

# Immigration Law and Procedure



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# **IMMIGRATION LAW AND PROCEDURE**

**IN A NUTSHELL**

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Others came involuntarily as punishment or under servitude. Slaves from Africa were forcibly brought. Children were kidnapped from English slums and sold for American labor. English judges were empowered to send both vagrants and felons to the colonies as punishment. These groups also met with disfavor and colonial restrictions; colonies began legislating to exclude "paupers" and "criminals" as early as 1639. Those restrictions excluding "public charges" embraced not only people sent by English courts but also the poor and the diseased who came voluntarily. Southern colonies especially tried to restrict criminals, because that region had received the greatest influx of the 50,000 sent under penal sanction during the fifty years before the Revolution.

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**CHAPTER 1**  
**HISTORY OF U.S. IMMIGRATION LAW AND POLICY**

**§ 1-1 COLONIAL IMMIGRATION**

Because an immigrant is defined by *Black's Law Dictionary* as one who leaves a country to settle permanently in another to live, one tends to think of United States immigration as dating from the nation's inception. Most anthropologists, however, believe that the first newcomers to the region that is now the United States entered from Asia over 20,000 years ago across the land bridge where the Bering Strait now lies. These people first settled the western regions, and distinct cultural groups lived in areas spanning to the Atlantic Ocean before any European explorers or later settlers arrived.

Much later, in settling the English colonies, immigrants arrived freely and were at first welcomed by other Europeans already settled. Immigration was limited principally by the cost of travel, disease, and conflict with indigenous inhabitants. By 1640, the population of the colonies had reached approximately 25,000. Population records can only suggest the rate of increase because no immigration records were kept.

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these attempts, the colonies were generally unable to check the influx of migrants, for they lacked both legal authority and a centralized administrative structure. In addition, immigration was still favored to the extent that the colonies needed more people for labor and security. To outsiders, the New World held great promise. Accordingly, by the year 1776, the population of the colonies stood at about 2,500,000, or 100 times the 1640 figure.

The colonial immigration restrictions may have influenced the later legislation of the United States on this subject. In fashioning its laws, the federal government eventually excluded the same general classes of immigrants as did the colonies. The federal legislation also used certain colonial sanctions on immigrants, such as head taxes on individuals and deportation of undesirable persons.

### **§ 1-2 EARLY U.S. IMMIGRATION POLICY**

Although colonial attitudes continued after the American Revolution, extensive federal legislation dealing with immigration was not enacted for some time, primarily for two reasons. First, for almost 100 years, it was unclear whether the federal government was even intended by the Constitution to have power to regulate immigration. Second, the United States officially favored unrestricted immigration for about the same period of time after the nation's birth.

The locus of power over the subject of immigration was not definitively identified in any early proclamation of the new government. Under the Articles of Confederation, each state apparently determined its own immigra-

tion policy, but there was confusion over the status of prior colonial enactments. The United States Constitution, adopted in 1789, granted Congress broad power to regulate foreign commerce in Article I, § 8, but it was not clear whether foreign commerce included immigration. Not until 1875 did the U.S. Supreme Court in *Henderson v. City of New York* (Sup.Ct.1875) declare state restrictions on immigration to be unconstitutional, as an infringement on the federal power over foreign commerce.

During this long period of uncertainty, Congress did not generally attempt to invoke its power to regulate immigration, but principally passed a series of acts regulating naturalization and a few other nonrestrictive pieces of legislation. Congress adopted the first such law in 1790, liberally granting citizenship to immigrants. Subsequent legislation, however, required increasingly longer periods of residency as well as the renunciation of former allegiances and titles of nobility. In 1798 Congress authorized the President to expel "dangerous" aliens in the Alien Friends Act and the Alien Enemies Act, but the Alien Friends Act expired without extension after two years. A new Naturalization Act in 1802 re-established the provisions of a 1795 act, creating a five-year residency requirement for citizenship. In addition, the "passenger acts" of 1819, 1847, 1848, and 1855 set certain minimum space and provisions standards for overseas vessels. Further, in 1808, Congress enacted a law forbidding the importation of slaves.

