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How to Immigrate to the United States: A Practical Guide for the Attorney

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Comments

HOW TO IMMIGRATE TO THE UNITED STATES: A PRACTICAL GUIDE FOR THE ATTORNEY*

"They say there's bread and work for all,
And the sun shines always there."

This old lament of the Irish immigrant well typifies the prevalent attitude of the modern immigrant seeking entry into our "promised land." However, the gates that were virtually wide open to the immigrant for three hundred years are now almost closed, leaving only a narrow passage. The requirements necessary to obtain access through that passage make the road particularly arduous.

Immigration law\(^2\) can be confusing and incongruous. Strict ad-

* The Immigration and Nationality Act Amendments, which alter many concepts fundamental to the American immigration system, were signed by the President on October 20, 1976, when this symposium issue of the San Diego Law Review was in its final printing stages. Accordingly, the Review is publishing in this issue an Afterword analyzing the major provisions of the bill. See Afterword: The Immigration and Nationality Act Amendments of 1976, 14 SAN DIEGO L. REV. 326 (1976) [hereinafter cited as Afterword].

Much of the discussion in this Article must be modified in light of the new legislation. The content of the Article remains important for two reasons: Much of the discussion is unaffected, and the portion which has been affected is subject to a broad savings clause, the precise scope of which is open to interpretation.

The reader should study this Article in conjunction with the above described Afterword, with particular emphasis on the section describing the savings clause.

2. Immigration law, with a few exceptions, is primarily contained in the Immigration and Nationality Act of June 27, 1952. The Act, commonly

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herence to both the statutes and the regulations is necessary. An alien who enters the United States without complying with the proper procedural and substantive guidelines is subject to deportation for an indefinite period. Those provisions have been severely criticized, but until the sanctions for noncompliance with the Immigration and Nationalization Act (Act) are either liberalized or amended, the provisions of the Act must be followed precisely.

Unfortunately, few attorneys in private practice have a working knowledge of the substantive or procedural aspects of the Act. This Comment is addressed to the attorney who has had no previous exposure to immigration law. It collects from a myriad of sources the rules, regulations, and procedures required of an attorney to successfully immigrate an alien.

known as the McCarran-Walter Act, has been amended frequently. The most important amendments were enacted on October 3, 1955. Commentators have declared that few laws enacted by Congress are longer and more complex than the Immigration and Nationality Act of 1952. E.g., Rosenfield, Necessary Administrative Reforms in the Immigration and Nationality Act of 1952, 27 Fordham L. Rev. 145 (1958). For a discussion of the 1976 Amendments, see Afterword.


4. Id. § 241(a)(1), 8 U.S.C. § 1251(a)(1). See also id. § 212(a), 8 U.S.C. § 1182(a). The Act contains no provision restricting the time during which deportation proceedings may be commenced.


7. Although the Act does provide for a number of avenues for relief against deportation, all these remedies depend upon the exercise of discretion by the Attorney General. See id. § 244, 8 U.S.C. § 1254 (suspension of deportation); id. § 245, 8 U.S.C. § 1255 (adjustment of status); id. § 249, 8 U.S.C. § 1259 (registry). Adjustment of status is discussed in notes 203-26 and accompanying text infra. Registry is discussed in notes 235-45 and accompanying text infra.

8. Comment, Immigration Consultants, 8 U.C. Davis L. Rev. 85, 89 (1975). Robert L. Miller, chairman of the immigration committee of the Los Angeles County Bar Association, estimates that there are only fifty immigration specialists in Los Angeles and another one hundred lawyers operating in the field occasionally. L.A. Times, April 21, 1975, pt. 1, at 14, col. 1.

9. Many of the concepts discussed may be considered too basic for the experienced immigration lawyer. The concern in this Comment is only with aliens classified as “immigrants,” and not with aliens classified as “nonimmigrants.” Immigrant aliens seek to enter the United States for permanent residence. I. & N. Act § 101(a)(15), 8 U.S.C. § 1101(a)(15) (1970). Nonimmigrant aliens are usually people who want to come to the United States temporarily, such as students and tourists. Categories of non-
Determination of Alien Status

Prior to initiation of the appropriate immigration procedures, the practitioner should determine whether the person is unknowingly a United States citizen. The United States allows acquisition of citizenship through place of birth,\textsuperscript{10} descent,\textsuperscript{11} and naturalization.\textsuperscript{12} Of these, the most difficult to ascertain is whether the person has acquired United States citizenship through descent. Citizenship by virtue of descent, more commonly referred to as derivative citizenship, assures a child born outside the United States to a citizen-parent the ability to secure his own citizenship.\textsuperscript{18}

The acquisition of derivative citizenship is dependent upon specified occurrences and upon the law in effect at the time these decisive occurrences took place.\textsuperscript{14} The present law\textsuperscript{15} deals with occurrences which transpired on or after December 24, 1952.\textsuperscript{16}

When the claimant is born outside the United States, derivative citizenship may be obtained by virtue of the citizenship of one or both parents. If both parents are United States citizens, one parent must have resided in the United States, or in an outlying possession,
prior to the claimant’s birth.\textsuperscript{17} When only one parent is a United States citizen and the other is a national,\textsuperscript{18} the citizen-parent must have been physically present in the United States, or in an outlying possession, for any continuous period of one year prior to the claimant’s birth.\textsuperscript{19} Finally, if only one parent is a United States citizen and the other is an alien, the citizen-parent must have been continuously present in the United States, or in an outlying possession, for any ten-year period prior to the claimant’s birth, at least five years of which were after the citizen-parent attained the age of fourteen.\textsuperscript{20} The claimant born of such citizen and alien parents will lose United States citizenship unless he maintains physical presence in the United States for a continuous period of two years between the ages of fourteen and twenty-eight.\textsuperscript{21}

A child born out of wedlock is also entitled to derivative citizenship.\textsuperscript{22} The child’s mother must be a United States citizen who has resided in this country for any one year prior to the child’s birth.\textsuperscript{23} Thus, under specified conditions, the illegitimate child may more easily acquire and retain derivative citizenship than may the legitimate child of a citizen-parent.\textsuperscript{24} In all cases, the burden of proving the purported relationship to a United States citizen-parent is on the claimant.\textsuperscript{25}

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\textsuperscript{18} Nationals are people who do not have complete United States citizenship rights, but who owe permanent allegiance to the United States. I. \& N. Act § 101(a)(22), 8 U.S.C. § 1101(a)(22) (1970). Basically, nationals are people who are citizens of territorial possessions of the United States. See 1 Gordon § 2.3c, at 2-16.


\textsuperscript{20} Id. § 301(a)(7), 8 U.S.C. § 1401(a)(7). The provision lists people who may satisfy the presence-in-the-United-States requirement even while they are abroad. Included are United States servicemen and servicewomen or government employees, employees of a United States international organization, and a dependent unmarried son or daughter of a person employed abroad in one of the listed capacities. Id.

\textsuperscript{21} Id. § 301(b), 8 U.S.C. 1401(b) (Supp. 1976). Absences from the United States of less than sixty days in the aggregate during this period when “continuous physical presence” is required do not break the continuity of such presence. Id.

\textsuperscript{22} Id. § 309(c), 8 U.S.C. § 1409(c) (1970).

\textsuperscript{23} Id.

\textsuperscript{24} The Act does not require that the citizen-mother of an illegitimate child spend ten years in the United States prior to her child’s becoming a citizen. Nor must the illegitimate child establish physical presence in the United States in order to retain citizenship. See E. Lowenstein, The Aliens and the Immigration Law (1958); Comment, The Conditional Nature of Derivative Citizenship, 8 U.C. Davis L. Rev. 345, 353 (1975).

\textsuperscript{25} Hoo Gan Tze v. Haff, 67 F.2d 234, 235 (9th Cir. 1933). The derivative
THE GENERAL IMMIGRATION PROCEDURE

Generally, an alien must proceed through two admissibility determinations before he is able to acquire lawful permanent residence in the United States. The alien must first apply for an immigrant citizen must file Form N-600 with the Service along with a fee of $10.00 and other evidence essential to establish the claimed relationship. Supporting documents should include, if applicable, the birth certificates of both parents and child, the parents' marriage certificate, and proof of legal termination of any previous marriages. The latter may be proved by certificates of death or dissolution. 8 C.F.R. § 341.1(a) (1976). These documents will enable the claimant to prove the citizenship and residence of his parents and the claimed relationship to them.

The application is filed with the District Director, who has delegated his review determination to the Travel Control Section of the Service, headed by an Assistant District Director. The Assistant District Director is guided by the law, regulations, internal Operation Instructions (certain Operation Instructions are available for reference use at the Service's public reading room), and procedural guidelines the District Director may set out. The District Director seldom personally reviews an application that is granted, but he reviews all cases which are appealed. Interview with Joseph Sureck, District Director of District No. 16 of the Immigration and Nationality Service, in Los Angeles, June 9, 1976.

26. Generally, an alien seeking entry into the United States comes in contact with four agencies during the course of the immigration process. The alien will always have to deal with the Immigration and Naturalization Service (INS), which is subject to the authority of the Attorney General. I. & N. Act § 103(a), 8 U.S.C. § 1103(a) (1970). The Service is a bureau of the Department of Justice and is charged with the major enforcement and administration of immigration laws. Id. Primarily, aliens deal with the Service through its district offices, the directors of which have primary authority to grant or deny many of the applications submitted. 8 C.F.R. § 103.1(21) (n) (1976). See 1 Gordon § 1.9c, at 1-41.

An alien must also contact a United States consulate when seeking to procure an immigrant visa. I. & N. Act § 101(a) (16), 8 U.S.C. § 1101(a) (16) (1970). However, an alien may avoid having to obtain an immigrant visa if he comes from the Eastern Hemisphere, has already achieved legal entry into the United States, and remains here. See notes 203-26 and accompanying text infra. For the applicability of the adjustment of status provisions to Western Hemisphere aliens, see Afterword 330. A consul's power derives from the State Department. I. & N. Act § 104(a), 8 U.S.C. § 1104(a) (1970). The Secretary of State is responsible for supervising all the consul's functions, except the duty conferred upon the consul relating to the granting or refusing of visas. Id. Visa issuance is discussed in notes 55-100 and accompanying text infra.

