration and nationality bills introduced. See [1974] INS ANN. REP. 132 (table 55).

CONSULAR DISCRETIONARY AUTHORITY UNDER THE REGULATORY
SCHEME AND IN PRACTICE

This section examines the extent to which the existing regulatory scheme minimizes the consular officer's discretionary authority to issue or refuse immigrant visas. The Act, the regulations promulgated under it, and the Department of State's policies, guidelines, and review procedures embody official efforts to minimize consular officer discretionary authority. These rules and regulations function as the equivalent of the three means of minimizing discretion that Professor Davis has identified.⁷⁵ Thus the Act, regulations, policies, guidelines, and official review procedures attempt to confine, structure, and check consular officer discretionary authority.

Discretion is confined by fixing boundaries around it.⁷⁶ The Act and regulations confine a consular officer's discretion whenever they establish the limits of his authority—that is, the acceptable grounds for refusal to issue a visa. Structuring discretion organizes or orders this authority.⁷⁷ The regulatory scheme structures a consular officer's discretion whenever the scheme establishes and weighs factors meriting consideration in a determination. Checking discretion means review of an officer's decisions.⁷⁸ The regulatory scheme checks a consular officer's discretion whenever the scheme provides for review of his determinations.

The first step in this analysis is to identify the general provisions of the regulatory scheme that delimit consular authority. The second step is to examine specific grounds of ineligibility for the tendency to confine, structure, or check consular discretion. The authors compare their observations of officers' day-to-day exercise of authority with the grants of authority under the Act's general provisions and under its specific grounds of ineligibility. These observations are based on interviews with consular officers in Mexico and Canada⁷⁹ as well as on the responses to the questionnaires the authors distributed to all immigrant visa-issuing officers worldwide.⁸⁰ These comparisons indicate whether consular officers comply with or exceed the grant of authority under each provision of the regulatory scheme.

75. See notes 5-8 and accompanying text *supra*.

76. *Id.*

77. K. DAVIS, ADMINISTRATIVE LAW TEXT 93-94 (3d ed. 1972).

78. *Id.* at 107.

79. See notes 31-32 and accompanying text *supra*.

80. See notes 21-30 and accompanying text *supra*.

General Provisions Delimiting Consular Discretion

Refusal Authority

Section 221(g) of the Act sets forth the broad limits of consular authority to refuse immigrant visas. The acceptable grounds of refusals are confined to cases within the thirty-two specific statutory grounds of ineligibility, other law, or regulations issued under the Act.⁸¹ The statutory standard of refusal requires that the consular officer "know or have reason to believe" that an alien is ineligible for a visa.⁸² The applicant bears the burden of proving his eligibility for an immigrant visa.⁸³

Departmental regulations somewhat clarify this statutory language. The "reason to believe" standard requires a "determination based upon facts and circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive an immigrant visa" under the Act and the regulations.⁸⁴ The same regulation provides that consideration "shall" be given to any evidence submitted to overcome a prior refusal.⁸⁵

Procedurally, consular officers must document and inform the applicant of the reasons for refusal and of the availability of any administrative relief.⁸⁶ Further, the Visa Office has adopted a policy that requires consular officers to inform the applicant's attorney of record of the basis for the refusal.⁸⁷ This policy means that an officer must cite as a reason for refusal a specific ground of ineligibility under sections 212(a)(1)-(32) or 221(g) of the Act or under other law.

Thus, section 221(g) only minimally confines consular authority to refuse immigrant visas. Basically, a consular officer may refuse a visa after an examination of the facts presented by the applicant if he has reason to believe the alien is ineligible under the law. In

81. I. & N. Act § 221(g), 8 U.S.C. § 1201(g) (1976).

82. *Id.*

83. *Id.* § 291, 8 U.S.C. § 1361.

84. 22 C.F.R. § 42.90 (1977).

85. *Id.*

86. *Id.* § 42.130(a).

87. Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-4660, at 2, n.3 (Nov. 14, 1977) (on file with the *San Diego Law Review*).

practice, consular authority under section 221(g) is virtually devoid of confinement or structure.

Section 221(g) is the most frequently cited basis for visa refusals.⁸⁸ In 1975, section 221(g) accounted for fifty-one percent of all initial refusals.⁸⁹ Typically, a refusal under this section means that the application contains "insufficient documentation" of eligibility. In fact, section 221(g) serves as a catch-all, covering a multitude of deficiencies that may be too difficult to document under a specific ground of ineligibility.⁹⁰ In one case, for example, the applicant presented a full complement of required documents, but the consular officer suspected that one of the documents was fraudulent. Rather than refuse to issue the visa on the ground of fraud, the consular officer refused for insufficient documentation under section 221(g).⁹¹ Presentation of church certificates of marriage or baptism instead of civil certificates also can result in a refusal for insufficient documentation.⁹²

A refusal for insufficient documentation effectively delays issuance of a visa pending presentation of additional evidence.⁹³ If an applicant is unable to obtain the requested documents, the visa is denied indefinitely.⁹⁴ However, a consular officer at the Toronto post believes that the delay caused by a refusal for insufficient documentation is a waste of time and energy.⁹⁵ If he expects the alien to be able to secure the requested document, he does not bother to refuse.⁹⁶

The regulations provide for waiver of required documents on the ground of undue hardship.⁹⁷ Circumstances constituting undue hardship are of great variety. A consular officer in Toronto, Canada, finds undue hardship when an applicant must leave the province to obtain the document.⁹⁸ Another officer waives documentation upon a showing that the applicant tried but failed to

88. VISA OFFICE REPORT, *supra* note 19, at 76.

89. *Id.* This figure does not take into account refusals later overcome by the presentation of additional evidence of eligibility to immigrate. When refusals overcome are included, § 221(g) accounts for approximately 41% of all refusals. *Id.*

90. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 20, 1977).

91. *Id.*

92. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977).

93. 22 C.F.R. § 42.90 (1977).

94. Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977).

95. *Id.*

96. *Id.*

97. 22 C.F.R. § 42.111(c) (1977).

98. Interview with consular officer at the United States consulate in Toronto, Canada (July 20, 1977).

obtain the document.⁹⁹

On the one hand, consular officers and their staffs acknowledge that section 221(g) poses a considerable threat of refusal by caprice. An officer at the Monterrey, Mexico, post admitted that "by going by the book" consular officers could force indefinite delay.¹⁰⁰ Sometimes section 221(g) refusals are treated as "soft refusals," neither documented nor submitted for administrative review.¹⁰¹ Two staff members at the consulate in Vancouver, Canada, stated that an officer could refuse to issue a visa under section 221(g) merely by writing "pending investigation" on the refusal sheet.¹⁰²

On the other hand, consular officers almost always comply with regulations allowing applicants to submit new evidence to overcome a prior refusal.¹⁰³ In 1975, applicants overcame section 221(g) refusals fully sixty percent of the time.¹⁰⁴ Moreover, in Mexico consular officers document virtually all refusals and inform the applicant of the reasons. Compliance with this last requirement is remarkable for its thoroughness.¹⁰⁵ Sometimes the exchange between the visa officer and applicant about what must be done to overcome a refusal is lengthier than the initial interview itself.¹⁰⁶ Similarly, the Vancouver, Canada, office has estab-

99. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977).

100. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

101. This situation existed in Winnipeg, Canada in all cases of "pre-screening," or cases in which the applicant does not receive an interview until the reviewing staff person is satisfied that all his documents are in order. *See* note 53 *supra*. Interview with staff member at the United States consulate in Winnipeg, Canada (Aug. 4, 1977).

102. Interview with staff member at the United States consulate in Vancouver, Canada (Aug. 8, 1977). This person reported that one consular officer refused visas for insufficient documentation under § 221(g) if the applicant declined to transfer all bank accounts to the United States, regardless of the amount of the assets involved.

103. VISA OFFICE REPORT, *supra* note 19, at 76. This report indicates that of the total number of visas refused on all grounds in 1975, almost one-half were later overcome and the visas issued.

104. *Id.*

105. One author observed numerous interviews between applicants and consular officers at the United States consulates in Monterrey, Mexico City, and Guadalajara, Mexico.

106. In one case, a consular officer in Guadalajara, Mexico, halted an applicant's interview to bring in a citizenship officer to clarify the law to the applicant. Interview with consul and visa applicant witnessed at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977).

lished a particularly effective method of processing requests to overcome section 221(g) refusals that saves time and avoids the inconvenience of a second interview with the often overloaded officer.¹⁰⁷

The question remains whether consular officers comply with or exceed the grant of authority in section 221(g). Officers argue that the grant of authority is broad enough to include almost any refusals. As indicated earlier, however, section 221(g) has been interpreted to require a "reasonable person" or objective standard of refusal. However, the reasonable person standard of visa refusals is largely devoid of meaning. As noted above, consular officers in at least a few posts can choose to disbelieve an applicant's proffered evidence and exercise "soft refusals"—neither documented nor reviewed. Officers in other posts may waive required documents and issue visas according to their own interpretations of "undue hardship." In other cases, as in the example in which the consul suspected but could not prove fraud, section 221(g) functions as a catch-all refusal category. Certainly, then, "soft refusals" that escape scrutiny for reasonableness exceed the consular officer's grant of authority.

Whether other refusals meet the reasonableness standard and comply with the grant of authority under section 221(g) depends upon the quality of review. In other fields of law courts determine the issue of reasonableness. A consular's officers decision whether to issue an immigrant visa is not subject to judicial review.¹⁰⁸ Generally, however, an officer's visa refusal is subject to a certain amount of administrative review.¹⁰⁹

Administrative Review of Immigrant-Visa Refusals

According to Department of State regulations, the principal consular officer at each consulate, or a delegate, must review all refusals that cannot be overcome by the presentation of additional evidence.¹¹⁰ Typically, the reviewing officer checks the

However, a consular officer who once served at Monterrey, Mexico, said he does not tell an applicant what he needs to overcome a refusal because he believes the applicant would submit forged documents. Interview with consular officer in San Diego, California (July 30, 1977).

107. If the consular officer thinks that he must give a refusal pursuant to § 221(g), he issues a visa pending submission of the required document. The oath is issued and the visa approved. The visa file is then transmitted to the cashier. When the applicant returns with the document, he merely goes to the cashier, hands in the document, and receives the visa. A second scheduled interview with the consular officer is avoided.

108. Gordon, *Recent Developments in Judicial Review of Immigration Cases*, 15 SAN DIEGO L. REV. 9, 16 (1977).

109. 22 C.F.R. § 42.130 (1977).

110. *Id.* § 42.130(b).

grounds of ineligibility indicated on the refusal sheet prepared by the immigrant visa officer and any attached supporting documents. If the reviewing officer does not concur in the refusal, he must refer the case to the Visa Office for an advisory opinion or take jurisdiction of the case himself.¹¹¹ Regulations further provide for Departmental review upon Departmental request. Departmental rulings interpreting law are binding upon consular officers.¹¹² According to Departmental policy, visas are either issued or refused. There are no temporary refusals.¹¹³ Review may be deferred if the grounds may be overcome, as in the public charge and insufficient documents categories, and if the applicant indicates he will attempt to overcome the refusal.¹¹⁴ Doubtful cases require immediate review.¹¹⁵

The Department apparently adopted these review procedures in response to criticisms of the consular officer's unreviewable authority to refuse visas.¹¹⁶ Members of the American Bar Association, for example, charged that prior procedures encouraged "the arbitrary and irresponsible exercise of power" and that in doubtful cases, the officer took the least risk by refusing the visa.¹¹⁷ Today the opposite is true. Consular officers believe that issuing the visa results in the least risk.¹¹⁸ One officer said: "The nice thing about our job is that if you issue the visa you can't make a mistake. It is only when you refuse that you've made a mistake."¹¹⁹ One reason that issuing the visa is less risky for the officer is that refusals invite outside inquiries from Congressmen and other interested outsiders.¹²⁰ Another reason is that issuances are rarely reviewed at the consulates¹²¹ even though Visa Office policy re-

111. *Id.*

112. *Id.* § 42.130(c).

113. 9 Dep't of State, Foreign Affairs Manual pt. 3, § 42.130 note 1.1 (1977) [hereinafter cited as Manual].

114. *Id.* note 1.3(e).

115. *Id.*

116. 1 C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 3.8b, at 3-57 (rev. ed. 1977).

117. Report, *American Bar Association's Resolutions*, 7 AD. L. BULL. 235, 236 (1954).

118. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

119. *Id.*

120. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

121. Forty-nine percent of visa officers responding to the questionnaire an-

quires internal spot checks of issued visas.¹²²

In general, the scope of administrative review of immigrant visa refusals is minimal. One reviewing officer lamented that ensuring strict adherence to the rules of eligibility bordered on the impossible.¹²³ Often the few documents accompanying the refusal sheet explain very little.¹²⁴ As a rule, the reviewing officer either sustains the refusal or returns it with comments to the appropriate officer. In the latter case, the original denying officer usually alters his determination.¹²⁵ Reviewing officers seldom refer cases to the Visa Office for advisory opinions¹²⁶ or take jurisdiction and issue the visa.¹²⁷ The Department seldom asks to review refused visas.¹²⁸

There are other problems in the effort to comply with the review requirement. First, the reviewing officer may be inadequately trained in the intricacies of the law, which results in rubber-stamped concurrences with the original officer's refusal.¹²⁹ Second, the principal officer's refusals may go unreviewed.¹³⁰ Finally, the applicant usually is uninformed about review procedures. His lack of information therefore precludes him from presenting arguments in his behalf to the reviewing officer.¹³¹ To

swered that issuances were "never" reviewed. Another 26% answered "not very often." See Appendix B (*Statistical Responses to Questionnaire*), question 15(a).

122. Interview with staff members of the Department of State Visa Office in Washington, D.C. (June 9, 1977). One consular officer in Tijuana, Mexico, suggested that the Visa Office implement stricter review of issued visas. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 5, 1977).

123. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

124. *Id.* Typically, the refusing officer writes a few sentences explaining the grounds of ineligibility on the refusal sheet and attaches any relevant documents supporting the refusal. If an applicant is refused a visa on the ground that he is likely to become a public charge, for example, the consular officer might attach to the refusal sheet a copy of the applicant's job offer as evidence of inadequate income.

125. *Id.*

126. Interviews with consular officers at the United States consulate in Ciudad Juarez, Mexico (July 8-14, 1977).

127. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

128. Interview with consular officers at the United States consulate in Ciudad Juarez, Mexico (July 8-12, 1977). According to these officers, however, Departmental requests to review are less frequent in Mexico than in other countries where refusals are less routine and involve, for example, suspected subversives.

129. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977).

130. Interview with consular officer at the United States consulate in Toronto, Canada (July 20, 1977).

131. None of the consular officers interviewed in Mexico and Canada explained to the applicant that the refusal would be reviewed by another officer. *But cf.* Appendix B, question 14 (majority of consular officers responding to the question-

avoid inconvenience and to assure the applicant a more equitable determination of eligibility, at least one consulate reviews permanent refusals before the alien leaves the office.¹³² Consular officers argue, however, that review is continuous in the sense that aliens know that they are free to return repeatedly with new evidence of eligibility to immigrate.¹³³ Indeed, applicants overcame almost fifty percent of all immigrant visa refusals in 1975.¹³⁴ Still, effective review is independent review away from those who were involved in the initial determination.¹³⁵

Ultimately, outside inquiries, although limited in number, may provide more effective review of visa refusals than the standard procedure. Frequent congressional inquiries into particular cases raise the ire of consular officers, but they elicit immediate responses as well.¹³⁶ In fact, some posts in Mexico abide by a self-imposed three-day response rule to congressional inquiries.¹³⁷ The consulate has three days from the time an inquiry is received to review a refusal and to respond in writing. Although procedures differ among consulates, the refusing officer typically reviews the file and prepares a response. A reviewing officer, and sometimes the principal consular officer, then edits and approves the refusal and the response.¹³⁸ Although this process results in the alteration of few determinations,¹³⁹ review is rather thorough.

naire indicated that they do tell the applicant about the review process). However, the interview results warrant the conclusion that the officers responding to the questionnaire misinterpreted the question. The officers seem to have construed the question as inquiring whether they advise applicants of their rights to reapply, to present new evidence, or to seek waivers of ineligibility from the INS.

132. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977).

133. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

134. VISA OFFICE REPORT, *supra* note 19, at 76.

135. K. DAVIS, ADMINISTRATIVE LAW CASEBOOK 523 (6th ed. 1977).

136. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 11, 1977). Another consular officer stated that he and his fellow officers were continually responding to congressional allegations that consular officers abuse their authority. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 5, 1977). Yet another consular officer admitted that constant congressional pressure wears down visa officers and adversely affects the equity of the process. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 7, 1977).

137. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 11, 1977).

138. *Id.*

139. Most consular officers deny that they feel pressured by congressional inquiries to alter their decisions. See Appendix B, question 15(h).

Still other situations lead to informal review. Inquiries from attorneys are probably less commonplace and less effective than are congressional inquiries, but the Visa Office requires consular officers to inform the applicant's attorney of record of the grounds for refusal.¹⁴⁰ Widespread compliance with this notification requirement seems doubtful because the Visa Office recently felt compelled to instruct all foreign posts to adhere to the policy.¹⁴¹ Private individuals and organizations also demand reconsideration of refusals, to little avail.¹⁴² Reconsideration demands from the Catholic Conference of El Paso upon the consulate in Ciudad Juarez, Mexico, are prolific and are one of the largest problems facing that consulate.¹⁴³ Finally, the prospect of a poor performance evaluation may encourage a consular officer to conform in advance to a superior's position,¹⁴⁴ but most officers deny any such influence on their decisions.¹⁴⁵

A consular officer may request at any time an advisory opinion from the Visa Office interpreting law or regulations.¹⁴⁶ Referral for an advisory opinion of certain specified classes of cases is mandatory.¹⁴⁷ These classes of cases include those involving war criminals, fraud, and activities prejudicial to the security of the

140. Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-4660, at 2 n.3 (Nov. 14, 1977) (on file with the *San Diego Law Review*).

141. *Id.* However, in Tijuana, Mexico, the Chief of the Visa Section has set aside Wednesday of every week for meetings with attorneys and immigration counselors. At these meetings attorneys and counselors may discuss their client's visa rejections with the supervisor of the Immigrant Visa Section. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 5, 1977).

142. Interview with consular officer at the United States Embassy in Ciudad Juarez, Mexico (July 8, 1977).

143. *Id.*

144. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 1, 1977).

145. See Appendix B, questions 15(g), (j).

146. Manual, *supra* note 113, § 42.90 note 1.1. According to the staff of the Visa Office, *anyone* may request an advisory opinion. Interview with staff members at the Department of State Visa Office in Washington, D.C. (June 9, 1977). The evidence indicates, however, that if anyone may request an advisory opinion, it is a well-kept secret. See Appendix B, question 15(d). Moreover, in a recent airgram the Department indicated that it is opposed to legislation that would subject refusals to Visa Office review as to issues of both law and fact. In a statement somewhat contradictory to the notion that anyone may request an advisory opinion, the Visa Office claimed that it "will consider allowing attorneys to submit requests for review directly to [the Visa Office] in selected cases." Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-4660, at 4 n.5 (Nov. 14, 1977) (on file with the *San Diego Law Review*).

147. Manual, *supra* note 113, § 42.90 note 1.2.

United States.¹⁴⁸ Departmental rulings regarding interpretations of law, as opposed to the applications of law to facts, are binding.¹⁴⁹ Otherwise, Departmental opinions are merely advisory.

