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Congress of the United States
House of Representatives
Washington, D.C. 20515

July 19, 1984

Dr. Hector Garcia
1315 Bright Street
Corpus Christi, Texas 78405

Dear Dr. Garcia:

Congressman Ortiz is participating in the Democratic National Convention this week and has asked me to provide you with the information you requested about the Simpson-Mazzoli bill.

I am enclosing for you a portion of the Congressional Record which contains the vote on final passage of the House version, the text of the Senate-passed bill, and the text of the House passed bill. I have marked the beginning page of each section. I hope this information will be helpful, but if you need any other information please do not hesitate to contact me and I will obtain whatever you need.

Thank you again for contacting Congressman Ortiz. He hopes that you will call on him whenever he may be of assistance.

With best personal regards, I remain

Sincerely yours,

FLORENCIO H. RENDON
Administrative Assistant to
Congressman Solomon P. Ortiz

FHR/km

COMMITTEES:
ARMED SERVICES

SUBCOMMITTEES:
PERSONNEL AND COMPENSATION
SEAPOW AND STRATEGIC AND
CRITICAL MATERIALS

MERCHANT MARINE AND FISHERIES

SUBCOMMITTEES:
FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT

MERCHANT MARINE

PANAMA CANAL AND THE
OUTER CONTINENTAL SHELF

SELECT COMMITTEE ON
NARCOTICS ABUSE AND CONTROL

SIMPSON
MAZZOLI
BILL 84

that the amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was not objection.

The SPEAKER. The question is on the amendment.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. McCOLLUM. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 219, nays 208, not voting 6, as follows:

[Roll No. 250]

YEAS—219

Andrews (NC)	Gibbons	Mica
Anthony	Gingrich	Michel
Applegate	Goodling	Miller (OH)
Archer	Gore	Molinar
Badham	Gradison	Montgomery
Barnard	Gramm	Moore
Bartlett	Gregg	Moorhead
Bateman	Gunderson	Myers
Bennett	Hall, Ralph	Neal
Bereuter	Hall, Sam	Nelson
Bethune	Hammer	Nichols
Bevill	Hance	Nielson
Biaggi	Hansen (UT)	O'Brien
Billakis	Hartnett	Olson
Billie	Hatcher	Oxley
Boehlert	Heiter	Packard
Boner	Heftel	Parris
Breaux	Hightower	Pashayan
Brooks	Hill	Patman
Broomfield	Hill	Petri
Brown (CO)	Hopkins	Pickie
Broyhill	Horton	Pritchard
Burton (IN)	Hubbard	Pursell
Byron	Huckaby	Quillen
Campbell	Hunter	Regula
Carney	Hutto	Ridge
Chandler	Hyde	Ritter
Chappell	Ireland	Roberts
Chapple	Jenkins	Robinson
Cheney	Jones (NC)	Roemer
Coats	Jones (OK)	Rogers
Coleman (MO)	Jones (TN)	Roth
Conable	Kasich	Roukema
Cooper	Kemp	Rowland
Corcoran	Kindness	Rudd
Coughlin	Kramer	Sawyer
Courter	Lagomarsino	Schaefer
Craig	Latta	Schulze
Crane, Daniel	Leath	Shaw
Crane, Philip	Lent	Shelby
Daniel	Lewis (CA)	Shumway
Dannemeyer	Lewis (FL)	Shuster
Darden	Livingston	Siljander
Daub	Lloyd	Siskis
Davis	Loeffler	Skeen
Derrick	Lott	Skelton
DeWine	Lowery (CA)	Smith (IA)
Dickinson	Lujan	Smith (NE)
Dowdy	Lungren	Smith, Denny
Dreier	Mack	Smith, Robert
Duncan	MacKay	Snowe
Dyson	Madigan	Snyder
Edwards (AL)	Marlenee	Solomon
Edwards (OK)	Marriott	Spence
Emerson	Martin (IL)	Stangeland
English	Martin (NC)	Stenholm
Erdreich	Martin (NY)	Stratton
Erlenborn	McCain	Stump
Evans (IA)	McCandless	Sundquist
Fiedler	McCollum	Tallon
Fields	McCurdy	Tauke
Filippo	McDade	Tausin
Franklin	McEwen	Taylor
Frenzel	McGrath	Thomas (CA)
Fugua	McKernan	Thomas (GA)
Gekas		

Torricelli
Valentine
Vander Jagt
Volkmier
Vucanovich
Walker
Watkins

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (TX)
Annunzio
Aspin
AuCoin
Barnes
Bates
Bedell
Bellenson
Berman
Boggs
Boland
Bonior
Bonker
Borah
Brock
Bryant
Burton (CA)
Casper
Carr
Clarke
Clay
Clinger
Coelho
Coleman (TX)
Collins
Conce
Conyers
Coyne
Crockett
D'Amours
Daschle
de la Garza
Dellums
Dicks
Dingell
Dixon
Donnelly
Dorgan
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edgar
Edwards (CA)
Evans (IL)
Fazio
Feighan
Ferraro
Fish
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frost

Hansen (ID)
Leland

Weber
Whitehurst
Whitely
Whittaker
Whitten
Williams (OH)
Wilson

NAYS—208

Garcia
Gaydos
Gelderson
Gephardt
Gillman
Glickman
Gonzales
Gray
Green
Guarini
Hall (IN)
Hall (OH)
Hamilton
Harkin
Harrison
Hawkins
Hayes
Hertel
Howard
Hoyer
Hughes
Jacobson
Jeffords
Johnson
Kaplan
Kastenmeier
Kaspar
Kemp
Kerney
Kilfee
Klucznak
Kobovsek
Kotler
Kostmayer
LaFalce
Lantos
Leach
Lehman (CA)
Lehman (FL)
Levin
Levine
Levitas
Lipinski
Long (LA)
Long (MD)
Lowry (WA)
Lukens
Lundine
Markley
Martinez
Mastai
Mavroules
Mazoli
McCloskey
McHugh
McKinney
McNulty
Miller (CA)
Mineta
Minshall
Mitchell
Moakley
Mollohan
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Nowak

NOT VOTING—6

Mikolski
Sensenbrenner
Shannon
Williams (MT)

1650

Mr. GEJDENSON and Mr. MURPHY changed their votes from "yea" to "nay."

Mr. WEBER changed his vote from "nay" to "yea."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. HORTON

Mr. HORTON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. HORTON. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. HORTON moves to recommit the bill, H.R. 1510, to the Committee on the Judiciary.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. GARCIA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 216, nays 211, not voting 6, as follows:

[Roll No. 251]

YEAS—216

Alexander	Dicks	Hyde
Andrews (NC)	Dingell	Ireland
Annunzio	Donnelly	Jeffords
Anthony	Dorgan	Johnson
Aspin	Dowdy	Jones (OK)
Badham	Downey	Jones (TN)
Barnes	Durbin	Kasich
Bateman	Dwyer	Kastenmeier
Bates	Early	Kleczka
Bedell	Eckart	Kostmayer
Bellenson	Edwards (AL)	LaFalce
Bennett	Erlenborn	Leach
Bereuter	Evans (IA)	Lehman (FL)
Boehlert	Fascell	Levin
Boggs	Feighan	Levitas
Boland	Fish	Lewis (FL)
Boner	Foley	Lipinski
Bonior	Ford (TN)	Livingston
Bonker	Fowler	Lloyd
Boucher	Frank	Long (LA)
Breaux	Franklin	Long (MD)
Britt	Frenzel	Lott
Broyhill	Fugua	Lowery (CA)
Burton (IN)	Gekas	Lukens
Byron	Gibbons	Lundine
Campbell	Gillman	Lungren
Carper	Gingrich	MacKay
Chandler	Glickman	Madigan
Chappell	Gore	Martin (NC)
Cheney	Gradison	Mavroules
Clarke	Green	Mazoli
Clinger	Gregg	McCandless
Coats	Gunderson	McCloskey
Conable	Hamilton	McCollum
Conce	Hammer	McCurdy
Cooper	Hansen (UT)	McDade
Corcoran	Harkin	McEwen
Coughlin	Harrison	McHugh
Coyne	Hefner	McKernan
D'Amours	Heftel	McKinney
Dannemeyer	Hill	Mica
Daschle	Holt	Miller (OH)
Davis	Howard	Moakley
Derrick	Hoyer	Molinar
DeWine	Hutto	

Montgomery	Ridge	St Germain
Moody	Ritter	Stangeland
Moorhead	Rodino	Stark
Morrison (WA)	Roe	Studds
Mrazek	Rose	Synar
Murtha	Rostenkowski	Tallon
Myers	Russo	Tauke
Natcher	Sabo	Taylor
Neal	Sawyer	Thomas (CA)
Nelson	Schaefer	Torricelli
Nielson	Scheuer	Traxler
Nowak	Schneider	Valentine
O'Brien	Schulze	Vucanovich
Obey	Schumer	Walgren
Ottlinger	Schirberling	Walker
Oxley	Sharp	Weaver
Packard	Shaw	Weber
Panetta	Sisisky	Whitehurst
Pease	Slattery	Whitley
Peeny	Smith (FL)	Whittaker
Pepper	Smith (IA)	Wilson
Petri	Smith (NE)	Winn
Pickle	Smith (NJ)	Wolf
Price	Smith, Denny	Wortley
Pritchard	Snowe	Wright
Quillen	Solars	Wyllie
Rahall	Spratt	Young (FL)