Generally, when the alien seeks to enter the United States to perform labor, he will also have to contact the Department of Labor, through its Bureau of Employment Security, to obtain a labor certification. I. & N. Act § 212(a) (14), 8 U.S.C. § 1182(a) (14) (1970). Certain relatives of United States citizens and of lawful, permanent resident aliens are exempt
visa at the United States consulate in his home country.\textsuperscript{27} Once the immigrant visa is procured, the alien brings it and his passport to a port of entry at the United States border.

In order to procure the immigrant visa, the alien must convince the consular officer that he is not excludable under the two categories of limitations—the quantitative quota restrictions\textsuperscript{28} and the qualitative restrictions known as the thirty-one reasons for exclusion.\textsuperscript{29} Certain aliens are exempt from all quantitative limitations and some qualitative limitations.\textsuperscript{30} Those aliens must generally file a visa petition with the Immigration and Naturalization Service (INS) to verify their exempt status. The visa petition must be filed with, and approved by, the Service before the alien may formally apply for a visa at a United States consulate.\textsuperscript{31}

\begin{itemize}
\item from the labor certification requirement. See notes 171-78 & 232 and accompanying text infra. Labor certification is discussed in greater detail in notes 105-18 and accompanying text infra. See also Afterword 328-30.
\item The quota restrictions vary depending on the hemisphere from which the alien comes. I. & N. Act §§ 201(a), 101(a) (27), 8 U.S.C. §§ 1151(a), 1101(a) (16). Certain aliens may obtain an exemption from the immigrant visa requirement. Id. § 211 (b), 8 U.S.C. § 1181(b); see 1 Gooden § 2.30c, at 2-147. Some Eastern Hemisphere aliens who have already entered the United States need not apply for an immigrant visa in their home country and may acquire lawful permanent residence without leaving this country through an adjustment of status procedure. I. & N. Act § 245, 8 U.S.C. § 1255 (1970). Adjustment of status is discussed in greater detail in notes 203-26 and accompanying text infra. See also Afterword 327-29.
\item The thirty-one reasons for exclusion are listed in I. & N. Act § 212(a), 8 U.S.C. § 1182(a) (1970). For additional discussion see notes 103-18 and accompanying text infra.
\item Aliens exempt from the labor certification requirement, one of the qualitative restrictions, are discussed in notes 171-78 & 232 and accompanying text infra. See also Afterword 328-30.
\item 22 C.F.R. § 42.111(b) (5) (1976). The procedure for obtaining an immigrant visa is discussed in notes 55-100 and accompanying text infra. A valid, unexpired visa must be presented by each arriving immigrant. I. & N. Act § 211(a), 8 U.S.C. § 1181(a) (1970). Certain aliens are exempt from the passport requirement. 8 C.F.R. § 211.2 (1970); 1 Gooden § 2.30e, at 2-151.
\end{itemize}
An alien holding a valid visa must still be determined admissible by an immigration officer at a port of entry. A prior determination of status by the consulate is not res judicata. Therefore, issuance of an immigrant visa by the consul is only a preliminary determination of eligibility and does not assure the alien admission into the United States. The immigration officer at the port of entry is empowered to make a reappraisal of the alien's qualifications, even in the absence of misrepresentation.

The duty of the immigration inspector at the port of entry is to screen out undesirable aliens. Immigration inspectors are authorized to examine all arriving aliens and to detain those not "clearly and beyond a doubt entitled to land." The immigration inspector must: first, determine the alien's proper classification under the Act; second, determine whether the alien has the documents required for that classification; and third, determine whether the alien is otherwise admissible to the United States.

An alien found excludable at a port of entry is referred to a special inquiry officer who conducts a formal hearing to determine the alien's admissibility. The alien is often "paroled" into the United States pending the hearing. The special inquiry officer is empow-

36. Aliens who have no right to enter the United States or whose entry would not be in the best interests of the United States are considered undesirable. 1974 INS, Annual Report 2.
39. This rarely happens on the initial entry because few such aliens are issued visas. Gordon, Finally of Immigration and Nationality Determinations—Can the Government be Estopped?, 31 U. Chi. L. Rev. 433 (1964).
41. The term parole refers to a discretionary function of the Attorney General, administered by the District Director in charge of the port of entry. Parole allows an alien temporary admittance into the United States pending his admissibility determination or for humane considerations. The parolee
ered to admit or exclude the alien. A decision to exclude the alien may be appealed to the Attorney General, who has delegated this responsibility to the Board of Immigration Appeals. However, the alien may be excluded without a hearing if a regional commissioner of the Service finds that the alien is excludable "on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security." Upon this determination, the alien is not allowed an appeal to the Board of Immigration Appeals.

If the alien is found admissible at the port of entry, he surrenders his visa and receives an Alien Registration Receipt Card, identifying him as a lawful, permanent resident. The immigrant is now free to settle or resettle anywhere in the United States for an indefinite period of time.

THE DOCUMENTARY REQUIREMENTS FOR ENTRY

Observance of the immigration requirements relating to specified documents is crucially important. An alien who attempts to enter the United States either without the required documents or with defective documents shall be denied entry. Documentary requirements apply to every immigrant and must be satisfied at the time the alien applies for admission into the United States.

42. Id. § 212(d)(5), 8 U.S.C. § 1182(d)(5). See 1 Gompox, supra note 9, § 2.54, at 2-248.
44. Id. §§ 236(b), (c), 8 U.S.C. §§ 1226(b), (c).
45. 8 C.F.R. §§ 235.8(b), (c) (1976).
47. Such a decision is final, and no appeal may be taken therefrom. 8 C.F.R. § 235.8(c) (1976).
48. Id. § 211.1(b)(1). See note 223 infra.
51. “Application for admission” refers to the alien’s application for adm-
The Passport Requirement

A valid unexpired passport must be presented by each immigrant at the port of entry.\textsuperscript{52} The Act defines the term \textit{passport} as any travel document which is issued by competent authority and which evidences the bearer's origin, identity, and nationality.\textsuperscript{53} The District Director has the authority to waive the passport requirement at the port of entry if good cause is shown.\textsuperscript{54}

The Visa Requirement

An alien must also procure a valid, unexpired visa prior to immigration into the United States.\textsuperscript{55} The alien must obtain the immigrant visa from a United States consul in his homeland.\textsuperscript{56} The visa requirement may be waived by the District Director at the port of entry upon a showing of good cause by the alien.\textsuperscript{57}

The issuance of visas is primarily the responsibility of United States consuls.\textsuperscript{58} The consul determines whether the alien is prima
facie eligible for a visa on the basis of information contained in the "Preliminary Questionnaire to Determine Immigrant Status." If prima facie eligibility is determined, the Preliminary Questionnaire is returned to the alien along with notification of any preliminary requirements which must be satisfied, such as a visa petition or a labor certification. Prior to applying for the visa, the alien must also complete the "Biographic Data For Visa Purposes Form" and assemble the necessary documents. When the alien has notified the consul that all necessary documents have been gathered and completed, the alien is given a formal application and also an appointment to file this visa application. Usually, the alien submits the visa application to the consular officer in the district in which he resides. Because this requirement is commonly en-

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important exception means the Secretary of State is statutorily prevented from reviewing the decisions of his own subordinates. For a discussion of the general subject, see 1 Gordon § 3.8a, at 3-56; Gordon, Finality of Immigration and Nationality Determinations—Can the Government be Estopped?, U. Chi. L. Rev. 433, 436 (1964); Rosenfield, Consular Non-Reviewability: A Case Study in Administrative Absolutism, 41 A.B.A.J. 1109 (1955); Rosenfield, Necessary Administrative Reforms in the Immigration and Nationality Act of 1952, 27 Fordham L. Rev. 145, 151 (1958).

59. The Preliminary Questionnaire is completed by the alien on Form FS-497. 22 C.F.R. § 42.115(a) (1975).

60. Visa petitions are discussed in notes 156-60 and accompanying text infra. See also 1 Gordon § 3.5, at 3-12.

61. The substantive requirements and procedure needed to obtain a labor certification are discussed in notes 108-18 and accompanying text infra. See also 1 Gordon § 3.6, at 3-38; Rubin and Mancini, An Overview of the Labor Certification Requirement for Intending Immigrants, 14 San Diego L. Rev. 76 (1976).

62. The Biographic Data is completed on Form DSP-70. 1 Gordon § 3.7b at 3-46.

63. The alien is responsible for keeping his own documents until they are ready to be used for actual issuance of a visa. Required documents are discussed in notes 67-87 and accompanying text infra.

64. The formal application is executed on Form FS-510. 22 C.F.R. § 42.115(b) (1975). The alien is given a formal appointment because of the large number of applications processed at the consulates. In some consulates up to five or six hundred applications are processed each week. Some applicants are given an "open appointment" if they are missing only a minor document with their formal visa application. Interview by telephone with Lelah Eastwood, Consular Officer at the United States Consulate in Tijuana, B.C., Mexico, July 8, 1976 [hereinafter cited as Interview with Lelah Eastwood]. The visa application is submitted in duplicate, accompanied by a $5.00 fee, along with the other required documents at the time of the consular interview. 22 C.F.R. §§ 42.115(b), (c), 42.117(a) (1975). An overview of the procedure for obtaining an immigrant visa is set out in 1 Gordon § 3.7b, at 3-45.