Apart from piecemeal legislation, the first 100 years of the nation's existence can be characterized as a period of unrestricted immigration. The spacious frontier and the need for labor were the primary reasons for this unre-

strictive policy. No official immigration records were kept until 1820, but it is estimated that 250,000 immigrants arrived in the United States between 1790 and 1820. From 1820 to 1880, while the issue of power over immigration was being debated, over 10 million people arrived.

Discontent with the open immigration policy increased with the rate of immigration and with change in the composition of immigrants. Between 1820 and 1880, political conditions and economic devastation brought over 2.8 million Irish immigrants to the United States. German Catholic immigrants came in large numbers during the European depressions of the 1840s. In a predominantly Protestant country, the Catholic Irish and Germans were not well accepted. The anti-Catholicism that had prevailed in colonial days resurfaced. Several groups and overlapping political parties, including social reformers, Protestant evangelicals, the Nativists, the Order of the Star-Spangled Banner, and the Know-Nothing Party, campaigned for legislation halting immigration and prohibiting even naturalized immigrants from participating in the nation's political process. These groups were somewhat successful at the state level, but failed at the federal level because the Irish and Germans constituted a large voting block. Politicians at the national level actively sought the vote of these and other newly arrived groups. Hence, federal policy, and apparently the majority of the nation, continued to favor immigration.

Eventually, the Civil War drowned the protests of groups like the Know-Nothings. The need for labor in both the North and South was magnified during these war years; an 1864 Act even facilitated immigration by



### **§ 1-3 RESTRICTION BEGINS: EXCLUDING THE UNWANTED**

After the Civil War, federal law began to reflect the growing desire to restrict the immigration of certain groups. The Facilitating Act of 1864 was repealed in 1868, and in 1875 Congress passed the first restrictive statute. That statute, borrowing from earlier colonial legislation, barred convicts and prostitutes from admission. These limits were the first of many “quality control” exclusions based on the nature of the immigrants themselves. The list of unacceptable types of immigrants would continue to grow in subsequent enactments.

The 1875 Act also attempted to solve the new problem faced by the western states. Westward expansion demanded huge numbers of laborers for work in the mines and on the railroads. Imported Chinese labor had been used since about 1850, and tension between the Chinese workers and the settlers of European descent ran high. Chinese labor depressed wage scales and some Chinese women were being imported as prostitutes. The Chinese did not assimilate and the European groups did not tolerate the cultural differences. In response, Congress adopted a law outlawing so-called “coolie labor” contracts and immigration for lewd and immoral purposes. Many Chinese, however, continued to immigrate voluntarily or were routed through Canada. Hence, in 1882 Congress took stronger action in the Chinese Exclusion Act, the nation’s first racist, restrictive immigration law, and one of several acts in the 1880s aimed at stemming

the tide of Chinese immigration. The Act suspended all immigration of Chinese laborers for ten years, and forbade any court to admit Chinese to citizenship. The Act was extended in 1902 and later made permanent. (Not until 1943 was it finally repealed so that Chinese immigrants could become citizens.)

Congress finally decided by the 1880s that immigration was appropriate for federal control. The Act of 1882 may be considered the first general federal immigration act. It continued to base restrictions on quality controls; in addition to the 1875 exclusions of “convicts” and “prostitutes,” it barred “lunatics,” “idiots,” and those “likely to become public charges.” The Act also for the first time imposed a head tax on every arriving immigrant. The tax served the express function of raising revenues to defray administrative expenses. Congress did not want the poor of other nations to be added to the government relief rolls; the tax served the underlying function of deterring the immigration of people unable to pay. In several subsequent statutes, the head tax was raised from fifty cents to two dollars, making the barrier relatively substantial at that time.