NAYS—211

Ackerman	Gonzales	Parris
Addabbo	Goodling	Pashayan
Akaka	Gramm	Patman
Albosta	Gray	Patterson
Anderson	Guarini	Paul
Andrews (TX)	Hall (IN)	Perkins
Applegate	Hall (OH)	Porter
Archer	Hall, Ralph	Pursell
AuCoin	Hall, Sam	Rangel
Barnard	Hance	Ratchford
Bartlett	Hartnett	Ray
Berman	Hatcher	Regula
Bethune	Hawkins	Reld
Bivill	Hertel	Richardson
Blaggi	Hightower	Rinaldo
Blirakis	Hillis	Roberts
Bliley	Hopkins	Robinson
Boraki	Horton	Roemer
Bosco	Hubbard	Rogers
Boxer	Huckaby	Roth
Brooks	Hughes	Roukema
Broomfield	Hunter	Rowland
Brown (CA)	Jacobs	Roybal
Brown (CO)	Jenkins	Rudd
Bryant	Jones (NC)	Savage
Burton (CA)	Kaptur	Schroeder
Carney	Kazen	Shelby
Carr	Kemp	Shumway
Chapple	Kennelly	Shuster
Clay	Kildee	Sikorski
Coelho	Kindness	Silander
Coleman (MO)	Kogovsek	Simon
Coleman (TX)	Kolter	Skeen
Collins	Kramer	Skelton
Conyers	Lagomarsino	Smith, Robert
Courier	Lantos	Snyder
Craig	Latta	Solomon
Crane, Daniel	Leath	Spence
Crane, Philip	Lehman (CA)	Staggers
Crockett	Lent	Stenholm
Daniel	Levine	Stokes
Darden	Lewis (CA)	Stratton
Daub	Loeffler	Stump
de la Garza	Lowry (WA)	Sundquist
Dellums	Lujan	Swift
Dickinson	Mack	Tauzin
Dixon	Markley	Thomas (GA)
Dreier	Marlenee	Torres
Duncan	Marriott	Towns
Dymally	Martin (IL)	Udall
Dyson	Martin (NY)	Vander Jagt
Edgar	Martinez	Vandergriff
Edwards (CA)	Matsui	Vento
Edwards (OK)	McCain	Volkmer
Emerson	McGrath	Watkins
Engleah	McNulty	Waxman
Erdreich	Miller (CA)	Weiss
Evans (IL)	Mineta	Whitten
Fazio	Minish	Williams (OH)
Ferraro	Mitchell	Wirth
Fiedler	Mollohan	Wise
Fields	Moore	Wolpe
Flippo	Morrison (CT)	Wyden
Florio	Murphy	Yates
Foglietta	Nichols	Yatron
Ford (MI)	Oakar	Young (AK)
Frost	Oberstar	Young (MO)
Garcia	Olin	Zechau
Gaydos	Ortiz	
Gejdenson	Owens	
Gephardt		

NOT VOTING—6

Hansen (ID)	Mikulski	Shannon
Leland	Sensenbrenner	Williams (MT)

□ 1710

Mr. PERKINS changed his vote from "yea" to "nay."

Messrs. BURTON of Indiana, PETRI, OTTINGER, and HOWARD changed their votes from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. RODINO. Mr. Speaker, I move to take from the Speaker's table the Senate bill (S. 529) to revise and reform the Immigration and Nationality Act, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey [Mr. RODINO].

The motion was agreed to.

The Clerk read the Senate bill, as follows:

S. 529

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

Sec. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS"

"Sec. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section—

"(A) to hire, or for consideration to recruit or refer, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

"(B) to hire for employment in the United States an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity which employs three or fewer employees.

"(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of the enactment of this Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(b) Except as provided in subsection (c), the requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the

case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form established by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in accordance with subsection (a)(1)(A) by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card (issued by the Social Security Administration under section 205(c)(2)(B) of the Social Security Act and in such secure form, if any, as the Administrator of Social Security has made available) or certificate of birth in the United States or United States consular report of birth or, in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, a passport of a foreign country or where no such documentation is available, any other identification acceptable to the Attorney General, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;

"(2) the individual must attest, under penalty of perjury and on the form established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending on the later of five years after such date or, in the case of the hiring of the individual, one year after the date the individual's employment is terminated.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(c)(1) Except as provided in paragraph (3), within three years after the date of the enactment of this section, the President shall implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure

system to determine employment eligibility in the United States, which system shall conform to the requirements of paragraph (2).

"(2) Such system shall be designed in a manner so that—

"(A) the system will reliably determine that a person with the identity claimed by an employee or prospective employee is eligible to work, and that the employee or prospective employee is not claiming the identity of another individual;

"(B) if the system requires an examination by an employer of any document, such document must be in a form which is resistant to counterfeiting and tampering;

"(C) personal information utilized by the system is available to Government agencies, employers, and other persons only to the extent necessary for the purpose of verifying that the individual is not an unauthorized alien;

"(D) the system will protect the privacy and security of personal information and identifiers utilized in the system including recommendations to the Congress for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system;

"(E) a verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld for any reason other than that the employee or prospective employee is an unauthorized alien;

"(F) the system shall not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States Code);

"(G) if the system requires individuals to present a card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) nor to be carried on one's person; and

"(H) the President shall examine existing Federal and State identification systems, or the systems referred to in subsection (b) of this section, to determine suitability for use with the permanent system authorized to be developed by this section.

"(3)(A) Before the President implements any change in or addition to the requirements of subsection (b) which would require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, he shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth his proposal to implement such a change or addition. No such change or addition may be implemented if, within thirty calendar days after receiving such report, the Congress adopts a concurrent resolution stating in substance that it objects to the implementation of such change or addition.

"(4)(A) Any such concurrent resolution shall be considered in the Senate in accordance with paragraph (5).

"(B) For the purpose of expediting the consideration and adoption of concurrent resolutions under paragraph (3), a motion to proceed to the consideration of any such concurrent resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5)(A) For purposes of paragraph (3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either

House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(B) Subparagraphs (C) and (D) of this subsection are enacted—

"(i) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of concurrent resolutions referred to in paragraph (3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the case of any other rule of the Senate.

"(C)(i) If the committee of the Senate to which has been referred a resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under subparagraph (A), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a resolution with respect to the same certification.

"(ii) A motion to discharge under clause (i) may be made only by a Senator favoring the resolution, is privileged, and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(D)(i) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(iv) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

"(d)(1)(A) In the case of a person or entity which violates paragraph (1)(A) or (2) of subsection (a) and which—

"(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such

paragraph, the person or entity shall be subject to a civil penalty of \$1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of \$2,000 for each unauthorized alien with respect to which the violation occurred.

In counting the number of previous determinations of violations for purposes of determining whether clause (i) or (ii) applies, determinations of more than one violation in the course of a single proceeding or adjudication shall be considered as a single determination. In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for its own hiring, recruiting, or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting, or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(B) In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than \$1,000, imprisoned not more than six months, or both, for each violation.

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii) within an eighteen-month period issues to a person or entity a second notice of a violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of distinct physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(3) A person or entity which violates subsection (a)(1)(B) shall be subject to a civil penalty of \$500 for each individual with respect to which such violation occurred.

"(4)(A) Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General.

"(B) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in any appropriate district court of the United States. In any such suit or in any other suit seeking to review the Attorney General's determination, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the Attorney General's findings of fact, if supported

by substantial evidence on the record considered as a whole, shall be conclusive.

"(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or refer or recruit for employment, unauthorized aliens.

"(g) The President shall monitor the implementation of this section (including the effectiveness of the verification system described in subsection (b) and the status of the development and implementation of the secure verification system described in subsection (c)) and the impact of this section on employment in the United States of aliens and of citizens and nationals of the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status."

"(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

"(B)(i) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the six-month period beginning on the first day of the first month beginning after the date of the enactment of this Act, the Attorney General shall notify such person or entity of such belief and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

"(ii) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent six-month period, the Attorney General shall, in the first instance of such a violation (or violations) occurring during such period, provide a warning to the person or entity that such a violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

"(C) During the year beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Commerce, Labor, and Agriculture and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

"(b) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens."

"(c)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

"(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(i)(A)";

"(B) in section 103(a) (29 U.S.C. 1813(a))—

"(i) by striking out "or" at the end of paragraph (4),

"(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "or"; and

"(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act."

"(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

"(D) by striking out "section 106" in section 301(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

"(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

"(d) Nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 2000e-5 of title 42, the United States Code, or any other authority provided therein.

TRAUD AND MISUSE OF CERTAIN DOCUMENTS

Sec. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(4) by striking out "\$2,000" and inserting in lieu thereof "\$5,000";

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsection:

"(b) Whoever without authority of the issuing agency and with unlawful intent—

"(1) photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of—

"(A) any document presented to satisfy a requirement of the Immigration and Nationality Act or regulations issued thereunder, or

"(B) any document presented to obtain a required document described in subparagraph (A), including any document presented to establish eligibility for adjustment of status under subsection (a) or (b) of section 245A of the Immigration and Nationality Act;

"(2) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, an engraving, photograph, print, or impression in the likeness of a document described in subparagraph (A) or (B) of paragraph (1);

"(3) alters any document described in subparagraph (A) or (B) of paragraph (1) relating to another person; or

"(4) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell,

transfer, distribute, present, or use, any document described in subparagraph (A) or (B) of paragraph (1) relating to another person, whether or not altered,

shall be fined not to exceed \$5,000 or imprisoned not more than five years, or both."

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents."

PART B—ENFORCEMENT

IMMIGRATION AND NATURALIZATION SERVICE ENFORCEMENT ACTIVITIES

SEC. 111. (a) It is the sense of the Congress that an essential element of the program of immigration control and reform established by this Act is an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service in order to prevent and deter the illegal entry of aliens into the United States.

(b) In order to do this in the most effective and efficient manner, it is the intent of the Congress to provide, through the annual authorization of appropriations process for the Department of Justice, for a controlled and closely monitored increase in the level of the border patrol and of other appropriate enforcement activities of the Immigration and Naturalization Service to achieve an effective level of control of illegal immigration.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended to read as follows:

"Sec. 274. (a) Any person who, knowingly or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved, be guilty of a misdemeanor and upon conviction shall be punished by a mandatory fine of \$2,500, the imposition of which shall not be suspended by the court, and, in the court's discretion, may be punished by an additional fine of not more than \$2,500 for each such alien in respect to whom any violation of this paragraph occurs or by imprisonment for a term not exceeding one year, or both.

