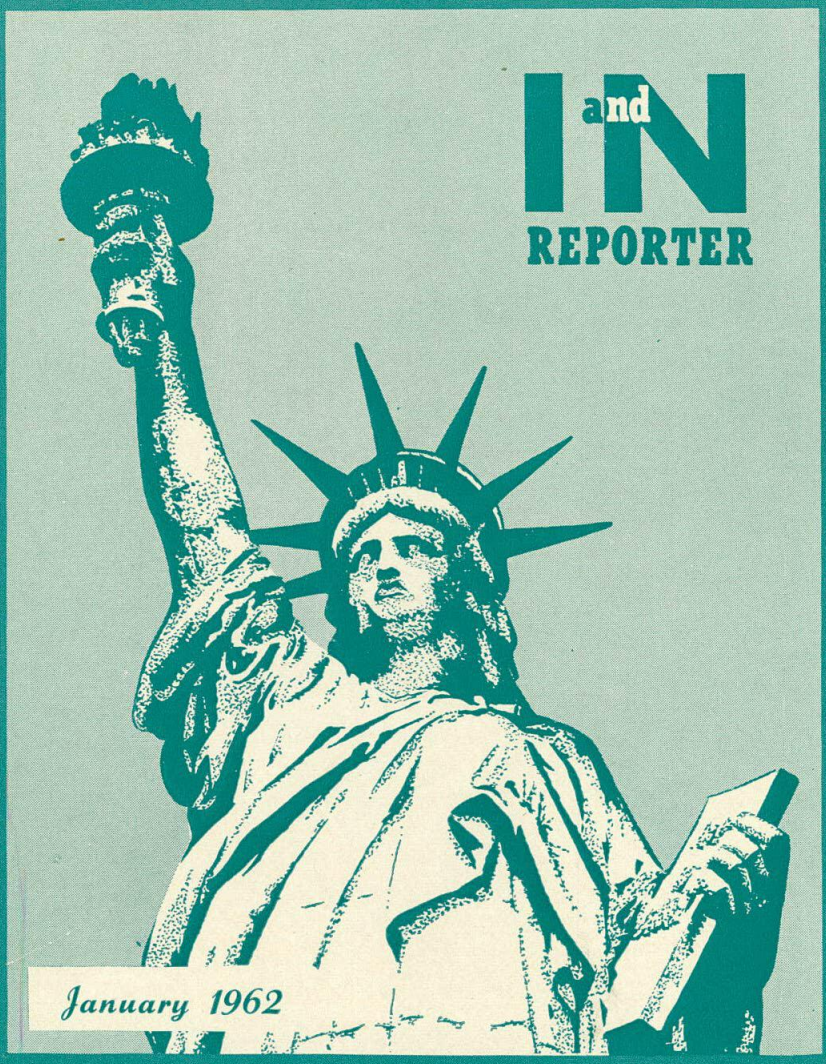
Mr. Senate

I and N REPORTER



January 1962

The opinions expressed are those of the authors and do not necessarily reflect the views or policies of the Immigration and Naturalization Service.

I and N Reporter

January 1962

THE UNITED STATES DEPARTMENT OF JUSTICE
ROBERT F. KENNEDY, *Attorney General*

IMMIGRATION AND NATURALIZATION SERVICE
RAYMOND F. FARRELL, *Commisioner*

Contents

Vol. 10, No. 3

Principles of Immigration Law—Part I 29
Changes in the Regulations 38
Highlights of Selected Recent Court Decisions 39
Recent Administrative Decisions 41

Price $1.00 per year—25 cents for a single issue. Draw check or money order made payable to the Treasurer of the United States. Address all correspondence concerning subscription to: Federal Prison Industries, Inc., U. S. Penitentiary, Atlanta, Georgia; Attention—*The I & N Reporter*. In sending notice of change of address kindly refer to subscription number.

Address other correspondence to: *The I & N Reporter,* Immigration and Naturalization Service, Washington 25, D. C.

Use of funds for printing this publication approved by the Director of the Bureau of the Budget, May 3, 1961.

Principles Of Immigration Law -- Part 1[1]

by Helen F. Eckerson
Chief, Statistics Branch, and
Gertrude D. Krichefsky
Statistician[2]

Quotas based on national origins have come to be known as the major principle of immigration laws. Both the Immigration and Nationality Act of 1952 and its predecessor, the Immigration Act of 1924, the two basic laws that have governed immigration since 1925, included the quota system. Other principles, however, are evident not only in these basic laws, but in other legislation. Over the past 13 years, laws have been passed, often temporary in nature, and for specific groups, that have liberalized and supplemented the basic laws.

Four broad principles emerge from a study of these immigration laws. These principles, reflected in some laws by preferences within quotas and in others through provision for nonquota admissions, are: (1) selective immigration by special priority to aliens with skills needed in the United States; (2) family unity; (3) Western Hemisphere solidarity through numerically free immigration; and (4) asylum to refugees. The first three principles are contained in the basic laws. The fourth, historically inherent in the immigration movement, has been incorporated into immigration laws since World War II.

This article traces the pattern of immigration since 1925 under these four principles, against the background of the quota system.

Quota formula. Prior to the First Quota Act of May 19, 1921[3], immigration restrictions were qualitative rather than quantitative. They were concerned chiefly with the health, morals, attitudes toward government, economic conditions, and literacy of the immigrants.

The 1921 Act, the first numerical restriction of immigration, limited quota immigration to

---

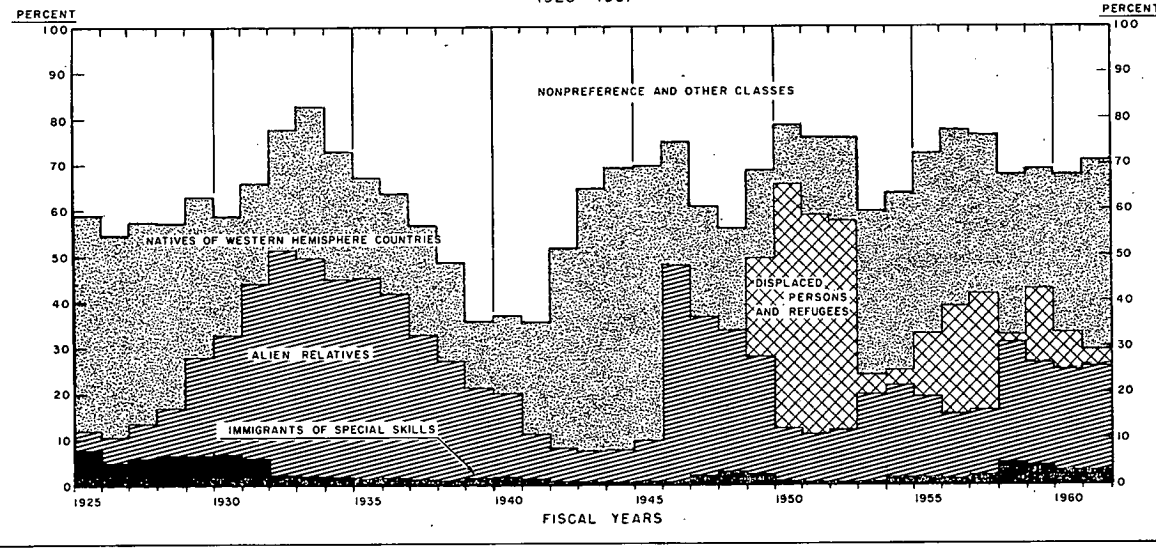
[1] This study will be continued in the next issue of the I and N REPORTER.

[2] George D. White, Statistician, assisted in preparation of this study. Valuable research on the "Family Unity" section was completed by Walter H. Fleischer, student-assistant during the summer of 1961.

[3] 42 Stat. 5.

Chart-1

PERCENT DISTRIBUTION OF IMMIGRANTS UNDER BASIC PRINCIPLES
1925–1961



357,803. The 1921 Act, which was an emergency measure, expired on June 30, 1924.

The Immigration Act of 1924[4] carried two bases for determining quotas[5]. In an interim formula used during the years 1925-1929, the quota of 164,667 was based on two percent of the foreign born who were resident in the United States as determined by the 1890 census. The National Origins Provision of the 1924 Act, which became effective July 1, 1929, provided that the quota should be determined on the basis of the national origin of the total white population as enumerated in the 1920 census. The quota was reduced to 153,714. Although the National Origins Plan was adopted primarily as a basis for determining quotas, in its broad sense it was intended to preserve the national or racial composition of the United States population through the selection of immigrants from those countries whose traditions, languages, and political systems were akin to those of this country. The Immigration and Nationality Act[6], retained the national origins concept in the 1924 Act, but simplified the quota formula by providing that the quota of any quota area should be one-sixth of one percent of the number of inhabitants in the continental United States in 1920. The annual quota was changed to 154,657 and only minor changes were made in the individual quota areas.