65. The consul has discretion to accept an application for an immigrant visa from an alien not residing in the consular district, but physically present there. 22 C.F.R. § 42.110 (1976). At least one consulate, that in Tijuana, B.C., Mexico, is suspicious whenever an alien claims to reside
forced, a tremendous hardship is imposed on the alien from a distant country who is presently in the United States as a nonimmigrant.\footnote{65}

The provisions of the Act set forth the specific supporting documents to be filed with the visa application.\footnote{66} The alien must obtain a police certificate from the appropriate authorities in any area in which he has resided longer than six months since the age of sixteen.\footnote{67} The police certificate must enumerate any arrests or criminal charges which have been made against the alien.\footnote{68} The alien must also furnish any prison or military record.\footnote{69} An original birth certificate or birth record is required in order to prove the alien's date and place of birth and parentage.\footnote{70} In addition, the consul requires a married alien to produce a marriage certificate and a formerly married alien to produce either a divorce certificate or his spouse's death certificate as proof that all previous marriages were

within its district and supplies the address of a "visa fixer" as his permanent residence. The Tijuana consulate receives such applications because of its proximity to the United States border. An alien is provided with a convenient entry into the United States after receiving an immigrant visa from the Tijuana consulate. Interview with Lelah Eastwood. In some situations the problem will be mooted by enactment of the 1976 Amendments. See Afterword 326.

\footnote{66}{An alien residing temporarily in the United States is considered to be a resident of the consular district of his last residence abroad. 22 C.F.R. § 42.110 (1976). Certain Eastern Hemisphere aliens need not submit a visa application abroad because of the remedy of adjustment of status. I. & N. Act § 245, 8 U.S.C. § 1255 (1970). Adjustment of status is discussed in detail in notes 214-37 and accompanying text infra. See also Afterword 330.}

\footnote{67}{I. & N. Act § 222(b), 8 U.S.C. § 1202(b) (1970). See 22 C.F.R. § 42.111(b) (1976).}

\footnote{68}{I. & N. Act § 222(b), 8 U.S.C. § 1202(b) (1970). A consular officer has discretionary authority to require the alien's police record from any area the alien has resided in for less than six months. 22 C.F.R. § 42.111(b) (1) (1976). Police certificates are valid for only six months. Therefore, the alien must apply for a visa within that period. Interview with Lelah Eastwood.}

\footnote{69}{An alien with a police record may be found inadmissible under I. & N. Act §§ 212(a) (5), (9), (10), & (23), 8 U.S.C. §§ 1182(a) (5), (9), 10), & (23) (1970).}

\footnote{70}{Id. § 222(b), 8 U.S.C. § 1202(b); 22 C.F.R. § 42.111(b) (1976). The United States consulates in Mexico no longer require a military card from Mexican males. The reason is that Mexican males must present their military cards in order to receive a Mexican passport. Interview with Lelah Eastwood.}

\footnote{71}{I. & N. Act § 222(b), 8 U.S.C. § 1202(b) (1970); 22 C.F.R. § 42.111(b) (1976).}
legally terminated. Some documents, such as the passport, military card, and police certificates, take several months to obtain in certain countries. Therefore, the prospective immigrant should start gathering these documents early.

Other important documentation is needed as proof of financial responsibility. The consular officer must be satisfied that the alien is not likely to become a public charge subsequent to entry into the United States. The designation of an alien likely to become a public charge is ambiguous. Because there is no fixed standard for the determination, evaluation is usually based on the alien's age, mental and physical condition, willingness to find employment, and the presence of friends or relatives in the United States.

The alien can establish he is not likely to become a public charge in a variety of ways. The alien can demonstrate financial independence either through proof that his own funds will be sufficient, or by a written affidavit from a prospective employer declaring that a job awaits the alien. Most commonly, the alien submits an affidavit of support from a person in the United States, re-

72. Interview with Lelah Eastwood.
73. Id.
74. Aliens likely to become public charges are excluded as economic undesirables. These are “[a]liens who, in the opinion of the consular officer at the time of application for admission, are likely at any time to become a public charge.” I. & N. Act § 212(a)(15), 8 U.S.C. § 1182(a)(15) (1970).
76. See 1 Gordon § 2.39d, at 2-189. The possibility that an alien may be subjected to criminal prosecution is considered too speculative for a public charge determination. Coykendall v. Skrmetta, 22 F.2d 120 (5th Cir. 1927). Also considered too speculative is the possibility that an alien child’s parents may subsequently die or be deported and leave him destitute. Duner v. Curran, 10 F.2d 38 (2d Cir. 1925).
77. State Department Form DSL-845 describes the procedures and the types of evidence that are acceptable. The form is obtainable from consular offices or the Visa Office of the State Department.
78. Sufficiency is established by bank and insurance statements, proof of real estate or securities interests, and income from investments and other sources. See 1 Gordon, supra note 9, § 3.7e, at 3-51. Exactly how much money the alien must establish he has varies with each case. Federal guidelines are published in the Federal Register; however, these are only general guidelines and are not binding on the consul. Interview with Lelah Eastwood.
79. The employer’s letter must stipulate whether a permanent job awaits the alien, the nature of the employment duties, the prospective salary, and the job location. To guard against falsified employment letters, the consul often calls the prospective employer. If the alien was previously undocumented in the United States, the consul requests the alien to produce “W-2” and income tax forms to agree with the job letter. Interview with Lelah Eastwood.
ferred to as a sponsor, testifying to the alien's worthiness and promising support.80

The affidavit of support should show the financial worth of the sponsor and should also describe the sponsor's citizenship or immigration status.81 An affidavit of support is not legally enforceable and creates only a moral obligation.82 Therefore, a sponsor cannot be held liable to either the immigrant alien or the United States Government if the alien becomes a public charge subsequent to entry into the United States.83

The Act contains no provision excluding aliens who have previously entered the United States unlawfully.84 Consequently, an affidavit from the employer stipulating the length of the undocumented alien's employment should be submitted with the application for residence. This affidavit will strengthen the alien's claim that he is not likely to become a public charge.85

80. See Comment, Sponsor Liability for Alien Immigrants: The Affidavit of Support in Light of Recent Developments, 7 SAN DIEGO L. REV. 316 n.9 (1970). Form I-134 is used for an affidavit of support. 8 C.F.R. § 299.1 (1976). An affidavit of support is useless for an alien who is considered a "bread winner." This type of alien must establish that he is able to earn a living on his own. Primarily, an affidavit of support is important when the alien is either too young or too old to earn his own living or an alien wife has children to care for. Interview with Lelah Eastwood.
81. See 1 Gordon § 3.7e, at 3-52. An inquiry must be made at the consulate concerning what type of evidence will be acceptable.
83. Id. But see FR Doc. No. 76-25992, which proposes an amendment to establish a unilateral agreement which will contractually bind a sponsor to repay to the United States, or any State, Territory, County, Town, Municipality or Municipal District any public assistance money which such a governmental entity has paid to the sponsored alien who has been issued an immigrant visa by a consular officer and admitted to the United States in reliance on the sponsor's agreement and undertaking.
84. However, the alien is statutorily vulnerable to criminal prosecution for having entered the United States illegally. I. & N. Act §§ 275, 276(2), 8 U.S.C. §§ 1325, 1326(2) (1970). Most of the applicants at the United States consulate in Tijuana, B.C., Mexico, are or have been undocumented aliens. Interview with Lelah Eastwood.
85. The consul expects undocumented aliens to have an established job. The very least such an alien can do is show that he can support himself. Great weight is given to the undocumented alien who has acquired "seniority" on the job. However, it is detrimental to the undocumented alien if
An alien likely to become a public charge may nevertheless be ad-
mitted into the United States, at the discretion of the Attorney Gen-
eral, if a bond is furnished on the alien’s behalf. That bond indem-
nifies the United States and all individual states and localities
against providing the alien support with public funds.

When the alien appears at the consular office to submit his formal visa application, three identical photographs must be furnished. If the alien is over the age of fourteen, he will be fingerprinted for identification purposes. In addition, the alien must undergo a mental and physical examination in order to determine his admissi-
bility.

If the consular officer determines that the alien is not eligible for a visa, the alien may request reconsideration within 120 days of the denial. Review of a denial must then be made by the principal consular officer at the post. Provided that the principal officer does not concur in the denial, the Visa Office of the state depart-
ment will then informally review the consular officer’s decision. Upon a finding of error, the Visa Office will issue an “advisory opinion” to the consul. Although an advisory opinion need not be fol-

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87. Id. A public charge bond is furnished on Form I-352 in an amount of at least $1,000. 8 C.F.R. § 213.1 (1976).
89. I. & N. Act §§ 221(b), 261, 8 U.S.C. §§ 1201(b), 1301 (1970); 22 C.F.R. § 42.116(b) (1976).
90. I. & N. Act § 221(d), 8 U.S.C. § 1201(d) (1970); 22 C.F.R. § 42.113(a) (1976). An alien is inadmissible if found to be mentally retarded, insane, previously insane, or afflicted with a psychopathic personality or a contagious disease. I. & N. Act § 212(a (1)-(4), (6), 8 U.S.C. § 1182(a) (1)-(4), (6) (1970). The medical examination is administered by the United States Public Health Service. Generally, the examination includes a chest x ray for tuberculosis and a blood test for syphilis. If facilities for such tests are unavailable, they may be postponed until the alien arrives at a port of entry in the United States. 42 C.F.R. § 34.4 (1976).
91. 22 C.F.R. § 42.130(d) (1976).
92. Id. § 42.130(b). For a brief discussion of the subject, see Comment, Ideological Restrictions on Immigration, 8 U.C. Davis L. Rev. 217, 218 (1975).
93. The state department will also review the consular officer’s denial of a visa if requested to do so by an attorney, a member of Congress, or an interested party. 22 C.F.R. §§ 42.130(b), (c) (1976). See 1 GORDON §§ 3.11, at 3-71, 3.8c, at 3-59.
94. 22 C.F.R. §§ 42.130(b), (c) (1976).
followed, consular officers usually comply with the opinions.\textsuperscript{95} No other procedure presently exists for review of the consular officer’s denial.\textsuperscript{96} Thus, there is only informal, nonbinding administrative review of a consul’s determination that an alien is inadmissible.\textsuperscript{97} However, the statutes provide that “if any consul is guilty of . . . abuse of power, he shall be liable to any injured person for all damages occasioned thereby.”\textsuperscript{98}

The consul must issue a visa when the alien has complied with the requirements of the law and of the regulations.\textsuperscript{99} The immigrant visa is valid only for a maximum period of four months.\textsuperscript{100} Therefore, the alien must physically enter the United States within that time.