Such advisory opinions play only a minor role in day-to-day operations at the consulates.¹⁵⁰ Some consular officers believe that the Visa Office is too far removed from factual settings to be able to help them in their work.¹⁵¹ Others believe that the Advisory Opinion Division of the Visa Office has had little experience overseas and cannot comprehend the situations at remote posts.¹⁵² One officer in Toronto, Canada, explained that he could make as enlightened a decision as could the Visa Office and that he saw no reason to "waste time" with advisory opinions.¹⁵³ Still another officer claimed that he had requested an advisory opinion on an interpretation of law but had never received a satisfactory answer.¹⁵⁴ Regardless of how seldom consular officers request advisory opinions, in general they will treat a clear answer as determinative of the question in issue.¹⁵⁵

As a device to check consular officer discretion, the review procedures established in the regulatory scheme are inadequate. The sheer volume of determinations at some posts¹⁵⁶ and the meager

148. *Id.* See I. & N. Act §§ 212(a)(9), (19), (27), 8 U.S.C. §§ 1182(a)(9), (19), (27) (1976).

149. 22 C.F.R. § 42.130(c) (1977).

150. See Appendix B, questions 15(d), (e).

151. Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977).

152. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977).

153. Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977). This officer will not request an advisory opinion unless it is obligatory that he do so.

154. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977). The officer's request involved the treatment of social security old age benefits under the public charge provision. Specifically, his question was whether immigrants whose ages would immediately qualify them for old age benefits should be considered likely to become public charges and thus refused visas. The officer still does not know the proper treatment of old age benefits under the public charge provision. *Id.*

155. See Appendix B, question 15(f).

156. The number of immigrant visa refusals that officers must review at the Monterrey and Ciudad Juarez consulates in Mexico is staggering. From July, 1976, through June, 1977, the Monterrey consulate refused 14,210 immigrant visas, more than any other post in Mexico. Thus, the Chief of the Visa Section was charged with the responsibility of reviewing an average of 1,184 refusals per month, or roughly 60 refusals each working day. The busiest month accounted for 1,865 refusals, and the calmest, 610 refusals. During the same period of time, the Ciudad

procedural requirements for documenting refusals¹⁵⁷ limit the depth and the effectiveness of review. Typically, the reviewing officer sees only a brief paragraph of the consular officer's findings and one document supporting the refusal.¹⁵⁸ Some reviewing officers are poorly trained as visa officers.¹⁵⁹ Some reviewing officers' refusals are never reviewed.¹⁶⁰ Other refusals are not considered permanent and therefore are not reviewed.¹⁶¹ Review of issued visas is cursory, if done at all.¹⁶² Review is secret,¹⁶³ and reviewing officers all but ignore the alternatives of advisory opinions or of taking jurisdiction and issuing visas themselves.¹⁶⁴ On its part, the Visa Office seldom initiates the advisory opinion procedure.¹⁶⁵ After considering these findings, it does not seem surprising that most officers deny that the prospect of review affects their determinations.¹⁶⁶

Consular officers consider informal avenues of review a waste of time and a nuisance.¹⁶⁷ Inquiries from Congressmen, attorneys, and other interested outsiders might encourage a second look, but according to most consular officers they seldom result in a reversed determination.¹⁶⁸ Even the threat of poor performance reports carries little weight.¹⁶⁹

The inadequacies of Departmental provisions for administrative review at the post and for advisory opinions from the Visa Office,

Juarez consulate refused 3,859 applicants, less than any other consulate in Mexico. Ciudad Juarez averaged 321 refusals per month, with 618 in the busiest month and 232 in the calmest month. Visa Office statistics for individual consulates in Mexico and in Canada, July, 1976-June, 1977 (on file with the *San Diego Law Review*). Reviewing officers have many duties aside from review of refusals. As a result, reviewing officers at high-volume posts such as those in Mexico have only a brief time to consider each refusal.

157. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

158. *Id.*

159. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977).

160. Interview with consular officer at the United States consulate in Toronto, Canada (July 20, 1977).

161. Interview with staff member at the United States consulate in Winnipeg, Canada (Aug. 4, 1977).

162. See Appendix B, question 15(a).

163. See note 131 and accompanying text *supra*.

164. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

165. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977).

166. Seventy-two percent of responding visa officers denied that review would affect their determinations. See Appendix B, question 15(c).

167. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 11, 1977).

168. See Appendix B, question 15(h).

169. *Id.* questions 15(j), (j)(1).

coupled with judicial nonreviewability of consular determinations,¹⁷⁰ leave consular officers with considerable discretion to issue or refuse immigrant visas. Determinations may escape review altogether as temporary refusals, as refusals by the reviewing officer in the first instance, or as issued visas. Even when determinations are reviewed, the scope of review is narrow because of the vast number of appeals at some posts and the minimal documentation of findings and reasons required. Finally, there is no systematic use of the advisory opinion procedure to spot-check determinations. As a result, Departmental review procedures largely are an inefficacious check on the consular officer's discretion.

Consular Discretionary Authority Under Specific Grounds of Ineligibility

Structuring discretion organizes or orders consular discretionary authority to refuse immigrant visas.¹⁷¹ It establishes and weights factors that merit consideration in visa determinations.¹⁷² Section 221(g) partially confines the acceptable grounds for visa refusal to thirty-two specific categories of ineligibility.¹⁷³ Guidelines for each category attempt to structure consular authority. By focusing on the more important categories of ineligibility—public charge and fraud—this section of the Study examines the effectiveness of attempts to structure discretionary authority.

Discretion Under the Section 212(a) (15) Public Charge Ground of Ineligibility

The public charge provision of the Act is responsible for the greatest number of immigrant visa refusals.¹⁷⁴ In 1975, after taking into account refusals overcome, consular officers relied on the public charge provision to deny visas in almost sixty percent of all refusals.¹⁷⁵ During the period from July, 1976, through June, 1977, the public charge provision accounted for sixty-one percent of all initial refusals in Mexico but only eleven percent of all initial

170. Gordon, *Recent Developments in Judicial Review of Immigration Cases*, 15 SAN DIEGO L. REV. 9, 16 (1977).

171. K. DAVIS, ADMINISTRATIVE LAW TEXT 94 (3d ed. 1972).

172. *Id.*

173. I. & N. Act § 221(g), 8 U.S.C. § 1201(g) (1976).

174. VISA OFFICE REPORT, *supra* note 19, at 76.

175. *Id.*

refusals in Canada.¹⁷⁶

On its face, the public charge provision of the Act represents a broad grant of discretion. Ineligibility includes “[a]liens who, *in the opinion of the consular officer* at the time of application for a visa, . . . are likely at any time to become public charges.”¹⁷⁷

Departmental regulations attempt to structure this discretion. A sworn job offer from an employer in the United States, for example, may establish eligibility.¹⁷⁸ However, these regulations provide that consular officers must presume ineligible aliens who rely solely on expected income that falls below the income poverty guidelines.¹⁷⁹

The interpretative and procedural notes to the Departmental regulations attempt more detailed structuring of the public charge provision.¹⁸⁰ These notes contain Departmental policy governing acceptable types of public charge evidence.¹⁸¹ A partial list of such evidence includes bank deposits, pre-arranged employment, affidavits of support, and bonds posted.¹⁸²

Departmental policy places a high priority on flexibility in the evaluation of evidence regarding sufficient funds to meet the public charge provision.¹⁸³ According to the *Foreign Affairs Manual*, consular officers should consider a variety of factors, including the applicant’s age, his physical condition, his family status, and economic conditions in the United States.¹⁸⁴ Moreover, stated policy prohibits consular officers from using “a fixed sum of money as a sole criterion for judging a prospective immigrant’s ability to meet the public charge requirement of the law.”¹⁸⁵

Yet Departmental policy provides for the presumption of ineligibility when an applicant relies solely on expected income that is below the income poverty guidelines.¹⁸⁶ The income poverty guidelines are published by the Community Service Administration and adopted by the Department for use in determining eligibility under the public charge provision.¹⁸⁷ The presumption of

176. This disparity is caused by the economic differences between applicants in Mexico and in Canada. Visa Office statistics for individual consulates in Mexico and in Canada, July, 1976-June, 1977 (on file with the *San Diego Law Review*).

177. I. & N. Act § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1976) (emphasis added).

178. 22 C.F.R. § 42.91(a)(15)(ii) (1977).

179. *Id.* § 42.91(a)(15)(iii).

180. See Manual, *supra* note 113, § 42.91(a)(15) notes 1-9 & Exhibit I (income poverty guideline tables).

181. *Id.*

182. *Id.* notes 2-5.

183. *Id.* note 1.1.

184. *Id.*

185. *Id.* note 1.3.

186. 22 C.F.R. § 42.91(a)(15)(iii) (1977).

187. Airgram from the Department of State to all American Diplomatic and

ineligibility seems to contradict the prohibition against a "fixed sum" analysis and the flexibility requirement. However, the presumption is not without exception. Ordinarily, a determination of the sufficiency of an applicant's expected income must include consideration of all dependent family members accompanying the applicant to, or already residing in, the United States.¹⁸⁸ An exception applies if dependent family members already residing in the United States receive public assistance and the presence of the applicant would probably diminish the level of public assistance.¹⁸⁹ Thus, an applicant whose expected income falls below the poverty guidelines for a family his size may still be issued a visa if dependent family members are already in the United States and are receiving public assistance.

Consular officers admit that the public charge provision confers a large amount of discretion upon immigrant visa-issuing officers.¹⁹⁰ One officer said: "It is a judgment decision. The law is written that way."¹⁹¹ Even consular officers who steadfastly deny exercising discretion invariably admit issuing visas to applicants of questionable eligibility when impressed by the applicant's desire, language skills, or character.¹⁹² This result is laudable, for it ensures flexibility and "individualized justice."¹⁹³

However, the immigration bar in the United States charges immigrant visa officers with widespread abuse of discretion and inflexibility under the public charge provision. An attorney in New York City states that with respect to the public charge provision, "the discretion, attitude, perspective, call it what you will, of the consul[ar officer] is the determining factor."¹⁹⁴ One attorney in Houston, Texas, alleged that consular officers rarely exercise dis-

Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-2152 (5/17/77), income poverty guideline tables (rev. May 25, 1977) (on file with the *San Diego Law Review*).

188. Manual, *supra* note 113, § 42.91(a)(15) note 3.5.

189. *Id.*

190. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 18, 1977).

191. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 1, 1977).

192. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977); Interview with consular officer at the United States consulate in Tijuana, Mexico (July 6, 1977).

193. K. DAVIS, *ADMINISTRATIVE LAW TEXT* 91-93 (3d ed. 1972).

194. Letter from William B. Taffet to Kim R. Anderson (Oct. 31, 1977) (on file with the *San Diego Law Review*).

cretion in favor of applicants.¹⁹⁵ He states that "all doubt in my experience is resolved in favor of the Government, i.e., adverse to the alien."¹⁹⁶ Still another immigration attorney claims that "all discretionary authority of the Consul[ar officer] is an abuse and has no merits at all."¹⁹⁷

A major area of consular officer discretion lies in the application of the income poverty guidelines. As one attorney explains, "[t]he Consul[ar officer] exercises his discretion to decide whether \$200 or \$500 less than the Guideline might be sufficient or whether because of what he deems to be particular factors and circumstances, \$2,000 or \$3,000 above the Guideline is still not sufficient."¹⁹⁸ Some consular officers are quite inflexible and rigidly apply the income poverty guidelines.¹⁹⁹ An inflexible officer will refuse a visa whenever an applicant's expected income falls below the guidelines.²⁰⁰

It is not difficult to understand why a consular officer might be inflexible. Officers at high-volume visa-issuing posts face severe time constraints.²⁰¹ One officer said: "The demand has just mushroomed in Mexico. When it really gets busy we can't work here. The [local staff] get into fights, everyone is exhausted."²⁰² To save time, many consular officers paste the guidelines in inconspicuous but convenient locations for constant reference.²⁰³ Inadequate investigative resources exacerbate the tendency of some officers to rely almost exclusively on the income poverty guidelines.²⁰⁴ Finally, many officers fear that state welfare rolls

195. Letter from Sam Williamson to Kim R. Anderson (Oct. 27, 1977) (on file with the *San Diego Law Review*).

196. *Id.*

197. Letter from H. John Herod, Director of the Visitor & Immigrant Service Agency of Milwaukee, Wisconsin, to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

198. Letter from William B. Taffet to Kim R. Anderson (Oct. 31, 1977) (on file with the *San Diego Law Review*).

199. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

200. *Id.*

201. The authors observed that immigrant visa-issuing officers at such posts average 25-35 applicant interviews per day with an average time per interview of 5-15 minutes.

202. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977).

203. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

204. In Ciudad Juarez, for example, the investigative unit consists of one local employee who works part-time, primarily checking newspapers. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977). In Mexico City the investigative unit was still largely in the planning stages when one of the authors visited. Interview with Fernando Sanchez, Chief of the Fraud Unit, at the United States Embassy in Mexico City, Mexico (Aug. 3, 1977).

are swelling with resident aliens.²⁰⁵ Indeed, one officer asked, "What am I doing to my country?"²⁰⁶ Of course, it is arguable that such statements reflect bias on the part of consular officers.

However compelling the reasons for inflexibility of consular officers, the resulting determinations seem particularly harsh. One applicant, for example, had been robbed and injured and unable to work for three months in 1976.²⁰⁷ His income for the year thus was below poverty level. When he returned from the United States to the consulate in Honduras, he was earning \$125 per week and his wife \$112 per week. They had deposited \$1,500 in the bank. Both visas were refused under the public charge provision. Husband and wife were forced to remain in Honduras to the detriment of their sick child. In another case, two aliens applying for visas at Guadalajara, Mexico, were refused under the public charge provision, although they later overcame the refusals.²⁰⁸ The delay caused both aliens to lose their jobs in the United States.

The Department is not unaware of the problem. Recently, for example, the Association of Immigration and Nationality Lawyers reported to the Visa Office that certain consulates misuse the income poverty guidelines.²⁰⁹ To its credit, the Visa Office disseminated a clarification to all consular posts, reiterating that a consular officer may not "base his decision on an unsupported personal assessment of whether or not a person can live on the

205. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977). An officer in Tijuana, Mexico, suggested that public charge provision guidelines should relate to corresponding welfare programs in the United States. Even though an applicant meets the poverty guidelines, the applicant, once he enters the United States, may still be at an income level that enables him to receive AFDC (Aid to Families with Dependent Children) and SSI (Supplemental Security Income). Interview with consular officer at the United States consulate in Tijuana, Mexico (July 5, 1977).

206. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

207. Letter from Philip J. Kleiner of the New York law firm of Barst & Mukamal to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

208. Letter from H. John Herod, Director of the Visitor & Immigrant Service Agency of Milwaukee, Wisconsin, to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

209. Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-4660, at 4 n.11 (Nov. 14, 1977) (on file with the *San Diego Law Review*).

income listed."²¹⁰

Of course, some consular officers consider factors other than the income poverty guidelines. In most determinations, the distinction between approaches probably resembles a continuum, with a greater or lesser degree of consideration given to a greater or fewer variety of factors, depending on the particular officer. Some of the more significant factors are examined below.

A valid job offer is the most important element in meeting the public charge provision. Validity is tested by a myriad of factors. One factor is whether the applicant's expected wages are commensurate with the type of job he expects to have. Some consular officers are suspicious any time expected wages are above the minimum wage.²¹¹ The stated reason at the Ciudad Juarez, Mexico, consulate for this suspicion is that in Texas employers usually pay aliens at a rate below the minimum wage.²¹² Another factor is whether the applicant appears qualified for a particular job. Officers commonly compare an applicant's work experience and degree of literacy with the type of work an employer has offered him.²¹³ Other indicators of validity include whether a prospective job is seasonal or permanent and the location of the employer.²¹⁴ Thus, a year-round industrial job might qualify the applicant while a temporary agricultural job often will not.

The slightest irregularity in the circumstances surrounding the job offer alerts consular officers to the possibility of fraud. Often technical irregularities in a job letter, such as the absence of a letterhead or poor grammar, cause the officer to reject the job letter as fraudulent.²¹⁵ The sale of fraudulent documents, including job offers, is big business.²¹⁶ In one case, job offers written on stationery stolen from an El Paso, Texas, hotel surfaced at the consulate in Ciudad Juarez, Mexico.²¹⁷ Only after consular officers realized that conspicuous numbers of offers were written on hotel stationery did they uncover the fraud. Because of the prevalence of

210. *Id.*

211. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

212. *Id.*

213. Interviews with consular officers at the United States consulate in Guadalajara, Mexico (Aug. 8-12, 1977); Interviews with consular officers at the United States consulate in Tijuana, Mexico (July 5-6, 1977). See Appendix B, questions 4, 8.

214. See authorities cited note 213 *supra*.

215. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 12, 1977).

216. Interview with INS Inspector Garza at the United States Santa Fe Bridge Border Patrol Office in El Paso, Texas (July 13, 1977).

217. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

fraudulent job offers, some officers do not take job offers at face value.²¹⁸ Instead, officers demand to see W-2 forms, payroll receipts, income tax statements, and even an employer's statement of wages paid to employees.²¹⁹ As a last resort, officers at the post in Ciudad Juarez sometimes telephone employers to verify job offers.²²⁰

The Visa Office is concerned about the propriety of some of these requests for additional documents. The Association of Immigration and Nationality Lawyers has complained that one consulate required the prospective employer to justify hiring the applicant by demonstrating the employer's inability to fill the position locally.²²¹ The Visa Office rejected this line of inquiry in an airgram to all posts.²²² In response to another Association complaint, the Visa Office instructed its posts to require only an applicant's last income tax return and to refrain from requesting proof of payment of all taxes.²²³

Although it is questionable whether consular officers comply with these instructions, aliens are well-advised to gather all the income records they can. Requests for proof of income can be extensive. A New York attorney reports the following example: An alien earned \$150 per week from November, 1976, to March, 1977, and thereafter \$184 per week plus overtime.²²⁴ The applicant's spouse earned \$125 per week. The immigrant visa officer rejected a paycheck stub as proof of income. The officer requested an employer's statement of wages paid to employees, independent proof

218. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 12, 1977); Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977). Both consular officers treat job offers like affidavits of support, which are nonbinding, and require other evidence of actual income.

219. The authors witnessed numerous requests for such evidence of income during interviews between consular officers and visa applicants.

220. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

221. Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrators of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-616, at 4 n.9 (Jan. 31, 1977) (on file with the *San Diego Law Review*).

222. *Id.*

223. *Id.* n.10.

224. Letter from Philip J. Kleiner of the New York law firm of Barst & Mukamal to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

of a change in the applicant's wages, a letter from the welfare office, and a letter from the hospital regarding childbirth expenses.

Family size is another important criterion under the public charge provision. Consular officers are careful to ascertain the number of dependent family members accompanying the applicant or already residing in the United States. Again, a high incidence of fraud frequently thwarts these efforts.²²⁵ Discrepancies between the number of dependents claimed for tax purposes and for visa application purposes are common.²²⁶

Another problem involves the definition of dependents for purposes of determining family size. One applicant with an annual income of \$6,250 was refused a visa at Winnipeg, Canada, because the consular officer held the alien responsible for the support of his wife's children by a former marriage.²²⁷ The applicant's attorney protested that his client had no legal duty to support the children.²²⁸ Departmental guidelines are silent on the issue. The decision to refuse under these circumstances falls within the discretion of the consular officer: The applicant has no legal recourse. However, in a similar case at Guadalajara, Mexico, the officer did not hold the applicant responsible for the support of the wife's premarital illegitimate child.²²⁹ The officer issued the visa.