Total quotas have changed very little between 1952 and 1960 (154,657 to 154,887). Most of the changes were due to the establishment of quotas for newly independent countries in Asia. In 1960 and 1961 additional quotas were established, mostly in Africa, which increased the total quota to 156,487 in 1961 and nearly doubled the quota for Africa from 1,700 to 3,200.

Determination of quota. With certain exceptions specified in the law, the quota to which an immigrant is chargeable is based on country of birth[7]. An immigrant born in a colony or independent area of a governing country is chargeable to the quota of the governing country. The law provides for a maximum of 100 quota numbers for each subquota area.

Special provisions with regard to quota chargeability are made for Asian persons. Since passage of the 1924 Act, various laws have been passed to liberalize the provisions in the laws affecting admissions of Asians. A number of such liberalizing provisions were carried into the Immigration and Nationality Act of 1952, which eliminated race as a bar to immigration. The 1952 Act set up minimum quotas for aliens previously barred for racial reasons. It carries a provision[8] that a person who attributes as much as one-half of his ancestry to a people or peoples indigenous to a geographical area described in the law as the Asia-Pacific Triangle should be chargeable, regardless of birthplace, to a quota area in that triangle. Thus, with certain exceptions, a person of Korean ancestry born in Korea is now admissible and chargeable to the Korea quota of 100. A Korean person born in Canada would be chargeable to the Korea quota area. A Chinese person, however, is not charged to the quota of 100 for China, but is charged to a separate Chinese Persons quota of 105 established in 1944. A special Asia-Pacific quota of 100 was set aside in 1952 for aliens of races indigenous to an Asian or Pacific colony of a foreign power.

There have been a number of proposals in Congress to eliminate the exception to quota provisions for Asians, so that all quotas, with the usual exceptions, would be based on country of birth, irrespective of the race of the immigrant. Congress recently took a step in this direction when, in the Act of September 26, 1961, it eliminated the existing requirement that an applicant state in his application his race and ethnic classification[9]. This law also removed the ceiling of 2,000 for the Asia-Pacific Triangle from the 1952 Act[10]. The latter provision, however, was made in the event of additional independent countries located there, since there are now 20 independent countries in that area. This section in the law also carries a provision that newly established countries will be entitled to quotas equal to the total subquotas or quotas now available for each of the component parts of such new country. For example, if The West Indies (federation) becomes an independent entity, the federation will be entitled to the 900 quota numbers now available to the component areas of the federation, instead of the minimum quota of 100 available prior to the amendment of the 1952 Act.

Allocation of immigrant visas. The Immigration and Nationality Act gives preference in quotas to selected immigrants of special skills and to close relatives of resident aliens. Spouses and children of United States citizens, natives

---

[4] 43 Stat. 153. (See also Senate Doc. No. 65, 70th Cong., Ist Sess.; and Senate Doc. No. 259, 70th Cong., 2nd Sess.)
[5] Secs. 11(b), (c), (d), and (e), Immigration Act of 1924 (53 Stat. 153).
[6] Sec. 201, Act of June 27, 1952 (66 Stat. 163).
[7] Sec. 202(a), I & N Act.
[8] Sec. 202(a)(5), (b), and (c), I & N Act.
[9] Sec. 6, Act of Sept. 26, 1961 (P.L. 87-301), amending Sec. 222, I & N Act.
[10] Sec. 9, Act of Sept 26, 1961, amending Sec. 202(e), I & N Act.

of independent countries of the Western Hemisphere and their families, and certain other classes are admitted as nonquota. These classes are discussed in more detail elsewhere in the article.

From 1946 to 1961, (see Table 1), 3,650,910 immigrants were admitted to the United States —1,697,902 quota and 1,953,008 nonquota. Nonquota immigration exceeded quota immigration in fiscal years 1946 and 1947 and since 1953 (in 1961 by 82 percent).

In recent years, only about two-thirds of the total quota has been used. The United Kingdom and Ireland have used less than half of their quotas and Sweden about 60 percent. A number of countries, however, such as Italy, Portugal, Germany, Finland, France, and Rumania have used practically all of the quotas allotted to them (see Chart 2). Usually, countries with long waiting lists for quota visas make fuller use of the preference provisions.

Among the countries in which preference quota exceeded nonpreference quota immigration during 1954-1961, were the European countries of Italy, Portugal, Greece, Rumania, Spain, Turkey, Yugoslavia, and Hungary and some nine countries in Asia. Most of the quota immigration from Germany, France, Austria, and Czechoslovakia, which make nearly full use of their quotas, has been nonpreference. Various proposals were made in the last session of Congress to pool the unused quotas into a reserve for use by countries with oversubscribed quotas, without regard to point of origin.

It is against this background of the quota system that we now examine immigration under the four broad principles that have motivated Congress in the enactment of immigration laws.

Seven-tenths of postwar immigration has been within the purview of these principles, most of the remaining three-tenths being nonpreference quota immigration.

TABLE 1. IMMIGRANTS ADMITTED TO THE UNITED STATES, BY CLASS: YEARS ENDED JUNE 30, 1925—1961

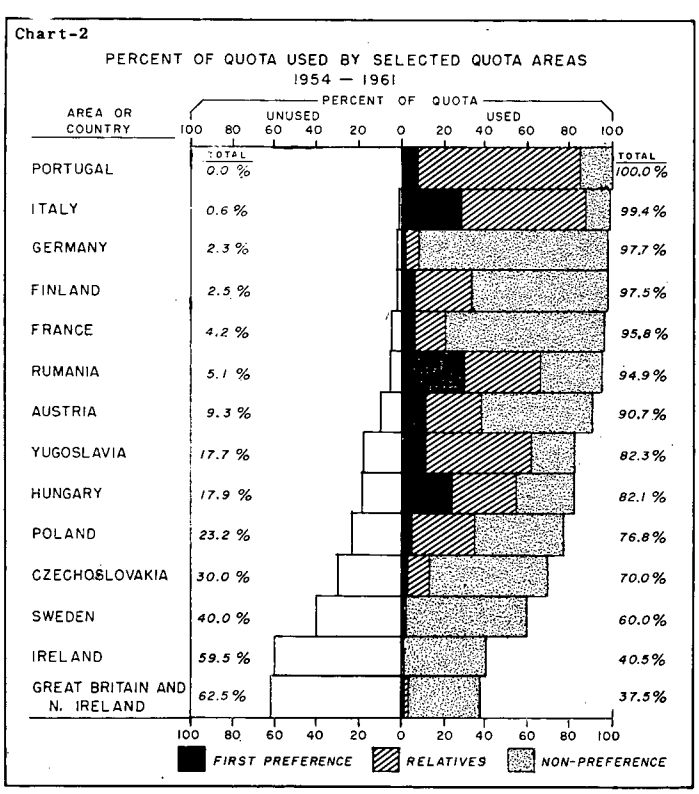
Class	1925-1961	1925-1945	1946-1961
Total immigrants	6,112,903	2,461,993	3,650,910
Skilled aliens	193,370	121,642	71,728
Skilled agriculturists, their wives and children	111,548	104,458	7,090
Selected immigrants of special skills	22,524		22,524
Spouses and children of selected immigrants of special skills	20,194		20,194
Beneficiaries of first preference petitions[1]	3,828	..	3,828
Spouses or children of beneficiaries of first preference petitions [1]	3,461	..	3,461
Ministers of religious denominations, their spouses and children	24,189	13,738	10,451
Professors, their wives and children	7,626	3,446	4,180
Relatives of U. S. citizens and resident aliens	1,124,984[2]	394,755	730,229
Displaced persons and refugees	674,772[3]	..	674,772
Natives of Western Hemisphere countries, their spouses and children	1,988,679	897,554	1,091,125
Nonpreference quota immigrants	2,074,105	1,017,978	1,056,127
Other classes	56,993	30,064	26,929

[1] Act of Sept. 11, 1957.

[2] Excludes 64,237 relatives of U. S. citizens and resident aliens admitted as displaced persons or refugees.

[3] Excludes 40,324 displaced persons admitted under President's Directive of Dec. 22, 1945, who are included in other classes.

Chart-2



SELECTIVE IMMIGRATION OF HIGHLY SKILLED ALIENS

Economic situations both here and abroad have been an important factor in all immigration. As our economy has developed from a rural to an industrial and highly technical one, so has the type of worker needed in the United States changed. To attract the kinds of workers needed, the principle of selective immigration

by providing for a first preference within the quota was adopted.

At the time the Immigration Act of 1924 was under consideration by Congress, there was a general drift from farm to city all over the country, especially from the cotton States of the South. This caused a shortage of farmers and farm labor in the South. In addition, newly arrived immigrants concentrated in the large industrial cities because of the high wages there. This internal migration of workers from the farms, and the new immigrants competed with American industrial workers and brought demands from American labor for a slowing down or complete stoppage of immigration.