"(b) Whoever, under subsection (a), commits—

"(1) a second offense,
"(2) an offense done for the purpose of commercial advantage or private financial gain,

"(3) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration official, or

"(4) an offense during which the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States,

shall be guilty of a felony and upon conviction shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs.

"(c) Any person who—

"(1) knowingly or having reason to know that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place

other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien,

"(2) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law, or

"(3) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection such alien in any place, including any building or any means of transportation,

shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs. For the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

"(d)(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been, is being, or is intended to be used in the commission of a violation of subsection (a), (b), or (c) shall be seized and subject to forfeiture, except that—

"(A) no conveyance used by any person as a common carrier shall be forfeited under the provisions of this section if the offense occurs when the conveyance is being used in the business as a common carrier unless the owner, operator, or other person in charge of the conveyance at the time of the offense was a consenting party or privy to the illegal act; and

"(B) no conveyance shall be forfeited under the provisions of this section if the offense occurred while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(2) Any conveyance subject to seizure under this section may be seized without a warrant if there is probable cause to believe the conveyance has been, is being, or is intended to be used in a violation of subsection (a), (b), or (c) and circumstances exist where a warrant is not constitutionally required.

"(3) All provisions of the customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property,

"(B) the disposition of such property or the proceeds from the sale thereof,

"(C) the remission or mitigation of such forfeiture, and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures,

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as applicable and not inconsistent with the provisions of this section, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizure and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(4) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

"(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484(i) of title 40, United States Code, take custody of the conveyance and remove it for disposition in accordance with law; or

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

"(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court. In determining whether probable cause exists, any of the following items of evidence shall be prima facie evidence of the presumption that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

"(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law;

"(B) Official records of the Service or of the Department of State showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law; and

"(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that such alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law.

"(6) Any officer or employee of the Service designated by the Attorney General, either individually or as a member of a class, and all other Federal officers whose duty it is to enforce criminal laws and those State officers whose duty it is to enforce criminal laws and who have been specifically designated by the Attorney General shall have authority to make any arrest for a violation of any provision of this section."

UNLAWFUL ENTRY INTO THE UNITED STATES

SEC. 113. Section 275 (8 U.S.C. 1325) is amended by inserting "or attempts to enter" after "enters".

BORDER PATROL

SEC. 114. There are authorized to be appropriated to an immigration emergency revolving fund, to be established in the Treasury, \$35,000,000, to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has deter-

mined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

EXECUTION OF WARRANT

SEC. 115. Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section, other than paragraph (3) subsection (a), an officer or employee of the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant."

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. (a) Section 235(a) (8 U.S.C. 1225(a)) is amended by striking out "arriving at ports" in the second sentence and inserting in lieu thereof "entering at ports or at the land borders".

(b) Section 235(b) (8 U.S.C. 1225(b)) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following:

"(b)(1) If an examining immigration officer at the port of arrival determines that an alien does not have the documentation required to obtain entry into the United States, does not have any reasonable basis for legal entry into the United States, and has not applied for asylum under section 208, such alien shall not be admissible and shall be excluded from entry into the United States without further inquiry or hearing.

"(2) If an examining immigration officer at a port of entry or land border of the United States determines that an alien (other than an alien crewman and except as otherwise provided in subsection (c) of this section and in section 273(d)) is otherwise not clearly and beyond a doubt entitled to land, such alien shall be detained for a hearing on exclusion of the alien to be held before an immigration judge."

(3) by designating the sentence beginning "The decision" as paragraph (3), and

(3) by adding at the end the following new paragraphs:

"(4) The Attorney General shall establish procedures, after consultation with the Judiciary Committees of the Congress, which assure that aliens are not excluded under paragraph (1) without an inquiry into their reasons for unlawfully seeking entry into the United States.

"(5) In the case of an alien who would be excluded from entry under paragraph (1) but for an application for asylum under section 208, the exclusion hearing with respect to such entry shall be limited to the issues raised by the asylum application."

(c) Section 236(a) (8 U.S.C. 1226(a)), as amended by section 126 of this Act, is further amended by inserting after the second sentence the following new sentence: "To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses."

(d) Section 237 (8 U.S.C. 1227) is amended—

(1) by striking out "arrived in" in the first sentence of subsection (a)(1) and inserting in lieu thereof "entered";

(2) by striking out "arrived" in the second sentence of subsection (a)(1) and inserting in lieu thereof "entered the United States";

(3) by striking out "airport of arrival" in the first sentence of subsection (b) and inserting in lieu thereof "port of entry";

(4) by striking out "port of arrival" in the second sentence of subsection (b) and inserting in lieu thereof "port of entry";

(5) by striking out "arrived in" in the first sentence of subsection (c) and inserting in lieu thereof "entered"; and

(6) by striking out "arrived in" in subsection (e) and inserting in lieu thereof "entered".

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF IMMIGRATION JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF IMMIGRATION JUDGES

"SEC. 107. (a)(1) There is established in the Department of Justice a United States Immigration Board (hereafter in this section referred to as the 'Board') composed of a Chairman and eight other members appointed by the Attorney General.

"(2) The term of office of the Chairman and all other members of the Board shall be six years, except that—

"(A) of the members first appointed under this subsection, three shall be appointed for a term of two years, three shall be appointed for a term of four years, and three shall be appointed for a term of six years,

"(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until his successor has taken office.

"(3) The Attorney General may remove a member of the Board only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS-18 of the General Schedule, under section 5332 of title 5, United States Code.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall promulgate rules of practice and procedure for the Board and immigration judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of immigration judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (1) or (2) of section 203(b) or petitions on behalf of a child described in section 101(b)(1)(F), and (ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

"(F) such other decisions or determinations arising under this Act as the Attorney General may by regulation prescribe.

"(2) Three members of the Board constitute a quorum of the Board, except that the

Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or en banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4) The Board shall review the decision of an immigration judge based solely upon the administrative record upon which the decision is based, and the findings of fact in the judge's order, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States."

"(c)(1) The Attorney General shall, in accordance with procedures and regulations governing appointment and, except as provided in this paragraph, compensation in the competitive service—

"(A) appoint immigration judges;

"(B) set the rate of compensation for such judges at a rate not to exceed the rate now or hereafter prescribed for grade GS-16 of the General Schedule, under section 5332 of title 5, United States Code; and

"(C) designate one such judge to serve as chief immigration judge, who shall be entitled to compensation at the rate now or hereafter prescribed for grade GS-17 of such General Schedule.

"(2) In accordance with the rules established by the Board, the chief immigration judge—

"(A) shall have responsibility for the administrative activities affecting immigration judges, and

"(B) may designate any immigration judge in active service to hear and decide any cases described in paragraph (3).

"(3) Immigration judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208, and

"(E) such other cases as the Attorney General may provide by regulation.

An immigration judge may not hear or decide the case of an alien excluded from entry under section 235(b)(1).

"(4) In considering and deciding cases coming before them, immigration judges may administer oaths and receive evidence, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges."

(2) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of immigration judges."

(3) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'immigration judge' means such a judge appointed under section 107."

(4) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and

redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 236(b) (8 U.S.C. 1226(b)) is amended by striking out "From a decision" and all that follows through "Attorney General" and inserting in lieu thereof the following: "Within fifteen days after the date of a decision of an immigration judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file an appeal of the decision with the United States Immigration Board in accordance with rules established by the Chairman of the Board".

(c) Section 242(b)(4) (8 U.S.C. 1252(b)(4)) is amended by striking out "reasonable, substantial, and probative" and inserting in lieu thereof "substantial".

(d) Section 242 (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(i) Except as otherwise provided in section 291, in any deportation proceeding under this Act the burden of proof shall be upon the Attorney General to establish deportability by a preponderance of the evidence."

JUDICIAL REVIEW

SEC. 123. (a) Subsection (a) of section 106 (8 U.S.C. 1105a) is amended—

(1)(A) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(B) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than 45 days from the date of the final order";

(C) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(D) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)"; and

(E) by striking out "The Service" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the Service"; and

(F) by inserting "exclusion or" before "deportation" in paragraph (4);

(2) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order";

(3) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in";

(4) by striking out "reasonable, substantial, and probative" in paragraph (4) and inserting in lieu thereof "substantial";

(5) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the immigration judge or the United States

Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious";

(6) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order," and inserting in lieu thereof "an exclusion or deportation order; and";

(7) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period, and

(8) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Nothing in this section shall be construed as limiting the right of habeas corpus under the Constitution of the United States.

"(2) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of immigration judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or the exclusion of an alien from the United States under section 235(b)(1)."

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an immigration judge".

(d) The section heading for section 106 is amended to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION, EXCLUSION, AND ASYLUM".

(e) In the case of a final order of deportation entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) forty-five days after the date of the enactment of this Act, or (2) of the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

(f) Section 279 (8 U.S.C. 1329) is amended—

(1) by striking out "The district courts," and inserting in lieu thereof "(a) Except as otherwise provided under section 106, the district courts"; and

(2) by adding at the end thereof the following new subsection:

"(b) An action for judicial review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of exclusion or deportation as provided in section 106(a) of this Act, may not be filed later than thirty days after the date of the final administrative action or from the effective date of this section, whichever is later."

ASYLUM

SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) An alien against whom exclusion or deportation proceedings have been instituted may not file a notice of intention to apply for asylum more than fourteen days, nor perfect such application for asylum more than thirty-five days, after the date of the service of the notice instituting such proceedings unless the alien can make a clear showing, to the satisfaction of the immigration judge conducting the proceeding, that changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of notice instituting the proceeding and the date of application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances in the country of the alien's nationality (or, in the case of the alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(2) Applications for asylum shall be considered before immigration judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. The Attorney General shall provide special training in international relations and international law for individuals who served as special inquiry officers before the date of enactment of the Immigration Reform and Control Act of 1983 in order to qualify such individuals to hear applications under this section.