Despite these limits, over 5.2 million immigrant aliens arrived in the 1880s. Immigration came to be seen as a threat to the U.S. economy, and Congress began expanding the list of “undesirable classes,” hoping both to upgrade the type of immigrants and to limit overall entry. An 1891 act added the “diseased,” “paupers,” and “polygamists” to the list of excludable persons. It also forbade advertising in foreign countries that encouraged immigration to America. In addition, immigrants were required to take medical examinations to determine whether they were “diseased.” A few years later, special

boards of inquiry were established to decide other questions of admissibility under the “quality” restrictions. The 1891 law established the Bureau of Immigration, the forerunner of the **Immigration and Naturalization Service (INS)** (now the U.S. Citizenship and Immigration Services, the U.S. Immigration and Customs Enforcement, and the U.S. Customs and Border Protection). The Bureau was responsible for inspecting entrants at the twenty-four ports of entry to the U.S.

Immigration did abate somewhat in the 1890s, totaling 3.6 million—a reduction of over 1.5 million from the previous decade. There was a sharp increase in immigration, however, at the turn of the century, and Congress tried to stem the flow by excluding more classes of immigrants. In 1903, a new law excluded epileptics, the “insane,” “beggars,” and “anarchists.” In 1907 the “febleminded,” the tubercular, and those persons with a mental or physical defect that “may affect” their ability to earn a living were added to the list. During this period, Japanese immigration was restricted by a 1907 agreement negotiated between the United States and Japan. Although the cumulative list was long, these quality controls were not easily enforced. Moreover, at that time the Bureau of Immigration and Naturalization (renamed by the 1907 Immigration Act) had only 1,200 employees in the U.S. to process arriving immigrants and enforce the entry restrictions. Nonetheless, almost 8.8 million immigrants were admitted by the Bureau in the first decade of the 1900s.

More than the huge numbers concerned Congress, however. Once again, the type of person immigrating was changing. In the 1880s, 72% of immigrants to the U.S. came from northern and western Europe. In contrast,

during the 1900–10 decade, 71% came from countries in southern or eastern Europe. These “new immigrants” were Italians, Slavs, and Jews, who were often considered “inferior” by the predominantly Anglo-Saxon population. Much like the Chinese who preceded them by several decades, the “new immigrants” were slow to assimilate, living together in urban ethnic neighborhoods. The Anglo-Saxons feared that their predominance was threatened and pressured Congress for more restrictive measures.

Because the earlier “quality control” exclusions did little to stem the flow of immigrants, those groups favoring restrictions on immigration began to advocate literacy as an entrance requirement. In 1907, after several failed attempts to pass a literacy bill, Congress established a joint congressional-presidential commission to study the impact of immigration on the United States. In 1911 the Commission published its findings. It concluded that twentieth century immigration to the U.S. was significantly different from earlier immigration and that the new immigration was dominated by the so-called “inferior” and “less desirable” groups. As a result, the Commission concluded that the United States no longer benefited from a liberal immigration policy and should impose further entry restrictions. The Commission recommended a literacy test as one such restriction.

In 1917, over President Wilson’s veto, Congress responded. The 1917 Act was clearly aimed at restricting immigration of various nationalities. One important purpose of the 1917 Act was to limit immigration from southern and eastern Europe, which was accomplished by barring people unable to read. Because the new immigrants were largely illiterate, the impact of literacy tests

limited that region's immigration more than any other. The Act also raised the head tax to eight dollars, providing yet another obstacle.

In addition, Congress addressed the growing concern over foreign "anarchists" in the 1917 Act. This group had been excluded by an earlier law of 1903 that had been enacted in response to President McKinley's assassination. In 1917, Congress apparently focused on the anti-immigrant mood prevalent during World War I. This sentiment led to subsequent enactment of the Anarchist Act of 1918, which more specifically defined "anarchists."

The last major exclusion of the 1917 Act prohibited all immigration of Asians from countries within specified latitudes and longitudes. Many similar racist exclusions had been proposed in Congress that year, and the Asiatic Barred Zone survived as an undebated amendment to the 1917 Act. Congressional attempts to prevent blacks from immigrating to the U.S. were defeated, however, due in large part to intensive lobbying by the NAACP.