Informal policy at one consulate requires a head-of-household applicant to make sufficient income to support his entire family, even if he is the only one immigrating.²³⁰ The presumption is that the applicant must support his family whether it remains in the foreign country or accompanies him to the United States. This policy apparently was developed to respond to immigration lawyers who advised clients to split their families and apply one at a time to make it easier to meet the poverty-level income requirement.²³¹ The asserted justification for the policy is that it is the intent of the Act to unite families, not to separate them.²³²

225. Consular officers charge that proving the number of dependent family members is difficult because applicants often inflate the number for income tax purposes while working in the United States. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

226. *Id.*

227. Letter from H. John Herod, Director of the Visitor & Immigrant Service Agency of Milwaukee, Wisconsin, to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

228. *Id.*

229. Interview between visa applicant and consular officer at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977).

230. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

231. *Id.*

232. *Id.*

Policies at other consulates are less strict. For instance, the policy of the principal consular officer at Toronto, Canada, is to require the prospective immigrant to demonstrate only the ability to support himself.²³³

Consular officers do comply with the diminution-of-public-assistance exception.²³⁴ If the applicant's family already receives welfare in the United States and his earning capacity might reduce the amount of assistance it needs, consular officers will issue the visa.²³⁵ For example, an applicant's wife at Guadalajara, Mexico, presented a letter from her welfare office in Texas indicating that she was withdrawing from public assistance because of her alien husband's income.²³⁶ The officer issued the visa even though the applicant's income fell below the income poverty guidelines.²³⁷

A related problem involves the definition of "public charge." Departmental guidelines in the *Foreign Affairs Manual* do not define the term. The consul general at Ciudad Juarez, Mexico, believes that the term causes some confusion, as in the case of elderly applicants who qualify for social security old age benefits.²³⁸ Members of the immigration bar agree. One attorney reports, for example, that an applicant was refused a visa because his wife received social security benefits as a widow of a prior marriage.²³⁹ The officer held that the receipt of any government funds constitutes a public charge.²⁴⁰ The officer eventually reversed his decision and issued the visa after the attorney per-

233. Interview with consular officer at the United States consulate in Toronto, Canada (July 20, 1977). This also appears to be the policy in Tijuana, Mexico. Usually the case arises when a family wants a visa for each member. The consular officer will ascertain the income of the income producers within that family. A visa will then be granted only to those members whom the officer believes the family income producer can support.

234. Interviews with consular officers at the United States consulate in Guadalajara, Mexico (Aug. 8-12, 1977).

235. *Id.*

236. Interview between visa applicant and consular officer at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977). Explained the officer: "Sometimes you grant the visa even if the income is under the guidelines. Otherwise everyone will be on welfare. This way it saves us all a little money." *Id.*

237. *Id.*

238. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977). See also note 154 and accompanying text *supra*.

239. Letter from H. John Herod, Director of the Visitor & Immigrant Service Agency of Milwaukee, Wisconsin, to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

240. *Id.*

suaed him that social security is not welfare.²⁴¹

Consular officers usually ignore affidavits of support from sponsors in the United States because such affidavits are unenforceable.²⁴² In close cases, however, affidavits can bolster an applicant's case for eligibility.²⁴³ Officers look to the closeness of the relationship between applicant and sponsor and consider whether the applicant is dependent on the sponsor.²⁴⁴ In one instance the consul general at Montreal, Canada, considered it an abuse of discretion to deny an application under the public charge provision when a prominent citizen gave the affidavit.²⁴⁵

Cases of borderline eligibility turn on more subjective factors. Interviews between the applicant and the consular officer are often determinative. An officer's overall impression of an applicant can be the deciding factor.²⁴⁶ Education and English-language skills, for example, are usually unimportant unless an applicant's prospective employment requires a specific level of skill. In close cases in Mexico, however, some officers are impressed by an applicant who has completed high school.²⁴⁷ The hardship a refusal will cause may be considered as well.²⁴⁸ In fact, individual officers often decide close cases for idiosyncratic rea-

241. *Id.*

242. Interviews with consular officers at the United States consulate in Guadalajara, Mexico (Aug. 8-12, 1977).

243. *Id.*

244. On the issue of dependency, one officer said that an affidavit of support from a husband for his wife would be significant. However, an affidavit of support from a wife for her husband would not be significant because traditionally the wife is not under a duty to support her husband. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

245. Even though the affidavit was not legally enforceable, for the applicant to fail to support his sister would have been a public embarrassment this gentleman would not likely have risked. The consul general at Montreal felt that the affidavit should have been sufficient to allow the applicant to overcome the provisions of I. & N. Act § 212(a) (15), 8 U.S.C. § 1182(a) (15) (1976). Interview with consular officer at the United States consulate in Montreal, Canada (July 15, 1977).

246. For example, a consular officer in Montreal, Canada, believed that the officer's personal impressions of the applicant will be an important factor in the visa determination approximately five percent of the time. In these borderline cases, such an impression could be the determining factor in the issuance of the visa. Interview with consular officers at the United States consulate in Montreal, Canada (July 15, 1977).

247. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977).

248. In one case a visa was issued to a Canadian spouse of an American citizen when the sole evidence of support to rebut a public charge provision refusal was a bank account of approximately \$1,200. The extenuating circumstances were that the two had sold their home in Canada and were driving through Halifax to pick up their visa as the first leg of their journey. The consular officer stated that in circumstances like these the visa would be more likely to issue than if no hardship would occur if it were refused. Interview with consular officer at a United States consulate in Canada (1977).

sons. One officer is biased against unwed mothers²⁴⁹ and favors certain ethnic groups.²⁵⁰ Another officer requires applicants to transfer their bank accounts to the United States before he will issue the visa.²⁵¹ Still another officer likes to see an applicant's children to gauge the quality of care they receive.²⁵² Finally, the officer might be indifferent. One consular officer issued a visa to an applicant who could not prove any income for the prior year.²⁵³ The officer explained that she just did not "want to hassle with it today."²⁵⁴

An altogether different type of case is the "stateside" case at the consulates in Canada.²⁵⁵ These cases involve aliens who have been living illegally in the United States and who now may be entitled to immigrant status.²⁵⁶ Such aliens originally enter the United States by violating their status as a non-immigrant or by not complying with the visa process. These aliens may become entitled to immigrate to the United States if they establish certain familial ties within the United States. To avoid the inconvenience of a trip home to obtain an immigrant visa, which in many cases may mean traveling thousands of miles, these aliens have been

249. *Id.*

250. A number of consular officers think that certain ethnic groups are more likely to go on welfare than others. One officer believes that Canadians, Haitians, and Portuguese are not as likely to go on welfare as Latin Americans. *Id.* Another officer stated that Chinese will not go on welfare. He believes that they will live with their families or starve before they will become wards of the state. Thus, he views Chinese with less suspicion than other groups under the public charge provision. Interview with consular officer at the United States consulate in Montreal, Canada (July 23, 1977).

251. Interview with local employees at the United States consulate in Vancouver, Canada (Aug. 8, 1977).

252. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977). Similarly, one officer views a neat and well-dressed applicant as a more refined, strong-charactered individual who has probably worked hard and would be less likely to go on welfare than a slovenly dressed applicant. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 6, 1977).

253. Interview with consular officer at a United States consulate in Mexico (1977).

254. *Id.*

255. Interview with consular officers at the United States consulate in Montreal, Canada (July 24, 1977); Interview with consular officer at the United States consulate in Toronto, Canada (July 25, 1977).

256. See Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrator of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-1691 (4/14/77) (on file with the *San Diego Law Review*).

granted the privilege of going to Canada to obtain their immigrant visas. They are allowed into Canada to obtain their visas on condition that they will be allowed to return to the United States if the visa is refused. Because a refusal of the visa simply means the alien is to return to the United States until he can obtain better financial evidence, most officers believe that denying such an applicant a visa serves no purpose.²⁵⁷ As a result, less financial evidence may suffice to grant a visa to one of these "stateside" cases.²⁵⁸

As the foregoing discussion indicates, Departmental efforts to structure consular officer discretion under the public charge provision have been minimal and sometimes confusing. The terms "public charge" and "dependent family members," for example, are inadequately defined. The presumption of ineligibility seems to contradict the policies favoring flexibility and prohibiting a fixed sum analysis. Perhaps these are reasons why many consular officers almost never refer to the *Foreign Affairs Manual* guidelines on the public charge provision.²⁵⁹

The guidelines and policy statements existing under the public charge provision have met with mixed success. Some consular officers are flexible in accordance with stated policy. Others are inflexible and rely too heavily on the income poverty guidelines. However, most officers adhere to the diminution-of-public-assistance exception for applicants with family members already receiving welfare in the United States.

The conclusion is that consular officers exercise a large amount of discretion to issue or refuse immigrant visas under the public charge provision. Major Departmental policies are contradictory, so an officer is free to rest a decision on the policy of flexibility or on the presumption of ineligibility. Either policy is acceptable. Key terms are ill-defined, so a consular officer may decide for himself what constitutes public assistance, who are dependent family members, and whether a head-of-household applicant may immigrate without his family. Indeed, two consulates have opposite policies on the latter issue. Income documentation requirements are inexact, so an officer may request an extensive array of financial evidence, yet disbelieve it. Finally, an officer may introduce into the visa determination extra-legal factors such as his opinion of certain ethnic groups, the swelling alien population in

257. Interviews with consular officers at United States consulates throughout Canada (July-Aug., 1977).

258. *Id.*

259. Interviews with consular officers at the United States consulates in Ciudad Juarez and in Monterrey, Mexico (July 8-22, 1977).

the United States, or a mother's marital status. These extra-legal factors indicate the pressing need for more effective structuring and more vigorous checking of consular discretionary authority under the public charge provision.

Fraud

An alien who procures or seeks to procure a visa or other entry document by fraud or misrepresentation is ineligible for a visa under the Act.²⁶⁰ Departmental regulations distinguish these aliens from those seeking to *enter* the United States by fraud.²⁶¹ The latter aliens are not ineligible to receive visas.

The Department has earnestly tried to structure the fraud provision of the Act to control unwarranted discretion in its use. However, regulations promulgated under the fraud provision are so complex that they have rendered fraud a seldom-used ground of ineligibility for a visa.²⁶² Departmental explanations of "material facts," "willfulness," and the "rule of probability" baffle consular officers.²⁶³ Time constraints prevent effective investigation and proper documentation of aliens. As a result, visa refusals on the ground of fraud usually require an admission of fraud by the applicant.²⁶⁴

Consular officers' attitudes toward fraud vary with each post and with individual officers. One officer believes that the complexity of the statutory visa-issuing process invites some fraud

260. I. & N. Act § 212(a)(19), 8 U.S.C. § 1182(a)(19) (1976).

261. 22 C.F.R. § 42.91(a)(19)(iii) (1977). Department of State regulations distinguish between attempts to enter the United States by fraud and attempts to procure entry documents by fraud. The latter are grounds for ineligibility; the former are not.

A former immigration judge in the Justice Department and current Chairman on Visa Practice of AINL explains the distinction as one between oral or written fraud and misrepresentation. Oral fraud renders the applicant ineligible only at the time he utters the misrepresentation. In comparison, written fraud renders the applicant forever ineligible. Letter from William B. Taffet to Paula L. Lehmann (Aug. 15, 1978) (on file with the *San Diego Law Review*).

262. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977). See also VISA OFFICE REPORT, *supra* note 19, at 76.

263. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 12, 1977); Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

264. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 21, 1977). If an admission is not forthcoming from the applicant, officers will often discount the validity of the particular document in question and refuse the visa under § 221(g) for insufficient documentation. See I. & N. Act § 221(g), 8 U.S.C. § 1201(g) (1976); notes 81-109 and accompanying text *supra*.

and that the consular officer should accept it and label it immaterial.²⁶⁵ Another view is that in most cases, the officer can use the fraud provision to refuse a visa at his whim.²⁶⁶ Immigration attorneys allege that consular officers seeking admissions of fraud use persistent interrogation to confuse and to intimidate applicants into admitting material fraud.²⁶⁷ Officers respond that some attorneys encourage their clients' deceit.²⁶⁸

Consular officers in Mexico suspect that at least some fraud and deception exist in virtually every case.²⁶⁹ Some officers claim they have never seen a Mexican document reveal anything unfavorable about a Mexican national.²⁷⁰ Moreover, many consular officers in Mexico believe that corruption is rampant and culturally acceptable in Mexico.²⁷¹ Consular officers at Ciudad Juarez, Mexico, for example, believe that applicants can fraudulently obtain any document requested.²⁷²

Only an applicant's imagination limits the variety of deceptions. A major problem facing the Monterrey, Mexico, consulate involves the use of delayed birth registrations to establish a petitioner's United States citizenship.²⁷³ In a letter to a Texas

265. An example of such immaterial fraud would be the fraudulent obtaining of a document in a Latin American country. It may be that it is virtually impossible for the alien to obtain the document legitimately, but rather than appear at the consulate without it, he may purchase a fraudulent document. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977).

266. Interview with consular officer at the United States consulate in Montreal, Canada (July 15, 1977). However, this officer claims that she will not deny a visa unless she has proof beyond a reasonable doubt that fraud was present. For example, she described a case in which a man obtained a non-immigrant visa with the intent of going to a hospital in New York for weight-reduction supervision. When he arrived in New York, he instead got a job, married an American citizen, and applied for an immigrant visa. It could be determined that he never had the intent of entering that hospital and thus obtained the non-immigrant visa fraudulently. However, the officer believed it just as likely that he had decided, upon his arrival in New York, that he would rather remain an American resident. As she was not *convinced* fraud was involved, she issued the visa. *Id.*

267. Letter from Philip J. Kleiner of the New York law firm of Barst & Mukamal to Kim R. Anderson (Nov. 3, 1977) (on file with the *San Diego Law Review*).

268. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 1, 1977).

269. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977). See note 368 *infra*.

270. Interviews with consular officers at the United States consulate in Guadaluajara, Mexico (Aug. 10 & 12, 1977).

271. Interviews with consular officers at the United States consulate in Ciudad Juarez, Mexico (July 8-12, 1977).

272. *Id.*

273. One author witnessed a case in which a mother petitioned for immediate relative status for her daughter. The daughter wished to bring seven children and her husband with her to the United States. The mother based her claim to United States citizenship on a birth certificate issued 43 years after she was born. The birth certificate had been issued by Texas in 1956 on the basis of sworn affidavits by two persons presumably knowledgeable of the circumstances surrounding the

attorney, the Acting Director of the Visa Office explained that "[i]n Texas, blank local birth certificates are available to practically anyone in uncontrolled numbers, and in Indiana, a quantity of blank birth certificates, the impression seal and the signature stamp of the health commissioner were stolen in 1972 from the Office of Vital Records in Gary."²⁷⁴ As a result of this theft, the Visa Office instructed the Monterrey post not to accept such birth certificates.²⁷⁵ Another source of fraud, common until recent investigations exposed it, involved midwives who fraudulently certified thousands of births.²⁷⁶ Finally, the Chief of the Monterrey Fraud Unit expects a glut of fifth preference fraud cases.²⁷⁷ The fifth preference allows a United States citizen to petition for a preference status on behalf of a brother or a sister provided the citizen is at least twenty-one years of age.²⁷⁸ Apparently, in Mexico one can easily purchase a birth certificate identifying anyone as his brother or sister.²⁷⁹

Some attempts to structure discretion under the fraud provision occur within each post. For example, the *Immigrant Visa Officer Handbook*, compiled at the Monterrey, Mexico, post, contains most of the tools for structuring discretion that Professor Davis has suggested.²⁸⁰ The *Handbook* includes examples of types of fraud, lists of frequent offenders, instructions on detecting and documenting certain frauds, and a reading file of pol-

mother's birth. There were no documents predating the birth certificate to confirm the mother's place of birth. The consular officer became suspicious because the mother's place of birth was blank on both the daughter's baptismal and marriage certificates. The father's place of birth, however, appeared on both certificates. In response to the consular officer's inquiry, the daughter answered that her mother could not remember where she was born. Closer inspection indicated that the official seal upon the daughter's marriage certificate was irregular and outside the sealing official's jurisdiction. The officer refused a visa for insufficient documentation. Interview between visa applicant and consular officer at the United States consulate in Monterrey, Mexico (July 21, 1977).

274. Letter from William D. Morgan, Acting Director of the Visa Office, to Sam Williamson (Sept. 20, 1977) (on file with the *San Diego Law Review*).

275. *Id.*

276. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 20, 1977).

277. *Id.*

278. I. & N. Act § 203(a)(5), 8 U.S.C. § 1153 (a)(5) (1976).

279. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 20, 1977).

280. See note 7 and accompanying text *supra*.

icy statements.²⁸¹ Although the authors found that consular officers seldom refer to the *Handbook*, the officers seem familiar with its contents. The *Handbook* is classified secret, however, except to the extent that the Department originally published its subject matter as policy statements or guidelines. Additionally, the Monterrey post maintains a small precedent file of past fraud violators.²⁸² The Vancouver, Canada, consulate provides another example of attempts to structure discretion. This office's principal consular officer is extremely cautious of Mexican documentation and has circulated an intra-office memo requiring special procedures to ensure authentic documentation when the applicant has a Latin American name.²⁸³

Marriage Fraud

Marriage fraud is a continuing source of ineligibility although less so since the disruption of organized marriage fraud rings.²⁸⁴ Nonetheless, the Ciudad Juarez, Mexico, consulate uncovered eighteen bigamists during a six-month period.²⁸⁵ Like other specific types of fraud, marriage fraud receives little treatment in the interpretative materials to the Departmental regulations. In consulates other than Vancouver, Canada, and Monterrey, Mexico, each consular officer informally develops methods of uncovering marriage fraud.²⁸⁶

A marriage of convenience may enable an applicant to obtain preference status as an immediate relative.²⁸⁷ A grant of preferred status is often crucial to an alien's hopes of immigration. Under the numerical limitation, visas are often unavailable to

281. Visa Section, U.S. Consulate at Monterrey, Mexico, Immigrant Visa Officer Handbook (United States consulate in Monterrey, Mexico).

282. One author reviewed the file. One case involved a visa fixer (virtually anyone assisting aliens in the preparation of their applications, but primarily one who provides fraudulent documents) who worked out of a camper truck in the park next to the consulate. When the INS apprehended the fixer while in the United States, his records indicated sales of at least 162 blank Texas birth certificates at prices ranging anywhere from \$500 to \$1,000 each. The fixer was convicted and sentenced to 13 years in prison. Many of his customers were discovered and deported.

283. Interview with consular officer at the United States consulate in Vancouver, Canada (Aug. 8, 1977).

284. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 21, 1977).

285. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977).

286. For example, consular officers typically ask the applicant for background information about any children of the petitioning spouse, including names and ages.