"(3)(A)(i) Upon the filing of an application for asylum, the immigration judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(ii) The hearing on the asylum application shall commence on the earliest practicable date after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (B), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community, that the alien meets a condition described in one of the subparagraphs of section 243(h)(2), or that the alien is subject to temporary exclusion under section 235(c).

"(B) A hearing on the asylum application shall be closed to the public, unless the applicant requests that it be open to the public. To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant

is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses. A complete verbatim record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The determination of the immigration judge shall be based only on the evidence produced at the hearing. The immigration judge shall render a determination on the application not later than ninety days after the date of completion of the hearing.

"(C)(1) The Secretary of State shall on a continuing basis make available information on human rights in all countries to the Attorney General and to immigration judges who hear applications under this section. The immigration judges shall use such information, if available without delay to the proceedings, as general guidelines in making the asylum determination.

"(ii) The Attorney General shall provide notice to the Secretary of State whenever an application for asylum is filed under this section. The Secretary of State may submit comments to the immigration judge on such application, but the immigration judge shall not delay the proceeding in order to receive such comments.

"(D) Upon the filing of a notice of appeal the decision of an immigration judge to the United States Immigration Board under section 107(b), the Attorney General and the Board shall provide that a transcript of the hearing is made available as soon as practicable.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) The Attorney General may, in his discretion, grant an alien asylum only if the immigration judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42)(A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.

"(6) After making a determination on an application for asylum under this section, an immigration judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum."

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2)".

(3) Such section is further amended by adding at the end the following new subsection:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum."

(b) Section 243(h) (8 U.S.C. 1253(h)) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section."

(c) Section 222(f) (8 U.S.C. 1202(f)) is redesignated as "Sec. 222. (f)(1)."

(d) Section 222(f) (8 U.S.C. 1202(f)) is amended by adding new subsections (f) (2) and (3) to read as follows:

"(2) The records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the issuance or denial of any application for asylum, refugee status, withholding of deportation under sections 207, 208, and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interests of the ends of justice in a case pending before the court.

"(3) The provisions of paragraph (2) of this section shall not be applicable to the person who is the subject of such application for asylum, refugee status, withholding of deportation, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group: *Provided, however,* That this subsection shall not limit the authority of any agency to withhold information pursuant to the Freedom of Information Act."

EFFECTIVE DATES AND TRANSITION

Sec. 125. (a)(1) Except as otherwise provided in this section, the amendments made by this part take effect on the date of the enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121(a), 123(a)(2), 123(a)(5), 123(a)(9), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date (designated under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that immigration judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as immigration judges.

(B) Paragraphs (1)(B), (3), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than fourteen days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in the last sentence of paragraph (3) and in paragraph (6) of such section to an immigration judge shall be deemed (before the asylum transition date) to be a reference to a special inquiry officer conducting the asylum hearing.

(3) The amendments made by section 121(b) shall apply to deportation proceed-

ings pending on or commenced after the date of the enactment of this Act.

(b)(1) The Attorney General shall appoint the Chairman and other members of the United States Immigration Board (hereafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Chairman shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and immigration judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Attorney General shall appoint at least ten immigration judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these immigration judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the immigration judge system, the Board, in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A), and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of immigration judges under subsection (b)(3)(B).

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an immigration judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) assume the duties of an acting immigration judge after such transition date during the period ending two years after the date of the enactment of this Act. If such individuals remain in such capacity through the end of such period and have not been appointed to the United States Immigration Board or as immigration judges, then they shall be deemed, for purposes of continuing employment in the Department of Justice, to have been employed by the Department as special inquiry officers during such period.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before this Act takes effect.

(2) Under rules established by the Chairman of the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and immigration judges shall be deemed to be a continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) The Attorney General shall provide that in the case of members of the Board of Immigration Appeals who—

(1) have served for a period of at least three years,

(2) are not appointed as members of the United States Immigration Board or as immigration judges, and

(3) continue to be employed by the Attorney General after the date the functions of the Board of Immigration Appeals are assumed by the United States Immigration Board,

there shall be no reduction in grade or compensation for one year after the date of termination of the individual's membership on the Board of Immigration Appeals.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 126. (a) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(b)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "immigration judges",

(B) by striking out "including special inquiry officers" in the fourth sentence and inserting in lieu thereof "and any immigration judge",

(C) by striking out "including special inquiry officers" in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and immigration judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "immigration judge".

(2) Subsection (b) of such section is amended by striking out "a special inquiry officer for further inquiry" in the second sentence and inserting in lieu thereof "an immigration judge for an exclusion hearing".

(3) Subsection (c) of such section is amended—

(A) by striking out "or to the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an immigration judge during an exclusion hearing",

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing",

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing",

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing", and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an immigration judge".

(c)(1) Sections 106(a)(2), 236, and 242(b) (8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(d)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1226) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "immigration judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1226) is amended—

(A) by amending the first sentence to read as follows: "An immigration judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing",

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing",

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the Chairman of the United States Immigration Board shall establish",

(F) by striking out "inquiry" in the sixth sentence and inserting in lieu thereof "hearing", and

(G) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended by striking out "Attorney General" in the first and fourth sentences and inserting in lieu thereof "United States Immigration Board" and by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(e) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "immigration judge",

(2) by striking out "shall administer oaths" and all that follows through "Attorney General" in the first sentence,

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "Chairman of the United States Immigration Board shall establish",

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence,

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the Chairman of the United States Immigration Board",

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "immigration judge shall be final unless reversed on appeal".

(f) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(g) Section 292 (8 U.S.C. 1362) is amended to read as follows:

"Sec. 292. In any proceeding or hearing before an immigration judge and in any appeal before the United States Immigration Board from any such proceeding, the person concerned shall have the privilege of being represented (at no expense to the Government and at no unreasonable delay) by such counsel, authorized to practice in such proceedings, as he shall choose."

(h) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after the word "proceedings", and

(2) by striking out the second sentence.

(i) Any reference in section 203(h) of the Immigration and Nationality Act, as in effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an immigration judge under section 101(a)(43) of such Act.

PART D—ADJUSTMENT OF STATUS

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY VISA ABUSERS

SEC. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by striking out "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" and inserting in lieu thereof "has failed to maintain continuously a legal status since entry into the United States".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status filed before, on, or after the date of the enactment of this Act.

PART E—DEPORTATION PROCEEDINGS

BURDEN OF PROOF

SEC. 141. Section 291 (8 U.S.C. 1361) is amended in the third sentence by inserting "to identify himself correctly by name and nationality and" after "such person".

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

NUMERICAL LIMITATIONS

SEC. 201. (a) Subsection (a) of section 201 (8 U.S.C. 1151) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

"(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) three hundred and fifty thousand, minus (B) the sum of (i) the number of immediate relatives specified in subsection (b) of this section who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, (ii) the number of immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, (iii) the number of immigrants born to permanent resident aliens during a temporary visit abroad, and (iv) the number of aliens who in the previous fiscal year were provided records of permanent residence under section 214(d), plus (C) the difference (if any) between the maximum

number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and

"(2) independent immigrants described in section 203(b), and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number equal to (A) seventy-five thousand, minus (B) the number of special immigrants (other than those described in section 101(a)(27)(A)) who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year."

(b) Section 202(a) (8 U.S.C. 1152(a)) is amended—

(1) by striking out "(a) No person" and inserting in lieu thereof "(a)(1) Except as specifically provided in paragraph (2) of this subsection and in section 101(a)(27), 201(b), 203, and 214(d), no person";

(2) by striking out "except as specifically" and all that follows up to the period at the end, and

(3) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the total number of natives of any single foreign state who are issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted for permanent residence under subsections (a) and (b) of section 203 or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under subsection (a) or (b) of section 203 shall not exceed in any fiscal year—

"(i) twenty thousand, in the case of any foreign state other than a foreign state contiguous to the United States, or

"(ii) forty thousand (or the number determined under subparagraph (C)), in the case of any foreign state contiguous to the United States.

"(B) If in a fiscal year the total number of immediate relatives specified in section 201(b), immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens provided records of permanent residence under section 214(d), and special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence who are natives of a particular foreign state exceeded twenty thousand, then the numerical limitation applicable to that state in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess.

"(C) If in any fiscal year the number of aliens chargeable to a contiguous foreign state who are issued immigrant visas or otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence is less than forty thousand, then in the following fiscal year the number to be used in clause (ii) of subparagraph (A) for the other contiguous foreign state shall

be forty thousand plus the amount of the difference."

PREFERENCE AND NONPREFERENCE ALLOCATION SYSTEMS

SEC. 202. (a)(1) Section 203 (8 U.S.C. 1153) is amended—

(A) by redesignating subsections (b) through (e) as subsections (e) through (h), respectively, and

(B) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allocated visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who (A) as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in this paragraph as in effect on such date, and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 65 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (1).

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) UNMARRIED BROTHERS AND SISTERS OF CITIZENS AND PREVIOUS FIFTH PREFERENCE.—

"(A) qualified immigrants who are the unmarried brothers or sisters of citizens of the United States, if such citizens are at least twenty-one years of age, and

"(B) qualified immigrants who (i) as of the date of enactment of the Immigration Reform and Control Act of 1983 had received approval of a petition made on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date, and (ii) continue to qualify under the terms of this Act as in effect on the day before such date,

shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3)."

"(b) PREFERENCE AND NONPREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:

"(1) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING DOCTORAL DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who are members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be

allocated visas. The Attorney General may, when he deems it to be in the national interest, waive the requirement of the preceding sentence that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. In determining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

"(2) SKILLED WORKERS.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated any visas not required for the classes specified in paragraph (1).

"(3) NONPREFERENCE ALIENS.—Visas authorized in any fiscal year under section 201(a)(2), less those required for issuance to the classes specified in paragraphs (1) and (2), shall be made available to other qualified immigrants in the chronological order in which they qualify. No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption. No natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

An immigrant visa shall not be issued to an immigrant under paragraph (1), (2), or (3) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of sections 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).