The literacy entrance requirement and the anxiety surrounding World War I about the ability to assimilate foreign born persons resulted in an **Americanization movement**. Beginning in 1919, many states established Americanization programs to ensure that immigrants would learn English. Industry joined the movement by establishing similar programs for workers. By 1923, the Bureau of Immigration and Naturalization reported 252,808 immigrants in 6,632 programs across the country.

#### § 1-4 THE QUOTA LAWS

World War I naturally limited immigration by making shipping less available, but after the war, immigration

began to grow again. The U.S. favored an isolationist policy and wanted to protect its own labor force from the anticipated postwar flood of European refugees. Dissatisfied with its latest set of quality exclusions, Congress implemented numerical controls. Enacted first as a temporary measure, the 1921 Quota Law marked a major shift in the U.S. approach to immigration control. The law limited immigration from each nation to 3% of the number of foreign-born persons of that nationality residing in the U.S. as of the 1910 census. The total quota was 357,000, but because few foreign-born persons from the South and East of Europe lived in the U.S. in 1910, that region's total quota was 45,000 less than that from the North and West of Europe. The effect of the quota allotments was to restrict immigration from the disfavored regions; the northern and western countries of Europe did not even fill their quotas under this law. Fortunately for the restricted group, Congress established certain "non-quota" exceptions. For example, the law permitted a person to be admitted to the United States as an immigrant if the individual had lived in the Western Hemisphere for one year (later changed to five years). Hence, by temporarily living in a Western Hemisphere country, many avoided the quotas.

In 1924, Congress further restricted immigration by reducing the immigration quota from 3% of foreign-born persons under the 1910 census to 2% of the foreign-born under the 1890 census. This change cut the total quota to 164,667 and made the southern and eastern quotas proportionately even smaller than before. Again, people from those regions had to use the non-quota provisions to enter the U.S. Although under the 1924 Act only Western Hemisphere natives were non-quota, Europeans

.S. citizens from the quotas.

Despite the restrictive 1924 Act, immigration from the southern and eastern countries of Europe equaled entries from the northern and western countries, thereby defeating the restrictive purposes of Congress. The quota and quality restrictions resulted in increased surreptitious border crossing. Moreover, although Europe was the targeted region, immigration from the Western Hemisphere began to climb in the 1920s, presenting border control problems. In response, the Bureau created the Border Patrol in 1924, hiring forty-five men to guard the country's 8,000 miles of land and sea borders. Total immigration in the years 1924-29 reached 1.5 million.

In 1929, as provided by the 1924 Act, a new quota took effect. The "national origins formula" used the ethnic background of the entire U.S. population, rather than the first generation immigrant population, as its base for calculating national quotas. Because the U.S. population was still predominantly Anglo-Saxon, the national origins quota restricted the newer immigrant groups more severely than the foreign-born formula of the previous quota laws. The national origins quota allotted 85% of the total quota of 150,000 to countries from the North and West of Europe, while the South and East received only 15% of that total quota.

The effect of the national origins formula, however, cannot accurately be measured. Soon after it took effect, the U.S. economy collapsed. The Great Depression limited immigration; only one-half million immigrated to the U.S. during the 1930s. In 1932, at the height of the Great Depression, emigration far exceeded legal immigration. Only 35,576 entered the country in that year, while



over 100,000 left. The potential for immigration increased during those years, however, with the growth of highways and increased airplane traffic. By 1938, there were 186 ports of entry into the U.S. On June 14, 1940, the INS was transferred from the Department of Labor to the Department of Justice.

One of the most tragic consequences of the U.S. restrictive immigration policy fell upon refugees trying to flee Europe before World War II. In 1939, Congress defeated a bill that would have accommodated 20,000 children fleeing from Nazi Germany—despite the availability of willing sponsor families—because the number of children would have exceeded the quota allocated to German nationals. In 1940 the State Department did permit consuls outside Germany to issue visas to German refugees when the German quota was unfilled, but this and other measures were inadequate to help the vast majority of victims of Nazi persecution.