The 1924 Immigration Act[11] gave first preference of 50 percent of the quota to parents and husbands of United States citizens and also, in the case of any nationality the quota for which was 300 or more, to skilled agriculturists, their wives, and their dependent children under the age of 18. The purpose of giving such preference to the agriculturists was to turn immigration from the cities to the the farms.

In the years 1925-1930, admissions of skilled agriculturists were relatively high, averaging some 16 thousand per year—about 11 percent of the total quota immigration at that time. Approximately nine-tenths of the agriculturists during this period came from Germany, Scandinavia, Poland, the United Kingdom, Switzerland, Czechoslovakia, and the Netherlands.

As the economic depression began abroad and within the United States, total immigration to this country dropped and with it admissions of agriculturists. The number dropped to under five thousand in 1931, and practically ceased until after World War II. Admissions of agriculturists resumed after World War II. From 1946 to 1953 a total of 7,090 agriculturists and their families were admitted to the United States as first preference quota immigrants. Many of these aliens came from the Netherlands, Poland, Norway, and the U.S.S.R.

The expansion of defense and other technical, scientific, and educational activities during and following World War II resulted in a shortage of personnel in the highly skilled, scientific, and educational fields, and led to amendment of first preference quota provisions when the 1952 Immigration and Nationality Act was passed. The 1952 Act (Sec. 203(a)(1)) specifies that 50 percent of the quota of each quota area should be made available to quota immigrants of special skills or ability needed urgently in the United States and who would be substantially beneficial to the national economy, cultural interests, or welfare of the United States. Spouses and children of such immigrants are included in first preference.

In the past five years, a yearly average of 3,500 selected immigrants of special skills and nearly an equal number of their spouses and children have been admitted under the first preference quota. Although the proportion of first preference quota immigrants admitted has more than doubled since enactment of the Immigration and Nationality Act, at no time has the total of such admissions exceeded five percent of the quota. However, a number of countries with heavily oversubscribed quotas have used substantially higher percentages of the first preference quota. The relatively high percentages of first preference quota used by underdeveloped Asian countries may be attributed in part to the fact that a number of their engineers, physicians, nurses and other skilled persons entered the United States temporarily as students, exchange visitors, or in other temporary status and have since adjusted their status to that of permanent residents under the provisions of Section 245, Immigration and Nationality Act, or have reentered the United States as immigrants.

First preference quota immigrants supplied only a fraction of the immigrants in the labor force who entered the United States since enactment of the Immigration and Nationality Act. The principal reason for this is the fact that most of the first preference quota immigrants have come here from countries with oversubscribed quotas, whereas most of the professional and semi-professional workers come to the United States from countries which are nonquota or do not fully use their preference or nonpreference quotas. For example, many of the engineers, natural scientists and physicians arriving in recent years have come from Canada, the United Kingdom, Ireland, and Germany. Canada has supplied 25 percent of all engineers, 38 percent of the nurses, and 13 percent of the physicians and surgeons admitted to the United States as immigrants during the years 1953-1961.

Table 2 shows the principal occupations of the first preference quota and other immigrants in the labor force admitted since January 1953.

The prospective employer of a highly skilled alien must file a visa petition and supporting documents with the Immigration and Naturalization Service to establish that the alien beneficiary is a highly skilled immigrant whose serv-

[11] Sec. 6(a)(1), Act of May 26, 1924 (43 Stat. 153), as amended by Act of May 29, 1928 (45 Stat. 1009).

ices are urgently needed in the United States. Except in the cases of certain occupations for which the urgent need is established, he must also obtain a clearance order from the United States Employment Service certifying that such qualified workers are not available in the United States. The list of occupations for which no individual clearance is required is released by the United States Employment Service and shows occupations and groups of occupations for which the supply of all available workers in this country is inadequate. The list includes chemists, professors and instructors, dentists, engineers, physicians, nurses, natural scientists, draftsmen, tool and die designers, and certain technicians.

Continued need for highly skilled immigrants, coupled with the exhaustion of first preference quota visas in a number of countries, resulted in provisions in the Act of September 11, 1957[12] which granted nonquota status to beneficiaries of all first preference petitions approved prior to July 1, 1958, and to their spouses and children. The immediate effect of this provision was to open up the first preference quotas in a number of countries; however, they rapidly became exhausted. As of the end of June 1961, a total of 3,828 skilled immigrants and their 3,461 spouses and children were admitted as nonquota under this provision of law.

Recent changes in the regulations permit highly skilled immigrants who are beneficiaries of approved first preference petitions, and their spouses and children, to be paroled into the United States until quota visas become available. In addition beneficiaries of approved first preference petitions abroad who are chargeable to oversubscribed quotas and who will come to work in defense industries may be paroled into the United States.

Several provisions in the immigration laws relate to specific occupations of aliens. Under the 1924 Act (Sec. 4(d)), professors coming to the United States to carry on their vocations, and their wives and children could be admitted as nonquota. Between 1925 and 1953, when this provision was in effect, a total of 4,149 professors and their 3,477 wives and children were thus admitted. The Immigration and Nationality Act of 1952 did not accord nonquota status to professors since it was felt that adequate provision was made for their admission under the first preference quota provisions of the law. Between 1953 and 1961, 2,780 professors and instructors were admitted as immigrants, 574 entering as first preference quota. Many of these persons were engineers, scientists or members of the medical professions.

TABLE 2. FIRST PREFERENCE QUOTA SELECTED IMMIGRANTS OF SPECIAL SKILLS AND OTHER IMMIGRANTS IN THE LABOR FORCE ADMITTED, BY OCCUPATION: JANUARY 1, 1953—JUNE 30, 1961

Occupation	Total immigrants	First preference selected immigrants of special skills	Other immigrants
All occupations	1,043,380[6]	22,524	1,020,856
Professional, technical and kindred workers	166,413	12,985	153,428
Chemists	4,448	645	3,803
Clergymen and religious workers	10,666	654	10,012
Engineers[1]	27,142	3,608	23,534
Nurses	25,376	1,073	24,303
Physicians and surgeons	12,680	1,554	11,126
Other medical professions[2]	1,665	107	1,558
Professors and instructors not specified[1]	1,921	374	1,547
Natural scientists[1] [3]	4,036	600	3,436
Social scientists[1] [4]	1,279	128	1,151
Teachers, not specified	17,998	1,267	16,731
Technicians[5]	19,894	1,114	18,780
Other professional, technical and kindred workers	39,308	1,861	37,447
Farmers and farm laborers	65,114	326	64,788
Managers, officials, and proprietors, except farm	44,937	886	44,051
Clerical, sales, and kindred workers	183,752	448	183,304
Mechanics and repairmen	38,945	504	38,441
Tailors and tailoresses	12,644	2,055	10,589
Tool makers and die makers and setters	6,506	567	5,939
Other craftsmen, foremen, and kindred workers	111,900	2,412	109,488
Operatives and kindred workers	134,487	1,131	133,356
Service workers	146,722	612	146,110
Miscellaneous	131,960	598	131,362

[1] College professors and instructors in fields shown separately have been grouped with each specific field.
[2] Includes dentists, osteopaths, veterinarians, and professors and instructors of medical sciences.
[3] Includes agricultural and biological scientists, geologists and geophysicists, mathematicians, physicists, and miscellaneous natural scientists.
[4] Includes economists, psychologists, statisticians and actuaries, and miscellaneous social scientists.
[5] Includes designers, draftsmen, radio operators, surveyors, medical and dental technicians, testing technicians, and technicians not specified.
[6] Excludes 1,182,887 persons not in the labor force, principally housewives, children, and others with no reported occupation.

Both the 1924 and 1952 Acts provided [13] that ministers of religion and their families could enter as nonquota immigrants. The religious denomination seeking the services of the minister must file a visa petition with the Immigration and Naturalization Service, similar to the petition filed for first preference status. It must certify that the beneficiary of the petition has carried on the vocation of minister at least two years prior to application for admission. Since enactment of the 1952 law, a total of 1,993 ministers of religion and their 1,379 spouses and children have been admitted to the United States as nonquota immigrants. In addition, 654 clergymen and religious workers were admitted to this country as first preference quota immigrants.

[12] Secs. 9 and 12, Act of Sept. 11, 1957 (71 Stat. 639), as amended by Act of August 21, 1958 (72 Stat. 699).
[13] Sec. 4(d), Immigration Act of May 26, 1924 and Sec. 101(a)(27)(F), I and N Act.

From July 1, 1951 through June 30, 1956, there was special legislation in effect[14] authorizing the admission of sheepherders as permanent residents excepted from the normal quota limitations for immigrants from Spain. Sheepherders admitted totaled 988. In recent years Spanish sheepherders have been admitted only as temporary workers.