\textbf{THE ENTRY RESTRICTIONS}

The restrictions limiting the alien’s access to immigration include the qualitative thirty-one reasons for exclusion\textsuperscript{101} and the quantitative quota system.\textsuperscript{102} The qualitative restrictions exclude aliens

\begin{itemize}
\item \textsuperscript{95} 1 Gordon \textsuperscript{3.8c}, at 3-59.
\item \textsuperscript{96} Senator Eastland has proposed a bill, presently before the Senate Judiciary Committee, which would allow administrative review by the Secretary of State of a visa denial by a consular officer. S. 3074, 94th Cong., 2d Sess. (1976). See note 97 and accompanying text infra.
\item \textsuperscript{97} Although the statutes and regulations specifically bar administrative review, they do not specifically prohibit judicial review of a consular officer’s determination that an alien is inadmissible. I. & N. Act \textsection{} 104(a), 8 U.S.C. \textsection{} 1101(a) (1970); 22 C.F.R. \textsection{} 42.130 (1976). For a general discussion of the subject, see 1 Gordon \textsuperscript{3.8a}, at 3-56; Gordon, \textit{Finality of Immigration and Nationality Determinations—Can the Government be Estopped?}, 31 U. Chi. L. Rev. 433, 436 (1964); Rosenfield, \textit{Consular Non-Reviewability: A Case Study in Administrative Absolutism}, 41 A.B.A.J. 1109 (1955); Rosenfield, \textit{Necessary Administrative Reform in the Immigration and Nationality Act of 1952}, 27 Fordham L. Rev. 145, 151 (1958).
\item \textsuperscript{98} 22 U.S.C. \textsection{} 1199 (1970). Liability is found when the consular officer acts outside his authority not justified by the laws and consular regulations. The consular officer must be aware of his actions, but he need not know he is breaking the law. \textit{See} American Sur. Co. v. Sullivan, 7 F.2d 605, 606 (2d Cir. 1929).
\item \textsuperscript{99} I. & N. Act \textsection{} 221(a), 8 U.S.C. \textsection{} 1201(a) (1970). The alien must then pay the $20.00 visa fee, which is in addition to the $5.00 fee paid for the application. 22 C.F.R. \textsection{} 42.121 (1976).
\item \textsuperscript{100} I. & N. Act \textsection{} 221(c), 8 U.S.C. \textsection{} 1201(c) (1970). A child adopted abroad is given a visa valid for a three-year period. Id.
\item \textsuperscript{101} Id. \textsection{} 212(a), 8 U.S.C. \textsection{} 1182(a).
\item \textsuperscript{102} Id. \textsection{}
\end{itemize}
on health, moral, criminal, political, and economic grounds. The thirty-one reasons for exclusion may neither be enlarged upon by immigration officers, nor be disregarded by executive officers or by the courts. If the alien has certain close relatives who are either United States citizens or permanent resident aliens, the Attorney General may allow discretionary waiver of excludability for tuberculosis or past mental illness, for prostitution or criminal violations, and for fraud in seeking entry. Those provisions are designed to alleviate the hardships of enforced separation on some family groups.

The most significant restriction under the thirty-one reasons for exclusion is the labor certification requirement. Any alien, unless given exempt status, intending to perform "skilled or unskilled" labor is precluded entry into the United States unless he first obtains labor certification. There is no requirement for a labor certification if the alien will not engage in employment after entry. Most immigrants to the United States are exempt from the labor certification requirement because of relationships to United States citizens or to permanent resident aliens. Consequently, only about 12 to 15 percent of the 300,000 to 400,000 immigrants admitted annually receive labor certifications. An alien claiming exemp-

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104. Stoma v. Commissioner, 18 F.2d 576 (5th Cir. 1927).
106. Id. § 212(h), 8 U.S.C. § 1182(h).
107. Id. § 212(i), 8 U.S.C. § 1182(i).
108. Aliens given exempt status are discussed in notes 171-78 & 232 and accompanying text infra.
110. 8 C.F.R. § 212.8 (b) (1976). The regulation lists people not within the purview of section 212, the labor certification requirement.
111. This includes aliens who qualify as immediate relatives, Eastern Hemisphere aliens who qualify under relative preferences, and Western Hemisphere aliens who qualify as relatives of permanent resident aliens or of United States citizens. Aliens qualifying for immediate relative status are discussed in notes 128-53 and accompanying text infra. Aliens qualifying for the relative preferences accorded to Eastern Hemisphere aliens are discussed in notes 184-92 and accompanying text infra. Western Hemisphere aliens qualifying as relatives of permanent resident aliens are discussed in note 232 infra. See Afterword 327-28.
tion from the labor certification requirement has the burden of proving the right to such exemption.\(^{113}\)

Determination for labor certification is made by the Secretary of Labor.\(^{114}\) A labor certification is issued only when there are not sufficient workers in the United States who are "able, willing, qualified, and available" to perform the particular type of labor.\(^{115}\) In addition, the alien's employment may not adversely affect wages and working conditions of people similarly employed.\(^{116}\) Because these prerequisites are extremely difficult for an alien to meet,\(^{117}\)

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\(^{113}\) Ojeda v. INS, 419 F.2d 183 (9th Cir. 1969).
\(^{114}\) The Secretary of Labor must make a favorable determination for the issuance of a labor certification before a consular officer may issue an immigrant visa to an alien. I. & N. Act § 203(a) (8), 8 U.S.C. § 1153(a) (8) (1970).
\(^{115}\) Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14).
\(^{116}\) Id. The Secretary of Labor implements the "able, willing, qualified, and available" determination according to three schedules which enumerate categories of employment relative to availability of domestic labor. The schedules are set out in 29 C.F.R. § 60.7 (1976). The Secretary abides by specified regulations in determining whether the alien's employment will adversely affect wages and working conditions of domestic workers similarly employed. See id. § 60.6. Primarily, the regulations provide that the fringe benefits, the working conditions, and the wage rate offered to the alien worker must not be less than those of domestic workers similarly employed.

Every immigrant alien subject to the labor certification requirement must file Form MA 7-50, in duplicate, with the appropriate United States consulate. Id. § 60.3(e). If the application is rejected, appeal to the appropriate agency may be made within ninety days after the denial. Id. § 60.4(b), (e). Judicial review of the Secretary of Labor's decision is also available. 5 U.S.C. § 702 (1970); see Pesikoff v. Secretary of Labor, 501 F.2d 767 (D.C. Cir.), cert. denied, 419 U.S. 1038 (1974).


117. In reviewing the certification determination, courts disagree about the burden of persuasion placed upon the alien regarding impossibility to locate a qualified United States worker for the desired position. Compare Pesikoff v. Secretary of Labor, 501 F.2d 757 (D.C. Cir.), cert. denied, 419 U.S. 1038 (1974), which places the burden of persuasion upon the alien, with Ratnayake v. Mack, 499 F.2d 1207 (8th Cir. 1974), which places sole empha-
the overwhelming majority of immigrants to the United States are able to immigrate only if exempt from the labor certification requirement.  

The quantitative restrictions of the quota system are applied according to two geographic areas of the world: the Eastern and Western Hemispheres. The Eastern Hemisphere has a 170,000 annual quota ceiling, whereas the Western Hemisphere has an annual quota ceiling of 120,000. An additional annual limit of 20,000 is placed upon the number of immigrant visas available for each country within the 170,000 Eastern Hemisphere ceiling. The Eastern Hemisphere visas are allocated according to a preference system, while Western Hemisphere visas are not. Thus, the quantitative restrictions regulating immigration vary tremendously depending upon the hemisphere in which the alien was born. All immigrants are deemed amenable to these numerical limitations unless entitled to a preferred special status.

Circumventing the Restrictions

Certain aliens are entitled to a waiver of the quantitative and the qualitative restrictions. The Act sets out special categories which are designed to enable the alien immigrant to circumvent the quota restrictions and the labor certification requirement. Without the special categories it would be extremely difficult for an alien to immigrate into the United States.


118. See notes 119-23 and accompanying text infra.


120. Id. §§ 101 (a) (27) (A), 201 (a), 8 U.S.C. §§ 1101 (a) (27) (A), 1151 (a).

121. Included within the immigrant visa allocations are aliens granted conditional entry as refugees. Id. §§ 203 (a) (7), 201 (a), 8 U.S.C. §§ 1153 (a) (7), 1151 (a).

122. Id. § 202 (a), 8 U.S.C. § 1152 (a). But see Afterword 327-29.

123. Id. § 203 (b), 8 U.S.C. § 1153 (b). But see Afterword 327-29.

124. An alien claiming admissibility under the Western Hemisphere quota must have been born in an independent country of the Western Hemisphere or in the Canal Zone, or must be an accompanying spouse or child of such alien. I & N. Act § 101 (a) (27) (A), 8 U.S.C. § 1101 (a) (27) (A) (1970). The Western Hemisphere is defined in notes 179-80 and accompanying text infra. This status cannot be claimed by naturalization. I & N. Act § 101 (a) (27) (A), 8 U.S.C. § 1101 (a) (27) (A) (1970). Aliens born in all other countries fall under the Eastern Hemisphere quota. Id. § 201 (a), 8 U.S.C. § 1151 (a).

125. Id. § 202 (a), 8 U.S.C. § 1151 (a).

126. An alien unable to immigrate to the United States might nevertheless be able to gain entry as a nonimmigrant. Nonimmigrant status is discussed in note 9 supra. The difficulty in obtaining a labor certification,
Immediate Relative Status

An alien may be entitled to the special category of preferred residence status by virtue of certain familial relationships to United States citizens. This special category of "immediate relative" is designed to preserve the family unit. A United States citizen may petition to immigrate his immediate relatives into this country.\(^1\)\(^2\) The Act defines an immediate relative as the child, spouse, or parent of a citizen of the United States, provided, that in the case of a parent, the citizen son or daughter must be at least twenty-one years old.\(^3\)\(^4\)

An alien child of a United States citizen qualifies for immediate relative status only if he is unmarried\(^5\)\(^6\) and under twenty-one both at the time a visa\(^7\)\(^8\) is issued and at the time he applies for entry at a United States port.\(^9\)\(^10\) A previous marriage, validly terminated before the crucial times, does not affect the alien's unmarried status.\(^11\)

An alien qualifies as a child under the Act if the alien is a step-child,\(^12\)\(^13\) a legitimated child,\(^14\) an illegitimate child if immigration benefits are based on the child's relationship to its natural mother,\(^15\) an adopted child,\(^16\) or an orphan.\(^17\) An adopted child qualifies for immediate relative status only if he is less than fourteen years of age at the time the visa petition is filed.\(^18\) The adopted child must also have been in the legal custody of, and have resided with, the adopting parents or parent for at least two

one of the qualitative restrictions, is discussed in notes 118-24 and accompanying text supra. Without the exemptions from the quota restrictions, the present number of aliens admitted (approximately 400,000) would have to be severely reduced to an aggregate quota ceiling of 290,000.