287. I. & N. Act § 204(c), 8 U.S.C. § 1154(c) (1976); 22 C.F.R. § 42.40 (1977).

non-preference immigrants.²⁸⁸ A certain percentage of visa numbers are allocated for each preference category, leaving few numbers available for non-preference immigrants.²⁸⁹ In most circumstances non-preference immigrants must also obtain labor certifications.²⁹⁰ However, the Act excludes spouses and other immediate relatives of United States citizens from the numerical limitations.²⁹¹

Departmental regulations state that upon receipt of an INS-approved petition, consular officers are authorized to grant the preferred status the petition indicates.²⁹² The interpretative notes to the *Foreign Affairs Manual* state that an approved petition establishes prima facie the validity of the indicated status.²⁹³ New evidence is not required unless a question arises.²⁹⁴ Yet an INS petition does not relieve the alien of the burden of proving visa eligibility to the satisfaction of the consular officer.²⁹⁵ Thus, a consular officer may suspend action and request INS revocation of the petition if he knows or has reason to believe that the applicant obtained approval of the petition by fraud or that the alien beneficiary is not otherwise entitled to preferred status.²⁹⁶

Consular officers consider many factors in determining whether the marriage of an applicant claiming preferred status is valid. Factors include the disparity of the spouses' ages, whether they have had prior marriages, the number of children by prior marriages, and the length of time the spouses have cohabited.²⁹⁷ At the consulate in Tijuana, Mexico, a primary consideration is whether the couple have had children.²⁹⁸ Many officers in Mexico believe that cultural norms dictate certain marital behavior and that non-conformists are, therefore, suspicious. Examples of non-

288. *Immigrant Visas for October 1977*, VISA Off. BULL., October, 1977, reprinted in 54 INTERPRETER RELEASES 334 (1977).

289. I. & N. Act § 203(a), 8 U.S.C. § 1153(a) (1976).

290. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14); 22 C.F.R. § 42.91(a)(14) (1977).

291. I. & N. Act § 201(b), 8 U.S.C. § 1151(b) (1976).

292. 22 C.F.R. § 42.40 (1977).

293. Manual, *supra* note 113, § 42.40 note 1.

294. *Id.*

295. 22 C.F.R. § 42.40 (1977).

296. *Id.* § 42.43(a)(1).

297. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977); Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 9, 1977).

298. Interview with consular officer at the United States consulate in Tijuana, Mexico (July 11, 1977).

conformists include young men who marry older women and adult males in their late twenties who claim to have neither spouse nor offspring in Mexico.²⁹⁹

Absent documented proof of a fraudulent marriage, consular officers may not refuse visas under the marriage fraud provision regardless of the number of factors present. As a result, officers have adopted interrogation techniques designed both to uncover the fraud and to cajole applicants and spouses into admitting it.³⁰⁰ Applying these techniques, officers interview the applicant and his spouse separately. Typically, officers ask each spouse to describe the circumstances under which the couple met, the decor in the couple's living quarters, or who sleeps on which side of the bed. If the alleged spouses' answers do not match, an officer will confront the petitioning spouse with charges of a sham marriage. Finally, even if an officer cannot prove marriage fraud, he may still refuse a visa under certain circumstances. In one case at the consulate in Monterrey, Mexico, the consular officer refused the visa under section 221(g) because he suspected marriage fraud. The officer was suspicious because the applicant had no children and her husband was not present. The applicant, who had traveled from San Francisco for purposes of the interview, was given an open appointment and told to return with her spouse.³⁰¹

Perhaps because of the harsh techniques they must apply, consular officers selectively enforce the marriage fraud ground for visa denial. Some officers decline to challenge the validity of marriages and accept the INS-approved petitions.³⁰² Other officers

299. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977). In an interview observed at the post in Tijuana, a woman with six children claimed to be married to a man 19 years her junior. The husband was the applicant. The woman had been on welfare for the last nine years. She was unable to work because of arthritis. The woman lived in the United States with her husband for one year, after which he was sent back to Mexico. While in Mexico he never sent any money to the woman. The consular officer asked the woman why she married a man 19 years younger than she. The officer's main concern was that the husband would leave the woman as soon as he received a visa. The woman assured the officer that her husband loved her. The officer denied the visa because of the absence of a job offer, but the issue of marriage fraud was resolved in the woman's favor. The officer commented about the marriage afterward: "What can you do without an investigation?" Interview between visa applicant and consular officer at the United States consulate in Tijuana, Mexico (July 12, 1977).

300. Interview between visa applicant and consular officer at the United States consulate in Monterrey, Mexico (July 20, 1977). One author observed the interrogation technique.

301. Interview between visa applicant and consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977). For a discussion of § 221(g), see notes 81-109 and accompanying text *supra*.

302. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

delay issuing a visa pending the results of an INS marriage investigation.³⁰³ Finally, two posts with a high incidence of fraud have developed intra-office guidelines on marriage fraud detection and are specialized in identifying sham marriages. The Vancouver, Canada, consulate, for example, has defined certain situations when the spouses must be interviewed separately even if the interviewing officer suspects no fraud.³⁰⁴ The consulate in Monterrey, Mexico, has a reputation among consular officers in Mexico for its success in uncovering fraudulent marriages.³⁰⁵

In determining the validity of other claims of preferred status, the effect given to INS-approved petitions differs among consulates and consular officers. Most consulates in Canada and Mexico probably accept without question the status indicated by the INS if for no other reason than lack of time for further investigation. According to officers at the United States Embassy in Mexico City, for example, it is informal policy to assume that the INS investigated sufficiently.³⁰⁶ The same is true in Canada, and unless the consular officer is aware of circumstances unknown to the INS, he will not send the petition back to the INS for further review.³⁰⁷ Ordinarily, an officer has neither need nor time to be overly suspicious of the relationship between the petitioner and the alien applicant.

303. One author observed such a case in Toronto, Canada. In that instance an Iraqi had come to Canada on a non-immigrant visa. The day after he arrived he married an American citizen whom he had met at Niagara Falls. During the immigrant-visa interview the consular officer discovered a fact unknown to the INS: The applicant had a relative who lived next door to the "wife" in Chicago. The consular officer, positive that this was an arranged marriage, had the applicant sign an affidavit swearing that this marriage was his first. The officer then returned the petition to the INS for further investigation. Interview with consular officer at the United States consulate in Toronto, Canada (July 27, 1977).

304. An office memo circulated at the Vancouver, Canada, consulate makes separate interviews of the husband and wife mandatory if certain factors appear. For example, if the wife is five or more years older than the husband and one of the parties is of Latin American descent, or if the applicant has remarried an original spouse after a brief marriage to a United States citizen, the consulate requires a thorough investigation. Interview with consular officer at the United States consulate in Vancouver, Canada (Aug. 8, 1977); Memo from Vancouver, Canada, consulate (June 7, 1977) (on file with the *San Diego Law Review*).

305. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

306. Interviews with consular officers at the United States Embassy in Mexico City, Mexico (July 26 - Aug. 3, 1977).

307. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977).

Other consulates undertake more demanding review. Officers at the Monterrey, Mexico, consulate frequently challenge relationships indicated by the INS-approved petitions.³⁰⁸ For this reason, Monterrey personnel allege that they perform INS's investigative work.³⁰⁹ Officers at the Vancouver, Canada, consulate also closely scrutinize petitioner-applicant relationships.³¹⁰ The high incidence of fraudulent claims at that post and the large number of California-resident Mexicans applying for visas at Vancouver have caused the officers to apply such scrutiny.³¹¹ Officers at other consulates where similar rates of fraud are suspected are not nearly as diligent in questioning petitioner-applicant relationships as are the Monterrey and Vancouver staffs.

Summary

The findings above illustrate that different consular officers and consulates approach fraud in markedly different ways. Well-organized, high-fraud posts formulate their own internal guidelines for uncovering fraud. An officer at such a post takes a highly active role in probing for fraud. Thus, in cases of suspected marriage fraud, he may demand the presence of both spouses and interrogate them intensively, but the visa may be refused and the applicant put to delays and travel expense for the absent spouse. Consular officers left to their own devices at other posts rarely refuse to issue a visa on the ground of fraud. Some officers refuse to concern themselves with marriage fraud. In these cases the visa issues without delay.

Similarly, consular officers treat INS-approved petitions differently in determining whether to grant the applicant immediate relative or preference status. The well-organized, high-fraud posts take pride in challenging family relationships indicated in INS-approved petitions. Informal policy at other consulates dictates acceptance of INS-approved petitions at face value. Again, in the former case an applicant may undergo hardship through delay, added expense, or requests for additional evidence. In the latter case no hardship is incurred.

308. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 20, 1977). It is impossible to document statistically the number of applicants refused for fraudulent petitioner-applicant relationships because consular officers often refuse for insufficient documentation, not for fraudulent relationships. See notes 88-91 and accompanying text *supra*.

309. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 18, 1977).

310. Interview with consular officer at the United States consulate in Vancouver, Canada (Aug. 8, 1977).

311. *Id.*

The examples of marriage fraud and the effect of INS-approved petitions indicate that consular officers and consulates enforce the fraud provision at their discretion. One reason for this selective enforcement is that the complex legal terminology used in the general fraud guidelines often seems unintelligible to officers. Specific types of fraud, such as marriage fraud, receive little or no treatment in the Departmental guidelines. Like Departmental policy under the public charge provision, Departmental policy regulating the effect of an INS-approved petition seems contradictory. An INS-approved petition supposedly establishes *prima facie* the validity of the family relationship indicated. Yet an alien must still convince the individual consular officer of the relationship's validity. Thus, Departmental attempts to structure consular discretion under the fraud provision have been inadequate.

EVALUATION OF EXTRA-STATUTORY FACTORS AFFECTING THE CONSULAR OFFICER'S DETERMINATION

The previous section examined the interactions between official norms—the Immigration and Nationality Act, regulations promulgated under it, State Department interpretations, interpretative guidelines—and the practical application of those norms by consular officers. This section assesses unofficial factors that influence individual consular officers to arrive at decisions that vary from those of other officers. First, the authors examine the consular officer's attitudes toward work, management, United States immigration policy, and visa applicants. Second, the authors evaluate the effect of the officer's background and attitudes on his decisionmaking.

The Effect of the Consular Officer's Personal Background upon the Decisionmaking Process

The consular corps is an unusually young group of professionals. Of the consular officers returning the questionnaire, seventy percent were under forty years of age.³¹² Apparently, individuals do not remain long as immigrant visa officers but either are transferred within the Foreign Service or find new careers outside government.

312. Fifty-seven of the 82 consular officers filling out the questionnaire were under 40.

Age affects the visa decisionmaking process in a number of ways.³¹³ The younger officer has greater difficulty detecting fraud than do the older officers.³¹⁴ The older officers are more inclined to believe that outside pressure is a major hindrance to their job.³¹⁵ However, the younger officers more often stated that outside pressure from Congressmen or from attorneys was likely to affect their decisions.³¹⁶

Fifty-two percent of the officers surveyed had been with the Foreign Service for no more than five years.³¹⁷ Sixty-four percent of the officers had been issuing immigrant visas for fewer than two years.³¹⁸ This inexperience is attributed to the Departmental policy of placing new officers in immigrant visa work.

The inexperienced consular officer is more apt to adhere strictly to Departmental regulations in refusing visas even in situations in which a more experienced consular officer would exercise discretionary authority to grant visas.³¹⁹ The refusal rates of the newer

313. The variable of age was broken down into two categories, those under 40 and those 40 or over. This variable was then cross-tabulated with answers to questions 1, 4, 5, 8, 15(h), (l), & (j). See Appendices A & B and computer printouts (on file with the *San Diego Law Review*).

314. Twenty-four percent of those officers under 40, as opposed to 12% of those 40 or over, claimed that detecting fraud was a major problem. See Appendices A & B, question 1 and computer printouts (on file with the *San Diego Law Review*).

315. Twenty-eight percent of the older officers felt congressional or attorney inquiries were a major problem. Only 14% of the younger officers stated that these inquiries were a major problem.

316. Twenty-eight percent of those officers under 40, compared to only 12% of the officers 40 or over, felt that pressure would affect their decisions. This finding seems to imply that the older officers are less likely to succumb to political pressure. However, although only 12% of the older officers felt that pressure affected their decisions, 44% said that the equity of the immigration process was adversely affected by such political pressure. Almost 58% of the officers under 40 felt the equity of the process to be affected in that such pressure would cause a visa to be given preference. See Appendix A, questions 15(h), (i) and computer printouts (on file with the *San Diego Law Review*).

317. See Appendix A, question 16(f). Researchers divided the variable "length of time with the service" into two groups: those who had been with the service five years or fewer and those who had been with the service over five years. The length-of-service variable was then cross-tabulated with questions 1, 4, 5, 8, 11, 12, 15, & 15(a). See computer printouts (on file with the *San Diego Law Review*).

318. See Appendix A, question 16(a).

319. Interview with consular officer at the United States consulate in Montreal, Canada (July 15, 1977). The interviewee gave as an example of this statement a situation in which a young consular officer refused a non-immigrant visa to a member of a corporate board of directors. The director's theory was that because the board meeting was to be held in the United States, the director would be "employed." The consular officer's superior thought that the officer could have exercised his discretion to create an exception. In another case, a young consular officer refused an immigrant visa under I. & N. Act § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1976), on the ground that an affidavit of support was insufficient evidence. However, the visa was issued due to the prominence of the maker of the affidavit. Interview, *supra*.

officers are uniformly higher than those of the more experienced officers.³²⁰ Conversely, in certain instances an officer who has spent many years in the Service may become embittered toward both the applicant and the immigration process. This attitude may cause the officer to interpret the law and regulations strictly, to the alien's disadvantage.³²¹

The questionnaire results show that slight differences in attitude exist between officers of longer tenure and newer officers. Almost twice as many newer as more experienced officers thought assisting applicants to be a major problem.³²² Problems related to explaining the law or to expediting the application process were frequently cited. The less experienced officers were more concerned with interference from Congressmen or from other interested parties than were more experienced officers.³²³ Significantly more of the seasoned employees thought that incompetent local employees were a source of difficulty.³²⁴

When asked the most frequent reason for denial of a visa, both groups named the public charge provision. However, a significantly larger percentage of the less experienced officers named

320. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977); Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977). Larger offices often have several immigrant visa-issuing officers. The local employees, knowing the predilections of the various officers to grant or deny visas, frequently distribute the files among the officers with this predisposition in mind. Applications that are likely to be refused are delivered to a more lenient officer while only the clearest cases of eligibility are consigned to the strict officer. The desired effect of this procedure is to avoid excess work and paper flow—it takes considerably more time to deny a visa than to grant one.

321. Interview with consular officer at the United States consulate in Montreal, Canada (July 17, 1977).

322. Thirty-nine percent of the newer officers, as opposed to 23% of the officers who had been with the service six years or more, felt that thoroughly and competently assisting the aliens was one of the major problems they faced. See Appendices A & B, question 1 and computer printouts (on file with the *San Diego Law Review*).

323. Twenty percent of the newer officers found such pressure to be a problem while such inquiries annoyed 13% of the more experienced officers. This result could imply that the more experienced officers are hardened to such pressure and do not take it as seriously as do the less experienced officers. *Id.* questions 15(h), (i).

324. Twenty-one percent of the officers who had been with the service six years or more found that incompetent or inadequately trained local employees were a major problem. Only five percent of the newer officers had the same complaint. *Id.* question 1.

this ground as the most frequent reason for denial.³²⁵ The data showing which factors the different officers considered in refusing the visa varied insignificantly. For example, similar percentages of officers felt that age, ability to support oneself, or health were relevant to the visa determination.³²⁶

Finally, twice as many newer as more experienced officers believed that political inquiries in the form of letters or telephone calls from Congressmen influenced their decisions.³²⁷ However, both new and experienced officers found such pressure to be detrimental to the equity of the visa process.³²⁸

Variation within the decisionmaking process is apparently not caused by a difference in education. Virtually all the officers had completed college, and sixty-six percent had completed some graduate work.³²⁹ The more educated group found fair, impartial interpretation and administration of the law to be a greater problem than did those with less education.³³⁰ Slightly more of the college-educated group stated that assisting the applicants with their applications was a major problem.³³¹

In response to the question of what, if any, non-statutory factors visa-issuing officers took into consideration, officers with different educational backgrounds exhibited little variation in their answers. Similar percentages found willingness to work and the credibility of the applicant to be relevant to their decisions. However, a slightly larger percentage of the more educated group of officers believed that such non-statutory factors do affect the con-

325. Almost 39% of the experienced officers cited the public charge provision as their most frequent ground of refusal in contrast with 46.5% of the newer officers. This higher self-admitted refusal rate by the newer officers may be because they are more stringent in their evaluation of the public charge evidence. *Id.* question 4.

326. For the various factors considered, see Appendix B, question 8.

327. Some 30.2% of the newer officers considered such pressure to be influential as opposed to 15.8% of the more experienced officers. *Id.* question 15(h).

328. Approximately 58% of the newer officers considered the pressure to be detrimental. Fifty percent of the more experienced officers so viewed the effect of the outside pressure. *Id.* question 15(i).

329. See Appendix A, question 16(i). The variable "education" was broken down into two categories: those who had done some graduate work (17 years or more of school) and those who had completed fewer than 17 years of school. These two variables were then cross-tabulated with questions 1, 4, 5, 8, 11, & 12. See computer printouts (on file with the *San Diego Law Review*).

330. Fourteen percent of those with fewer than 17 years of schooling stated that impartial interpretation of the law was a problem. Twenty-nine percent of those with 17 or more years of schooling saw this to be a major problem. See Appendix A, question 1.

331. Thirty-nine percent of the less educated officers, as contrasted with 28% of those with graduate education, stated that assisting the applicants was a major problem. *Id.*

sular officer's determination.³³² Moreover, almost three times the number of the college-educated officers denied considering non-statutory factors than did the post-college-educated group.³³³ Thus, it appears that the more educated officers admitted utilizing their discretion to a greater extent in allowing non-statutory factors to influence their decisions than did their counterparts with only a college education.

Officers' Attitudes Toward Consular Work and Toward Immigration Policy

Seventy-three percent of the officers claim to be pleased with their work assignments. Similarly, seventy-five percent are happy with the locations of their posts.³³⁴ However, these attitudes vary with the location of the Foreign Service post and with the clientele encountered. In an European post, most applicants are likely to be professionals, whereas in a Mexican post many applicants are poor, unskilled, and speak little English. Consular officers admit that the location of the post affects their attitudes toward the applicants and toward their work.³³⁵

In Mexico, most consular officers are disappointed and frustrated with their work. The following comment is typical: "We deal with the least attractive segment of the foreign community and we sour quicker. Compared to political and economic officers, consular officers are treated as second class citizens."³³⁶ Conversely, in Canada most immigrant visa officers state that they enjoy their work.³³⁷ These smaller Canadian posts are probably

332. *Id.* question 4.

333. Thirty-two percent of the officers with a college education or less totally denied the use of non-statutory factors. Only 12% of those with graduate education claimed the same.

334. See Appendix B, questions 16(c), (d).

335. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 18, 1977).

336. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 1, 1977). Another officer voices a similar opinion:

Mexico eats up junior officers. You get bloodied, fully indoctrinated. I've seen more here in two years than most guys in Asia see in their entire career. Morale is pretty good, but you get tired. All day long you're dashing people's dreams. You think, who am I to do that? It's very tiring.

Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

337. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977). The large Canadian posts of Montreal and Toronto are atypical for immigrant visa purposes because of the large number of stateside

more representative of a typical post.³³⁸

Many consular officers cited boredom as a problem. An enthusiastic young officer entering the consular corps expecting a variety of tasks may be disappointed to be placed in an immigrant visa section where the work is normally routine and repetitious.³³⁹ As a result, that officer is less likely to be probing and may issue visas in all but the obviously ineligible cases. Sometimes the officers' ambitions are frustrated when they enter the Foreign Service hoping to become political or economic officers and instead are placed in the visa section.³⁴⁰

Regardless of the consular officers' views on the desirability of the job, most officers appear to have sufficient professional pride to prevent their attitudes from interfering with their work.³⁴¹ Officers seldom acknowledge that satisfaction or dissatisfaction with their work significantly affects the decision rendered.³⁴² Still, frustration and disappointment with the work affect office morale.³⁴³ Low morale affects an officer's willingness to work or to accept responsibility for refusals.³⁴⁴ More important, however, is the officer's attitude toward the immigration process. His attitude may have a significant effect upon the decision rendered. Consular officers uniformly feel a sense of frustration and futility about the realistic enforcement of the immigration laws. The impotence of the immigration laws and of the consular officer's role with respect to them is indicated by the geometrically increasing num-

cases entertained. As a result, aliens of every nationality apply at these posts. For a discussion of stateside cases, see text accompanying notes 255-58 *supra*.