While the preference priority for aliens with skills needed in the United States has had no great numeric impact, this provision of the law has made it possible for the Defense Department and certain other Government agencies, as well as private organizations, including research foundations and hospitals to obtain the services of highly trained and skilled persons who might otherwise have been precluded from admission to the United States.

FAMILY UNITY

For many years Congress has favored the admission of relatives of American citizens and alien residents into the United States. This Congressional intent is demonstrated clearly by a series of legislative acts, beginning in 1921 and extending to the present. There has been a steady, unabated trend toward making easier the admission of such relatives. Each provision of the law dealing with the subject subsequent to the First Quota Act of May 19, 1921, has facilitated the admission of such relatives.

The Act of May 19, 1921, which provided for the first quota restrictions upon immigration, nevertheless exempted minor children (under age 18) of American citizens from the quota restrictions[15]. It also provided that, as far as possible, preference should be given to the immediate families and fiancees of citizens and resident aliens. Unfortunately, no statistics are available by which the efficacy of the provisions in the 1921 law affecting the admission of relatives can be measured.

The Immigration Act of 1924[16] made several changes from the 1921 Act in regard to admission of relatives. First, wives of citizens were granted nonquota status instead of preference within the quotas. The significance of this change is that there is no numerical limitation on the admission of classes accorded nonquota status, whereas the number of immigrants of preference classes admissible under the quotas is still determined in large part by the size of the quota of the country from which they come. Previous to the passage of the 1924 Act, wives of citizens from countries with filled quotas might have had to wait several years before being admitted to the United States.

Added to the classes given preference within the quotas under the 1924 Act[17] were unmarried children between the ages 18 and 21, and husbands of citizens. Unlike the 1921 Act, the Immigration Act of 1924 gave no preference to relatives of resident aliens, an omission which was soon reversed in a Joint Resolution of Congress enacted on May 29, 1928.

The 1928 Act was the first in a series of liberalizations in the provisions affecting the admission of relatives. The Congressional intention to hasten the reuniting of families is made especially clear by the fact that these early liberalizations in provisions dealing with relatives came at a time when the quota laws were becoming more restrictive.

Three major changes in the 1924 law were made by the 1928 Act: unmarried children (under age 21) of citizens were given nonquota status; husbands of citizens by marriages which occurred before June 1, 1928, were given nonquota status; and wives and unmarried children under the age of 21 of resident aliens were given second preference within the quotas (after the 50 percent to the various relatives of citizens and the skilled agriculturists granted first preference)[18].

The need for this grant of preference to relatives of alien residents in order to alleviate separation of families is graphically demonstrated by the following table, showing the percentage of quota visas issued to classes having preference before and after approval of the 1928 Act. This 1928 amendment to the Immigration Act of 1924 did not materially alter the composition of immigration from many countries. However, in the total quota immigration of countries with a high demand for quota visas, the percentage of immigrating relatives of citizens and resident aliens increased sharply.

Table 3. Preference Quota Visas Issued, by Specified Quota Areas: Years ended June 30, 1925—1932*

Quota area	1925—1928		1929—1932			
	Quota visas issued		Quota visa issued			
	Total number	Percent issued to relatives of citizens	Total number	Percent issued to relatives		
				Of citizens	Of aliens	Total
Italy	14,228	43.6	15,905	53.7	40.4	94.1
Poland	23,928	27.2	16,257	30.2	43.6	73.8
Turkey	399	49.9	778	50.0	34.4	84.4
U.S.S.R.	8,992	35.2	7,250	27.9	27.8	55.7

* Source: Visa Work of the Department of State and the Foreign Service. June 1, 1957, pp.47-54. Dep't. State Publ. 6510.

[14] Act of June 30, 1950 (64 Stat. 306), Act of April 9, 1952 (66 Stat. 50), and Act of Sept. 3, 1954 (68 Stat. 1145).
[15] Sec. 2(a), Act of May 19, 1921 (42 Stat. 5).
[16] Sec. 4(a), Immigration Act of 1924 (43 Stat. 153).
[17] Immigration Act of 1924, Sec. 6(a)(1) and Sec. 6(b).
[18] Sec. 3, Act of May 29, 1928 (45 Stat. 1009).

The 1928 Act also gave nonquota status to husbands of citizens by marriages occurring before June 1, 1928. The Act of July 11, 1932, revised this provision by moving the date of marriage to July 11, 1932, for purposes of determining whether a husband of a citizen was entitled to nonquota status[19]. It is difficult to assess the effects of this measure statistically, because the depression so thoroughly affected the flow of immigrants.

A similar statute was passed in 1948, granting nonquota status in cases in which the husband had married prior to January 1, 1948[20]. The immediate consequence of this act was a rise in the number of husbands of citizens admitted as nonquota immigrants under the 1924 Act from 553 in 1948 to 3,168 in 1949, an increase of nearly 500 percent (as compared to an increase of slightly more than 10 percent in the total yearly immigration from 1948 to 1949)[21].

Effects of this 1948 Act were short-range, however, and the number of husbands of citizens admitted as nonquota immigrants dropped to 1,453 in 1950, 822 in 1951, and 793 in 1952. This result suggests that the provision of the law favoring husbands is utilized largely by husbands of American citizens by recent marriages. The Immigration and Nationality Act of 1952 finally gave all spouses of American citizens nonquota status[22].

A further liberalization in the provisions affecting the admission of relatives was the increase in the amount of the quota available to the preferred classes. It will be remembered that although the 1924 Act had set a maximum of 50 percent on the amount of the quota to be available to the preferred classes, the amendments of 1928 had made available to the newly established second preference classes the remaining 50 percent of the quota. The Immigration and Nationality Act further advanced the accessibility of the quotas to the preferred groups.

As noted above, under the Immigration and Nationality Act, the first 50 percent of each quota is available to specially skilled or "urgently needed" immigrants and their spouses and children. The next 30 percent of the quota, plus whatever portion of the quota available to the group given higher preference is unused, is available to parents of United States citizens; and the remaining 20 percent, plus whatever portion of the quota number is unused, is available to spouses or children of resident aliens. Twenty-five percent of whatever portion of the quota is not used by these first three groups is available to brothers, sisters, sons, or daughters (i.e., sons or daughters over the age of 21) of American citizens. This last, or fourth preference, group was given preference for the first time in the Immigration and Nationality Act[23].

It might be suggested that the consigning of the first 50 percent of the quotas to skilled immigrants and their spouses and children would work to the disadvantage of relatives of citizens and resident aliens, but in practice this generally has not been the case, for, as has been pointed out, the first preference group has used few of the quota numbers available to it. There are some conspicuous exceptions. For example, in fiscal year 1961, 50 percent of the quota for Italy, a country with a backlog of applications for admission, was used by this first preference group. In such a case, the granting of 50 percent of the quota to skilled immigrants would probably make more difficult the admission of relatives.

The provision granting up to 100 percent of the annual quota to preference classes has been one of the most controversial of those affecting the admission of relatives. The chief criticism of the provision was that it "may well cut off the immigration of the little fellow, the man of no superior education or technical training, who helped America become great"[24]. Perhaps the best answer to this criticism is the fact that the great bulk of the immigrants admitted since the passage of the Immigration and Nationality Act in 1952 have not been granted preference status. However, a lower maximum percentage of quota available to relatives could prevent the early reuniting of families for countries using most of their quota for preference classes.

Several special acts of Congress have benefited relatives of citizens and resident aliens. The most notable of these measures was the War Brides Act of December 28, 1945, which was to expire three years after passage. It was passed to expedite the admission to the United States of alien spouses and alien minor children of citizen members of the United States Armed Forces by waiving the requirement that they file a petition to show that they were entitled to nonquota status and by waiving certain of the physical health requirements[25]. During the five years following the passage of the Act,

---

[19] Act of July 11, 1932 (47 Stat. 656).
[20] Act of May 19, 1948 (62 Stat. 241).
[21] Total immigration rose from 170,570 in 1948 to 188,317 in 1949.
[22] Sec. 101(a)(27)(A), I and N Act. (66 Stat. 163).
[23] Sec. 203(a), Act of June 27, 1952 (66 Stat. 163).
[24] Hearings, President's Commission on Immigration and Naturalization, 82nd Cong., 2nd Sess., 1952, p. 475.
[25] Act of Dec. 28, 1945 (59 Stat. 659). cf. Immigration Act of 1924, supra, Sec. 9.

119,693 immigrants were admitted, of which number 114,691 were wives of members of our Armed Forces.

Alien fiancees and fiances of citizen members of the Armed Forces who came from countries with exhausted quotas were admitted as nonimmigrant temporary visitors for a three-month period by an act passed in 1946[26]. After marriage their status was adjusted to that of permanent residents under the War Brides Act.