"(c) GUIDE FOR ALLOCATION BETWEEN PREFERENCE SYSTEMS.—Where it is determined that the maximum number of visas will be made available under section 202(a)(2) to natives of any single foreign state (defined in section 202(b)) or any dependent area (defined in section 202(c)) in any fiscal year, in determining whether to provide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—

"(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immediate relatives specified in section 201(b), immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant

visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to

"(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year,

is equal to 4.65 to 1.

"(d)(1) A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

"(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State."

(2) Subsection (e) of such section, as so redesignated, is amended—

(A) by inserting "or under subsection (b)" after "subsection (a)" the first place it appears, and

(B) by striking out "subsection (a)" the second place it appears and inserting in lieu thereof "the respective subsection".

(b) Section 202 (8 U.S.C. 1152) is amended by striking out subsection (e), section 204 (8 U.S.C. 1154) is amended by striking out subsection (f), and section 245(b) (8 U.S.C. 1255(b)) is amended by striking out "202(e) or".

(c)(1)(A) Subsection (f) of section 203 (8 U.S.C. 1153), as redesignated by subsection (a)(1), is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or pursuant to paragraphs (1) through (3) of subsection (b)".

(B) Subsection (g) of such section, as so redesignated, is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or paragraphs (1) through (3) of subsection (b)" each place it appears.

(2)(A) Subsection (a) of section 204 (8 U.S.C. 1154) is amended—

(i) by striking out "paragraph (1), (4), or (5) of section 203(a)" and inserting in lieu thereof "paragraph (1), (3), or (4) of section 203(a)",

(ii) by striking out "section 203(a)(3)" and inserting in lieu thereof "paragraph (1), of section 203(b)", and

(iii) by striking out "203(a)(6)" and inserting in lieu thereof "203(b)(2) or 203(b)(3)".

(B) Subsection (b) of such section is amended by striking out "section 203(a) (3) or (6)" and inserting in lieu thereof "paragraph (1), (2), or (3) of section 203(b)".

(d) Section 241(a)(9) (8 U.S.C. 1251(a)(9)) is amended—

(1) by inserting "(A)" after "(9)", and

(2) by striking out the semicolon at the end thereof and inserting in lieu thereof "or", and

(3) by adding at the end thereof the following new subparagraph:

"(B) was admitted as an independent immigrant by the end of the one-year period following the date of entry failed to invest substantial capital in an enterprise in the United States as required in such paragraph

or, having made such investment, has failed without good cause to maintain such an investment for a period of at least one year after the date of such entry or after the date such substantial investment was made, whichever date was later;"

LABOR CERTIFICATION

Sec. 203. (a) Paragraph (14) of section 212(a) (8 U.S.C. 1182(a)) is amended by striking out "(A)" and all that follows through the end and inserting in lieu thereof the following: "(A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens (i) who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the occupations in which the aliens will be employed; (B) sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers; and (C) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2) and to nonpreference immigrants described in section 203(b)(3). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner."

(b) Section 212(d) (8 U.S.C. 1181(d)) is amended by adding at the end the following new paragraph:

"(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest."

G-4 SPECIAL IMMIGRANTS

Sec. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and (i) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and twenty-one years, and (ii) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of

such an international organization, and (i) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (ii) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later.

"(iii) an immigrant who is a retired officer or employee of such an international organization, and (i) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the officer or employee's retirement from any such international organization, and (ii) applies for admission under this subparagraph (i) on or before December 31, 1992 and (ii) no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family."

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "or", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv)."

EFFECTIVE DATES AND TRANSITION

Sec. 205. (a) The amendments made by sections 201, 202, and 203 shall apply to the admission of aliens to the United States on and after October 1, 1984. The amendments made by section 204 shall take effect on the date of the enactment of this Act.

(b)(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1984, such petition shall be deemed, as of such date, to be a petition for the new corresponding preference or nonpreference status (as defined in paragraph (2)), and the priority date for such petition shall remain in effect.

(2) For purposes of paragraph (1), the term "new corresponding preference or nonpreference status" means, in the case of a petition for a—

(A) preference status described in section 203(a)(1) of the Immigration and Nationality Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(B) preference status described in section 203(a)(2) of such Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(C) preference status described in section 203(a)(3) of such Act (as in effect on September 30, 1984), the preference status described in both paragraphs (1) and (2) of

section 203(b) of such Act as in effect after such date;

(D) preference status described in section 203(a)(4) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)(3) of such Act as in effect after such date;

(E) preference status described in section 203(a)(5) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)(4) of such Act as in effect after such date;

(F) preference status described in section 203(a)(6) of such Act (as in effect on September 30, 1984), the preference status described in section 203(b)(2), in the case of skilled labor, or the nonpreference status described in section 203(b)(3), in the case of unskilled labor, of such Act as in effect after such date; and

(G) nonpreference status described in section 203(a)(7) of such Act (as in effect on September 30, 1984), the preference statuses described in paragraph (3) of section 203(b) of such Act (as in effect after such date) in the case of investors or the nonpreference described in section 203(b)(3) of such Act (as in effect after such date) in the case of non-investors.

(c) When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1984, makes application for admission, his admissibility under paragraphs (20) and (21) of section 212(a) shall be determined under the provisions of law in effect on the date of the issuance of such visa.

PART B—NONIMMIGRANTS

H-3 WORKERS

SEC. 211. (a) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences: "An alien may not be admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of the enactment of the Immigration Reform and Control Act of 1983, has recognized require a longer period, which may exceed one year. An alien who was admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii) during the preceding five-year period may not be admitted under that provision if the alien violated the terms of any such previous admission. The Attorney General shall provide for such procedures for the entry and exit of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section."

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c) the following new paragraphs:

"(2)(A) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition, and

"(ii) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraph (A) if—

"(i) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; or

"(ii) the employer, during the previous two years, employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer during that period substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers or has not paid a penalty (or penalties) for such violations which may be assessed by the Secretary of Labor, except that no employer may be denied certification for more than one year for any such violation.

"(3)(A) In the case of an application for a labor certification under section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that such an application for labor certification be filed more than eighty days before the first date the employer requires the labor or services of the alien;

"(ii) such application shall be considered to have met the requirements of paragraph (2) unless the Secretary of Labor, within seven days of the filing of such application, notifies the employer filing such application whether such application meets such requirements and, if not, states the reasons therefor and provides an opportunity for the prompt resubmission of a modified application;

"(iii) the Secretary of Labor shall make, not less than twenty days before the date such labor or services are first required to be performed, the certification described in paragraphs (2)(A) (i) and (ii) if an employer has complied with the criteria for certification, including the recruitment of eligible individuals as prescribed by the Secretary, and the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have agreed to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary and who are otherwise available, except that the terms of such labor certification shall remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply to the employer or are referred to the employer; and

"(iv) the petition, or the application for a certification, may be filed by an association representing agricultural producers who use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application unless the association is the sole employer of all alien agricultural labor or services, in which case only the association shall be liable for representations made in such petition or application.

"(B) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2) in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a), or at the appli-

cant's request, a de novo administrative hearing.

"(C) The Secretary of Labor shall expeditiously make a new determination on the request for certification in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not qualified, the burden of proof is on the employer to establish that the individuals referred are not qualified because of employment-related reasons.

"(D) For purposes of this paragraph, the term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection, the impact of aliens admitted pursuant to such certifications on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, \$10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection.", and

(4) by adding at the end the following new subsection:

"(e) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating admissibility of nonimmigrant workers."

(c) The amendments made by this section apply to petitions and applications filed under section 214(c) of the Immigration and Nationality Act on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(d) The Attorney General in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing the amendments made by this section shall be issued, on an interim or other basis, not later than the first day of the sixth month beginning after the date of the enactment of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by inserting "(1)" after "No person",

(2) by inserting after "training," the following: "or (2) admitted under section 101(a)(15) (F) or (M) or acquiring such status after admission.", and

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (1)(iii) or clause (2)", and

(4) by striking out the period and inserting in lieu thereof the following: "And provided further, That the Attorney General may, if he determines it to be in the public interest, waive such two-year foreign residence requirement—

"(A) in the case of an alien admitted on or before September 30, 1989, under section 101(a)(15)(F), (i) who is applying for a visa as an immigrant described in section 202(b)(1) and who has obtained his degree from a college or university in the United States, and who has been offered a position as a faculty member or academic researcher in the field in which he obtained his degree by a United States college or university, or (ii) who has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States, who is applying for a visa as an immigrant described in section 202(b)(1) or (2), and who has been offered a research, business, or technical position by a United States employer in the field in which he obtained such degree, or (iii) who has obtained an advanced degree in business or economics from a college or university in the United States, who has exceptional ability in business or economics, who is applying for a visa as an immigrant described in section 202(b)(1) or (2), and who has been offered a research, business or technical position by a United States employer which is in the field in which he obtained such degree and which requires such exceptional ability, or

"(B) in the case of an alien admitted under section 101(a)(15)(F) who has obtained a degree in a natural science, computer science, or in a field of engineering or business, who is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii), and who will receive no more than four years of training by a United States firm, corporation, or other legal entity, which training will enable such alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof.

Thirty days after the end of each fiscal year, the Attorney General shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the number of aliens who applied for, and the number of aliens who were granted, waivers of the two-year foreign residence requirement pursuant to subclause (A) of the preceding proviso during the preceding fiscal year. The Attorney General and the Secretary of State jointly shall conduct a study on the impact of the waivers made pursuant to subclause (A) of the preceding proviso on the professional or technical labor requirements of foreign countries and jointly shall prepare and transmit not later than the close of the fiscal year 1988 to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the findings of such study."

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: "or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e) who entered the United States classified as a nonimmigrant under subparagraph (P) or (M) of section

101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under section 212(i))."

(c)(1) The amendments made by subsection (a) apply to aliens admitted to the United States after the date of the enactment of this Act.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States, except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section).