129. Id. § 101(b) (1), 8 U.S.C. § 1101(b) (1).
130. The visa requirement is discussed in notes 55-100 and accompanying text supra.
133. Id. § 101(b) (1) (B), 8 U.S.C. § 1101(b) (1) (B).
134. Id. § 101(b) (1) (C), 8 U.S.C. § 1101(b) (1) (C).
135. Id. § 101(b) (1) (D), 8 U.S.C. § 1101(b) (1) (D).
136. Id. § 101(b) (1) (E), 8 U.S.C. § 1101(b) (1) (E).
137. Id. § 101(b) (1) (F), 8 U.S.C. § 1101(b) (1) (F).
138. Id. § 101(b) (1) (E), 8 U.S.C. § 1101(b) (1) (E).
In addition, an eligible orphan must be under the age of fourteen at the time the visa petition is filed. The child must be an orphan because of the death, disappearance, or abandonment by both parents. However, if one parent remains, that parent must be incapable of providing proper care and must irrevocably release the child for emigration and adoption.

An alien spouse of a United States citizen qualifies for preferential treatment as an immediate relative. In order to obtain this status the marriage must be both legal and valid. A marriage is considered legal when it was lawfully contracted. The legality of a marriage ordinarily will be determined by the law of the place where it is celebrated. However, for immigration purposes, there is a strong presumption in favor of legality of a marriage. In contrast, the alien has the burden of establishing the validity of a marriage. A marriage is deemed valid when it was not entered into solely for immigration benefits. There is a statutory presumption that a marriage to an alien spouse is invalid if it was entered into within two years prior to entry and dissolved within two years after entry. A continuing marriage is not invalid merely

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139. Id.
141. Id. See In re Del Conte, 10 I. & N. Dec. 761 (BIA, 1964) (a District Director's determination for orphan eligibility was upheld even though the determination ignored requirements of Italian law).
143. Id. § 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A). A fiance of a United States citizen does not qualify for "immediate relative" status. However, the fiance may enter the United States as a nonimmigrant with a visa. The fiance may then apply for adjustment to permanent residence if the marriage takes place within ninety days after entry. 22 C.F.R. § 41.66 (1976). See 1974 INS, ANNUAL REPORT 8.
146. On v. Brownell, 253 F.2d 814 (5th Cir. 1958); In re Awadalla, 10 I. & N. Dec. 550 (BIA, 1961). Even if the marriage is valid at its place of origin, it may in some situations be inadequate to support a preferred status designation. See In re H., 9 I. & N. Dec. 640 (BIA, 1962) (polygamous marriage); In re E., 4 I. & N. Dec. 239 (BIA, 1951) (incestuous marriage).
149. A marriage may be invalid for immigration purposes even though it is regarded as legal at the place of celebration. See Lutwak v. United States, 344 U.S. 604 (1953); United States v. Diogo, 320 F.2d 898 (2d Cir. 1963).
150. I. & N. Act § 241(c), 8 U.S.C. § 1251(c) (1970). However, if it ap-
because it is voidable.\footnote{151}

Immediate relative status is also granted to the alien parents of United States citizens, but only if the citizen-son or -daughter is at least twenty-one years of age.\footnote{152} An alien parent eligible for immediate relative status includes a stepparent, a parent of a legitimated child, the mother of an illegitimate child, and an adoptive parent.\footnote{153} The significance of the immediate relative category is twofold. Immediate relative aliens are not subject to the numerical limitations\footnote{154} or to the labor certification requirement.\footnote{155}

Preferred status as an immediate relative may not be obtained unless the United States citizen-parent, -spouse, or -child files a petition with the Service, on the alien's behalf, for issuance of an immigration visa.\footnote{156} The petition is filed in the INS office having jurisdiction that the alien contracted the marriage in good faith, the subsequent failure or dissolution of the union will not subject him to deportation. \textit{In re V.}, \textit{7 I. & N. Dec. 460} (BIA, 1957); \textit{In re T.}, \textit{7 I. & N. Dec. 417} (BIA, 1957). Fraudulent marriages are discussed in 1 \textsc{Gordon}, \textit{supra} note 5, \S\ 4.7d, at 4-65.


\footnote{152}{\textsc{i.} & \textsc{n.} \textsc{act \S\ 201(b), 8 u.s.c. \S\ 1151(b) (1970). The purpose of this age requirement is to discourage aliens from entering the country illegally. If there were no age requirement, a great incentive would exist for aliens to enter the United States illegally, have a child here, and then claim immigration benefits from the child, who would be a citizen. \textit{See note 10 supra."

\footnote{153}{\textsc{i.} & \textsc{n.} \textsc{act \S\ 101(b) (2), 8 u.s.c. \S\ 1101(b) (2) (1970). \textit{See also 1 Gordon \S\ 2.18c, at 2-100.

\footnote{154}{\textsc{i.} & \textsc{n.} \textsc{act \S\ 202(a), 8 u.s.c. \S\ 1152(a) (1970). Without the quota exemption, the alien may never get into the United States because the quota may be oversubscribed. \textit{See notes 193-94 & 231 and accompanying text infra. The present waiting period for aliens subject to the Western Hemisphere quota is approximately two and one-half years, depending on the demand, although immediate relatives can generally immigrate in six months. An immediate relative has no waiting period, but he can immigrate only when his documents are gathered and processed by the Service and the United States consulate. \textit{Interview with Lelah Eastwood, \textit{supra} note 64.

\footnote{155}{\textsc{i.} & \textsc{n.} \textsc{act \S\ 212(a) (14), 8 u.s.c. \S\ 1182(a) (14) (1970). The labor certification is discussed in notes 108-18 and accompanying text \textit{supra}. Immediate relatives are not, however, exempt from the other thirty exclusionary provisions.

\footnote{156}{For each alien claimed, a visa petition is filed on Form I-130 and accompanied by a $10.00 fee. 8 C.F.R. \S\ 204.1(a) (1976). Unlike the other petitions for immediate relative status, the visa petition for an orphan child is submitted on Form N-600 and accompanied by a
diction over the United States citizen's place of residence.\textsuperscript{157} The Service must verify that the alien is an immediate relative. Therefore, the person submitting the visa petition, known as the petitioner, must prove to the Service that he is a United States citizen and that the claimed relationship to the alien exists.\textsuperscript{158}

Once the INS approves the visa petition, it issues two copies of the approval.\textsuperscript{159} One copy is sent to the petitioner and another to the United States consulate where the alien resides.\textsuperscript{160} Issuance of a visa must then be determined by the United States consulate.\textsuperscript{161}

\section*{\textsuperscript{157} 8 C.F.R. § 204.1(a) (1976).}
\section*{\textsuperscript{158} In re B., 9 I. & N. Dec. 521 (BIA, 1961). A list of the documents required is contained in the regulations. 8 C.F.R. § 204.2 (1976). See 1 Gordon § 3.5d, at 3-20.3. A document submitted in support of a visa petition should be an original. If the document is a copy, an attorney must certify that it is true and complete. 8 C.F.R. § 204.2(f) (1976). The regulation sets forth the language the petitioner must use. Id.
\section*{\textsuperscript{159} If the visa petition is denied, the petitioner is notified of the reasons and of his right to file an appeal within fifteen days. 8 C.F.R. § 204.1(c)(5) (1976); In re C., 9 I. & N. Dec. 547 (BIA, 1962) (only the petitioner may appeal). The petitioner may appeal to the Board of Immigration Appeals. 8 C.F.R. § 3.1(b)(5) (1976). Procedure for such appeals is discussed in 1 Gordon § 1.10d, at 1-54.
\section*{\textsuperscript{160} 8 C.F.R. § 204.3 (1976). This consulate is the one which the petitioner designated on the Form I-130.
\section*{\textsuperscript{161} 22 C.F.R. § 42.40 (1976); see Amarante v. Rosenberg, 326 F.2d 59 (9th Cir. 1964). The procedure for issuing an immigrant visa at the consulate is discussed in notes 42-89 and accompanying text supra.
Even if the consul issues an immigrant visa to the alien, the determination is not final. The immigration inspector at the port of entry makes an independent determination of whether the alien is entitled to a preferred status classification.\textsuperscript{162}

**United States Government Employees and Former Citizens**

The Act defines other special preferred status categories exempt from the quota restrictions which include former citizens of the United States and United States Government employees. The two classes of former citizens awarded this preferred immigrant status are military expatriates and women who have lost their citizenship by marriage to an alien.\textsuperscript{163} An alien employed abroad by the United States Government for at least fifteen years also qualifies for special immigrant status.\textsuperscript{164} An alien awarded such preferred status may enter the United States as a nonquota immigrant in order to pursue his application for citizenship. The alien may obtain a visa without filing a petition.\textsuperscript{165} When a visa is sought,\textsuperscript{166} the alien need only satisfy the consular officer, by appropriate evidence, that he qualifies under one of the exempt categories.

**Ministers of Religion**

Special nonquota immigrant status is also awarded to ministers of religion.\textsuperscript{167} Three conditions must be satisfied in order to acquire this special classification: First, the immigrant must have been practicing his ministerial vocation continuously for at least two

\textsuperscript{162} I. & N. Act § 204(e), 8 U.S.C. § 1154(e) (1970). The examination at the port of entry is discussed in notes 90-106 and accompanying text supra. In 1974, 104,844 immigrant aliens were admitted into the United States under the "immediate relative" classification. 1974 INS, ANNUAL REPORT 2.