338. Interviews with numerous consular officers at United States consulates throughout Canada (July-Aug., 1977).

339. Interview with consular officer at the United States consulate in Toronto, Canada (July 28, 1977). This officer, with a degree in psychology, thought consular work would provide her with a variety of human encounters stimulating to the intellect. She has found visa work to be mundane and is leaving the service.

340. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977). This officer, a recent graduate of the Visa Office's Rosslyn center training (see note 41 *supra*), was slated to be a political officer.

341. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 21, 1977). Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 10, 1977). Both officers, economic officers, were temporarily working in the visa sections due to the high workload and insufficient number of visa officers.

342. Interview with consular officer at the United States consulate in Halifax, Canada (July 10, 1977).

343. With the exception of Monterrey, morale in most offices observed in Mexico was poor. Interviews with numerous consular officers at United States consulates throughout Mexico (July-Aug., 1977). In contrast, morale in the majority of offices in Canada is high once the officers accept that the job they are doing is nearly impossible. Interviews with numerous consular officers at United States consulates throughout Canada (July-Aug., 1977).

344. See note 343 *supra*.

bers of illegal aliens entering the United States each year.³⁴⁵ Moreover, provisions actually embodied in the law provide for routine waiver of the officer's eligibility decision.³⁴⁶

Consular officers disdain illegal aliens who obtain equities not available to other applicants. For example, an alien who is illegally present in the United States and marries an American citizen is accorded immediate relative status and can immigrate without reference to the numerical limitations imposed by the quota system. Such an applicant receives the same treatment as applicants who strictly comply with the immigration laws. Although consular officers believe this result is unjust,³⁴⁷ the law provides no penalties for circumvention of the immigration process in this manner.³⁴⁸

These feelings of futility were expressed by a consular officer at Guadalajara, Mexico: "Our work is a farce. I think the [State] Department realizes this and that's why we don't get promoted, or enough resources, or enough manpower. It's a nothing job."³⁴⁹ Furthermore, officers estimate that ninety percent of all applicants list a current address in the United States. Even if the applicants are refused a visa, officers believe the aliens will return to live illegally in the United States.³⁵⁰

345. In 1975, the INS Commissioner stated that the number of aliens smuggled into the United States was double that of the previous year. Chapman, *A Look at Illegal Immigration: Causes and Impact on the United States*, 13 SAN DIEGO L. REV. 34, 35 (1975).

346. Such waivers are granted to immediate relatives excluded on criminal, fraudulent, or medical grounds. I. & N. Act § 212(g)-(i), 8 U.S.C. § 1182(g)-(i) (1976). The Mexico City INS office handles approximately 60 waiver requests each month, including all requests from Central America. The Monterrey, Mexico, INS office processes about 100 requests per month. It is estimated that these INS offices grant 90% of all waiver requests. Interview with Warren O'Neal, INS District Director, United States Embassy, Mexico City, Mexico (Aug. 3, 1977).

347. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977); Interviews with consular officers at the United States consulate in Montreal, Canada (July 14-20, 1977); Interviews with consular officers at the United States consulate in Toronto, Canada (July 24, 1977).

348. Unless the consular officer can verify that the intent to defraud was present at the time the applicant applied for the non-immigrant visa, no detrimental consequence accrues to the alien for having lived illegally in the United States. I. & N. Act § 212(a)(19), 8 U.S.C. § 1182(a)(19) (1976).

349. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 12, 1977).

350. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

Because of their frustration, many consular officers become embittered toward the immigration process. As a result, some officers use their authority to interpret strictly the immigration law against the alien whenever possible.³⁵¹ This attitude may cause the officer to attempt to force the applicant to admit fraud and then refuse the visa.³⁵² He may require the applicant to meet stringent standards of financial sufficiency.³⁵³ More commonly, however, consular officers resign themselves to the impossibility of proper enforcement of the Act.

In Canada the feeling of futility is enhanced by the prevalence of the "stateside" cases.³⁵⁴ A "stateside" applicant who has been illegally residing in the United States is entitled to apply for a visa in Canada. Regardless of whether the visa is denied, the alien is allowed to return to the United States. This practice reinforces the consular officers' view that the immigration process is illogical.

The effect of denying "stateside" visas has been described by one consular officer as a "no-win" situation.³⁵⁵ Most of the stateside cases that are denied are refused on public charge grounds.³⁵⁶ However, the alien can legally neither obtain a job to overcome the ineligibility without a visa nor obtain a visa without a job. Because he is allowed to return to the United States without the visa, the only effect of refusal is to keep the alien in the same low economic position. The result of this predicament is that consular officers grant visas to many of these "stateside" cases when they might deny them to similar applicants elsewhere. The solution of one consular officer in Canada is to issue a visa whenever he believes that the applicant could return with the required document necessary to establish eligibility or that the applicant would be granted a routine waiver.³⁵⁷ In Winnipeg, Canada, one officer considers whether the alien will be a danger

351. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

352. Interview with consular officer at the United States consulate in Montreal, Canada (July 19, 1977).

353. Interview with consular officer at the United States consulate in Montreal, Canada (July 14, 1977).

354. See text accompanying notes 255-58 *supra*.

355. Interview with consular officer at the United States consulate in Montreal, Canada (July 19, 1977).

356. *Id.*

357. Interviews with consular officer at a United States consulate in Canada (1977). One author observed several interviews in which the alien presented no evidence that he would not become a public charge. Nonetheless, these aliens received visas.

to the United States.³⁵⁸ If he determines that the alien will not present a danger, he normally will issue the visa.³⁵⁹ This officer believes he thus furthers the purpose of excluding undesirable aliens while avoiding strict adherence to unrealistic rules and regulations.³⁶⁰

In Mexico many officers describe their consulates as "visa mills."³⁶¹ One officer described the Ciudad Juarez consulate as "merely a holding station."³⁶² He stated that Mexican nationals come to Ciudad Juarez to apply for visas and at the same time enter the United States illegally to work. This officer's view enhances his tendency to be lenient when issuing visas.

Thus, the effect of consular officers' attitudes toward the immigration process varies with individual officers and seems to account for some of the different decisions on visa applications. Some officers strictly interpret the immigration law and regulations in each case while other officers are more lenient in an attempt to apply the law with greater fairness and impartiality. The authors observed such a lenient approach in Canada and in Mexico, where the majority of officers grant visas liberally because of the impracticality of denial.

Consular Officers' Attitudes Toward Applicants

Although the applicants at each post vary, there are certain similarities among them. In Mexico, the majority of applicants

358. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 3, 1977).

359. Exceptions involve refusals on the "permanent grounds" of drug abuse or of subversive activity. In these cases, the consular officer *cannot* issue the visa. The officer at Winnipeg has suggested to the State Department that the rule of mandatory denial for marijuana convictions be discarded. *Id.* See I. & N. Act § 212 (a)(23), (28), 8 U.S.C. § 1182(a)(23), (28) (1976). See Manual, *supra* note 113, § 42.91(a)(23) note 2 (distinguishing "use" from "possession." The former does not render the applicant ineligible).

360. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977). This officer believes his job as a consular officer includes exercising his judgment. He will not strictly interpret the law if, by doing so, he will reach what he considers an unjust result. The philosophy of the chief consular officer at Winnipeg is reflected in the post's low refusal rate, which was approximately five percent during the 12-month period from July 15, 1976, through June 15, 1977. This norm is in direct contrast to the 30-60% refusal rates reported at each Mexican post.

361. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

362. *Id.*

are similarly situated economically. Most have little, if any, formal education and speak little English.³⁶³ Many applicants have illegally resided in the United States.³⁶⁴ Although illegal residence is seldom to the applicant's disadvantage,³⁶⁵ some consular officers do not favorably view such aliens.

Some officers in Mexico take a harsh view of applicants, describing them as dirty, smelly, lazy, and prone to crime and welfare.³⁶⁶ Consular officers adopting this view deny that they discriminate against these applicants, rationalizing that the law does not allow for such considerations. In comparison, officers in Mexico City believe that the typical applicant there is more qualified for a visa than are applicants in other areas of Mexico. Mexico City officials claim that this fact results in a lower refusal rate for their post.³⁶⁷

Most consular officers in Mexico assume that the majority of applicants commit some form of fraud in their visa applications.³⁶⁸ Therefore, documents of Mexican applicants are examined more closely for fraud than are the documents submitted by applicants of other nationalities. This careful scrutiny also takes place in the Vancouver, Canada, office, where a large number of Mexicans apply for visas.³⁶⁹

Some consular officers consider themselves guardians of the United States' borders.³⁷⁰ Such an attitude causes a strict examination of Mexican applications.³⁷¹ One officer stated that he believes Mexican immigrants do not contribute to a better United

363. *Id.*

364. *See also* text accompanying notes 347-48 *supra*.

365. *See id.*

366. Interviews with various consular officers at United States consulates in Mexico (July 7 - Aug. 12, 1977). Some consular officers use the pejorative "trash" to refer to Mexican applicants. *Id.*

367. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 2, 1977).

368. Consular officers suspect that virtually all applicants are deceitful in some way. Sometimes fraud is blatant; at other times the applicant feigns forgetfulness. Interviews with consular officers at the United States consulate in Ciudad Juarez, Mexico (July 8-14, 1977). One highly skeptical officer said: "I've never seen a Mexican document that indicated anything bad about an applicant. Nothing. I've never seen a police letter implicate a Mexican." Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 10, 1977). *See* text accompanying notes 269-72 *supra*.

369. This office has instigated special procedures for detecting both documentary and other fraud when the applicant is of Latin American descent. Memo from Vancouver, Canada, consulate (June 7, 1977) (on file with the *San Diego Law Review*).

370. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

371. *Id.*

States society.³⁷²

The consular officers' attitudes toward applicants in Canada depend on whether the applicants are Canadian or "stateside" cases. Native Canadians are generally viewed favorably and are assumed to be honest.³⁷³ Presumably, their desire to enter the United States is not as compelling as that of many Mexicans because Canada is a politically stable and an economically affluent country. They need not immigrate solely to survive, as do many Mexicans. Consequently, consular officers examine Canadian applicants less closely for fraud than they do applicants of most other nationalities.³⁷⁴ Officers believe that if a Canadian is not prosperous in the United States, he will return to Canada rather than apply for public assistance in the United States.³⁷⁵

A consular officer's opinion of "stateside" applicants is probably similar to his view of Mexican applicants. However, these opinions do not usually lead to denial of visas. Although officers are resentful and suspicious of "stateside" applicants and may investigate these applications more thoroughly, the futility of denying such applications often causes officers to issue the visas regardless of their opinions of the applications' merits.³⁷⁶

Attitudes Toward Management

In the consular offices, as in any administrative agency, the quality of management has an important impact on the visa process. Each of the larger consulates has a Visa Section Chief.³⁷⁷

372. Interview with consular officer at a United States consulate in Mexico (1977). This officer believes that Mexicans are not making a contribution to society and that Congress is reluctant to do anything because of the ever-increasing Mexican-American constituency. The officer equated the problem of controlling illegal aliens with the United States approach in the Vietnam War, *i.e.*, trying to please everyone but not satisfying anyone. He opines, "If we're going to fight the illegal aliens, then let's fight to win." *Id.*

373. Interview with consular officer at the United States consulate in Winnipeg, Canada (Aug. 3, 1977).

374. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977). While in the Halifax, Canada, office on July 7, 1977, one author observed a Canadian with an American spouse applying for a visa as an immediate relative. The consular officer granted the visa, regarding as slight public charge evidence a bank account with a balance of \$1,256. The officer admitted that had the spouses been of different nationalities than they were, she might have denied the visa. *Id.*

375. *Id.*

376. See notes 255-58 and accompanying text *supra*.

377. In 68% of the offices answering the questionnaire there was only one im-

Under the supervision of the Chief are the supervisors for the immigrant and non-immigrant visa sections. The immigrant visa supervisor issues visas himself and has daily contact with the rank-and-file immigrant visa-issuing officers at the post.

The role of the visa supervisor varies at each office. In some offices, he may actively participate with the staff officers in the issuance of visas. Through the use of intra-office memos, interpretative regulations, and free exercise of his review powers, the supervisor may gain firm control over the immigrant visa operation.³⁷⁸ In other offices, the supervisor may become disillusioned, disinterested, or lazy and may refuse to entertain inquiries from other officers, thus providing little assistance to his visa-issuing staff.³⁷⁹

An officer who is not trained in visa work is likely to be an ineffective supervisor. Nevertheless, an administrative officer may be designated as the supervisory consular officer at a post even though he is unfamiliar with immigration law. Thus, a young visa-issuing officer in such a consulate may have no one to turn to for advice. Moreover, because it is difficult for one with no expertise in the field to render a decision, meaningful review is uncommon and hence is effectively denied.³⁸⁰

Over eighty percent of the consular officers stated that management at their consulates could be improved.³⁸¹ However, the officer's attitude toward post management and its effect upon the visa process differs according to the role the supervising officer takes. An active supervisor will gain respect not only from his own officers but from officers throughout the nation in which his post is located. These officers will seek his advice.³⁸² Respected

migrant visa officer. Appendix B, question 2(c). When there is no visa section chief, the visa decisions are reviewed, if at all, by an officer who normally does not issue immigrant visas. Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977).

378. The Visa Section Chief at the United States consulate in Montreal, Canada, practices these methods of control. This officer also helps with the visa process by interviewing applicants and by investigating both immigrant and non-immigrant visas, a task that few Visa Section Chiefs undertake. One of the authors observed this process in the Montreal office.

379. Interview with consular officer at a United States consulate in Canada (1977). One officer stated that often the State Department will transfer such an officer to an innocuous post where it is felt he will do little harm rather than cause an officer to retire or quit.

380. Interview with consular officer at the United States consulate in Halifax, Canada (July 9, 1977).

381. Eleven percent of the officers said management could be greatly improved, while 71% stated some improvement could be made. See Appendix B, question 2(e).

382. Often officers seek advice from Montreal, Canada, rather than from the Department of State Visa Office when they need quick clarification on a point of law.

management influences less experienced officers' decisions. The inexperienced consular officer may be inclined to agree with the supervisor's philosophy or approach to issuing visas.³⁸³ An active supervisor sets a good example that the other officers will follow. Poor and disrespected management within a consulate is detrimental to efficiency because newer officers have only incompetent officers to look to for guidance. Similarly, the efficiency of the office will suffer if the supervisor is unwilling to perform his share of the work.³⁸⁴

Many consular officers believe that they receive too much criticism from the State Department for the immigration problems in the United States. These officers claim that one can find the source of the immigration dilemma in the State Department's failure to employ competent officers and to provide them with better guidance.³⁸⁵ Some consular officers believe that the Visa Office's officer training is inadequate both in quality and in time. Some of the surveyed officers had received only two weeks of formal training. One officer stated that consular officers should be required to take legal courses.³⁸⁶

Guidance from the Visa Office in the form of advisory opinions and of interpretative guidelines often comes too late to be of service.³⁸⁷ Because the Visa Office is not familiar with overseas problems, State Department guidance often is not useful.³⁸⁸ The Visa Office in Washington, D.C., often has little idea of what transpires at different foreign posts.³⁸⁹

383. This appeared to be the case in Winnipeg, Canada, where the liberal philosophy of the Chief of the Visa Section had been somewhat instilled in a novice officer. Interviews with consular officer at the United States consulate in Winnipeg, Canada (Aug. 2, 1977).

384. Interviews with consular officer at the United States consulate in Toronto, Canada (July 15, 1977). Officers admitted that inefficient superiors affected their own efficiency.

385. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 2, 1977).

386. Interview with consular officer at the United States consulate in Toronto, Canada (July 26, 1978).

387. Interview with consular officer at the United States consulate in Toronto, Canada (July 27, 1978). This officer absolutely refuses to ask for State Department advice on questions of fact. He believes that he is in a better position to judge the merits of each case. He states that interpretative guidance from the Visa Office is outdated and that he relies on releases from the Association of Immigration and Nationality Lawyers for guidance.

388. Interview with consular officer at the United States consulate in Halifax, Canada (July 10, 1977).

389. For example, the State Department conducts annual inspections of the Ti-

It is the opinion of at least one officer that political inquiries to the State Department from attorneys and Congressmen regarding their clients and constituents deter consular officers from thorough investigation of some cases.³⁹⁰ This deterrence comes to bear on the officer in the form of pressure to issue visas.³⁹¹ An officer with a high refusal rate is often last in line for a promotion as a result of State Department pressure to issue visas.³⁹²

Finally, inadequate officer staffing of consular offices is a problem. Almost half the consular officers stated that their performance could improve if the number of officers were increased.³⁹³ Proper performance of necessary visa investigations is impossible because lack of personnel renders the available time inadequate for the job.

The Effect of the Promotion System upon the Visa Decision

Consular officers frequently complain that prospects for advancement beyond the middle grades of the Foreign Service are poor.³⁹⁴ Many officers believe that a tour of duty in Mexico is a blemish on their careers. One officer put it bluntly: "Hacking visas is not a feather in your cap. Mexican posts are a blot on your record. Of four in my training class assigned to Mexico, none has been promoted."³⁹⁵ Without the promotion incentive, many officers lose enthusiasm and interest. Of greater concern, they lose the sense of the importance of their work both for the individual applicants and for the United States. As a result, many officers exhibit less willingness to bear their shares of the workload and may leave the service after a relatively short time. As one officer states: "A lot of officers on their second or third tour do half of what they could do because they are going to leave anyway."³⁹⁶

Despite the belief that advancement is rare, many consular officers deny that lack of promotion opportunities has any effect on

juana and other Mexican posts, but the inspectors have no knowledge of the visa process. Consequently, their cursory inspection reveals little. Rarely do inspectors speak with the officers in any depth.

390. Interview with consular officer at the United States consulate in Halifax, Canada (July 10, 1977).

391. *Id.*

392. *Id.*

393. Forty-five percent of the officers answering the questionnaire stated that their performance would improve if more officers were assigned to their posts. See Appendix B, question 2(d).

394. Interviews with consular officers at the United States consulate in Guadalajara and the Embassy in Mexico City, Mexico (July 26 - Aug. 12, 1977).

395. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 12, 1977).

396. Interview with consular officer at the United States Embassy in Mexico City, Mexico (July 28, 1977).

their decisions to leave the Service. However, they make one notable exception—the Chief Consular Officer's report. The Chief Consular Officer evaluates each consular officer yearly. He forwards the report to the State Department, which reviews each report and evaluates each officer's performance. Differing philosophies of visa issuance and denial between the Chief Officer and the consular officer may influence the Chief Officer's evaluation report.³⁹⁷ Thus, the immigrant visa officers are encouraged to maintain attitudes toward their work that are consistent with those of their superior officers.³⁹⁸ This influence may account for a variation in visa refusal rates among different Foreign Service posts, but it does not explain varying decisions among individual officers in the same post.

