

Foreword

HON. PETER W. RODINO, JR.*

The authority to formulate immigration policy in the United States is vested in the Congress of the United States by Article 1, section 8, of the United States Constitution. Supreme Court decisions have long recognized the plenary power of Congress in the immigration area. Justice Frankfurter in *Harisiades v. Shaughnessy*¹ commented that:

The conditions for entry of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to determine responsibility, . . . have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this court to control

The immigration laws of our country have not been formulated in a vacuum. They have been influenced by population growth and distribution as well as economic and political conditions both in the United States and foreign nations. Such influences have caused significant variations in patterns of immigration throughout our nation's history. It is important for us to remember our distinguished immigrant heritage when commenting upon past immigration policy and projecting as to the future of our immigration laws. This heritage has led generally to a policy reflecting

* Chairman, Committee on the Judiciary, House of Representatives; Representative, Tenth District, New Jersey; J.D., Rutgers University.

1. 342 U.S. 580 (1951).

the goals of family reunification; the offering of a haven for the homeless, the fearful, and the oppressed of the world.

The Immigration and Nationality Act, commonly referred to as the McCarran-Walter Act of 1952, consolidated and codified, with some modifications, many earlier immigration statutes. In summary, the Act eliminated the discrimination in immigration between the sexes and races, created a system whereby preference was afforded to those aliens with skills and services needed by the United States, broadened the grounds for exclusion and deportation and provided some additional procedural safeguards for deportable aliens.

In 1965, major amendments to the Immigration and Nationality Act were enacted which essentially repealed the repugnant restrictive policy of a national origin quota system which was predicated on the assumption that immigrants from certain countries are more desirable than those from other countries. The twin goals of equity and family unity were accomplished by this amendment with regard to the Eastern Hemisphere. Though this change was a major advance for the immigration policy of this country, the amendments of 1965 also created other inequities in the current law. Such inequities include the lack of a comparable preference system for natives of the Western Hemisphere based upon the reunification of families and skills needed in the United States. In addition, the cumbersome labor certification process places an unreasonable burden on many prospective immigrants from the Western Hemisphere.

The discrimination against the Western Hemisphere has led individuals to disregard our immigration laws by surreptitiously entering the United States.

It must be understood that the policy of welcoming immigrants to the United States is threatened by the aliens who illegally reside in the United States and take jobs with substandard wages and working conditions. A failure to correct the problem caused by illegal aliens helps neither the citizen, the permanent resident alien, nor the legal alien in the United States. Further, it is unfortunate that the illegal alien problem has nurtured a negative attitude toward those immigrants who abide by our immigration statutes.

Legislation which I have sponsored to deal with this problem, has twice passed the House of Representatives by overwhelming majorities.² Recent statistics relating to the apprehension and de-

portation of illegal aliens clearly demonstrate the problem has reached severe proportions. The impact of these illegal aliens upon our nation and the economy has been substantial. It must be remembered, however, that these illegal aliens are often exploited and victimized by many who pretend to aid them. Their plight must be realized when considering legislative change.

The current status of the immigration law with regard to natives of the Western Hemisphere is a priority legislative concern of the House Committee on the Judiciary. In view of the hardships which are being experienced by immigrants from this Hemisphere and the adverse diplomatic effects which follow, it is important that legislation be enacted which would extend the provisions of the law governing the Eastern Hemisphere to natives of the Western Hemisphere. It has become abundantly clear in the four years since the 120,000 ceiling on the Western Hemisphere went into effect on July 1, 1968, that the Western Hemisphere has suffered because of the absence of a preference and per-country limit. I have introduced legislation³ in the ninety-fourth Congress which would address this matter.

The law in the United States with regard to the admission of refugees is likewise in need of expansion, revitalization and revision. Historically the United States, through its immigration law, has had difficulty accommodating large numbers of refugees fleeing political persecution. If the United States is to accept responsibility for the homeless and persecuted, there is need for flexible and comprehensive legislation.

Thousands of persons who have been victims of war, internal strife, religious persecution or natural disasters have been granted permission to enter the United States through the "parole authority" of the Attorney General found in section 212(d)(5) of the Immigration and Nationality Act. With regard to the admission of refugees there is need for flexibility and accountability in the statute. An amendment to the current law should be considered which would specifically formalize Congress' role in the process, which has historically been one of consultation.

2. See H.R. 982, 93d Cong., 1st Sess. (1973), which has recently been reintroduced as H.R. 8713, 94th Cong., 1st Sess. (1975).

3. H.R. 981, 94th Cong., 1st Sess. (1975).

Legislative change is also needed which will provide for the care and resettlement of refugees who are admitted to the United States. In the past, because of this statutory defect, Congress has been called upon to pass emergency legislation, as in the Cuban and Indochina refugee crisis. This emergency legislation seldom has time for truly adequate review. It is important that Congress address itself to legislation which would clarify the law so as to accommodate refugees seeking assistance.

I want to commend the editors of the *San Diego Law Review* for devoting the pages of this issue to the crucial topic of immigration. If in the future we are to remove the inequities in our present law, we must have forums for public discussion and criticism so that ideas can be generated which will help not only to inform and educate our society but also to provide a stimulus for creative legislative solutions.