World War II brought an economic upswing, and immigration increased in response, bringing the total of entrants in the 1940s to one million. The United States again needed labor from abroad and negotiated with Mexico for a temporary worker program to satisfy the country's wartime employment needs. Congress also repealed the ban on Chinese immigration, largely due to the wartime alliance of the United States with China. Congress established a small quota for Chinese immigrants and also permitted Chinese immigrants to be naturalized as U.S. citizens.

As the United States became painfully aware of the Nazi atrocities and the fate of the refugees it had refused, there was a short period of liberalization of the strict quota laws. President Truman issued a directive in



1945, admitting 40,000 war refugees. Under the War Brides Act of 1945 and the Fiancees Act of 1946, about 123,000 spouses, children, and fiancées of WW II military personnel were admitted to the U.S. The Displaced Persons Act of 1948 admitted 400,000 war refugees from Austria, Germany, and Italy to the U.S., but these admissions “mortgaged” their countries’ quotas, sometimes limiting or closing off all immigration from a country for several years thereafter.

The work of the INS had burgeoned by the late 1940s. By 1949, the U.S. had 416 ports of entry by land, sea, and air at which the INS annually made about 90 million inspections of immigrants, nonimmigrants, and returning citizens for compliance with entry requirements. The Border Patrol force remained stable at about 1,100, yet its total apprehensions of deportable aliens tripled in three years from 100,000 in 1946 to 300,000 in 1949.

In contrast to its liberalizing post-war legislation, Congress soon thereafter acted to restrict another group. Anti-Communism rose after WW II and particularly during the war in Korea. As a result, national security legislation received high priority in Congress. The Internal Security Act of 1950 amended the 1918 Anarchists Act. The exclusions, however, were expressly directed this time at Communists; the Act broadly defined the excluded group, barring anyone “likely to” engage in “subversive activity.”

At the same time, however, Congress continued to legislate in the area of refugee admissions. In 1953 Congress passed the Refugee Relief Act, which admitted an additional 214,000 refugees. Although designed primarily to facilitate the admission of refugees fleeing from Eastern European countries dominated by the Soviet

Union, the Act also included provisions to prevent the admission of undesirable aliens. Similar measures were passed in 1956 and 1957 to assist the entry of Hungarians and others fleeing from Communism as well as persons fleeing from countries in the Middle East. The 1960 Refugee Fair Share Law established a temporary admission and assistance program for those World War II refugees and displaced persons who remained in camps under the mandate of the United Nations High Commissioner for Refugees.

### § 1-5 THE 1952 ACT AND LATER AMENDMENTS

The Immigration and Nationality Act of 1952 (INA) consolidated previous immigration laws into one coordinated statute. As amended, the 1952 Act provides the foundation for immigration law in effect today.

The 1952 Act retained, over President Truman's veto, the controversial national origins quota. The 1952 quota was calculated differently from the original national origins quota and established a 150,000 person limit on immigration from the Eastern Hemisphere. Congress exempted the Asia-Pacific Triangle from this quota, because so few people from that region lived in the U.S. as a consequence of the Barred Zone law of 1917; the quota would have been grossly inequitable in that respect. Instead, a modest quota of 2,000 was established for that area. Congress also retained the detailed "quality control" exclusions found in earlier legislation and added several new ones. Within the quota system, four types of entrance preferences were established. First preference was given to those entrants with skills or experience needed by the U.S. economy. Those persons with close

family relations to U.S. citizens or permanent residents received lower preferences. This ordering was changed by amendment in 1965, but it should be noted that spouses, children, and parents of U.S. citizens were not and are still not subject to the quota or preference system. For that reason, they are called "immediate relatives."

Several aspects of the 1952 Act drew heavy criticism. The national origins quota, based on the 1920 census, was a blatant form of racial and ethnic discrimination. Also, despite some increased procedural safeguards for non-citizens, the 1952 Act did not provide them procedural due process.