The Lack of Time as a Factor upon a Decision

Inadequate time to investigate greatly affects the visa-issuing process. Twenty-six percent of the officers claim that they have inadequate time to review the high volume of cases.³⁹⁹ Although one officer believed that his allotted time was adequate, most officers agree that time pressures influence their decisions.⁴⁰⁰ In the busier offices each consular officer considers twenty-five to thirty visa applications per day.⁴⁰¹ More than half the officers work more than forty hours per week.⁴⁰²

Forty-three percent of the survey respondents stated that appli-

397. Interview with consular officer at the United States consulate in Toronto, Canada (July 22, 1977). Apparently, only complimentary comments cause the State Department to look with favor on a consular officer when considering his promotion—a report devoid of such comments has the same effect as one that contains unfavorable remarks. *Id.*

398. *Id.*

399. The high volume of cases relative to the time allotted was the second most frequently cited problem by the officers. The most commonly cited problem was the job of helping the aliens understand and expedite the applications. *See* Appendices A & B, question 1.

400. Interviews with consular officers at the United States consulate in Tijuana, Mexico (July - Aug., 1977).

401. In the Toronto, Canada, office each officer is scheduled 25-30 interviews per day. Each officer in Montreal sees a similarly high volume of applicants daily. Interviews with consular officers at the United States consulates in Montreal and in Toronto, Canada (July 14-28, 1977).

402. Fifty-four percent of the officers claim to work over 40 hours per week. Twenty-four percent work a 45-hour week and 8% work 50 hours. One consular officer states that he works a 64-hour week. *See* Appendix B, question 2(a).

cant interviews typically last from ten to twenty minutes.⁴⁰³ Although local employees are an invaluable aid in screening documentation, the consular officer still must review all documents, interview the applicant, and make his decision in a matter of minutes. Because refusals must be thoroughly documented and reasons stated, time limitations prevent thorough investigation of possibly fraudulent claims.⁴⁰⁴ Moreover, persistent inquiries from Congressmen and attorneys compete with applicants for the officers' time.⁴⁰⁵

These time constraints have two consequences. First, the officer cannot investigate documents or job letters. The officer often must make a subjective judgment of the proffered document's validity. This judgment may be inaccurate. Second, the officer will be less likely to consider each applicant's individual circumstances when time is limited. Thus, individualized justice is hindered.

The Effect of Intermediaries

Often the application process involves individuals other than the applicant. The applicant may retain an attorney to help him immigrate. He might hire a lay consultant to inform him of any obstacles he must overcome. A relative or friend within the United States may write to a Congressman who then becomes involved in the process through direct correspondence with the consular officer. Consular officers generally resent inquiries from Congressmen because they consider Congressmen to be ignorant in the field of immigration law.⁴⁰⁶ Congressional inquiries deter the officers from devoting time where needed—examination of the

403. Twelve percent of the officers conducted five-minute interviews. See Appendix B, question 3(c). In Toronto, Canada, interviews are scheduled every 15 minutes. Similarly, in Montreal, Canada, interviews are scheduled approximately every 20 minutes. In the smaller offices visited, the interviews are held at longer intervals, but the officers have duties other than the issuance of immigrant visas.

404. Interview with consular officer at the United States consulate in Halifax, Canada (July 8, 1977). One officer stated that if enough time were allowed for investigation, most visas could be refused on grounds of fraud. *Id.*

405. Twenty-six percent of the officers stated such interference was one of the major problems of being an immigrant visa officer. See Appendix B, question 1.

406. The procedure for handling such "congressionals" varies within each office. See notes 136-38 and accompanying text *supra*. In some offices, notably Montreal and Winnipeg, Canada, the job of responding to congressional inquiries is delegated to the local employees. Interviews with consular officers at the United States consulate in Montreal, Canada (July 14-20, 1977); Interviews with consular officers at the United States consulate in Winnipeg, Canada (Aug. 3-5, 1977). In other offices, the consular officers themselves answer the correspondence. It would appear to be a more efficient use of time to leave the job of responding to these often uninformed inquiries to the local employees and thus to allow the consular officer more time for more crucial matters.

immigrant visa applications.⁴⁰⁷

The effects of congressional inquiries on the decision regarding a particular application varies. Ordinarily the inquiries prompt a check on the officer's decision and result in a second consideration of the application.⁴⁰⁸ This second examination can either reinforce the officer's decision or cause him to change it. He might uncover new facts that may cause him to issue a visa that he might have denied without the closer scrutiny.⁴⁰⁹ Conversely, this second look may reveal factors unfavorable to an applicant, leading to a visa refusal when upon cursory review the visa would have been issued.⁴¹⁰ Many officers believe that such congressional interest affects the equity of the immigration process because it may cause visas to be issued improperly.⁴¹¹

"The relationship between a lawyer and the consular officer in the visa-issuing process must be considered adversarial, in the sense that if you [the attorney] err, you and your client will be cut to ribbons."⁴¹² Consular officers and attorneys exhibit a mutual attitude of distrust and disrespect toward each other.⁴¹³

407. Interview with consular officer at the United States consulate in Toronto, Canada (July 23, 1978).

408. Twenty percent of the officers stated that the result of a congressional inquiry is to cause them to give extra time to an application. See Appendix B, question 15(i)(1).

409. Eleven percent of the officers stated that the effect of congressional pressure was to influence them to issue a visa that they might otherwise have denied. See Appendix B, question 15(i)(1).

410. Interview with consular officer at the United States consulate in Montreal, Canada (July 15, 1977).

411. Interview with consular officer at the United States consulate in Toronto, Canada (July 23, 1977). Fifty-three to 54 % of the officers felt that such pressure adversely affects the equity of the system primarily because it causes certain applications to be treated more favorably than others. See Appendices A & B, question 15(i). One officer views the effect of congressional inquiry as follows: "The tendency is to be quite liberal. You are forced to be. I used to think that when I refused an applicant I could support it. But the Senators and Congressmen jump all over you. Kennedy's staff was just terrible in Canada." Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 12, 1977).

412. Letter from Sam Williamson to Kim R. Anderson (Oct. 27, 1977) (on file with the *San Diego Law Review*). One officer opined, "All attorneys are crooks," explaining that an attorney in New York City has been indicted 79 times, but as of July, 1977, was still informing aliens "how to fraudulently gain access." Interview with consular officer at the United States consulate in Halifax, Canada (July 7, 1977).

413. Interview with consular officer at the United States consulate in Montreal, Canada (July 17, 1977). Officers stated that attorneys coach applicants on certain answers to avoid a decision of ineligibility. The most commonly cited example was to the question, "Why did you apply for the non-immigrant visa?" The pre-

In certain circumstances the mere retention of an attorney affects the determination of the visa application. In Ciudad Juarez, Mexico, active representation by an attorney raises the consular officers' suspicions.⁴¹⁴ Similarly, in Vancouver, Canada, and in Monterrey, Mexico, representation by a specific attorney causes more thorough investigation.⁴¹⁵ However, attorneys are useful in completing the visa application and in obtaining documents.⁴¹⁶ In this respect, representation by an attorney may avoid a refusal for insufficient documentation.⁴¹⁷ In Mexico City, attorneys' inquiries can cause an applicant's visa to be processed more rapidly. However, most consular officers agree that attorneys are unnecessary, that they often serve to induce fraudulent claims,⁴¹⁸ and that they are a nuisance and a hindrance to the effective enforcement of the immigration law.

"Visa fixers" or other lay consultants do a thriving business and are a continuing source of irritation to consular officers.⁴¹⁹ "Visa fixers" include immigration consultants, notary publics, and organized groups such as the Catholic Conference.⁴²⁰ For example, in

ferred answer is "vacation" when an alien has entered the United States on a non-immigrant visa, has since established entitlement (usually through marriage to a United States citizen), and is now applying for an immigrant visa. If it can be proved that at the time of application for the non-immigrant visa the alien had the intention of permanently residing in the United States, the applicant may be excluded under the fraud provision, I. & N. Act § 212(a)(19), 8 U.S.C. § 1182(a)(19) (1976). Hence, prior coaching by an attorney to reply "vacation" will avoid this result.

414. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977).

415. Interview with consular officer at the United States consulate in Vancouver, Canada (Aug. 9, 1977). An office memo stated that all applicants represented by a certain attorney should be sent to the Seattle office of the INS for investigation during the pre-examination stage. Memo from Vancouver, Canada, consulate (June 7, 1977) (on file with the *San Diego Law Review*). The Monterrey, Mexico, office maintains a list of unscrupulous attorneys, and consular officers carefully inspect the applications of these attorneys' clients. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 18, 1977).

416. Interview with consular officer at the United States consulate in Montreal, Canada (July 18, 1977).

417. The financial cost to the alien for this paper shuffling is exorbitant. Attorneys' fees range from \$500 to \$1,500. "We could set up an office in Brownsville right now and make a million dollars in six months." Interview with consular officer at the United States consulate in Monterrey, Mexico (July 19, 1977).

418. Interview with consular officer at the United States Embassy in Mexico City, Mexico (Aug. 1, 1977).

419. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 18, 1977).

420. The immigration field is a complex one, and there are not enough competent attorneys in the United States to handle the workload. However, at present the law excludes lay persons from acting as immigration specialists for hire. 8 C.F.R. § 292.1 (1978). Immigration consultants see the solution in creating a licensing board to allow lay persons to counsel aliens while ensuring that professional standards are upheld. Immigration attorneys are opposed to the idea and believe

Ciudad Juarez, Mexico, the El Paso offices of the Catholic Conference constantly mail letters and call consular officers. The Conference demands favored treatment and regards the sole purpose of the immigration law as being the reunification of families.⁴²¹ In Monterrey, Mexico, one "visa fixer" until recently worked openly in a park near the consulate. He accounted for the sale of fraudulent documents to 166 known clients.⁴²² In Guadalajara, Mexico, the consulate felt compelled to make discreet inquiries into advertisements from local attorneys who claimed to guarantee visas for a price. The price was considerable, but as one attorney explained, the price was necessary to bribe the consular officers.⁴²³

Summary

Through the use of a multi-method research technique,⁴²⁴ the authors have identified several factors that influence the discretionary issuance of visas. One factor is the personal background of the consular officer.⁴²⁵ Other factors include the effect of intermediaries,⁴²⁶ lack of time,⁴²⁷ and the promotion system.⁴²⁸ Finally, the consular officer's attitudes toward management,⁴²⁹ applicants,⁴³⁰ and immigration policy⁴³¹ affect his visa decisions.

RECOMMENDATIONS

This section presents the authors' recommendations to minimize consular discretionary authority to issue and refuse immi-

the possibility of inferior work would be increased through the use of lay consultants. L.A. Daily Journal, Feb. 7, 1978, at 1, col. 6.

As a result of this controversy, the California Assembly passed a bill to regulate consultants in February, 1978. The bill limits consultants to filling out forms but establishes no control over consultants. The California Senate will most likely modify the bill to include some form of licensing provision. *Id.*

421. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977).

422. Interview with consular officer at the United States consulate in Monterrey, Mexico (July 21, 1977).

423. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

424. See notes 20-33 and accompanying text *supra*.

425. See notes 312-33 and accompanying text *supra*.

426. See notes 406-23 and accompanying text *supra*.

427. See notes 399-405 and accompanying text *supra*.

428. See notes 394-98 and accompanying text *supra*.

429. See notes 377-93 and accompanying text *supra*.

430. See notes 363-76 and accompanying text *supra*.

431. See notes 334-62 and accompanying text *supra*.

grant visas. The goal is to achieve more uniform application of the immigration law and regulations within the boundaries of the statutory grant of authority. Much progress toward the realization of this goal is possible through the structuring and checking of consular discretionary authority.

The visa-issuing process suffers from the State Department's lack of accountability for the determinations of its consular officers. Although the Department may not directly control an officer's determinations,⁴³² it is responsible for training officers and for providing regulations and instructions to enforce the Act.⁴³³ Only the Department can ensure that its regulations and guidelines are clear and well-defined; only the Department can ensure that a consular officer's determinations are within the bounds of such guidelines.

Yet, this Study indicates that Departmental guidelines are often vague and ill-defined. Different consular officers and consulates interpret the law, the regulations, and the guidelines in vastly dissimilar ways. Indeed, two officers may reach opposite determinations on the same question of fact and law. The system of checking these determinations is inadequate to ensure the uniform application of the law. Review at the post is often cursory and sometimes deferred. Visa refusals occasionally pass completely unchecked. Aliens who are refused visas have little recourse. It is the responsibility of the Department to correct these problems through more effective structuring and checking.

Structuring Consular Discretion Through the Foreign Affairs Manual

The *Foreign Affairs Manual*⁴³⁴ represents the Department's principal attempt to structure consular discretion. The *Manual* is a compilation of the Act and of Departmental regulations, interpretations, and procedural notes. As a device to structure consular discretionary authority to issue or refuse visas, the *Manual* is beset with problems.

Discretion is properly structured by isolating which factors apply and what weight they should be given in a particular determination.⁴³⁵ The primary means of structuring are through open plans, policy statements, rules, findings, reasons, precedents, and fair informal procedure.⁴³⁶ Yet the *Manual* contains few, if any,

432. I. & N. Act § 104(a), 8 U.S.C. § 1104(a) (1970).

433. *Id.*

434. *Manual*, note 113 *supra*.

435. K. DAVIS, *ADMINISTRATIVE LAW TEXT* 94 (3d ed. 1972).

436. K. DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 97 (1969).

findings, reasons, or precedents relative to specific types of cases. Moreover, those policies and rules that the Department publishes are confusing to the consular officers.

One cause of the *Manual's* inadequate structuring of consular discretion is the nonuniform application of Departmental policies and rules. First, use of the *Manual* is erratic at best. Consular officers seldom refer to the *Manual* on routine cases such as those under the public charge provision.⁴³⁷ Officers use the *Manual* more frequently in complicated cases⁴³⁸ and, according to some officers, at posts with a wider variety of cases.⁴³⁹ As a general rule, consular officers seek the advice of co-workers or superiors before consulting the *Manual*.⁴⁴⁰ One important reason for the *Manual's* infrequent use is its propensity for complex terminology.⁴⁴¹ Officers find it difficult to understand.⁴⁴² Even when officers do refer to the *Manual*, its application is not uniform. As one officer stated: "Everyone interprets it for themselves."⁴⁴³ Said another officer of the *Manual*: "I use it all the time, basically on the theory that anything you want it to say, you can find it in the *Manual*, just like the Bible."⁴⁴⁴

Still, the *Manual* is probably the most practical method available for structuring consular discretionary authority. Although instituting a Board of Visa Appeals, for example, would involve protracted administrative and legislative maneuvering, the *Manual* is subject to expeditious revision. With relatively little increase in manpower and resources, the Department and the

437. Interviews with consular officers at the United States consulates in Ciudad Juarez and in Monterrey, Mexico (July 8 - 22, 1977).

438. At the consulate in Monterrey, Mexico, for example, consular officers debate difficult fraud issues after referring to the exact language of the *Manual*. One author witnessed several such debates at the United States consulate in Monterrey, Mexico (July 19-22, 1977).

439. Interviews with consular officers at the United States consulate in Ciudad Juarez, Mexico (July 8 - 12, 1977).

440. Interviews with consular officers at the United States consulate in Guadalajara, Mexico (Aug. 8 - 12, 1977).

441. Regarding the *Manual's* complex terminology, one consular officer complained that "the only thing worse is the Internal Revenue Code." Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 12, 1977).

442. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 11, 1977).

443. Interview with consular officer at the United States consulate in Guadalajara, Mexico (Aug. 8, 1977).

444. Interview with consular officer at the United States Embassy in Mexico City, Mexico (July 28, 1977).

Visa Office could incorporate into the *Manual* most of Professor Davis's seven means of structuring discretion.⁴⁴⁵

Findings, reasons, and precedents can be culled from illustrative cases in the files of the Advisory Opinions Division of the Visa Office and from those of posts worldwide. Many posts claim to have precedent files, but use of such files is time-consuming and impractical. Abstracts of the files could form the beginning of a digest of cases for inclusion in the *Manual*. At the same time, the Department could clarify its policies, rules, and interpretations, presenting them in a more readable and understandable fashion. The expediency with which the Department could alter the *Manual* suggests its eminent practicality as a device for structuring consular discretionary authority.

The Study findings suggest specific recommendations for alteration of the *Manual* to structure further consular discretionary authority to issue visas. One recommendation is that the Department define the terms "public charge" and "dependent family members" under the public charge provision. The designation "public charge," which accounts for the most visa refusals, remains undefined in the *Manual*. At least one consular officer believes that the failure to define the term "public charge" creates confusion among consular officers.⁴⁴⁶ One reason for this confusion is the myriad types of public assistance available in the United States. Officers are not always certain under what conditions receipt of public assistance renders an alien ineligible to receive a visa.⁴⁴⁷ The only treatment of the matter in the *Manual* seems to be in the income poverty guidelines. The guidelines define "income" to include regular payments for public assistance, social security, and unemployment compensation.⁴⁴⁸ What is needed, however, is a clear definition of "public charge" and a list of the types of public assistance to aliens that render them ineligible for visas.

The *Manual* also should define and clarify Departmental policy toward "dependent family members." Earlier this Study illustrated the problem of whether the applicant spouse is responsible for the support of the petitioner spouse's children by a prior mar-

445. See notes 5-8 and accompanying text *supra*.

446. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977). See text accompanying notes 238-41 *supra*.

447. See text accompanying notes 238-41 *supra*.

448. Airgram from the Department of State to all American Diplomatic and Consular Posts (except Chiang Mai) and the District Administrator of the Trust Territory of the Pacific Islands, the Governor of American Samoa, and the Executive Secretary of the Canal Zone, Message Ref. No. A-2152 (5/17/77), income poverty guideline tables (rev. May 25, 1977) (on file with the *San Diego Law Review*).

riage.⁴⁴⁹ Another issue involves an applicant's responsibility for the support of dependent family members remaining in the foreign country.⁴⁵⁰ Must an applicant meet the income poverty guidelines for dependent family members remaining in the foreign country even if the cost of living in that country is well below that in the United States? Consular officers and consulates should not be free to answer this question differently for similarly situated applicants. The Department should clearly define its policy regarding dependent family members and clarify the policy's application to the income poverty guidelines.

Other policies under the public charge provision require clarification. Technically, the policy providing for a presumption of ineligibility when an applicant relies solely on expected income that falls below the income poverty guidelines may be consistent with the policy prohibiting the use of a fixed sum as the sole criterion in making the public charge determination,⁴⁵¹ but the compatibility of these two policies is suspect. If flexibility in the consideration of all relevant factors is the desired goal, the presumption of ineligibility is inconsistent with it. The danger is that a harried consular officer in the typical "visa mill" might rely to an inordinate degree on the presumption of ineligibility. This Study indicates that many officers do so rely.⁴⁵² Departmental inclusion of the ineligibility presumption in the regulations seems to sanction this behavior. To attain flexibility in visa eligibility determinations under the public charge provision, the Department should remove the temptation inherent in its policy and dispense with the presumption of ineligibility.

Finally, the Department should clarify in the *Manual* the acceptable requests for documentation to prove past and expected income. The Visa Office has already instructed its posts on the impropriety of certain requests for documents. It remains now to incorporate into the *Manual* a policy statement on the subject that lists acceptable requests for evidence.