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsection:

"(1)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this subsection referred to as the 'program') under which the requirement of paragraph (2)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, health, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors

from the United States under subsection (a) and this subsection.

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a

carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period."

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 212(i) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days from the date of admission."

(c) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2); by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(i)."

AGRICULTURAL LABOR TRANSITION PROGRAM

Sec. 214. (a) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of an agricultural labor transition program. The program shall be effective on the first day of the sixth month beginning after the date of enactment of this Act and shall last three years from the effective date.

(b) During the first year of the transition program, an agricultural employer, except as provided in (c), (d), and (e) below, may, as provided by regulation, employ up to 100 per centum of his seasonal agricultural worker need with transitional workers. During the second and third years of the program, the employer may employ up to 67 per centum and 33 per centum respectively, of his seasonal agricultural worker needs with transitional workers.

(c) Nothing in this section shall permit transitional workers to replace available United States workers or legal foreign workers admitted under the Immigration and Nationality Act.

(d) All workers employed under the provisions of this section shall be fully protected by all Federal and State laws and regulations governing the employment of United States migrant and seasonal agricultural workers.

(e)(1) An undocumented alien in the United States shall be eligible to be a transitional worker under the provisions of this section if the person is employed or has been employed as a seasonal agricultural worker in the United States for at least ninety days during a period of time after January 1, 1980.

(2) An undocumented worker shall not be eligible to be a transitional worker and may not be registered under this section if the

person is deportable for any reason other than those described in section 241(a) (2) and (9), or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a). Only persons employed as transitional workers and registered as such by the Attorney General during the first year of the program shall be eligible during the second and third years.

(f) To employ transitional workers under the provisions of this section, an agricultural employer must—

(1) notify the Attorney General of said employer's intention to participate in the transition program within twelve months from the effective date of this Act section, and

(2) provide to the satisfaction of the Attorney General a numerical count of the numbers of seasonal agricultural workers employed during the immediately preceding twelve month period by said employer.

(g) After an employer begins participation in the agricultural labor transition program the employer shall provide, upon request, to the Attorney General a numerical count of the number of transitional workers employed and the total number of seasonal agricultural workers employed by said employer.

(h) Any eligible employer under the transition program who employs nonimmigrant alien agricultural workers under the provisions of section 101(a)(15)(H)(ii)(a) shall provide wages and working conditions as required by section 214(c)(2)(A)(ii) to all similarly employed workers of that employer.

(i) Agreement by an alien to be a transitional worker would not preclude that alien from eligibility under the legislation provisions of title III.

(j) The Attorney General may require by regulation, as a condition of participation by an employer in the transition program, the payment of a fee to recover the reasonable costs of processing registrations under the transition program.

TITLE III—LEGALIZATION

LEGALIZATION

Sec. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1980, TO THAT OF PERSON ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE

"Sec. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United

States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, and

"(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(3) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(4) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States, and

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(A) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order;

"(B)(i)(I) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1980, and has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; or

"(II) the alien entered the United States as a nonimmigrant before January 1, 1980, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1980, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1980, and the alien has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; and

"(iii) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; or

"(ii) the alien is—

"(I) a national of Cuba who arrived in the United States and presented himself for inspection after April 20, 1980, and before January 1, 1981, and who is still physically present in the United States;

"(II) a national of Haiti who on December 31, 1980, was the subject of exclusion or deportation proceedings under section 236 or section 242 of the Immigration and Nationality Act, including a national of Haiti who on that date was under an order of exclusion and deportation or under an order of deportation which had not yet been executed;

"(III) a national of Haiti who was paroled into the United States under section 212(d)(5) of such Act or was granted voluntary departure before December 31, 1980, and was physically present in the United States on that date; or

"(IV) a national of Cuba or Haiti who on December 31, 1980, had an application for

asylum pending with the Immigration and Naturalization Service;

"(C) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(D) the alien—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—

"(A) the Attorney General shall permit the alien to return to the United States after such brief and casual trips abroad, in accordance with subsection (d)(3), as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (3); and

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the six-month period beginning with the first day of the thirty-seventh month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2); and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(D) can demonstrate that he either (i) meets the requirement of paragraph (1) of section 312 (relating to minimal understanding of ordinary English), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English.

"(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

"(A) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(B) at the end of the forty-second month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

"(C)(i) The Attorney General shall provide that applications for adjustment of status under subsection (a) and subsection (b)(1) may be filed with the Attorney General or with any qualified organization or State or local government which the Attorney General may designate if such organization or government agrees to transmit any such application to him. No qualified orga-

nization or such government may make a determination required by this section to be made by the Attorney General.

"(2) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(3) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949 (63 U.S.C. 377), as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the Act, such amounts as may be necessary for the leasing or acquisition of real property in the fulfillment of this section. This authority shall end two years from enactment.

"(5) The Attorney General shall prescribe a fee of \$100 or more to be paid by each alien who files an application for adjustment of status under subsection (a) or subsection (b)(1). The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

"(d)(1) For purposes of subsection (a), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1977, and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time in excess of 180 days; and

"(C) meets the requirements of paragraph (4).

"(2) For purposes of subsection (b)(1), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1980 (or in the case of an alien described by subparagraph (B)(ii) of such subsection, January 1, 1981), and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time—

"(i) in the case of an alien described by subsection (b)(1)(B)(i), in excess of 90 days; or

"(ii) in the case of an alien described by subsection (b)(1)(B)(ii), in excess of 60 days; and

"(C) meets the requirements of paragraph (4).

"(3) For purposes of subsection (b)(3), an alien shall be considered to have resided continuously in the United States, if, during the period between the date of adjustment to temporary resident status and the date of filing an application under paragraph (3) of such subsection, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for any aggregate period of time in excess of 90 days; and

"(C) meets the requirements of paragraph (4).

"(4)(A) For purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during the period of time referred to in paragraph (1), (2), or (3) of this subsection, whichever is applicable, such alien was outside the United States as a result of a departure under an order of deportation.

"(B) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this subsection.

"(5)(A) Each individual who applies for adjustment of status under subsection (a), (b)(1), or (b)(3) shall submit with his application such documents as are necessary to establish that such alien has employment in the United States, together with independent corroboration of the information contained in such documents, except that if the Attorney General determines that such proof of employment is inapplicable, the Attorney General may accept other documents which support the individual's application for adjustment of status, together with independent corroboration of the information contained in such documents.

"(B) Any document of Federal, State, or local government submitted pursuant to subparagraph (A) shall be in the form of a certified copy. A duly attested declaration under penalty of perjury by such individual's employer, who is a United States citizen, of continuous residency by an individual applying for adjustment of status under this section shall constitute only a rebuttable presumption of physical presence for purposes of this section.

"(e)(1) During the period an alien is in lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a) or (b)(3), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government;

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act; and

"(iii) assistance under the Food Stamp Act of 1977; and

"(B) a State or political subdivision therein may provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

"(2)(A) Paragraph (1) shall not apply to an alien described in subsection (b)(1)(B)(ii)

(relating to certain Cuban and Haitian entrants).

"(B) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(f) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and the Senate and with qualified organizations and governments designated pursuant to subsection (c)(1), shall prescribe regulations as may be necessary to carry out the provisions of this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(g)(1) No decision or determination made by the Attorney General under this section may be reviewed by any court of the United States or of any State.

"(2) No alien denied adjustment of status under this section may raise a claim to such adjustment in any proceeding of the United States or any State involving the status of such alien, including any proceeding of deportation or exclusion under this Act.

"(3) No denial of adjustment of status under subsection (a) or subsection (b) based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

"(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.

"(i) The Attorney General in his sole discretion may waive the requirements of subsection (d)(1)(A) or (d)(2)(A) in cases which would result in exceptional and extreme hardship to the alien or to his spouse, parent, or child. The decision to grant or deny such a waiver shall not be reviewable in any court or administrative proceeding in the United States."

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1980, to that of person admitted for temporary or permanent residence."

(c)(1) Public Law 89-732 (approved November 2, 1966) is repealed.

(2) The repeal made by paragraph (1) shall not apply to a native or citizen of Cuba who has been inspected and admitted or paroled into the United States before April 21, 1980.

STATE LEGALIZATION IMPACT-ASSISTANCE BLOCK GRANTS

SEC. 302. (a) There are authorized to be appropriated for grants (and related Federal administrative costs) to carry out this section such sums as may be necessary for fiscal year 1984 and for each of the five succeeding fiscal years.

(b)(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (hereafter in this section referred

to as the "Secretary") shall allot to each State (as defined in subsection (1)(1)) meeting the requirements of subsection (d) an amount determined in accordance with a formula, established by the Secretary, which takes into account—

(A)(1) the number of eligible legalized aliens (as defined in subsection (1)(2)) residing in the State in that fiscal year.

(ii) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year, and

(iii) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens under programs of public assistance (as defined in subsection (1)(3)), and

(B) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such sums.

(2) In determining the number of eligible legalized aliens for purposes of subclauses (i) and (ii) of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

(3) For each fiscal year the Secretary shall make payments, as provided by section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), to each State from its allotment under paragraph (1). Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(c) A State may use amounts paid to it under subsection (b)(2) for the purpose of providing assistance with respect to eligible legalized aliens under programs of public assistance, but only to the extent such assistance is otherwise available under such programs to citizens residing in the State.

(d) In order to receive an allotment for a fiscal year under subsection (b), a State must prepare and transmit to the Secretary—

(1) a report describing the intended use of payments the State is to receive under this section for the fiscal year, including (A) a description of those programs of public assistance and localities of the State identified by the State as needing assistance from grants under this section, and (B) criteria for and administrative methods of disbursing funds received under this section, and

(2) a statement of assurances that certifies that (A) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c), (B) the State will provide a fair method (as determined by the State) for allocating funds allotted to the State under this section among the programs and localities identified under paragraph (1)(A), and (C) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements incorporated by subsections (e) through (f).