\textsuperscript{164} I. & N. Act § 101(a) (27) (E), 8 U.S.C. § 1101(a) (27) (E) (1970); 22 C.F.R. § 42.26 (1976). The alien employee may procure entry for his accompanying spouse and children as special immigrants. Id.

\textsuperscript{165} 22 C.F.R. §§ 42.24, 42.26 (1976).

\textsuperscript{166} Id.

years prior to applying for admission to the United States; second, the immigrant must seek entry solely to carry on his vocation as minister; and third, the immigrant must have been requested by a bona fide United States religious organization. A visa petition is not a prerequisite for the issuance of a visa to a minister seeking nonquota status. Nonetheless, the alien minister must establish to the satisfaction of the consul that he qualifies under this category.

Aliens Exempt from the Labor Certification Requirement

In addition to immediate relatives, certain categories of aliens are not deemed within the purview of section 212, the labor certification requirement. An alien investor is not required to obtain a labor certification if he has invested, or is in the process of investing, capital totaling at least $40,000 in either a commercial or agricultural enterprise. This provision reflects several recent amendments not applicable to aliens applying prior to October 7, 1976.

Other people exempt from the labor certification requirement include members of the United States Armed Forces and an accompanying alien spouse or child of an alien who already has a labor certification. A female alien who intends to marry a United States citizen or permanent resident may also achieve this exemp-

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169. 22 C.F.R. § 42.25 (1976).
170. Id.
171. Id. Aliens qualifying as immediate relatives are discussed in notes 134–58 and accompanying text supra.
172. 8 C.F.R. § 212.8 (b) (1976).
173. For the Immigration and Naturalization Service regulations, see 41 Fed. Reg. 37565 (Sept. 7, 1976), amending 8 C.F.R. § 212.8 (b) (4) (1976). For the corresponding State Department regulation, see 41 Fed. Reg. 37574 (Sept. 7, 1976), amending 22 C.F.R. § 42.91 (a) (14) (ii) (d) (1976). For further discussion, see Recent Developments in Immigration Law 1976, 14 San Diego L. Rev. 326, 311 (1976). This exemption has been criticized as discriminatory for allowing a small percentage of aliens to “buy their way” into the United States and for leaving the majority of aliens with no such relief. Interview with Joseph Sureck, supra note 25. See 8 C.F.R. § 214.2 (e) (1976). Senator Fong has proposed a bill, presently before the Senate Judiciary Committee, which would raise the investment total to $50,000. S. 3208, 94th Cong., 2d Sess. § 5 (1976).
174. See regulations and amendments cited in note 173 supra. This requirement prevents aliens from immigrating to the United States solely because they have the capital to do so. An alien investor seeking exemption from the labor certification requirement must file Form I-526 with the Service. 8 C.F.R. § 212.8 (b) (4) (1976).
175. Id. § 212.8 (b) (1).
176. Id. § 212.8 (b) (2).
provided she does not intend to seek employment in the United States and her fiancé guarantees financial support.178

HEMISPHERE CONSIDERATIONS178a

An alien who does not qualify for a preferred status category must immigrate into the United States subject to the restrictions placed upon the hemisphere in which he was born. The Act divides the world into two geographic areas: independent countries lying in the Western Hemisphere and independent countries lying in the Eastern Hemisphere. The Western Hemisphere encompasses Canada, Mexico, Central and South America,179 and "adjacent islands."180 The Eastern Hemisphere embraces all other independent countries of the world.181 There are tremendous variations in the substantive requirements regulating immigration from the two hemispheres.182

Eastern Hemisphere Aliens

Eastern Hemisphere visas are allocated according to a preference system.183 The Act sets up seven preference categories for Eastern Hemisphere immigrants. Ranked in order of preference, the categories include: (1) unmarried sons and daughters of United States

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177. Id. § 212.8(b)(3).
178. Id.
178a. Much of what is said in this section will be altered by the 1976 Amendments. For a discussion of the bill's substantive provisions, effective dates, and savings clause, see Afterword.
179. The Act does not define the countries lying within the Western Hemisphere. However, legislative history shows that the Western Hemisphere includes all independent countries of North and South America, while the Eastern Hemisphere includes all other independent countries. S. Rep. No. 748, 89th Cong., 1st Sess. (1965). See Retter, Immigration Law Practice, 47 Fla. B.J. 370, 372 (1973).
181. See note 179 supra.
182. Prominent authorities in the immigration field have argued for a change in the present disparity between the hemispheric statutes. See Gordon, The Need to Modernize Our Immigration Laws, 13 San Diego L. Rev. 1, 15 (1975). See also Afterword 327-29.
183. The numerical quota for Eastern Hemisphere aliens is discussed in notes 125 & 128 and accompanying text supra.
citizens;\(^{184}\) (2) spouses and unmarried sons and daughters of permanent residents of the United States;\(^{185}\) (3) certain professionals, scientists, and artists;\(^{186}\) (4) married sons and daughters of United States citizens;\(^{187}\) (5) brothers and sisters of United States citizens;\(^{188}\) (6) skilled or unskilled laborers;\(^{189}\) and (7) refugees.\(^{100}\) Included within each preference category is the accompanying, or following, spouse or child who is given the same priority as his spouse or parent.\(^{191}\) There is a presumption that every immigrant is in the nonpreference category, unless he establishes to the satisfaction of the United States consulate abroad and the immigration officers at the port of entry that he is entitled to a preference status.\(^{192}\)

Qualification within a preference category does not assure the

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\(^{184}\) I. \& N. Act § 203(a) (1), 8 U.S.C. § 1153(a) (1) (1970). Twenty percent (34,000) of the Eastern Hemisphere visas is allotted for this first preference. Id.

\(^{185}\) Id. § 203(a) (2), 8 U.S.C. § 1153(a) (2). Twenty percent (24,000) plus any unused portion of the first preference visas is allotted for this second Eastern Hemisphere preference. Id.

\(^{186}\) Id. § 203(a) (3), 8 U.S.C. § 1153(a) (3). Ten percent (17,000) of the Eastern Hemisphere visas is allotted for this third preference category. These aliens, unlike most of the other preference aliens, cannot pick up any of the unused visas from the first and second preference categories. Third preference aliens must obtain a labor certification. Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14). Labor certification is discussed in notes 114-24 and accompanying text supra. In 1974, 7,763 aliens entered the United States under this third preference classification. 1974 INS, ANNUAL REPORT 3.

\(^{187}\) Id. § 203(a) (4), 8 U.S.C. § 1153(a) (4) (1970). Ten percent (17,000) plus any unused portions of the first, second, and third preference visas is allotted to this fourth Eastern Hemisphere preference. Id.

\(^{188}\) Id. § 203(a) (5), 8 U.S.C. § 1153(a) (5). Twenty-four percent (40,800) plus any unused portions of the first, second, third, and fourth preference visas is allotted to this fifth Eastern Hemisphere preference. Id.

\(^{189}\) Id. § 203(a) (6), 8 U.S.C. § 1153(a) (6). Ten percent (17,000) of the Eastern Hemisphere visas is allotted for this sixth preference. These aliens cannot pick up any of the unused visas from preference categories 1 through 5. Sixth preference aliens must obtain a labor certification. Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14). Labor certification is discussed in notes 114-24 and accompanying text supra. During 1974, 6,420 aliens were admitted to the United States to fill positions requiring skilled or unskilled workers under this sixth preference category. 1974 INS, ANNUAL REPORT 3.

\(^{190}\) I. \& N. Act § 203(a) (7), 8 U.S.C. § 1153(a) (7) (1970). Six percent (10,200) of the Eastern Hemisphere visas is allotted for this seventh preference category. These alien refugees cannot pick up any of the unused visas from preference categories 1 through 6. An alien qualifies as a refugee if he is either uprooted by natural calamity or fleeing from Communist domination or from a Middle Eastern country. Refugees enter the United States only conditionally, but after two years of continuous residence here, they may adjust their status to permanent residence. Id. In this way during 1974, 7,853 conditional entrants acquired permanent residence. 1974 INS, ANNUAL REPORT 3.


\(^{192}\) Id. § 203(d), 8 U.S.C. § 1153(d).
alien of immediate consideration and acceptance of his visa application. The demand for visas within a category or country may be greater than the supply, and thus the category is determined oversubscribed. Visas within an oversubscribed preference category are granted in chronological order based on the filing dates of the visa petitions submitted to the Service.

If demand within a preference category is less than supply, excess visas are made available to the other preference categories. Any unused visas from the first preference category are first made available to aliens within the second preference category. Unused visas from the first, second, and third preference categories are then made available to aliens within the fourth preference category. Finally, any unused visas from categories 1 through 4 are made available to aliens within the fifth preference category. Thus, excess visas are made available to certain numbered preference categories, but only after the demand in the lower-numbered categories has been satisfied.

Eastern Hemisphere aliens who do not fall within any of the seven preference categories are classified as nonpreference applicants. Nonpreference aliens must simply wait their turn, in the chronological order in which they qualify for an immigrant visa, for any portion of the worldwide annual quota which is not consumed by the preference groups. Thus, Eastern Hemisphere nonpreference aliens who do not fall within any of the seven preference categories are classified as nonpreference applicants. Nonpreference aliens must simply wait their turn, in the chronological order in which they qualify for an immigrant visa, for any portion of the worldwide annual quota which is not consumed by the preference groups.