Section 221(g) of the Act, the insufficient documentation provision,⁴⁵³ also should structure consular discretionary authority

449. See notes 227-29 and accompanying text *supra*.

450. See notes 230-32 and accompanying text *supra*.

451. See text accompanying notes 183-88 *supra*.

452. See notes 198-210 and accompanying text *supra*.

453. I. & N. Act § 221(g), 8 U.S.C. § 1201(g) (1976). See notes 81-109 and accompanying text *supra*.

more effectively. Currently, the provision invites abuse of consular discretion in two major ways. First, the insufficient documentation provision is virtually devoid of substantive guidelines in the *Manual*, yet it accounts for fifty-one percent of all initial refusals.⁴⁵⁴ Second, a consular officer may elect to defer review of refusals pending presentation of additional evidence by the applicant.⁴⁵⁵ As a result, the paucity of substantive guidelines and the deferred review procedure remove any meaningful check on an officer's decision.

The authors offer two recommendations to help solve this problem. First, the Department should incorporate into the *Manual* complete lists of acceptable and unacceptable types of documentation for each substantive ineligibility provision. Second, the Department should abolish the deferred review procedure. A decision to require additional documentation has the same force and effect as a visa refusal. Such a decision should be checked by a superior just as are other refusals.

Under the fraud provision of the Act,⁴⁵⁶ the most effective means of structuring consular authority would be to publish precedents in the *Manual*. Consular officers simply are not sure under what circumstances an applicant is ineligible for a visa on the ground of fraud. Consequently, even though officers suspect a high incidence of fraud, few applicants are refused for fraud. A compilation of precedents would help officers to identify cases of forbidden fraud. An example of such a compilation can be found in the *Manual* under the "crimes of moral turpitude" provision.⁴⁵⁷ A similar list is needed for types and circumstances of fraud that render an applicant ineligible for a visa.

Finally, the Department should simplify the interpretative materials in the *Manual*. Indeed, one consular officer complained that: "As it stands now, things are explained four different times, once in the law, once in the regulations, once in the interpretative materials, and again in other sources."⁴⁵⁸

This officer recommends that the *Manual* be rewritten to adopt a step-by-step approach following the format of an interview with an applicant. For each ground of visa ineligibility the *Manual* would list a certain number of positive factors to be considered.

454. VISA OFFICE REPORT, *supra* note 19, at 76. When refusals overcome are included, § 221(g) accounts for approximately 41% of all refusals. *Id.*

455. 22 C.F.R. § 42.130(b) (1977).

456. I. & N. Act § 212(a)(19), 8 U.S.C. § 1182(a)(19) (1976).

457. *Manual*, *supra* note 113, § 42.91(a)(9) note 4. See I. & N. Act § 212(a)(9), 8 U.S.C. § 1182(a)(9) (1976).

458. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 11, 1977).

Qualifications for eligibility would also be listed. An officer would merely go through the list ascertaining the presence or absence of each factor.

The above recommended changes in the *Manual* would better structure consular discretionary authority to issue and refuse immigrant visas. Moreover, these alterations would foster greater use of the *Manual* because it would then be easier to understand and apply. Greater use by consular officers of a more understandable *Manual* would, in turn, foster more uniform application of the law and the regulations within the boundaries of the statutory grant of authority.

Checking Consular Discretion Through Administrative Review

The Department's administrative review procedure⁴⁵⁹ is inadequate as a check on consular discretionary authority. Although it is conceptually sound, the procedure is poorly implemented. One reason for this poor implementation is that reviewing officers seldom refer cases for advisory opinions or take jurisdiction and issue the visa. Another reason is that the scope of review is minimal. An ordinary refusal sheet⁴⁶⁰ focuses little attention on detail. Review of the refusal sheet is often pro forma and cursory. Finally, the reviewing officer is not independent of those involved in the original decision.

Several changes in the administrative review procedure are necessary to provide more effective checking of consular discretionary authority. First, the Department should require more thorough evaluation of a case upon review. Such an evaluation would require the reviewing officer to have detailed information regarding the applicant's circumstances. Perhaps an expanded refusal sheet containing a checklist of the matters discussed during the interview would provide the necessary depth of information. A reviewing officer would then have available virtually the same degree of detail as the interviewing officer. Moreover, the refusal sheet checklist might correspond to the *Manual's* list of factors relevant to each ground of ineligibility suggested earlier.

Another means of providing more detail would be to grant an alien limited access to the reviewing officer. This would entail either an interview or the submission of the alien's own statement

459. See notes 110-70 and accompanying text *supra*.

460. See note 124 *supra*.

of facts. Such a procedure has the advantage of being eminently fair. The reviewing officer would have a full complement of data, and the applicant would have the opportunity to argue his case before the ultimate decisionmaker. However, there are several disadvantages. The procedure would consume precious time, further erode the reviewing officer's independence, and perhaps assume an unwanted measure of formality. Still, if interviewing consular officers have access to reviewing officers, then aliens should have access as well.

A second way to strengthen the checking value of the administrative review procedure is to utilize advisory opinions. The Department should encourage reviewing officers to refer cases for advisory opinions. Thus, the Visa Office could identify areas of the law in which Departmental policy needs clarification. Reviewing officers could then be instructed to forward cases involving these issues. Such a procedure would provide consular officers with guidance and the Visa Office with a collection of cases for use in policy analysis. A similar system is already in use under some grounds of ineligibility.⁴⁶¹ It could easily be expanded by requiring advisory opinions for other vague areas of the law.

Ultimately, consular discretionary authority to refuse immigrant visas should be checked by a system of administrative appeals. Aliens refused immigrant visas should have a right of appeal to a Board of Visa Appeals.⁴⁶² Such a Board would structure as well as check consular discretionary authority. The Board's decisions would help generate the open reasons, precedents, rules, and policies needed better to structure consular discretionary authority.

Recommendations to Increase Consular Officers' Morale and Competence

Maintaining high consular morale and competence is as important to more uniform application of the immigration law as is structuring and checking discretionary authority. Some consular officers complain that incompetent colleagues apply the law in accordance with their own prejudices. Officers with low morale may apply the law indifferently, using shortcuts in lieu of thoughtful

461. See text accompanying notes 147-48 *supra*.

462. A Board of Visa Appeals was first proposed during congressional debate on the 1952 Act. Senators Lehman and Humphrey incorporated such a Board in their alternative omnibus immigration bill, which was rejected by the Senate. Representative Javits also proposed such a Board. See generally 98 CONG. REC. *passim* (1952).

analysis. The following recommendations are directed toward improving consular competence and morale.

The Department should require formal training of consular officers to ensure that their visa determinations will be of high quality and integrity. The Department's new Rosslyn training center, in Arlington, Virginia, is well-suited to this task. There, consular officers develop an excellent background in immigration law. However, Rosslyn alone is not enough. Consular officers should undergo a training period at their posts as well. The new immigrant visa officer should be closely supervised, first as an observer and then as a participant.

Ideally, certain posts could be designated training posts where first-tour officers would receive on-the-job instruction before taking their first assignments. The Department could monitor designated training posts for proper compliance with its policies and procedures. Thus, new officers would be trained as nearly as possible in accordance with Departmental policies and procedures. Finally, the Department should convene regional consular seminars to discuss problems and changes in visa policy. Such seminars would effectively update consular training on a more formal level.

However, even if consular officers were highly trained, inadequately staffed consulates would reduce the quality of consular performance. The lag in filling consular staff requirements and an earlier administration freeze on hiring local employees⁴⁶³ are two major contributors to the problem of inadequately staffed consulates. The effect on the already understaffed and overcrowded consulates is particularly harsh. If the Department cannot provide adequate staff, it should instruct the consulates to reduce their workloads accordingly.

Ultimately, consular morale suffers from the tediousness of visa work and from the low expectations of promotion from it. To combat this tediousness, the Department routinely rotates consular officers among posts and to other non-visa duties. This rotation policy should take into account that some locations are less desirable than others. Officers in Latin America, for example, often

463. At the time the authors visited the consulates, hiring additional local employees was forbidden without prior approval from the Department of State. Interview with consular officer at the United States consulate in Ciudad Juarez, Mexico (July 8, 1977).

feel that they are doomed to stay in Latin America for the remainder of their careers. The Department should rotate these officers in and out of Latin America as frequently as possible. Finally, the Department should upgrade the stature of visa work through promotion of visa personnel and through active career counseling and planning.

Underlying many of these recommendations is the simple concept of management accountability. By and large, most officers perform well under difficult circumstances. If officers misapply the law, it may be because no one corrects their errors. The authors offer these recommendations in the hope that the Department will accept greater responsibility for overseeing the immigrant visa-issuing process.

KIM R. ANDERSON
DAVID A. GIFFORD

APPENDIX A

QUESTIONNAIRE
FOR
IMMIGRANT VISA OFFICERS

This questionnaire is part of a scientific survey about immigrant visas. The San Diego Law Review is conducting the survey under a grant from the National Science Foundation and in cooperation with the Department of State. As you complete the questionnaire please feel free to clarify any answer in the space following each question. Each person's responses will be kept in strictest confidence.

1. First, what are the most important problems you face in doing your job as an Immigrant Visa Officer?

- a. _____
- b. _____
- c. _____

We are interested in information concerning your conditions at work.

- 2. a. During an average week, about how many hours do you work?
_____ HOURS.
- b. Approximately what percentage is devoted to immigrant visas?
_____ PERCENT.
- c. How many Immigrant Visa Officers are there in your consular section, including yourself? _____
- d. Do you feel your personal performance would improve if your office had more officers? Please circle appropriate answer.
 - 1. YES, Greatly Improve
 - 2. YES, Somewhat Improve
 - 3. YES, Improve a Little
 - 4. NO, Not Improve at all
- e. Do you feel management of your consular section could be improved?
 - 1. YES, Greatly Improved
 - 2. YES, Somewhat Improved
 - 3. YES, Improved very little
 - 4. NO, Not Improved at all

We are also interested in changes in your workload over the past year.

- 3. Were you employed as an Immigrant Visa Officer in your present post one year ago?
 - 1. YES 2. NO If NO, please go on to question 4.
 - a. Generally, are you granting a higher, lower, or about the same percentage of immigrant visas now as compared with a year ago? Circle appropriate answer.
 - 1. MORE NOW
 - 2. SAME
 - 3. LESS NOW
 - b. About how many immigrant visa applications do you consider in an average week?

NOW _____ A YEAR AGO _____

- c. On the average, about how much time do you spend per immigrant visa interview?

_____ MINUTES.

- d. Are there large seasonal fluctuations in the number of immigrant visa applications? 1. YES 2. NO. If yes, please explain apparent causes of such fluctuations.

4. We recognize that there are many non-statutory factors which an Immigrant Visa Officer must consider when making a preliminary decision on an immigrant visa application. Please list those which you feel are the most important.

a. _____

b. _____

c. _____

5. Considering now the immigrant visa applications which you deny, what are the most frequent causes for denial?

a. _____

b. _____

c. _____

6. Some people have mentioned the following reasons for investigation of an applicant's eligibility. Not all of these reasons relate to statutory grounds. Please note the most important statutory ground beside each of the following items when applicable. If there is more than one ground, note additional grounds on the spaces provided. (leave the spaces blank beside an item that relates to no statutory ground).

Statutory Grounds

- | | | | |
|--|-------|-------|-------|
| a. Negative attitude of applicant toward the immigration process | _____ | _____ | _____ |
| b. Cleanliness of applicant | _____ | _____ | _____ |
| c. Courtesy of applicant | _____ | _____ | _____ |
| d. Demeanor of applicant | _____ | _____ | _____ |
| e. Conviction for public disorder or drunkenness | _____ | _____ | _____ |
| f. Apparent circumvention of the immigration process | _____ | _____ | _____ |
| g. Dress of applicant | _____ | _____ | _____ |
| h. Ethnic background of applicant | _____ | _____ | _____ |
| i. Ideological views | _____ | _____ | _____ |

j. Medical problems	_____	_____	_____
k. Mental or psychological problems	_____	_____	_____
l. Neatness of applicant	_____	_____	_____
m. Excluded from admission previously	_____	_____	_____
n. Previous visa refusal	_____	_____	_____
o. The applicant is elderly	_____	_____	_____
p. Applicant is other than your own sex	_____	_____	_____
q. Applicant is a woman	_____	_____	_____
r. Applicant speaks no English	_____	_____	_____
s. Applicant lacks a high school education	_____	_____	_____
t. Applicant is represented by an attorney	_____	_____	_____
u. Congressional interest	_____	_____	_____
v. Petitioner has adjusted status	_____	_____	_____
w. Applicant seems arrogant	_____	_____	_____
x. Other factors (non-statutory) (Please list)	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. We are also interested in the number of times each factor is applied and the relative weight given to each item when making a preliminary decision on an immigrant visa. First, note the frequency such factors appear when considering an application in blanks under the column labeled "FREQUENCY" (If you use an item very frequently mark a 5, fairly frequently mark a 4, not very frequently mark a 3, not at all frequently mark a 2, and if you never consider an item mark a 1 beside it).

	<u>Frequency</u>	<u>Weight</u>
a. Negative attitude of applicant toward the immigration process	_____	_____
b. Cleanliness of applicant	_____	_____
c. Courtesy of applicant	_____	_____
d. Demeanor of applicant	_____	_____
e. Conviction for public disorder or drunkenness	_____	_____
f. Apparent circumvention of the immigration process	_____	_____
g. Dress of applicant	_____	_____
h. Ethnic background of applicant	_____	_____
i. Ideological views	_____	_____

- j. Medical problems _____
- k. Mental or psychological problems _____
- l. Neatness of applicant _____
- m. Excluded from admission previously _____
- n. Previous visa refusal _____
- o. The applicant is elderly _____
- p. Applicant is other than your own sex _____
- q. Applicant is a woman _____
- r. Applicant speaks no English _____
- s. Applicant lacks a high school education _____
- t. Applicant is represented by an attorney _____
- u. Congressional interest _____
- v. Petitioner has adjusted status _____
- w. Applicant seems arrogant _____

Now, we'd like you to indicate the weight given each item when considering an application. Just go back and mark a 5 beside an item if you consider it to be conclusive, a 4 if you consider it of great weight, a 3 if some weight is given, a 2 if little weight is given, and a 1 if you consider it to have no weight in consideration of an application.

8. What are the most important factors you consider in determining whether the applicant is likely to be refused under INA § 212(a)(15)? Please list as many factors as you think are important.

- a. _____
- b. _____
- c. _____

9. What weight is given each of the following factors when deciding whether to refuse an applicant under § 212(a)(15)? Circle the number beside each item that corresponds most closely with the weight you give that factor when passing upon the application.

	<u>Conclusive</u>	<u>Great</u>	<u>Some</u>	<u>Little</u>	<u>No</u>
	<u>Weight</u>	<u>Weight</u>	<u>Weight</u>	<u>Weight</u>	<u>Weight</u>
a. Whether the alien has ever received welfare benefits or their equivalent	1	2	3	4	5
b. Whether any member of the alien's family has received welfare benefits or their equivalent	1	2	3	4	5
c. Affidavit of support	1	2	3	4	5
d. Job offer from a United States employer	1	2	3	4	5
e. Alien's prior work experience	1	2	3	4	5
f. Type of work being offered	1	2	3	4	5
g. Wages offered	1	2	3	4	5
h. Alien's educational background	1	2	3	4	5

i. Alien's English language skills	1	2	3	4	5
j. Financial assets of alien or his family	1	2	3	4	5
k. Applicant is over 50	1	2	3	4	5
l. Applicant is a woman	1	2	3	4	5
m. Number of persons dependent on applicant for support	1	2	3	4	5
n. Final destination of alien	1	2	3	4	5
o. Nationality	1	2	3	4	5
p. Alien's prospective income is slightly above poverty level	1	2	3	4	5
q. Applicant is self-confident	1	2	3	4	5

10. What are the most important things you look for in determining whether the applicant is telling the truth?
-

11. The next series of questions deals with legal guidelines or interpretative materials you may use, including any pertaining to non-statutory factors affecting your decision. Please circle the number beside the most appropriate response for each question.

- a. How frequently are any legal guidelines used?
 1. VERY FREQUENTLY
 2. FAIRLY FREQUENTLY
 3. NOT VERY FREQUENTLY
 4. NOT AT ALL FREQUENTLY
 5. NEVER
- b. How frequently are interpretative materials used?
 1. VERY FREQUENTLY
 2. FAIRLY FREQUENTLY
 3. NOT VERY FREQUENTLY
 4. NOT AT ALL FREQUENTLY
 5. NEVER
- c. Do you receive materials or guidelines from the State Department?
 1. YES 2. NO

If YES, answer the following:

 1. How explicit are the legal guidelines?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE
 2. How often are the legal guidelines updated?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 3. How explicit are the interpretative materials?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE

4. How often are such interpretative materials revised?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 - d. Do you receive materials or guidelines from the local Embassy?
 1. YES 2. NOIf YES, answer the following:
 1. How explicit are the legal guidelines?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE
 2. How often are the legal guidelines updated?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 3. How explicit are the interpretative materials?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE
 4. How often are such interpretative materials revised?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 - e. Do you receive materials or guidelines from your own office?
 1. YES 2. NOIf YES, answer the following:
 1. How explicit are the legal guidelines?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE
 2. How often are the legal guidelines updated?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 3. How explicit are the interpretative materials?
 1. VERY EXPLICIT
 2. SOMEWHAT EXPLICIT
 3. FAIRLY GENERAL
 4. EXTREMELY VAGUE
 4. How often are such interpretative materials revised?
 1. MONTHLY
 2. ANNUALLY
 3. EVERY FEW YEARS
 4. RARELY
 - f. How could the legal guidelines and interpretative materials best be improved to enhance the performance of your job?
-
-

12. In arriving at a decision on an immigrant visa, about how often do you make use of the following sources? Circle the number beside each item that corresponds to your own view.

	Very Frequently	Somewhat Frequently	Occasionally	Never
a. Advisory opinions	1	2	3	4
b. Your own prior cases	1	2	3	4
c. Co-workers' prior cases	1	2	3	4
d. Consultation with superior	1	2	3	4
e. Consultation with co-workers	1	2	3	4
f. Consultation with other persons (Please specify)				
_____	1	2	3	4
_____	1	2	3	4
g. Your own common sense	1	2	3	4
h. Other sources (Please specify)				
_____	1	2	3	4
_____	1	2	3	4

13. When you refuse an immigrant visa, to what extent do you set forth your reasons?

Please circle the number beside each item that reflects your own practices.

	<u>Yes</u>	<u>No</u>
a. I explain the reasons orally to the alien.	1	2
b. I give the alien reasons in writing.	1	2
c. I make a written notation in the file, which eventually goes to_____ (Please state position).	1	2
d. I explain orally to_____ (Please state position).	1	2
e. I tell the alien the reasons if he requests them.	1	2
f. I do not set forth the reasons.	1	2

14. When you refuse an immigrant visa, to what extent do you inform the alien of the review process? Circle the number beside each item which corresponds to your practices.

	<u>Yes</u>	<u>No</u>
a. I automatically explain the review process orally to the alien.	1	2
b. I notify the alien in writing of the review process.	1	2
c. I tell the alien of the review process if he asks about it.	1	2
d. I do not inform the alien of the review process.	1	2

15. a. About how often does your supervising officer personally review your decisions granting immigrant visas? Circle appropriate response.

1. ALWAYS
2. NEARLY ALWAYS
3. SOMETIMES
4. NOT VERY OFTEN

5. NEVER

What is her/his title? _____

- b. Does your supervising officer personally review your decisions denying immigrant visas? Circle appropriate response.

1. ALWAYS
2. NEARLY ALWAYS
3. SOMETIMES
4. NOT VERY OFTEN
5. NEVER

- c. If your decisions were to be reviewed by a supervisory officer in your consular section, would the review have any effect on your decisions? Circle the *one* number that best corresponds to your own view.