The Displaced Persons Act of 1948 gave third preference to displaced persons who were the blood relatives of citizens or lawfully admitted alien residents of the United States[27]. During 1949 and 1950, 6,222 relatives were admitted under this section. A 1950 amendment to the Displaced Persons Act permitted the issuance of up to 2,500 immigrant visas to "residents and nationals of Greece" eligible for admission to the United States as first and second preference quota immigrants under the 1924 Act[28]. Under this amendment, 1,477 relatives of citizens and alien residents were admitted.

The Refugee Relief Act of 1953[29] granted a number "not to exceed" 15,000 visas to persons of Italian ethnic origin who qualified for a second, third, or fourth preference under the Immigration and Nationality Act of 1952. Similarly, up to 2,000 nonquota visas were made available to Greek ethnics and 2,000 to Dutch ethnics entitled to these preferences as relatives.

In 1954, this section was amended in a way which greatly benefited relatives of Italian, Greek, and Dutch ethnic origins. The allowances for the relatives of the three ethnic origins, as provided in the original Refugee Relief Act of 1953, were but a small portion of the totals of 60,000, 17,000, and 17,000 visas available to all persons of those three ethnic groups. The 1954 amendment permitted the issuance of visas "bilaterally within each of the three ethnic groups"[30]. This meant that relatives could be issued visas from the entire quotas for the ethnic groups, rather than from only the portions originally designated for them.

The Refugee Relief Act also granted priority, within other quotas it established, to specially skilled immigrants and to certain relatives of citizens and resident aliens[31].

Table 4. Relatives Admitted Under Section 4, Refugee Relief Act of 1953: Years ended June 30, 1954—1958

Ethnic origin	Total	1954	1955	1956	1957	1958
Italians	46,308	613	18,183	24,114	3,394	4
Greeks	7,518	59	2,654	3,814	991	..
Dutch	930	43	429	275	183	..

Some liberalizations in permanent policy regarding admission of relatives of citizens and resident aliens have been made. An act passed September 1957 authorized waivers of excludability on tubercular, criminal, and document fraud grounds to the spouses, children, or parents of United States citizens or resident aliens[32]. These waivers of excludability were incorporated permanently into the Immigration and Nationality Act by the Act of September 26, 1961[33].

More significant from the standpoint of reuniting families was the provision (Sec. 12) in the September 1957 Act which permitted the issuance of nonquota visas to alien beneficiaries of second or third preference petitions approved by the Attorney General prior to July 1, 1957. The purpose of this provision was to provide relief to families with relatives in countries with a long waiting list for immigrant visas. Precisely this result occurred. Under the provision, 24,897 immigrants were admitted nonquota who would ordinarily have been charged to quotas. The distribution of these immigrants by country illustrates the working of this provision.

Table 5. Relatives Admitted Under Act of September 11, 1957: Years ended June 30, 1958—1961

Country of birth	Total admitted
Greece	1,880
Ireland	5
Italy	17,832
United Kingdom	15
Poland	710
Sweden	1

The termination by the 1957 Act of the mortgages on quota left from the Displaced Persons Act of 1948[34] was of indirect, though quite tangible, benefit to relatives from countries with partly mortgaged quotas.

An act was passed by Congress in September 1959, giving nonquota status to any alien who "is registered on a consular waiting list . . . under a priority date earlier than December 31, 1953, and . . . is eligible for a quota immigrant status . . ." as second, third, or fourth

[26] Act of June 29, 1946 (60 Stat. 339).
[27] Sec. 6(c), Displaced Persons Act of 1948 (62 Stat. 1009).
[28] Sec. 3(b)(4), Act of June 16, 1950 (64 Stat. 219).
[29] Secs. 4(a)(6), 4(a)(8) and 4(a)(10), Act of Aug. 7, 1953 (67 Stat. 400).
[30] Act of Aug. 31, 1954 (68 Stat. 1044).
[31] Sec. 12(2), Refugee Relief Act of 1953.
[32] Secs. 5, 6, and 7, Act of September 11, 1957 (71 Stat. 639).
[33] Secs. 12, 14, and 15, Act of September 26, 1961 (P.L. 87-301), which amended Sec. 212 (f) of the I. and N. Act and added new Sections 212 (g) and 212 (h).
[34] Sec. 10, Displaced Persons Act of 1948, supra.

preference under the Immigration and Nationality Act . . . "on . . . basis of a petition approved by the Attorney General prior to January 1, 1959".[35] Immigrants admitted under this section of the law in fiscal years 1960 and 1961 totaled 21,803. This Act amended the Immigration and Nationality Act to change the status of unmarried sons and daughters of citizens over the age of 21 from fourth preference to second preference, and also provided that the relatives entitled to fourth preference be given " a preference of not exceeding 50 per centum of the immigrant visas available for issuance for each quota area under this paragraph . . ."[36] Thus a larger portion of the quota numbers not used by the higher preference groups was made available to relatives in the fourth preference group than had previously been at their disposal. Nonquota visas also were made available, under the Act of September 22, 1959, to aliens eligible to enter the United States as second or third preference relatives under the Immigration and Nationality Act if they had filed a petition under the Refugee Relief Act before January 1, 1959[37]. In fiscal years 1960 and 1961, 1,766 relatives were admitted under this provision.

Under the 1957 and 1959 Acts, 48,466 relatives who normally would have been preference quota immigrants were admitted nonquota in the years 1958—1961. During this same period, 55,545 aliens were admitted as second, third, or fourth preference quota immigrants.

The Act of September 26, 1961 (Sec. 25(a)) authorized nonquota visas to beneficiaries of second and third preference petitions filed prior to July 1, 1961, thereby making approximately 16,000 immigrants eligible for nonquota visas.

There is a great deal of unevenness in the operation of the provisions in the immigration laws affecting the admission of relatives of citizens and resident aliens due to the differences in the use of these measures by various countries, as shown in the table below.

Excepting admissions under the War Brides Act, the distribution, by country, of relatives admitted as nonquota immigrants has been substantially more uneven. For example, taking into consideration only those immigrants admitted as nonquota relatives of United States citizens under either the 1924 Act or the Immigration and Nationality Act, one finds that 71,431 Italians were admitted as relatives of this description from 1946 through 1961, as compared to only 3,622 British and 550 Irish.

Total immigration from Great Britain exceeded that from Italy for the same period. The bulk of the British immigrants entered the United States as nonpreference quota immigrants, since there were more than enough quota numbers available and there was no necessity for them to file a petition for preference quota status in order to gain admission. Presumably, there are many more relatives of citizens and alien residents in the total immigration from Great Britain (and other countries with similarly undersubscribed quotas) than is indicated by the number entering with preference or nonquota visas.

The over-all effect of the laws affecting the admission of relatives is perhaps best seen in the percentage of relatives in the total immigration for the years following the passage of each piece of legislation, as depicted in Chart 1.

This Chart shows that, for the most part, the peaks in percentage of relatives in the total immigration can be related to the passage of legislation. The sharp increase in percentage of relatives admitted from 1928 to 1929 is largely due to the establishment of the second preference category for wives and children of resident aliens[38]. The continued rise in percentage of relatives of citizens and resident aliens in the early 1930's is due to the fact that the excluding provision of law relating to persons "likely to become a public charge" was not applied to relatives in the preference and nonquota categories, on the grounds that the relatives in the United States would "prevent, if financially able" the intending immigrant from becoming a public charge[39].

The drop in percentage of relatives in the total immigration during World War II follows the general rule that preference and nonquota visas are less sought when there is less pressure

Table 6. Total Immigrants Admitted as Relatives with Preference Status, 1946—1961 (1924 Act, Immigration and Nationality Act, D.P. Act of 1948)

Country	Preference relatives admitted	Total quotas available	Percent by relatives
Czechoslovakia	4,666	45,849	10.2
Germany	29,763	414,025	7.2
Greece	3,419	4,930	69.4
Ireland	1,280	284,775	0.4
Italy	50,870	91,208	55.8
Poland	22,103	104,060	21.2
Sweden	656	52,853	1.2
United Kingdom	4,736	1,048,296	0.5
Yugoslavia	5,526	14,516	38.1

[35] Sec. 4, Act of September 22, 1959 (73 Stat. 644).

[36] Sec. 3, Act of Sept. 22, 1959. cf. I. and N. Act, Sec. 203(a)(4).

[37] Ibid., Sec. 6.

[38] An estimated 24,036 aliens, 8.6 percent of the total immigration in 1929, entered as wives and children of resident aliens.

[39] The Immigration Work of the Department of State and its Consular Officers, pp. 3, 4, U. S. Gov. Printing Office 1932.

on the prospective immigrant to obtain them in order to gain admission, and because immigration was largely Western Hemisphere immigration. The sharp rise in percentage of relatives in the total immigration in 1946 is directly attributable to the passage of the War Brides Act and the consequent influx of wives of members of the Armed Forces (war brides made up 41 percent of the total immigration in 1946). The drop in percentage of relatives for the years 1950—1952 is a result of the expiration of the War Brides Act. The small peak in 1954—1955 was a result of the Refugee Relief Act of 1953 and the amendment of 1954. The 1958 high is largely accounted for by admissions under the Act of September 11, 1957[40].