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193. See id. § 203(a) (8), 8 U.S.C. § 1153(a) (8). See also 1 Gordon, supra note 5, § 3.7a, at 3-4411.
195. Id. § 203(a) (2), 8 U.S.C. § 1153(a) (2).
196. Id. § 203(a) (4), 8 U.S.C. § 1153(a) (4).
197. Id. § 203(a) (5), 8 U.S.C. § 1153(a) (5).
198. See Driessen, Immigration Laws, Procedures and Impediments Pertaining to Intercountry Adoptions, 4 Denver J. Int’l L. & Pol. 257 (1974). Excess visas are not made available to the higher preference categories after the demand in the lower categories has been satisfied—e.g., first preference aliens may not use the unused second preference visas. See I. & N. Act § 203(a), 8 U.S.C. § 1153(a) (1970). It is thus possible for an alien to be better off in a higher numbered preference category than in a lower numbered preference category.
199. I. & N. Act § 203(a) (8), 8 U.S.C. § 1153(a) (8) (1970). See Gordon § 2.27i, at 2-137, § 3.7a, at 3-4411. Generally, a nonpreference immigrant must obtain a labor certification. The priority date for nonpreference immigrants is the date a proper application for a labor certification is accepted for processing within the Employment Service system.
ence aliens are not given priority within their category until they qualify for an immigrant visa, while Eastern Hemisphere preference aliens are given priority within their applicable category as soon as a visa petition is filed on their behalf with the Service.

Distinct advantages exist for aliens falling within the Eastern Hemisphere preference system. The most important is the exemption from the labor certification requirement that relative preference categories 1, 2, 4, and 5 receive.

In addition, an alien generally must apply for an immigrant visa at a United States consulate in his home country. However, aliens from the Eastern Hemisphere residing in the United States may be able to have their status adjusted to that of permanent residence without leaving the United States. An Eastern Hemisphere alien qualifies for adjustment of status only if he has entered the United States after inspection and is either admitted or paroled by immigration officers. Therefore, so long as the alien was examined


201. See note 194 and accompanying text supra.

202. I. & N. Act § 212(a) (14), 8 U.S.C. § 1182(a) (14) (1970). The procedure for obtaining relative preference for categories 1, 2, 4, and 5 is the same as that for an immediate relative of a United States citizen. See notes 156-62 and accompanying text supra. There is a disadvantage for an alien from the Eastern Hemisphere when his United States citizen-, or permanent-resident, child is under twenty-one. Having such a child does not place the Eastern Hemisphere alien within any of the preference categories. Consequently, the labor certification requirement applies. However, a Western Hemisphere alien in such a position is specifically exempt from the labor certification requirement. I. & N. Act §§ 212(a) (14), 101(b) (1), 8 U.S.C. §§ 1182(a) (14), 1101(b) (1) (1970).

Eastern Hemisphere preference categories 3 and 6 and all nonpreference aliens are not exempt from the labor certification requirement. Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14). Aliens who can prove they fall within the third or sixth preferences usually encounter little difficulty in obtaining a labor certification. An alien seeking third or sixth preference status must file a petition with the Service on Form I-140 and pay a §23.00 fee. 8 C.F.R. § 204.1(e) (1976). The procedure for obtaining a labor certification is discussed in notes 108-18 and accompanying text supra.


and passed by immigration officers, he qualifies for adjustment of status.206

An alien seeking adjustment of status must comply with all entry requirements except for the production of certain documents.207 Since the alien is already within the United States, he is exempted from the visa requirement.208 Nevertheless, the alien must qualify under the numerical limitations209 and must not be subject to any exclusion provisions.210 The regulations prescribe which documents must accompany the application.211

An alien who has met the statutory prerequisites, after careful scrutiny by the Service to locate deficiencies,212 is eligible for adjustment of status. Adjustment of status is then awarded at the discretion of the Attorney General, who delegates such authority to

status. An alien crewman is defined as a person: a) serving in any capacity on board a United States vessel or aircraft; or b) who is destined to join a vessel or aircraft in the United States to serve in any capacity thereon. 8 C.F.R. § 245.1(a) (1976).

206. The mere fact of error by an immigration officer does not prevent an alien from seeking adjustment of status. However, there must be an absence of vitiating fraud on the part of the alien. See In re F., 9 I. & N. Dec. 54 (BIA, 1960); In re C.N.J., 9 I. & N. Dec. 141 (BIA, 1960); 1 GORDON § 7.7b, at 7-56.

207. 8 C.F.R. § 245.5 (1976). See Amarante v. Rosenberg, 326 F.2d 58 (9th Cir. 1964).


209. Numerical admissibility is discussed in notes 125-31 and accompanying text supra. If preference category 3 or 6 is sought, the alien must obtain a labor certification. 8 C.F.R. § 245.1(e) (1976). Labor certification is discussed in notes 108-18 and accompanying text supra. A preliminary visa petition must be submitted when immediate relative or other preferred status is sought. 8 C.F.R. §§ 245.1(d), 245.2 (1976). The visa petition procedure is discussed in notes 156-58 and accompanying text supra. A preference or nonpreference visa must be available to the alien within ninety days of approval of his formal application for a visa. 8 C.F.R. § 245.1(g) (1976).


211. 8 C.F.R. § 245.2 (1976) (instructions on Form I-485). The important documents include the alien’s passport, birth record, any temporary entry permit (Form I-94) previously issued, complete fingerprint chart (fingerprint cards are available at Service offices), two photographs, and an affidavit of support to show the alien is not likely to become a public charge. (The public charge designation is discussed in notes 74-87 and accompanying text supra.) See 2 GORDON § 7.7e, at 7-67.

212. See Stedman, Recent Changes in Adjustment of Status Procedure,
the Service.\textsuperscript{213} The alien is entitled to adjustment only upon a review by an immigration officer\textsuperscript{214} who conducts an informal review of the application and all documents, medical reports, and any other evidence submitted.\textsuperscript{215} The alien must establish that his case is "meritorious"\textsuperscript{216} and that a favorable adjustment of status determination by the immigration officer is warranted.\textsuperscript{217} Generally, factors such as family ties, hardship, and length of residence in the United States influence favorable exercise of administrative discretion.\textsuperscript{218}

The application may not be approved if the alien fails to meet his burden of proof for adjustment eligibility or if the immigration officer believes that the alien is not worthy of relief.\textsuperscript{219} The most frequent basis for discretionary denials are bad faith dealings with the Government\textsuperscript{220} and failure to qualify under the good-moral-character requirement.\textsuperscript{221}

Upon conclusion of the inquiry, the application is referred to the District Director, who notifies the alien applicant of the decision.\textsuperscript{222}

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\textsuperscript{20} I. \& N. RRTR. 13 (1971). See also Afterword 330.
\textsuperscript{214} 8 C.F.R. § 245.2(a) (4) (1976).
\textsuperscript{215} Id. § 245.7.
\textsuperscript{216} In re Arai, 13 I. \& N. Dec. 494 (BIA, 1970). The thirty-one reasons for exclusion are discussed in notes 103-13 and accompanying text supra.
\textsuperscript{218} In re Arai, 13 I. \& N. Dec. 494, 496 (BIA, 1970). The procedure is usually routine if the alien has no problems in immigrating—i.e., there are no quota or excludability problems, and the statutory prerequisites are met.
\textsuperscript{219} 8 C.F.R. § 242.17(d) (1976).
\textsuperscript{220} See Sofaer, The Change-of-Status Adjudication, supra note 217, at n.108. Bad faith dealings with the Government usually consist of misrepresentations to secure entry to, or remain in, the United States. Such aliens are then subject to deportation. I. \& N. Act § 212(a) (19), 8 U.S.C. § 1182 (a) (19) (1970).
\textsuperscript{221} I. \& N. Act § 101(f), 8 U.S.C. § 1101(f) (1970). Good moral character is a nebulous term, but it has been interpreted to mean adherence to the standards of the average person and is assessed against the current mores of the community. See Balich v. United States, 185 F.2d 784 (8th Cir. 1950); In re Sousounis, 239 F. Supp. 126 (E.D. Pa. 1965). Establishing good moral character for a reasonable period of time is a prerequisite to the exercise of discretion in approving an adjustment of status application. In re Francois, 10 I. \& N. Dec. 168 (BIA, 1963); In re N.R., 7 I. \& N. Dec. 651 (BIA, 1958). This requirement is criticized as an enlargement of the statutory mandate in Carliner, Administrative Consideration and Review of Immigration Appeals, 37 Interpreter Releases 340, 343 (1960).
\textsuperscript{222} See 2 Gordon, supra note 9, § 7.7e, at 7-70. Actually, the District
If the application is approved, the Alien Registration Receipt Card is delivered to the alien granting him permanent residence status as of the date of the decision.\textsuperscript{228} If the application is denied by the District Director, the alien has no administrative appeal.\textsuperscript{224} However, the alien may renew the adjustment of status application in subsequent deportation proceedings,\textsuperscript{226} or he may seek judicial review.\textsuperscript{226}

**Western Hemisphere Aliens**

Western Hemisphere aliens include any immigrant born in an independent country of the Western Hemisphere\textsuperscript{227} or in the Canal Zone\textsuperscript{228} and his accompanying, or following, spouse and children.\textsuperscript{229} Western Hemisphere aliens do not receive the same advantages and benefits under the Act as do aliens from the Eastern Hemisphere. The statutory preferences listed for Eastern Hemisphere aliens within the worldwide quota do not apply to immigrants within the Western Hemisphere quota. All Western Hemisphere immigrants, except certain of those given preferred status,\textsuperscript{230} enter the United States in the order of their qualifying for immigration visas.\textsuperscript{223}
addition, the labor certification exemptions enjoyed by Western Hemisphere aliens are much narrower than are those granted Eastern Hemisphere aliens. A Western Hemisphere alien, who intends to engage in "skilled or unskilled" labor in the United States, is exempt from the labor certification requirement only if he is the spouse, parent, or child of a United States citizen or of a permanent resident alien. Finally, aliens from the Western Hemisphere present in this country are not allowed the benefit of adjustment of status. Instead they must obtain immigration visas by physically appearing at the United States consulate in their homeland.

date for Western Hemisphere immigrants requiring labor certifications is the date a proper application for such a certification is accepted for processing within the Employment Service system. 29 C.F.R. § 60.5(d) (1976). Labor certification is discussed in notes 108-18 and accompanying text supra.

232. I. & N. Act § 212(a) (14), 8 U.S.C. § 1182(a) (14) (1970). In contrast, an Eastern Hemisphere alien is exempt from the labor certification requirement if he is either an immediate relative or a member of the first, second, fourth, or fifth preference categories. The immediate relative classification is discussed in notes 127-62 and accompanying text supra. The Eastern Hemisphere preference categories are discussed in notes 183-226 and accompanying text supra.