1. YES. In close cases, I would tend to lean toward granting the visa.
2. YES. In close cases, I would tend to lean toward denying the visa.
3. YES. Because of this review, I would make a special effort to reach the same result the supervisor would reach.
4. NO. It would not affect my decision.

- d. Of those aliens whose immigrant visa applications you deny, about what percentage of them seek further review in Washington, D.C.? ____%

- e. Of those applications in which advisory review is sought, about what percentage of the time does the Visa Office recommend that you change your decision? ____%

- f. When the Advisory Opinion Section does recommend that you change your opinion, about what percentage of the time do you accept the recommendation? ____%

- g. Does the fact that your decision might be reviewed in the Visa Office affect your decision in any way? Circle the *one* number beside the item that best corresponds to your own view.

1. YES. In close cases, I tend to lean toward granting the visa.
2. YES. In close cases, I tend to lean toward denying the visa.
3. YES. Because of this review, I make a special effort to reach the same result that Washington would reach.
4. NO. It does not affect my decision.

- h. Does the fact that politicians may bring pressure to bear on the process affect your decision?

1. YES 2. NO If YES, How?

- i. Does such outside pressure affect the equity of the immigrant visa process?

1. YES 2. NO If YES, How?

- j. Have you ever felt that the overall number of visas you grant or deny would affect your career?

1. YES 2. NO If YES, How?

16. Finally, we would like the following background information:

- a. How many years in your career have you been an Immigrant Visa Officer?
____YEARS ____MONTHS

- b. About how long have you been at your present post?
____YEARS ____MONTHS

- c. How pleased are you with your present assignment? (as a Consular Officer)

Circle the number beside the appropriate response.

1. VERY PLEASED
2. REASONABLY PLEASED
3. NOT DISPLEASED
4. DISPLEASED
5. SERIOUSLY DISPLEASED

- d. How pleased are you with your current location? Circle the number which indicates the appropriate answer.

1. VERY PLEASED
2. REASONABLY PLEASED
3. NOT DISPLEASED
4. DISPLEASED
5. SERIOUSLY DISPLEASED

- e. How pleased is your family with your current location? Circle the number which indicates the appropriate response.

1. VERY PLEASED
2. REASONABLY PLEASED
3. NOT DISPLEASED
4. DISPLEASED
5. SERIOUSLY DISPLEASED

- f. How long have you been employed by the Foreign Service? Circle applicable number.

1. UNDER 1 YEAR
2. 1-5 YEARS
3. 6-15 YEARS
4. 16-24 YEARS
5. OVER 25 YEARS

- g. What is your age? Circle applicable number.

1. 21-29
2. 30-39
3. 40-49
4. 50-59
5. OVER 60

- h. How many more years do you plan to work for the Service?
___ YEARS

- i. How many years of education have you completed? Circle appropriate number.

1. 12 YEARS (High School)
2. 13-15 YEARS (Some College)
3. 16 YEARS (College Degree)
4. 17-18 YEARS (Some graduate work)
5. 18+ YEARS (Graduate Degree)

- j. Would you say you have working knowledge of the native language?

1. YES
2. NO

- k. Religion

1. PROTESTANT
2. JEWISH
3. CATHOLIC
4. OTHER (Please Specify) _____

5. I do not care to state

1. Ethnic Background

1. BLACK

2. WHITE

3. ASIAN

4. HISPANIC DESCENT

5. OTHER (Please Specify) _____

6. I do not care to state

m. Sex

1. FEMALE

2. MALE

Thank you very much for your help in this project. Please put this questionnaire in the stamped, pre-addressed envelope and just drop it in the mail.

APPENDIX B*

STATISTICAL RESPONSES
TO QUESTIONNAIRE**

Question #1: Problems faced as immigrant visa officer. Most frequent responses were:

	<u>% of officers responding</u>
1. Assisting the applicants in general, explaining the laws, expediting applications	32
2. Insufficient time/heavy workload	26
3. Interpreting & administering the law	26
4. Interference from the public/ Congressmen/attorneys	26
5. Detecting fraud	21
6. Evaluating documentation	21

Question #2: Hours worked.

2(a)	40 hours	46
	41-45 hours	24
	46-50 hours	22
	over 50 hours	8
2(b)	Percent devoted to immigrant visas.	
	Under 10%	12
	10-20%	26
	21-50%	24
	51-99%	21
	100%	17
2(c)	Number of immigrant visa officers in section office.	
	1	68
	2	21
	3	4
	4	2
	5	5

* This Appendix partially reproduces a computer tabulation of consular officers' responses to the questionnaire, Appendix A *supra*. The computer printout from which this Appendix was derived is on file with the *San Diego Law Review*. For a description of research methodology, see notes 20-33 and accompanying text *supra*.

** Because of rounding, some columns will not add up to 100%. Similarly, some questions list only frequencies of response rather than tabulations.

	<u>% of officers responding</u>
2(d) Would more officers improve performance?	
(1) Yes, greatly	14
(2) Yes, somewhat	16
(3) Yes, a little	15
(4) No	55
2(e) Could management be improved?	
(1) Yes, greatly	11
(2) Yes, somewhat	34
(3) Yes, a little	37
(4) No	18
Question #3: Were you employed as an immigrant visa officer in your present post one year ago?	
Yes	56
No	42
No answer, not applicable	2
3(a) Generally, are you granting a higher, lower, or about the same percentage of immigrant visas now as compared with a year ago?	
(1) More now	23
(2) Same	29
(3) Less now	6
(4) No answer, not applicable	42
3(b) About how many immigrant visa applications do you consider in an average week?	
<i>Now</i>	
(1) Under 10	24
(2) 10-49	22
(3) 50-200	12
(4) Over 200	4
(5) No answer, not applicable	38
<i>A year ago</i>	
(1) Under 10	26
(2) 10-49	19
(3) 50-200	12
(4) Over 200	2
(5) No answer, not applicable	40
3(c) On the average, about how much time do you spend per immigrant visa interview?	
(1) Under 10 minutes	12
(2) 10-20	43
(3) Over 20	10
(4) No answer, not applicable	35
3(d) Are there large seasonal fluctuations in the number of immigrant visa applications?	
(1) Yes	11
(2) No	63
(3) No answer, not applicable	26
Question #4: Non-statutory factors used when making a preliminary decision on an immigrant visa application.	
1. Ability, willingness to work, skills, job history, etc.	21
2. Do not consider non-statutory factors	19

	<u>% of officers responding</u>
3. Strength and validity of relationship with petitioner	12
4. Assets of applicant	11
Question #5: Most frequent causes for denial of immigration visa applications.	
1. Insufficient financial support	63
2. Insufficient documentation	40
3. Conviction for or commission of crimes of moral turpitude	24
4. Fraud or misrepresentation in family relations, job offers, <i>etc.</i>	20
5. Labor certification invalid	14
6. Low refusal post or no refusals	14
7. Mental illness	11
8. Communist affiliation	11
9. Medical	10
Question #8: What are the most important factors you consider in determining whether an applicant is likely to be refused under INA § 212(a)(15)?	
1. Job offer in U.S. and job prospects	50
2. Affidavit	41
3. Post-employment record	35
4. Ability to support	29
5. Financial position	28
6. Skills & qualifications	20
7. Number of dependents	17
8. Age	15
Question #10: Most important things looked for in determining whether the appli- cant is telling the truth.	
1. Inconsistency of answers and documents	75
2. Demeanor	34
3. Plausibility	30
4. Intuition	10
Question #11: Legal and interpretative materials used.	
11(a) How frequently are any legal guidelines used?	
(1) Very frequently	54
(2) Fairly frequently	33
(3) Not very frequently	11
(4) Not at all frequently	1
(5) Never	0
(6) No answer, not applicable	0
11(b) How frequently are interpretative materials used?	
(1) Very frequently	42
(2) Fairly frequently	37
(3) Not very frequently	17
(4) Not at all frequently	2
(5) Never	0
(6) No answer, not applicable	0

	<u>% of officers responding</u>
11(c) Do you receive guidelines from the State Department?	
(1) Yes	99
(2) No	0
(3) No answer, not applicable	0
11(c) (1)—How explicit are the legal guidelines?	
(1) Very explicit	21
(2) Somewhat explicit	56
(3) Fairly general	17
(4) Extremely vague	1
(5) No answer, not applicable	5
11(c) (2)—How often are the legal guidelines updated?	
(1) Monthly	18
(2) Annually	17
(3) Every few years	38
(4) Rarely	13
(5) As needed	9
(6) No answer, not applicable	5
11(c) (3)—How explicit are the interpretative materials?	
(1) Very explicit	15
(2) Somewhat explicit	56
(3) Fairly general	20
(4) Extremely vague	6
(5) No answer, not applicable	3
11(c) (4)—How often are such interpretative materials revised?	
(1) Monthly	13
(2) Annually	17
(3) Every few years	43
(4) Rarely	11
(5) As needed	10
(6) No answer, not applicable	6
11(d) Do you receive materials or guidelines from the local Embassy?	
(1) Yes	20
(2) No	67
(3) No answer, not applicable	13
11(d) (1)—How explicit are the legal guidelines?	
(1) Very explicit	4
(2) Somewhat explicit	11
(3) Fairly general	4
(4) Extremely vague	0
(5) No answer, not applicable	81
11(d) (2)—How often are the legal guidelines updated?	
(1) Monthly	2
(2) Annually	4
(3) Every few years	6
(4) Rarely	1
(5) As needed	1
(6) No answer, not applicable	86
11(d) (3)—How explicit are the interpretative materials?	
(1) Very explicit	9

	<u>% of officers responding</u>
(2) Somewhat explicit	7
(3) Fairly general	2
(4) Extremely vague	0
(5) No answer, not applicable	82
11(d) (4)—How often are such interpretative materials revised?	
(1) Monthly	1
(2) Annually	9
(3) Every few years	4
(4) Rarely	0
(5) As needed	1
(6) No answer, not applicable	85
11(e) Do you receive materials or guidelines from your own office?	
(1) Yes	35
(2) No	54
(3) No answer, not applicable	11
11(e) (1)—How explicit are the legal guidelines?	
(1) Very explicit	15
(2) Somewhat explicit	13
(3) Fairly general	2
(4) Extremely vague	1
(5) No answer, not applicable	68
11(e) (2)—How often are the legal guidelines updated?	
(1) Monthly	10
(2) Annually	9
(3) Every few years	4
(4) Rarely	9
(5) No answer, not applicable	68
11(e) (3)—How explicit are the interpretative materials?	
(1) Very explicit	18
(2) Somewhat explicit	15
(3) Fairly general	2
(4) Extremely vague	0
(5) No answer, not applicable	65
11(e) (4)—How often are such interpretative materials revised?	
(1) Monthly	11
(2) Annually	10
(3) Every few years	5
(4) Rarely	7
(5) No answer, not applicable	67
11(f) How could the legal guidelines and interpretative materials best be improved to enhance the performance of your job?	
(1) Simplify <i>Manual</i> , clearer, etc.	24

	<u>% of officers responding</u>
(2) Revise & update <i>Manual</i> more frequently	26
(3) Adequate	10
(4) More precedents	7
Question #12: In arriving at a decision on an immigrant visa, about how often do you make use of the following sources?	
12(a) Advisory opinions.	
(1) Very frequently	5
(2) Somewhat frequently	20
(3) Occasionally	69
(4) Never	6
(5) No answer, not applicable	0
12(b) Your own prior cases.	
(1) Very frequently	25
(2) Somewhat frequently	43
(3) Occasionally	28
(4) Never	4
(5) No answer, not applicable	0
12(c) Co-workers' prior cases.	
(1) Very frequently	13
(2) Somewhat frequently	24
(3) Occasionally	39
(4) Never	18
(5) No answer, not applicable	5
12(d) Consultation with superior.	
(1) Very frequently	9
(2) Somewhat frequently	23
(3) Occasionally	46
(4) Never	16
(5) No answer, not applicable	5
12(e) Consultation with co-workers.	
(1) Very frequently	16
(2) Somewhat frequently	26
(3) Occasionally	32
(4) Never	19
(5) No answer, not applicable	7
12(f) Consultation with other persons.	
(1) Very frequently	7
(2) Somewhat frequently	4
(3) Occasionally	29
(4) Never	22
12(g) Your own common sense.	
(1) Very frequently	60
(2) Somewhat frequently	24
(3) Occasionally	9
(4) Never	0
(5) No answer, not applicable	7
12(h) Other sources.	
(1) Very frequently	36
(2) Somewhat frequently	15
(3) Occasionally	11
(4) Never	7

% of officers
responding

Question #13: When you refuse an immigrant visa, to what extent do you set forth your reasons?

13(a)	I explain the reasons orally to the alien.	
(1)	Yes	98
(2)	No	2
(3)	No answer, not applicable	0
13(b)	I give the alien reasons in writing.	
(1)	Yes	71
(2)	No	21
(3)	No answer, not applicable	8
13(c)	I make a written notation in the file, which eventually goes to _____.	
(1)	Yes	81
(2)	No	5
(3)	No answer, not applicable	14
13(d)	I explain orally to _____.	
(1)	Yes	21
(2)	No	49
(3)	No answer, not applicable	30
13(e)	I tell the alien the reasons if he requests them.	
(1)	Yes	38
(2)	No	32
(3)	No answer, not applicable	30
13(f)	I do not set forth the reasons.	
(1)	Yes	0
(2)	No	73
(3)	No answer, not applicable	27

Question #14: When you refuse an immigrant visa, to what extent do you inform the alien of the review process?

14(a)	I automatically explain the review process orally to the alien.	
(1)	Yes	63
(2)	No	24
(3)	No answer, not applicable	13
14(b)	I notify the alien in writing of the review process.	
(1)	Yes	38
(2)	No	48
(3)	No answer, not applicable	15
14(c)	I tell the alien of the review process if he asks about it.	
(1)	Yes	39
(2)	No	34
(3)	No answer, not applicable	27
14(d)	I do not inform the alien of the review process.	
(1)	Yes	10

		<u>% of officers responding</u>
	(2) No	62
	(3) No answer, not applicable	28
Question #15:		
15(a)	About how often does your supervisory officer personally review your decision granting immigrant visas?	
	(1) Always	8
	(2) Nearly always	2
	(3) Sometimes	11
	(4) Not very often	26
	(5) Never	49
	(6) No answer, not applicable	4
15(b)	Does your supervising officer personally review your decisions denying immigrant visas?	
	(1) Always	50
	(2) Nearly always	5
	(3) Sometimes	6
	(4) Not very often	15
	(5) Never	17
	(6) No answer, not applicable	7
15(c)	If your decisions were to be reviewed by a supervisory officer in your consular section, would the review have any effect on your decision?	
	(1) Yes, lean toward granting	5
	(2) Yes, lean toward denying	1
	(3) Yes, reach the same result	7
	(4) No, not affect decision	72
	(5) No answer, not applicable	15
15(d)	Of those aliens whose immigrant visas you deny, about what percentage seek further review in Washington, D.C.?	
	(1) Under 10	32
	(2) 10-50	10
	(3) Over 50	1
	(4) No answer, not applicable	57
15(e)	Percentage of time the Visa Office recommends a change in decision when advisory review is sought.	
	(1) Under 10	10
	(2) 10-40	13
	(3) Over 40	0
	(4) No answer, not applicable	77
15(f)	Percentage of time that immigrant visa officer accepts the recommendation of the Advisory Opinion Section.	
	(1) 50	4
	(2) 51-98	10
	(3) 99-100	28
15(g)	(4) No answer, not applicable	58
	The effect of a possible review in the Visa Office.	
	(1) Yes, lean toward granting visa	7
	(2) Yes, lean toward denying visa	0

	<u>% of officers responding</u>
(3) Yes, reach same result	10
(4) No, not affect decision	78
(5) No answer, not applicable	5
15(h) Whether politicians may bring pressure to bear on the decision-making process of the immigrant visa officer.	
(1) Yes	23
(2) No	76
(3) No answer, not applicable	0
15(h) (1)—How political pressure affects the officers.	
(1) Lean toward issuing in close cases	7
(2) Must document refusals carefully	7
(3) Makes me take another look	2
(4) Makes me suspicious	1
(5) No answer, not applicable	82
15(i) The effect of the outside pressure on the equity of the immigrant visa process.	
(1) Yes	54
(2) No	45
(3) No answer, not applicable	1
15(i) (1)—How the outside pressure affects the system.	
(1) Aliens with outside pressure get more attention	20
(2) Some C.O.'s (weak) inclined to give in	5
(3) No refusals, no trouble	2
(4) Allows unqualified applicants in	11
(5) Takes valuable time	6
(6) No answer, not applicable	56
15(j) Is there an effect on career based upon the number of visas granted or denied?	
(1) Yes	13
(2) No	87
(3) No answer, not applicable	0
15(j) (1)—What effect?	
(1) Shouldn't make waves by denying large numbers	5
(2) Supervisor may influence efficiency report	5
(3) State Department inspectors criticized past for low output	1
(4) No answer, not applicable	89
Question #16: Background information.	
16(a) How many years have you been an immigrant visa officer?	
(1) Under one year	35
(2) One to two years	29
(3) Two to three years	7
(4) Three to five years	12

	<u>% of officers responding</u>
(5) Over five years	17
(6) No answer, not applicable	0
16(b) How long have you been at your present post?	
(1) Under six months	19
(2) Six to twelve months	27
(3) One year to eighteen months	21
(4) Eighteen months to two years	18
(5) Two to three years	12
(6) Over three years	3
(7) No answer, not applicable	0
16(c) How pleased are you with your current assignment as a consular officer?	
(1) Very pleased	33
(2) Reasonably pleased	40
(3) Not displeased	15
(4) Displeased	12
(5) No answer, not applicable	0
16(d) How pleased are you with your current location?	
(1) Very pleased	41
(2) Reasonably pleased	34
(3) Not displeased	11
(4) Displeased	14
(5) No answer, not applicable	0
16(e) How pleased is your family with your current location?	
(1) Very pleased	26
(2) Reasonably pleased	28
(3) Not displeased	14
(4) Displeased	14
(5) No answer, not applicable	18
16(f) How long have you been employed by the Foreign Service?	
(1) Fewer than six years	52
(2) Six years or more	48
(3) No answer, not applicable	0
16(g) What is your age?	
(1) Under forty	70
(2) Forty or over	30
(3) No answer, not applicable	0
16(h) How many more years do you plan to work for the Foreign Service?	
(1) Less than one year	7
(2) One to three years	20
(3) Three to five years	12
(4) Five to fifteen years	17
(5) Fifteen to twenty years	18
(6) Over twenty years	26
(7) No answer, not applicable	0
16(i) How many years of education have you completed?	
(1) Fewer than seventeen years	34
(2) Seventeen years or more	66
(3) No answer, not applicable	0
16(j) Do you have a working knowledge of the native language?	
(1) Yes	82
(2) No	16
(3) No answer, not applicable	2

% of officers
responding

16(j)	Do you have a working knowledge of the native language?	
(1)	Yes	82
(2)	No	16
(3)	No answer, not applicable	2
16(k)	Religion.	
(1)	Protestant	37
(2)	Jewish	7
(3)	Catholic	21
(4)	Other, do not care to state	35
16(l)	Ethnic background	
(1)	Black	7
(2)	White	72
(3)	Asian	1
(4)	Other, do not care to state	20
16(m)	Sex	
(1)	Female	21
(2)	Male	75
(3)	Do not care to state	4