Several conclusions can be drawn regarding the effect of the statutes and provisions affecting admission of relatives of countries with varying demands for immigrant visas. First, the proportion of relatives in the total immigration from a nation varies with the pressure for immigrant visas within that country. The second conclusion is that the provisions of the law favoring the admission of relatives have an adverse effect on immigration of nonpreferred classes from countries with oversubscribed quotas, but do not affect the composition of the immigration from countries with undersubscribed quotas. The third conclusion is that these provisions of the law have materially assisted in the reuniting of families from countries with oversubscribed quotas.

Even with these provisions in the 1924 Act and the Immigration and Nationality Act, not all relatives from such countries have been able to gain admission to the United States without a wait of several years. For this reason, the Acts of September 1957, September 1959, and September 1961 provided that certain relatives could be admitted nonquota. Admissions under these Acts indicate that there were a substantial number of relatives from Italy, Greece, Portugal, Yugoslavia, and a number of other countries who had long been on consular waiting lists.[41]

There can be little doubt that a large number of these relatives living in countries with oversubscribed quotas could not have been admitted if visas were issued on a first-come, first-served basis within the quota limitations, and no preferences were granted.

[40] 26.3% of total immigration in 1958 was comprised of preference quota and nonquota relatives, compared to 15.5% in 1957. 7% of the rise is due to admissions under the Sept. 11, 1957 Act.

[41] In fiscal years 1960 and 1961, 13,903 relatives of citizens and resident aliens who had been on consular waiting lists since the beginning of 1954 (or longer) were admitted.

CHANGES IN THE REGULATIONS

UNDER TITLE 3, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 26, No. 240, December 14, 1961,* Presidential Proclamation Number 3441, dated December 1, 1961.

UNDER TITLE 8, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 26, No. 193, October 6, 1961,* Sections 103.1(g); 212.7(a)(b); 242.7a; 245.1 (Application); 249.1; 299.1 (Prescribed forms); and 340.11.

Vol. 26, No. 225, November 22, 1961, Sections 103.7(c); 212.7(b); Part 223; Section 264.1(c); Part 282 (Headnote); and Sections 299.1 (Prescribed forms); 332a.2 (Official forms prescribed for use by clerks of naturalization courts); and 499.1 (Prescribed forms).

Vol. 26, No. 226, November 23, 1961, Part 205.

Vol. 26, No. 236, December 8, 1961, Sections 252.1(c); 253.1(d); and 253.1(e)(f) (added).

Vol. 26, No. 237, December 9, 1961, Sections 237.2; 237.5; Part 243; and Section 299.1 (Prescribed forms).

UNDER TITLE 22, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register, Vol. 26, No. 195, October 10, 1961,* Sections 41.12; 41.45; 41.65; 41.91(d); and 42.91(c).

Vol. 26, No. 207, October 26, 1961, Sections 41.91(a)(9); 41.91(a)(10)(i); 41.115; 42.12(a); 42.27; 42.64(b); 42.91(a); 42.115; and 42.122(a).

HIGHLIGHTS OF SELECTED RECENT COURT DECISIONS

DEPORTATION

Hernandez-Avila v. Boyd and Kennedy. Hebeas Corpus; Release Pending Judicial Review of Deportation Order—Excessive Administrative Bail. **(C.A. 9, No. 17442, September 1, 1961).**

This appeal was from the denial by the District Court of the appellant's motion in habeas corpus proceedings for his immediate release from custody or for reduction of his administrative bail. He contended on his appeal that having established prima facie United States citizenship by naturalization he is entitled to be released from custody or if not so entitled that the amount of his administrative bail is excessive.

He is a native of Mexico who became a citizen of the United States by naturalization in 1944. He left the United States in 1951 and resided in Mexico until January 1961 when he was readmitted to this country as a nonimmigrant alien visitor for pleasure. The following month the Service instituted deportation proceedings against him and in that connection took him into custody and fixed his administrative bail at $25,000. From the order fixing the amount of bail he did not appeal.

In the deportation proceedings the government contended that he lost his citizenship by his residence in Mexico from 1951 to 1961 under 8 U.S.C. 1484(a)(1) and that he was deportable under 8 U.S.C. 1252(a)(9) for having failed to maintain his nonimmigrant visitor's status by seeking gainful employment. The proceedings resulted in an order for his deportation which became final when his appeal from it was dismissed by the Board of Immigration Appeals on April 4, 1961.

Subsequently he filed his petition for habeas corpus in the District Court and an order to show cause was issued and answered. Thereupon he filed (1) an amended complaint for a declaratory judgment on the issue of his citizenship and (2) a motion for his immediate release from custody or for reduction of bail. It is from the denial of (2) that this appeal was taken, (1) having been answered but not heard on the merits.

The Court of Appeals held that while the appellant is entitled to a judicial determination on the issue of his citizenship he may be held in custody pending such determination (**Ng Fung Ho** v. **White,** 259 U.S. 276 and cases cited therein) and found no error in the District Court's denial of the petition for writ of habeas corpus.

On the question of whether the administrative bail of $25,000 is unreasonably high there was evidence that the appellant had fled from Texas to Mexico in 1951 to avoid prosecution on an embezzlement charge and that when he returned to the United States in 1961 he was being sought by Mexican authorities in connection with an $80,000 embezzlement in that country. Additionally he had on two other occasions fled a jurisdiction when he was threatened with prosecution; these facts indicated to the Court of Appeals that he is a poor bail risk.

The determination of the Attorney General and his authorized representative with respect to bail can be overturned only when there is an abuse of discretion (**Carlson** v. **Landon,** 342 U.S. 524) and the Court of Appeals found no such abuse in this case in setting the appellant's bail at $25,000, nor could it find that the district judge abused his discretion in refusing to fix bail at a lesser amount.

Affirmed.

Leong Leun Do v. Esperdy. Adjustment of Status Under Refugee Relief Act of 1953—Judicial Review of Denial; Definition of Residence; Country of Deportation. **(S.D., N.Y., Civ. 151-303, September 25, 1961).**

A native of China (mainland) went to the Dominican Republic in 1949 to establish a business and while there he obtained a certificate of residence and a re-entry permit. In 1950 he came to the United States as a temporary visitor to take care of matters involved in the estate of a deceased brother and was ordered deported after he had overstayed the time for which he was admitted.

He then applied for an adjustment of his status to that of a permanent resident under section 6 of the Refugee Relief Act of 1953, as amended (50 U.S.C. App. 1971(d)), but his application was denied after findings that his last foreign residence was in the Dominican Republic and that he had failed to show that he was unable to return there because of persecution or fear of persecution. For that showing he relied merely on the fact that the Dominican Republic declined to receive him as a deportee from the United States. (Formosa also declined but Hong Kong accepted him after he declined to designate a country of his choice.)

This declaratory judgment action followed to review the denial of his application and the order directing his deportation to Hong Kong. He contended that China was the country of his last residence but even assuming that he was last a resident of the Dominican Republic he should have the benefits of 50 U.S.C. App. 1971(d) because that country has refused permission for his return; and that his proposed deportation to Hong Kong is void because no attempt was first made to return him to mainland China.

The court found that the definition of the term "residence" in the Immigration and Nationality Act (8 U.S.C. 1101(a)(33)) is applicable to the Refugee Relief Act of 1953 and that the plaintiff's indicia of residence and the announced intention of the purpose of his visit to this country were substantial evidence to sustain the determination that the Dominican Republic was his last residence. While that definition states that intention is not to be considered in determining residence the court assumed this to mean that the plaintiff cannot give evidence of his intention as to residence, but that the Government is not prevented from showing intention on his part to establish residence based on his actions.

It also found that Congress was quite precise when it allowed for adjustment of status under the Refugee Relief Act because of inability to return to certain specified countries. That inability had to be based on persecution or fear of persecution and not, as in this case, because the countries refused to accept the alien as a deportee. **(Cheng Lee King** v. **Carnahan,** 253 F.2d 893, C.A. 9, **contra).**

As to the final contention the court could not believe that it was serious but if serious the court could not take it seriously. The most favorable result that the plaintiff could obtain in proceeding as he contended would be deportation, as now ordered, and the court could see no reason for affording him additional time to stay in this country.

Summary judgment for defendant.

Rule in Rowoldt v. Perfetto. Langhammer v. Hamilton. Judicial Review of Deportation Order Based on Communist Party Membership; Fraudulent Visa. **(C.A. 1, No. 5862, Nov. 3, 1961).**

This was an appeal from the District Court's dismissal

of the appellant's complaint for a review of a final order of deportation (194 F. Supp. 854). He contended on appeal, as in the court below, that (1) the deportation order was invalid since his Communist Party membership was not proved but even if proved was involuntary by operation of law under 8 U.S.C. 1182 (a)(28)(I)(i); (2) the record disclosed no willful misrepresentation of a material fact when he obtained his visa; (3) it was error not to consider discretionary relief form deportation under 8 U.S.C. 1251a.