The 1952 Act presented the INS with new and complex laws to enforce, yet Congress did not supply the Service with increased personnel or appropriations to perform its new work. Moreover, the early 1950s saw a large increase in apprehensions of deportable non-citizens aimed at the expulsion of Mexicans from the U.S. The Border Patrol, still about 1,000 strong, apprehended 800,000 deportable non-citizens in 1952; in 1954, that number increased to one million. Because of "Operation Wet-back," 90% of those apprehended came from Mexico. It is believed that this expulsion included U.S. citizens of Mexican descent who were not given an opportunity to prove their claim to citizenship.

During the 1950s, Congress made several minor revisions in the 1952 Act, and over 2.5 million people immigrated to the U.S. The number of people entering the U.S. increased again in the 1960s, reflecting the growing availability of all means of travel. To facilitate the necessary inspections, in 1963 the INS consolidated duties at ports of entry with several agencies. Hence, one officer performed the duties of the INS, Customs, U.S. Public

Health Service, and the Bureau of Plant Quarantine at the Mexican border. This joint approach eased the workload somewhat, for in 1964 the INS made 178 million inspections, almost twice the 1949 figure, yet total INS personnel had only increased from 6,900 to 7,058. In 1966, 200 million persons—immigrants, non-immigrants, and returning citizens—were inspected at over 400 ports of entry. Total immigration for the 1960's was 3.3 million.

The criticized national origins formula was not abolished until 1965, when President Johnson successfully urged enactment of former President Kennedy's program of immigration reform. The 1965 amendments replaced the national origins formula with a limit of 20,000 on each country in the Eastern Hemisphere and an overall limit of 170,000 for that hemisphere. The law established a quota of 120,000 for the Western Hemisphere, without preferences or country limits—to take effect in 1968.

The 1965 amendments abolished the old four-preference system and established in its place a seven-preference system for close relatives and those immigrants with needed occupational skills from the Eastern Hemisphere. Again, spouses of U.S. citizens were permitted to immigrate without reference to the quota or preference system. Under the preference system, unmarried adult children of U.S. citizens received highest preference; second preference was granted to spouses and unmarried children of permanent residents. The preference for immigrants of "exceptional ability" and those in "the professions" was changed from first to third. Other relatives of citizens and permanent residents received the fourth and fifth preferences. Sixth preference was given to needed workers. Seventh preference was allocated to refugees.

The abolition of the national origins formula was in large part the result of a pervasive attitudinal change. Anti-Catholic, -Asian, and -Semitic sentiment decreased as the civil rights movement stimulated an increased tolerance of racial and ethnic differences. Unfortunately, there remained strong prejudice against certain immigrant groups. After World War II, the proportion of Spanish-speaking immigrants increased, and much prejudice was directed toward these newcomers from Mexico as well as Central and South America. Although the 1952 Act did not place a numerical limit on immigration from these areas, Congress included the Western Hemisphere quota of 120,000 in the 1965 amendments as a compromise for abolishing the national origins system. As a result, it created a steadily growing backlog of Latin American applicants forced to wait several years for a visa.

In 1976, a new law was passed which applied the Eastern Hemisphere preference system to the Western Hemisphere. Hence, both hemispheres were subject to the 20,000 per country limit and the seven preference system. The law, however, did retain separate annual limits—120,000 for the Western and 170,000 for the Eastern Hemisphere—and a special 600 person ceiling for colonies and dependencies.

A 1978 amendment established a world-wide quota of 290,000 and applied the same per country limits and seven preference system to both hemispheres. This worldwide ceiling eliminated the hemisphere consideration and allowed visas to go where the need was greatest. The 20,000 per country limit, however, was a serious restraint on immigration from a few countries such as Mexico.