The State shall promptly revise the report referred to in paragraph (1) to reflect substantial changes in its intended use of the funds allotted the State under this section. Such report (for fiscal years after fiscal year 1984), and any revisions proposed thereto, shall be made public within the State in such manner as to facilitate review of and comments from interested persons and local governments on the intended use and distribution of funds for the fiscal year.

(e)(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order properly to evaluate and to compare the performance of different States assisted under this section and to assure the proper

expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (i) to secure an accurate description of those activities, (ii) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes of this section, and (iii) to determine the extent to which funds were expended consistent with the State's description and statement transmitted under subsection (d). Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(B) The Secretary shall annually report to the Congress on activities funded under subsection (b) and shall provide for transmittal of a copy of such report to each State.

(2)(A) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this section. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this section in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards.

following the completion of each audit report, the State shall submit a copy of audit report to the Secretary.

(B) Each State shall repay to the U States amounts found by the Secretary after notice and opportunity for a to the State, not to have been expended accordance with this section and, if such payment is not made, the Secretary offset such amounts against the amount of any allotment to which the State is or become entitled under this section or otherwise recover such amounts.

(C) The Secretary may, after notice opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(4)(A) For the purpose of evaluating and reviewing the block grant established under this section, the Secretary and the Comptroller General shall have access to books, accounts, records, correspondence, other documents that are related to block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(B) In conjunction with an evaluation review under subparagraph (A), no State political subdivision thereof (or grantee either) shall be required to create or prepare new records to comply with subparagraph (A).

(f) Whoever—

(1) knowingly and willfully makes causes to be made any false statement representation of a material fact in connection with the furnishing of items or for which payment may be made by a from funds allotted to the State under section, or

(2) having knowledge of the occurrence any event affecting his initial or continuing right to any such payment conceals or to disclose such event with an intent

lently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

(g)(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

(2) Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under subsection (b), has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable, or

(C) take such other action as may be provided by law.

(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(h) In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

(i) For purposes of this section:

(1) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(2) The term "eligible legalized alien" means—

(A) an alien who has been granted permanent resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the three-year period beginning on the date the alien was granted such status; and

(B) an alien who has been granted temporary resident status under section 245A(b)(1) of such Act, but only until—

(i) such temporary resident status is terminated or

(ii) if the alien has been subsequently granted permanent resident status under section 245A(b)(2) of such Act, until the end of the three-year period beginning on the

date such permanent resident status was granted, whichever is later.

(3) The term "program of public assistance" means State or local programs which provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals or required in the interest of public health.

TITLE IV—GENERAL PROVISIONS

REPORTS TO CONGRESS

Sec. 401. The President shall submit the following reports to the Committees on the Judiciary of the Senate and of the House of Representatives:

(a) Reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens), which shall include—

(1) an analysis of the adequacy of the verification procedure set forth in subsection (b) of that section;

(2) the status of the development and implementation of a more secure verification system as provided in subsection (c) of that section; and

(3) the impact of that section on—

(A) the employment, wages, and working conditions of United States workers,

(B) the number of aliens entering the United States illegally,

(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors,

(D) discrimination against citizen and permanent resident alien members of minority groups, and

(E) the paperwork and recordkeeping burden on United States employers.

Reports concerning the matters described in paragraphs (1), (2), and subparagraphs (A), (B), and (C) of paragraph (3) shall be submitted every six months beginning six months after the date of the enactment of this Act. Reports concerning the matters described in subparagraphs (D) and (E) of paragraph (3) shall be submitted three times: the first not later than eighteen months after the date of enactment of this Act, the second not later than thirty-six months after the date of enactment of this Act, and the third not later than fifty-four months after the date of enactment of this Act.

(b) A comprehensive report on the general legal admissions under the Immigration and Nationality Act, which shall include—

(1) the number and classifications of aliens admitted as immediate relatives under family reunification preferences, independent or occupational preferences and other permanent residents, refugees, asylees, parolees, and a reasonable estimate of the number of aliens who entered the United States without visas or who became deportable under section 241; and

(2) the impact, including reasonable projections and future estimates, of the admission or parole of such aliens on the foreign policy, economy, environmental quality, resources and population growth rate of the United States and the employment of citizens and aliens in the United States. The report called for under this paragraph shall relate to total immigration during the five years prior to the report and reasonable estimates substantiated by the best available evidence, for five years into the future.

This report shall be submitted not later than three years after the date of the enactment of this Act, and every three years thereafter.

(c) A report on the implementation of the agricultural labor transition program and the temporary worker program (popularly known as the "H-2" program), which shall include—

(1) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers,

(2) the development of regulations with respect to the program,

(3) recommendations for modifications of the program, including—

(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested, and

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act.

(d) A report on the pilot program established under section 212(i) of the Immigration and Nationality Act, added by section 213(a) of this Act (popularly known as the "visa waiver program"), which shall include—

(1) an evaluation of the program, including its impact on the control of alien visitors to the United States, consular operations in the countries designated under section 212(i)(3)(A) of the Immigration and Nationality Act, and the impact of the program on the United States tourism industry, and

(2) recommendations on the extension of the program and the expansion of the number of countries which may be designated under such section.

The report shall be submitted not later than two years after the commencement of the program.

(e) A report on the population whose status is legalized under the legalization program established under section 301 of this Act, compiled and validated in accordance with sound statistical practice, which shall include—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics,

(3) their patterns of employment,

(4) their participation in social service programs, and

(5) a general profile and characteristics of the population legalized under the program.

The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter.

(f) Three years after the date of enactment of this Act, the Secretary of Labor, after consulting with the Attorney General, and with representatives of domestic employers and representative domestic employees, and domestic institutions of higher learning, shall submit to the Congress and the President a report, to be accompanied by his recommendations for changes in current law and regulations, concerning the Nation's need for qualified immigrants identified in paragraphs (1) and (2) of subsection (b) of this section who have acquired professional or technical skills that may be in critical demand in the United States. Another such report shall be submitted five years after the date of enactment of this Act.

ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES

SEC. 402. It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly; and

(2) in the enforcement of such laws, the Attorney General should take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

REIMBURSE STATES FOR INCARCERATING ILLEGAL ALIENS

SEC. 403. (a) The Attorney General shall reimburse a State for the costs incurred by such State for the imprisonment of any alien who is convicted of a felony by such State.

(b) An alien referred to in subsection (a) is any alien, as defined in section 101(a)(3) of the Immigration and Nationality Act, other than—

(1) an alien who was issued an immigrant visa or who otherwise acquired the status of an alien lawfully admitted for permanent residence, and who was subject to the numerical limitations contained in section 207(a) of the Immigration and Nationality Act (other than an alien accorded the status of a temporary or permanent resident under section 245A of such Act);

(2) an alien who is an immediate relative within the meaning of section 201(b) of such Act; and

(3) an alien who is a nonimmigrant within the meaning of subparagraphs (A) or (G) of section 101(a)(15).

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

(d) This amendment shall become effective on October 1, 1983.

REPORT BY THE COMPTROLLER GENERAL

SEC. 404. Beginning one year after the date of enactment of this section, and at intervals of one year thereafter for a period of five years after such date, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate a report describing the results of a comprehensive review of the implementation and enforcement of the provisions contained in the amendment made by section 101(a) of this Act during the preceding twelve-month period, for the purpose of determining if—

(1) such provisions have been carried out satisfactorily;

(2) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(3) an unnecessary regulatory burden has been created for employers hiring such workers.

Such committees shall hold public hearings on the contents of each such report and shall submit their findings and recommendations for remedial action, if necessary, to their respective Houses of Congress not later than 60 days after the date of receipt of any such report.

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. (a) Section 404 (8 U.S.C. 1101, note) is amended to read as follows:

"Sec. 404. There are authorized to be appropriated for the fiscal year 1984, \$200,000,000 to carry out the provisions of this Act other than section 214(c)(5) of chapter 2 of title IV."

(b) There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department and to the Equal Employment Opportunity Commission for its enforcement activities in connection with the enforcement of section 274A of the Immigration and Nationality Act.

OFFICIAL LANGUAGE

SEC. 406. It is the sense of the Congress that—

(1) the English language is the official language of the United States, and

(2) no language other than the English language is recognized as the official language of the United States.

WEST VIRGINIA FRUITGROWERS

SEC. 407. It is the sense of the Senate that, inasmuch as the Department of Labor promulgated a final rule on January 4, 1983, at 20 CFR Part 655, described as Labor Certification Process for the Temporary Employment of Aliens in the United States in Agriculture; Adverse Effect Wage Rate; and this rule increased the Adverse Effect Wage Rate for West Virginia by 17.2 percent; and

Inasmuch as the 17.2 per centum increase in the Adverse Effect Wage Rate for West Virginia is nearly seven times greater than the increase made for other states affected by the rulemaking; and

Inasmuch as the increase in the Adverse Effect Wage Rate will cause a substantial portion of the West Virginia apple crop to be uncompetitive in the marketplace, and the resulting economic damage to a significant number of apple growers in West Virginia is likely to be severe; and

Inasmuch as the Department of Labor should consider the formal objections of the State of West Virginia, the State of Maryland, and the United States Department of Agriculture to its rulemaking;

The Senate declares that the Department of Labor should reexamine its January 4, 1983, rulemaking at 20 CFR Part 655, affecting the Adverse Effect Wage Rate applied to West Virginia fruitgrowers, with the purpose of seeking a fair and reasonable adjustment to that rate.

MOTION OFFERED BY MR. RODINO

Mr. RODINO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. RODINO moves to strike out all after the enacting clause of the Senate bill, S. 529, and to insert in lieu thereof the provisions of the bill, H.R. 1510, as passed, as follows:

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS"

SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee or other consideration, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as paragraph (4)) with respect to such employment, or

"(B) an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity that employs three or fewer employees.

"(2) It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States and has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(5) For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

"(6) Paragraph (1) and (2) shall not apply to a person or entity (other than a farm labor contractor, as defined in section 3(7) of the Migrant and Seasonal Agricultural Worker Protection Act) which employs three or fewer employees.