In affirming, the Court of Appeals agreed with the court below that the Supreme Court's holding in **Rowoldt v.Perfetto,** 335 U.S. 115, established no rule of universal application that the testimony of an alien, standing alone, is insufficient to establish the requisite "meaningful association" essential to sustain a deportation order based on Communist Party membership and that the testimony of the alien may well in and of itself establish the requisite membership, as it did here. It also agreed that the nicety of a medical education was not what Congress had in mind when it used the phase "employment, food rations, or other essentials of living" in 8 U.S.C. 1182(a)(28) (I)(i) to relieve an alien from exclusion from the United States because of such membership. (**Grzymala-Siedlecki** v. **U. S.,** 285 F.2d 836, C. A. 5, 1961, distinguished.)

As to the second contention the court found that the fact of his party membership was an eminently material matter with respect to the issuance of his visa since its mere disclosure would have revealed that he was a member of an excludable class of aliens, and that the record supported the finding of willful concealment.

The court found no merit in his third contention for it could not say that his application for discretionary relief was not considered; moreover, under the plain words of 8 U.S.C. 1251a, to be entitled to relief an alien must be "otherwise admissible at the time of entry" which the appellant was not because of his Communist Party membership at that time.

NATURALIZATION

Petition of Sittler. Attachment to Principles of The Constitution. **(S.D., N.Y., No. 713425, August 24, 1961).**

Petitioner was born in Ohio in 1916. In 1937, at the age of 21 and after two years of college, he left the United States for Germany. His asserted purpose was to further his education and culture in the land from which his grandparents had come. He attended German Universities and worked as a teacher and translator until 1940. In September 1939, immediately on the outbreak of World War II, he applied for German citizenship and in the Spring of 1940 he was naturalized. He denied taking an oath of allegiance to Germany but admitted voluntary renunciation of his United States citizenship.

His first marriage in the United States had proved unsuccessful. In September 1940, he married his present wife in Germany. She possessed both British and German nationality. He was drafted into the German Army in 1940 and after basic training was transferred to radio service. He voluntarily joined the Nazi Party in 1942 and engaged in propaganda work all during World War II in the interest of Germany and against the United States. In the final hours of the war he was in the uniform of the Elite S.S. Guard.

After the war he became a witness for the United States in the treason prosecutions of certain of his former associates in the German anti-American activities. While in the United States temporarily in that connection he was permitted to take employment and further his education. In 1950 he received his Ph.D from Northwestern University and in the same year he left the United States and was readmitted for permanent residence. He has followed a teaching career in the United States but has found difficulty in maintaining positions because of his Nazi background. Though his wife is with him in this country, his eight children—four born in Germany and four in the United States—have been returned to Germany to live with friends because of the petitioner's financial plight.

The petitioner complied with all the formal requirements for naturalization. The Designated Naturalization Examiner opposed the grant of the petition on the ground that the petitioner had failed to prove that during the five years preceding the filing of his petition he had been and still is attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, a prerequisite to naturalization under Section 316 of the I & N Act (8 U.S.C. 1427). Twenty witnesses composed of neighbors, pupils, colleagues, relatives, friends and an attorney of the Department of Justice who had questioned petitioner at length in 1946, all testified to his good conduct and habits. None had ever heard him say anything against the United States. All thought him attached to the principles of The Constitution and recommended him for citizenship.

The court said that the required attachment meant acceptance of the fundamental political habits and attitudes which prevail in the United States and willingness to obey resulting laws. The question, said the court, was whether the petitioner was sincere in declaring his attachment, etc. After reviewing the evidence at great length and in detail, the court said: "The conclusion is inescapable . . . that Sittler's application for citizenship is motivated, not by bonds of affection for the United States and attachment to the principles of the Constitution, but by the opportunistic demands of self-interest." The petitioner had failed to sustain his burden of proof of showing otherwise. The gift of citizenship is not to be conferred lightly, and certainly not to those as unworthy as petitioner, the court observed.

Petition denied.

RECENT ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each percedent decision. Copies of these decisions may be seen at any local office of the Immigration and Naturalization Service. Copies of these Interim Decisions may also be purchased on a yearly subscription basis ($3.25 per year, 75 cents extra for foreign mailing) from the Supertendent of Documents, Government Printing Office, Washington 25, D. C. The decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at Government Printing Office, Washington 25, D. C.)

Interim Decision Number 1129

(In the Matter of C—C—Y—. In Deportation Proceedings, A-10436785. Decided by Board of Imm. Appeals, February 28, 1961.)

Fair hearing—Deportation proceedings—Defects in original hearing cured by valid reopened hearing—Privilege against self-incrimination waived by voluntary pre-hearing statement —Validity of warrant of arrest unaffected by withdrawal of deportation order and reopening of proceedings.
(1) Defects in original deportation hearing in 1954 which may have arisen from failure to inform respondent of right to counsel and to provide an interpreter were cured when the proceedings were reopened in 1959 and the respondent was accorded a further hearing satisfying the requirements of due process.
(2) Respondent is not entitled to invoke the privilege against self-incrimination in respect to pre-hearing statement which was voluntarily given to Service investigating officer; such statement was admissible in evidence at the deportation hearing, although the special inquiry officer excluded it from the record.
(3) The warrant of arrest which initiated the deportation action in 1954 remained effective as authority for respondent's detention, despite withdrawal in 1959 of the original order of deportation and subsequent reopening of the proceedings.

Interim Decision Number 1130

(In the Matter of W—K—W—. In Deportation Proceedings, A-10828430. Decided by Board of Imm. Appeals, February 28, 1961.)

Deportability—Adverse court decision under section 503 of the Nationality Act of 1940 makes alien deportable.
(1) Where respondent was admitted in 1952 to prosecute an action under section 503 of the Nationality Act of 1940 and the court issued a final judgment in 1958 declaring that respondent is not a national or citizen of the United States following which respondent was notified of a departure date and failed to depart, it was held that the adverse judgment by the court in the section 503 proceedings without more required respondent's deportation.
(2) Hence, respondent was properly found deportable under section 241(a)(2) of the Immigration and Nationality Act as having remained in the United States in violation of law.
(Note: **Matter of T—**, Int Dec. No. 981, 8 I. & N. Dec. 244, distinguished.)

Interim Decision Number 1131

(In the Matter of T—. In Deportation Proceedings, A-12184655. Decided by Board of Imm. Appeals, March 13, 1961.)

Extension of stay—Authority to revoke—Failure to depart upon notice of revocation incurs deportability under section 241(a)(2).
(1) Respondent, admitted in December 1956 as a nonimmigrant exchange visitor and granted an extension of stay on June 19, 1960, to June 11, 1961, was informed on August 16, 1960, by the Service, upon latter learning that respondent had transferred from one exchange program to another without permission and contrary to regulations, that his extension of stay was revoked and that he was being granted until September 20, 1960, in which to leave the United States. Although respondent contended that revocation of his extension of stay was an arbitrary action which violated procedural due process, it was held that the Service has the authority to revoke an extension of stay granted without knowledge of the true facts.
(2) Thus, failure to depart after notice of revocation and a reasonable period to effect his departure renders respondent amenable to deportation under section 241(a)(2) of the 1952 Act as having "remained longer than permitted."
(3) By transferring from one exchange program to another without permission from the Service respondent violated the terms of his admission as an exchange visitor. Hence, he is also deportable under section 241(a)(9) of the 1952 Act for having failed to comply with the conditions of his nonimmigrant status .

Interim Decision Number 1132

(In the Matter of C—. In Visa Petition Proceedings, A-11760526. Decided by the Board of Imm. Appeals, April 21, 1961.)

Illegitimate child—Portugal—Mere acknowledgment by natural father insufficient to constitute legitimation or adoption.
(1) Under Portuguese law "perfilhacao" or acknowledgment of a child born out of wedlock unaccompanied by the marriage of the natural parents does not result in legitimation (**Matter of F—**, 7 I. & N. Dec. 448). Nor does it constitute the equivalent of a legal adoption which is no longer authorized in Portugal (cf. **Matter of P—**, Int. Dec. No. 1046, 8 I. & N. Dec. 527).
(2) Massachusetts adoption decree obtained by petitioner (natural father) for 17-year-old illegitimate son fails to qualify latter as "child" within meaning of section 101(b)(1)(E) of 1952 Act in view of requirement that adoption must take place while child is under the age of 14.

Interim Decision Number 1133

(In the Matter of J—. In Visa Petition Proceedings, A-11841872, A-11841873, A-12001860.. Decided by the Board of Imm. Appeals, April 24, 1961.)