Meanwhile, the INS staff became increasingly overworked. The number of deportable non-citizens, which fell in the 1950s, climbed rapidly in the 1960s and 1970s, as did the number of total entries. In 1972, one half million deportable non-citizens were apprehended. By 1977, that annual figure had doubled. The Border Patrol had grown to a force of 2,400, still too few to guard the borders. The Immigration Service estimated that, between undetected border crossings and violations of legal entry conditions, millions of undocumented non-citizens were living in the U.S. in 1974. In 1973, 250 million persons were inspected at about 1,000 ports of entry. By 1979, 274 million were inspected annually, and the Border Patrol apprehended one million deportable non-citizens. That year, the INS employed almost 11,000 personnel under a 300 million dollar budget.

In March 1980, Congress dealt with the issue of refugees. The 1980 Refugee Act broadened the definition of refugees to accord with the international definition in the Convention and Protocol relating to the Status of Refugees. Further, the Refugee Act set an annual maximum of 50,000 refugees through the year 1982, but permitted the Administration, in consultation with Congress, to set the number of refugees to be admitted each year after 1982. The initial numerical limits in the Refugee Act were undermined, however, by the deluge of Cuban refugees soon after its enactment. More than 100,000 Cubans arrived in the U.S. in the spring of 1980—mostly via the port of Mariel, Cuba. Eventually, the Carter Administration concluded that the influx of “Mariel” Cubans was not within the contemplation of the Refugee Act and asked for special legislation to deal with the problem. The 1980 Act reduced the worldwide

immigrant quota from 290,000 to 270,000 to offset partially the separate allocation for refugees.

In 1981 Congress adopted another series of amendments to the immigration law, which eliminated the permanent exclusion of non-citizens five years after deportation. Also, a person convicted of a single minor marijuana offense could obtain a waiver of excludability. There were a number of other amendments concerning foreign medical graduates, congressional reporting requirements as to visas issued, exchange visitors, and treaty investors. But these minor changes did not address the national perception that the U.S. had lost control of its borders and required a much more thorough revision of immigration law.

Congress enacted the Immigration Marriage Fraud Amendments in 1986 to deter immigration-related marriage fraud. The 1986 Fraud Amendments imposed a two-year conditional residency requirement on non-citizen spouses and children before they could obtain permanent resident status on the basis of a "qualifying marriage" to a U.S. citizen or permanent resident alien. To obtain permanent status, couples were required to file a petition and, in some cases, be interviewed by the INS to verify that the couple had not entered into the marriage solely to procure immigration benefits and had not divorced during the conditional period. In 1990 Congress amended those provisions to permit waivers for cases of battered spouses or children as well as other hardships. See § 5-2.1(c), *infra*, for further discussion of the conditional residence provisions.

The 1986 Fraud Amendments also imposed criminal penalties for immigration-related marriage fraud of not more than five years and/or not more than \$250,000 in

ines. In addition, the 1986 Fraud Amendments explicitly made marriage fraud an additional ground for deportation as well as a perpetual bar to future immigration. Furthermore, the Fraud Amendments restricted adjustment to permanent residence status based on a marriage undertaken while a non-citizen is in removal proceedings. INA § 245(e). See § 5-2.1(c), *infra*.

### § 1-6 THE 1986 IMMIGRATION REFORM AND CONTROL ACT (IRCA)

In 1980 the United States Census Bureau counted 2,047,000 undocumented non-citizens in the country. Based on the Bureau of Census' experience in miscounting other segments of the population, the Bureau had estimated that there were 5,965,000 undocumented persons in the country on census day April 1, 1980. As the INS attempted to confront these problems with inadequate resources, it was criticized for inefficient internal operations, misconduct, and a general inability to control the flow of undocumented immigration.

Thirty-four years had passed since the enactment of the last major immigration reform, when Congress finally adopted in 1986 the Immigration Reform and Control Act (IRCA). IRCA was not easily adopted, having been unsuccessfully attempted in three previous congressional sessions. It represented a political compromise between four interests—(1) those people seeking to deter illegal immigration by discouraging unauthorized employment in the U.S.; (2) those seeking a one-time amnesty for non-citizens who, for years, had been locked out as illegal immigrants; (3) those who wanted to insure continued access to low-cost agricultural labor without elaborate



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