An alien who is a spouse, parent, or child of a United States citizen may qualify for immediate relative status. The procedure for obtaining immediate relative status, and consequently exemption from the labor certification requirement, is discussed in notes 156-62 and accompanying text supra.

A Western Hemisphere alien who is a parent of a United States citizen, if the citizen is less than twenty-one years of age, may not qualify as an immediate relative. I. & N. Act § 101(b) (1), 8 U.S.C. § 1101(b) (1) (1970). Nevertheless, the parent is entitled to an exemption from the labor certification requirement. Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14).

A Western Hemisphere alien who is a spouse, parent, or child of a permanent resident alien in the United States may also achieve exemption from the labor certification requirement. Id. § 212(a) (14), 8 U.S.C. § 1182(a) (14). The permanent resident must file Form I-550 with the Service for verification of his lawful permanent residency. 8 C.F.R. § 29.91 (1976). The procedure is then analogous to that for an immediate relative. Id. § 204.2. However, the waiting period to obtain an immigrant visa for such an alien is longer than that for an immediate relative because the quota limitations still apply.

233. See I. & N. Act § 245(c), 8 U.S.C. § 1255(c) (1970). It has been argued that Congress has not allowed Western Hemisphere aliens to benefit from an adjustment of status procedure because of the ease with which people of this hemisphere can enter the United States. This ease is attested to by the presence of over five million illegal aliens currently in the United States. Interview with Joseph Sureck, supra note 25. However, it is not particularly easy for all people from the Western Hemisphere to fly home to pick up their visas, only to have to fly back to the United States in the hope they will be admitted (particularly aliens from countries located in lower South America such as Argentina or Peru). See Afterword 330.

234. Acquisition of an immigrant visa is discussed in notes 55-100 and accompanying text supra.
A final special category exists under the Act whereby an alien may bypass the entry restrictions and achieve lawful, permanent residence. If an alien entered the United States prior to June 30, 1948, or if his record of lawful admission at a port of entry cannot be located,236 he may be entitled to permanent residence status under registry proceedings.236 The record of lawful entry established in such proceedings is recognized as valid for all purposes under the immigration and naturalization laws.237

Registry relief may be granted only at the sound discretion of the Attorney General.238 The Act requires that the alien prove continuous residence in the United States since his entry prior to June 30, 1948,239 and that he has good moral character.240 An alien who cannot establish good moral character because he is or was a criminal, prostitute, subversive, narcotics addict, or smuggler may nevertheless benefit by a waiver of inadmissibility in the registry proceeding.

235. That category is an ameliorative provision designed to aid a person who has formed a substantial tie to the United States. See Sit Jay Sing v. Nice, 182 F. Supp. 292 (N.D. Cal. 1960), aff'd, 287 F.2d 561 (9th Cir. 1961). It has been held that the benefits of that provision are unavailable when there is a record of a lawful admission for permanent residence, even when the alien subsequently reenters illegally. In re Edwards, 10 I. & N. Dec. 506 (BIA, 1964); In re M.P., 9 I. & N. Dec. 747 (BIA, 1962).


238. Spinella v. Esperdy, 188 F. Supp. 535 (S.D.N.Y. 1960) (a court cannot grant registry status when no application was submitted to the Attorney General). Each person seeking to establish lawful entry through the registry procedure must apply on Form I-485 and pay a $25.00 fee. 8 C.F.R. § 249.2 (1976). The application must be submitted to the nearest INS office.

239. I. & N. Act § 249, 8 U.S.C. § 1259 (1970). Residence is defined as “the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” Id. § 101(a) (33), 8 U.S.C. § 1101(a) (33). Temporary absences are permissible so long as United States residence is not abandoned. In re Young, 11 I. & N. Dec. 38 (BIA, 1965). Documentary evidence needed to prove continuous residence includes bank books, leases and deeds, licenses, receipts, letters, birth certificate, school records, marriage certificate, census records, etc. See 2 Gordon, supra note 9, § 7.6d, at 7-50.

Upon approval of the application for registry, the applicant is given an Alien Registration Receipt Card identifying him as a lawful, permanent resident. If the application for registry is denied by the immigration officer, the alien has no administrative appeal. However, the alien has the right to renew the application in subsequent deportation proceedings and may also seek judicial review.

PRIVATE BILLS

An alien denied entry into the United States under any of the innumerable immigration provisions or regulations may nevertheless obtain admission through a special procedure. The alien may petition Congress to enact a private bill to obtain a waiver of his admissibility deficiencies. However, the enactment of these bills is becoming less prevalent, and the alien must usually demonstrate outstanding equities to qualify for a private bill. The prospect of obtaining a private bill is increased upon a congressional determination that the alien will benefit the community if permitted to remain in the United States or that the alien has developed close family ties while in this country. The alien may also qualify if de-

242. 8 C.F.R. § 249.2 (1976). The Alien Registration Receipt Card, commonly referred to as a green card, is on Form I-151. Id. § 211.1. An alien who entered the United States prior to July 1, 1924, is given a record of lawful admission as of the date of such entry. All other aliens are given a record of lawful admission as of the approval date of their applications. I. & N. Act § 249, 8 U.S.C. § 1259 (1970). The date of lawful admission may later affect the residence requirement for naturalization. Naturalization is discussed briefly in notes 256-57 and accompanying text infra.
243. 8 C.F.R. § 249.2 (1976).
244. Id.
245. Generally, discretionary action is judicially unreviewable. Adel v. Shaughnessy, 183 F.2d 371, 372 (2d Cir. 1950). However, judicial review may be sought if there was an erroneous factual determination in assessing compliance with the statutory qualifications. See Exarchou v. Murff, 265 F.2d 504 (2d Cir. 1959) (inadequate basis for overruling prior finding of good moral character).
246. For a description of how to obtain a private immigration bill, see 2 GONSON § 7.12b, at 7-127; Note, Private Bills and the Immigration Law, 69 HARV. L. REV. 1083 (1956).
247. In the 90th Congress, only 218 of the 7,293 private immigration and nationality bills introduced were enacted into law. In the 93d Congress, only sixty-three became law. For statistics see 1974 INS, ANNUAL REPORT 132, Table 55.
portation would be unduly burdensome due to illness or old age or because someone is financially dependent on the alien.

**Considerations Subsequent to Successful Immigration**

Once the alien has successfully immigrated, the attorney should advise him of several important considerations. An alien may lose his permanent residence status and become subject to deportation if he engages in certain designated types of misconduct. For instance, an alien who within five years after entry commits a crime involving moral turpitude may be deportable. Also, upon leaving and reentering the United States, the alien may be subject to deportation for failing to present himself for inspection at a port of entry, even if he possesses a green card. Moreover, the Act requires that every alien within the United States on January 1 of each year must notify the Attorney General during the month of January of his current address. Failure to comply with the reporting requirements is a misdemeanor and may subject an alien to deportation.

The attorney should also advise the alien of the conditions he will eventually be required to meet if he wishes to become a naturalized citizen, and the steps which should be taken immediately to facili-

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249. Id. at 1087. Even if the alien possesses none of the factors enumerated, inquiry should nevertheless be made to the appropriate Congressman of the congressional district where the alien resides.


251. Id. § 241(a) (4), 8 U.S.C. § 1251(a) (4).

252. Id. § 241(a) (2), 8 U.S.C. § 1251(a) (2). An immigrant visa is required from every immigrant in order to obtain entry into the United States. Id. § 101(a) (16), 8 U.S.C. § 1101(a) (16). If the alien has previously entered the United States, an equivalent document can satisfy the requirement for an immigrant visa. Documents commonly used for reentry include a reentry permit, a resident alien's border crossing identification card, and an alien registration receipt card. Id. § 212(a) (20), 8 U.S.C. § 1182(a) (20); 8 C.F.R. § 211.1 (1976).

253. The green card is the common name for the Alien Registration Receipt Card, which is the alien's identification card to prove he has been granted permanent residence status. See 8 C.F.R. § 211.1 (1976).

254. I. & N. Act § 265, 8 U.S.C. § 1305 (1970). The required notice and additional prescribed information is submitted on Form I–53, which can be obtained at any post office or immigration office and is mailed to the address indicated on the form. 8 C.F.R. § 265.1 (1976).

tate future proof that these conditions are met. Generally, the alien must show lawful admission for permanent residence followed by at least five years of continuous residence in the United States, establish good moral character, and demonstrate attachment to the principles of the United States Constitution.\textsuperscript{256} There are at least two things the alien should be advised to do immediately: One is to begin saving rent receipts and other available evidence of continuous residence; the other, if applicable, is to begin the process of learning and improving the English language skills needed to pass the naturalization test and to function effectively in American society.

\textbf{Conclusion}

The immigration process is long, arduous, and often very difficult. The starting point for the attorney interviewing an intending immigrant is to determine whether the client is in fact an alien. If he is, the attorney must consider such factors as the alien's family relationships, special job skills, finances, employment possibilities, criminal record, and other miscellaneous factors bearing on the immigration process. The attorney must be prepared to deal with the Immigration and Naturalization Service, in most cases the State Department, in some cases the Labor Department, and occasionally the Department of Health, Education, and Welfare. Upon successful immigration, the alien should be advised of precautionary measures to avoid deportation, and of the steps to be taken in contemplation of subsequent naturalization. It is hoped this Comment will provide some assistance for the attorney engaged in the complex procedure of helping his client to immigrate to the United States.

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\textsuperscript{256} Id. § 316(a), 8 U.S.C. § 1427(a). \textit{See also} 3 Gordon, \textit{supra} note 9, § 15, at 15-1. Only a three-year period of continuous residence in the United States is required if the permanent resident has been married to a United States citizen throughout the three years and if the citizen spouse has been physically present in the United States at least half that period. \textit{I. & N. Act} § 319(a), 8 U.S.C. § 1430(a) (1970). Establishing good moral character is discussed in note 221 and accompanying text \textit{supra}. To demonstrate attachment to the principles of the United States Constitution, the alien must learn the fundamentals of United States government and history. \textit{I. & N. Act} § 312(2), 8 U.S.C. § 1423(2) (1970).