Illegitimate child—British Guiana—Legitimation requires marriage of natural parents.
Under the law of British Guiana, acknowledgment or recognition by the natural father of a child born out of wedlock does not result in legitimation. The marriage of the natural parents is the only means of legitimating such a child.

Interim Decision Number 1134

(In the Matter of A—. In Section 245 Proceedings, A-8833595. Decided by Regional Commissioner; Approved by Assistant Commissioner, May 4, 1961.)

Adjustment of status—Section 245 of Act—Discretionary denial.
Ajustment of status under section 245 of the Act is denied in the exercise of discretion to a former official of a foreign government accused by that government of misappropriating its funds, whose continued presence in this country, in the opinion of the Department of State, would create an irritating factor in the relations between the United States and such foreign government.

Interim Decision Number 1135

(In the Matter of S—. In Deportation Proceedings, A-1138079. Decided by the Board of Imm. Appeals, May 5, 1961.)

Deportability — Subversive organization — Membership in Socialist Workers Party ground for deportation under section 241(a)(6).
(1) Evidence of record establishes that Socialist Workers Party between 1938 and at least February advocated overthrow of the Government of the United States by force or violence or other unconstitutional means.
(2) Alien who was member of Socialist Workers Party from 1938 to 1955, whose activities within the Party show that his membership was "meaningful," held deportable under section 241(a)(6) of the 1952 Act.
(3) That Socialist Workers Party is permitted to engage in political activity in State of Wisconsin which forbids such activity by any organization advocating forcible overthrow of the Government is not controlling in immigration proceeding where determination of deportability is based upon record created at the deportation hearing.

Interim Decision Number 1136

(In the Matter of C—H—. In Section 245 Proceedings, A-11908700. Decided by Regional Commissioner, March 14, 1961; Approved by Assistant Commissioner.)

Adjustment of Status—Section 245—Exclusion order does not bar eligibility when alien has been inspected and paroled—Alien's good faith as favorable element in exercising discretion.
Native and citizen of Guatemala with unexpired visitor's visa who was inspected and paroled into the United States and, after special inquiry officer hearing was ordered excluded

as an immigrant not in possession of proper entry documents meets **eligibility** requirements for adjustment of status under section 245 of the 1952 Act and merits favorable exercise of **discretion** upon findings that she was a **bona fide** nonimmigrant when she first obtained her vistor's visa from the U. S. Consul; that thereafter on two occasions when she entered the United States she complied with the terms of her admission as a nonimmigrant and departed within the time authorized; and that at the time she last applied for admission she was acting in good faith, although under an erroneous assumption, and made no attempt to mislead the inspecting officer as to her intent to reside here permanently.

Interim Decision Number 1137

(In the Matter of C—. In Visa Petition Proceedings, A-11695615. Decided by the Board of Imm. Appeals, May 17, 1961.)

Legitmation—Michigan—Acknowledgment by natural father.
(1) Child born out of wedlock in Italy is not legitimated either under Italian or Michigan law by natural father's "Act of Acknowledgment" executed before Italian Vice Consul in Detroit, Michigan, and recorded in a public office in Italy.
(2) Under Michigan law, the father may legitimate his child at any time by acknowledging paternity in a written instrument executed in the same maner as provided for deeds of real estate (before two witnesses) and by recording the instrument in the probate office of the county where the father has his legal residence.

Interim Decision Number 1138

(In the Matter of Yatch **Caribbean Star.** In Fine Proceedings, MIA-10/61.235. Decided by the Board of Imm. Appeals, May 12, 1961.)

Fine—Payoff and/or discharge of alien crewman without permission—Temporary departure from United States without termination of services and with intention of returning to vessel.
Liability to fine for paying off and/or discharging an alien crewman is not incurred where the crewman who has been paid earned wages plus a $50 advance temporarily leaves the United States for Nassau to obtain papers necessary for his promotion to Master of the vessel; his delay in rejoining the vessel has resulted from circumstances beyond the control of any of the parties concerned; and it is still intended that he will rejoin the vessel, when repairs are completed, as its Master.
Basis for Fine: Act of 1952—Section 256 (8 U.S.C. 1286).

Interim Decision Number 1139

(In the Matter of F—. In Visa Petition Proceedings, A-12027843. Decided by the Board of Imm. Appeals, May 5, 1961.)

Marriage—Effect of annulment—Validity of marriage contracted in Belgium prior to annulment of preexisting marriage—Adopted child—Adoption proceedings by wife in maiden name without participation of husband.
(1) Where beneficiary did not obtain annulment of preexisting marriage until three years after ceremonial marriage to petitioner in Belgium in 1955, general rules relating to effect of nullity decrees will be applied, absent evidence that the law of Belgium is otherwise, to uphold validity of beneficiary's marriage to petitioner.
(2) Notwithstanding that adoption proceedings under Belgian law were solely by wife in her maiden name, minor beneficiary qualifies as "adopted child" of petitioner/husband upon showing made that **bona fide** family relationship has existed since adoption and that requirements as to custody and residence have been satisfied.

Interim Decision Number 1140

(In the Matter of M—C—. In Deportation Proceedings, A-10466862. Decided by the Board of Imm. Appeals, May 17, 1961.)

Petty offense—Section 4, Act of September 3, 1954—State statute punishing crime either as felony or misdemeanor—Benefits limited to aliens "otherwise admissible."
(1) Conviction of crime (statutory rape) which is punishable under California law in the discretion of the court either as felony or as misdemeanor (imprisonment in county jail for not more than one year) may be treated as conviction for "petty offense" within section 4, Act of September 3, 1954, where respondent was sentenced to six months in county jail, sentence suspended, and placed on probation. (Cf. **Matter of C—O—**, 8 I. & N. Dec. 488.)
(2) While respondent qualifies as petty offender, he was not "otherwise admissible" at time of last entry, not being in possession of required immigrant visa, and, hence, he cannot be granted section 4 exemption in respect to such entry.

Interim Decision Number 1141

(In the Matter of C—Y—L—. In Deportation Proceedings, A-10672544. Decided by the Board of Imm. Appeals, May 23, 1961.)

Evidence—Blood tests—Incompatibility of blood overcomes effect of prior admission as United States citizen.
Blood grouping tests which establish the incompatibility of blood between a claimant to citizenship and his alleged parents constitute clear, unequivocal, and convincing evidence that warrants disregard of prior decisions admitting claimant as a United States citizen.

Interim Decision Number 1142

(In the Matter of P—. In Deportation Proceedings, A-8421656. Decided by the Attorney General, May 24, 1961.)

Recommendation against deportation—Effective when made at time of resentencing unless sole purpose in granting **coram nobis** was to provide opportunity for recommendation.
If the court's **sole** basis in granting a writ of error **coram nobis** is to provide an opportunity to make a recommendation against deportation, the subsequent recommendation is ineffective. If it is clear that this is not the sole basis upon which the court acted—as when **coram nobis** is granted because of a constitutional defect in the prior conviction—the recommendation against deportation made following retrial satisfies the requirement in section 241(b) of the Act that it must be made at the time of "first imposing judgment." (Overrules **Matter of P—**, 8 I. & N. Dec. 689.)

Interim Decision Number 1143

(In the Matter of S—. In Visa Petition Proceedings, A-11760497. Decided by the Board of Imm. Appeals, May 25, 1961.)

Marriage—Not valid where contracted in New Hampshire before Massachusetts divorce decree became final.
Beneficiary's marriage to petitioner in New Hampshire on December 28, 1960, which occurred nine days after beneficiary had obtained decree **nisi** in Massachusetts divorce proceedings against first husband, is ruled void. Under the law of Massachusetts, a decree **nisi** does not become final until six months have elapsed from the date of its entry.

Interim Decision Number 1144

(In the Matter of S—. In Visa Petition Proceedings, A-11673066. Decided by Assistant Commissioner, July 10, 1961.)

First perference status—Tailor—Qualifying experience must be acquired after age 21.
First preference status will not be accorded to a tailor unless he has had at least five years' journeyman experience in all the hand and/or machine sewing operations necessary to make an entire garment such as a suit, dress, or overcoat, and such experience was acquired after the age of 21 years. (Supersedes **Matter of B—S—, Inc.**, 7 I. & N. Dec. 423.)

Interim Decision Number 1145

(In the Matter of A—. In Deportation Proceedings, A-4872170. Decided by the Board of Imm. Appeals, March 31, 1961.)

Suspension of deportation—Timely application—Fee requirement cannot be waived.
(1) An unsigned copy of an application for suspension of deportation under section 244(a)(1) of the 1952 Act, unaccompanied by a fee, handed to a Service investigating officer prior to the statutory cut-off date of December 23, 1957, cannot be regarded as a timely application.
(2) The fee for filing an application for suspension of deportation under the 1952 Act is a statutory requirement which cannot be waived administratively.