"(7)(A) A person or entity that establishes that it has complied with the requirements of subsection (b) (including meeting the requirement of subparagraph (B) of this paragraph) with respect to the hiring, recruiting, or referral for employment of an individual has established a complete defense as to a violation by that person or entity of paragraph (1)(A) with respect to the hiring, recruiting, or referral of that individual.

"(B) The Attorney General, in cooperation with the Secretaries of Labor and Health and Human Services, shall establish a method to validate the social security account numbers of individuals applying to be hired, recruited, or referred for employment

in the United States. The Attorney General shall provide for publication in the Federal Register of notice of the establishment of the validation method, and procedures for its use, not earlier than six months, and not later than two years, after the date of enactment of this section. Beginning on an effective date, not earlier than 90 days after the date final regulations are published under the previous sentence, set forth by the Attorney General, in order to comply with the requirement of subsection (b) in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the person or other entity must, pursuant to the verification method—

"(i) submit the social security account number of the individual, and

"(ii) be provided and record on the form designated or established for purposes of subsection (b)(1) a validation code indicating that the number submitted is valid.

"(b) The requirements and procedures referred to in paragraphs (1)(B), (3), and (5) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card or certificate of birth in the United States or establishing United States nationality at birth, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar alien registration card issued by the Attorney General to aliens and designated for use for this purpose,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification, and by validating (to the extent and in the manner required under subsection (a)(6)(B)) the social security account number presented by the individual;

"(2) the individual must attest, on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

"(A) in the case of the recruiting or referral (without hiring) of an individual, three years after the date of such recruiting or referral, and

"(B) in the case of the hiring of an individual—

"(i) three years after the date of such hiring, or

"(ii) one year after the date the individual's employment is terminated, whichever is later.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection. A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity. A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

"(c) Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment or administration of a national identification card or system.

"(d)(1) It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of \$1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(e)(1)(A) In the case of a person or entity which has not previously been cited under this subparagraph, if the Attorney General, based on evidence or information he deems persuasive, reasonably concludes that the person or entity has violated paragraph (1)(A) or (2) of subsection (a) with respect to the hiring, recruiting or referring for a fee or other consideration, for employment of an alien, the Attorney General may serve a citation on the person or entity containing a notification that the alien's employment is not authorized and a warning of the penalties and injunctive remedy set forth in this subsection.

"(B) In the case of a person or entity which has previously been cited under subparagraph (A), which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)(i)) to have violated paragraph (1)(A) or (2) of subsection (a), and which—

"(i) has not previously been subject to a civil penalty under this subparagraph, the person or entity shall be subject to a civil penalty of \$1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been subject to a civil penalty under this subparagraph in one or

more instances, the person or entity shall be subject to a civil penalty of \$2,000 for each unauthorized alien with respect to which the violation occurred.

"(2) Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the United States district court for the district in which the person or entity resides or in which the violation occurred requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

"(3)(A) In the case of a person or entity which has not previously been cited under this subparagraph, if the Attorney General, based on evidence or information he deems persuasive, reasonably concludes that the person or entity had violated subsection (a)(1)(B) with respect to the hiring, or recruiting or referring for a fee or other consideration, for employment of an individual, the Attorney General may serve a citation on the person or entity containing a notification of the requirements of subsection (a)(1)(B) and a warning of the penalty set forth in subparagraph (B).

"(B) A person or entity which has previously been cited under subparagraph (A) and which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)(i)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of \$500 for each individual with respect to which such violation occurred.

"(4)(A)(i) Before issuing a citation on, or imposing a civil penalty against, a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than thirty days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(ii) Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code and rules of the United States Immigration Board established under section 107. The hearing shall be held within two hundred miles of the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

"(iii) A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within sixty days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(B)(i) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the United States district court for the district in which the person or entity resides or in which the violation (with respect to which the penalty was assessed) occurred.

"(ii) In any suit described in clause (i) based on an assessment—

"(I) made after a hearing before an administrative law judge, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the administrative law judge's findings of fact, if supported by substantial

evidence on the record considered as a whole, shall be conclusive, or

"(II) for which a timely request for a hearing was not made, the validity and appropriateness of the final order imposing the assessment shall not be subject to review.

"(5)(A) In determining the level of sanction that is applicable under paragraph (1) for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

"(B) In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(f) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(g) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee or other consideration for employment, unauthorized aliens.

"(h)(1) The President shall monitor, and shall consult with the Congress every six months concerning, the implementation of this section (including the effectiveness of the verification and recordkeeping system described in subsection (b) and the status of the changes and additions described in subsection (c)) and the impact of this section on the economy of the United States and on employment (including discrimination in employment) of citizens and aliens in the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.

"(2)(A) The Civil Rights Commission shall monitor the implementation and enforcement of the provisions of this section and shall investigate allegations that the enforcement or implementation of this section has been conducted in the manner that results in unlawful discrimination by race or nationality against citizens of the United States or aliens who are not unauthorized aliens (as defined in subsection (a)(4)).

"(B) The Civil Rights Commission, not later than eighteen months after the month in which this section is enacted, shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing the implementation and enforcement of the provisions of this section during the preceding period, for the purpose of determining if a pattern of such unlawful discrimination has resulted. Two more such reports shall be prepared and transmitted thirty-six and fifty-four months after the month in which this section is enacted.

"(h)(1)(A) It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee or other consideration, of the individual for employment because of such individual's national origin or alienage.

"(B) Subparagraph (A) shall not apply to—

"(i) a person or other entity that employs three or fewer employees,

"(ii) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

"(iii) discrimination because of alienage which is otherwise required in order to comply with law.

"(2) Any person (or person, including a class representing such persons) alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Soviet alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel of the United States Immigration Board (hereinafter in this subsection referred to as the 'Special Counsel' and the 'Board', respectively). Charges shall be in writing under oath or affirmation and shall contain such information as the Board requires. The Special Counsel shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within ten days.

"(e)(A) The Special Counsel shall investigate each charge received and, within 30 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before the Board. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to subparagraph (C), file a complaint before the Board.

"(B) If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice, has not filed a complaint before the Board with respect to such charge within such 30-day period, the person making the charge may (subject to subparagraph (C)) file a complaint directly before the Board.

"(C) No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This clause shall not prevent the subsequent amending of a charge or complaint under paragraph (4)(A).

"(4)(A) Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, the Board, through an administrative law judge designated by the Board for such purposes, shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(B) Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Board as having special training respecting employment discrimination

and, to the extent practicable, before such judges who only consider cases under this section.

"(C) Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before the Board respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the administrative law judge conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(5)(A) The testimony taken by the administrative law judge shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may provide for the taking of further testimony or hear argument.

"(B) The administrative law judge shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within 20 days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(6) In conducting investigations and hearings under this subsection and in accordance with rules of the Board, the Special Counsel and administrative law judges—

"(A) shall have reasonable access to examine evidence of any person or entity being investigated, and

"(B) by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Board, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(1)(I) If, upon the preponderance of the testimony taken, the Board shall be of the opinion that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice. Such an order also may require the person or entity—

"(A) to comply with the requirements of subsection (b) with respect to individuals hired (or recruited or referred for employment for a fee or other consideration) during a period of up to three years;

"(B) to retain for the period referred to in subparagraph (A) and only for purposes consistent with the last sentence of subsection (b) the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee or other consideration, for employment in the United States;

"(C) to hire individuals directly and adversely affected, with or without back pay;

"(D) if the Board finds that the practice was intentional, to take such other action as the Board deems appropriate; and

"(E)(i) except as provided in clauses (ii) and (iii), to pay a civil penalty of not more than \$2,000 for each individual discriminated against,

"(ii) except as provided in clause (iii), in the case of a person or entity previously

subject to such an order; to pay a civil penalty of not more than \$3,000 for each individual discriminated against, or

"(iii) in the case of a person or entity who has engaged or is engaging in a pattern or practice of such discrimination or of such violation, to pay a civil penalty of not more than \$4,000 for each individual discriminated against.

"(2)(A) In providing a remedy under paragraph (1)(C), back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Board. Interim earnings or amounts earnable with reasonable diligence by the individual or individual aggrieved against shall operate to reduce the back pay otherwise allowable under such paragraph. No order of the Board shall require the hiring of an individual as an employee or the payment to him of any back pay, if the individual was refused employment for any reason other than discrimination on amount of national origin or alienage.

"(B) In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person or entity named in the complaint has engaged or is engaging in any such unfair immigration-related employment practice, then the Board shall state its findings of fact and shall issue an order dismissing the complaint.

"(4) In any complaint respecting an unfair immigration-related employment practice, the Board, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(5)(A) The provisions of subsections (d), (e), (f), (g), (i), and (j) of section 10 of the National Labor Relations Act (29 U.S.C. 160) shall apply to court petitions and review of orders under this section in the same manner as they apply to court petitions and orders under that section, except that the authority of the General Counsel or the National Labor Relations Board under those subsections shall be exercised for purposes of this paragraph through the Special Counsel to the Board.

"(B) In any proceeding referred to in subparagraph (A), the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.

"(2)(A) No citation, civil or criminal penalty, or injunction may be issued under section 274A of the Immigration and Nationality Act for the hiring, or recruiting or referring for a fee or other consideration, for employment of individuals occurring before the first day of the seventh month beginning after the date of the enactment of this Act.

"(B) During the one-year period beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

"(C) The Attorney General shall, not later than the first day of the seventh month be-

ginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

"(3) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens."

(b)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii) and 214(c)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and 214(e)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act."

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1856(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

SEC. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(4) by striking out "\$2,000" and inserting in lieu thereof "\$5,000";

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsections:

"(b) Whoever knowingly uses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document or a false attestation for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence

agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)."

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents."

PART B—IMPROVEMENT OF ENFORCEMENT AND SERVICES

SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 111. (a) Two essential elements of the program of immigration control and reform established by this Act are—

(1) an increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

(b) Section 404 (8 U.S.C. 1101 note) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 404. (a)(1) In addition to any other amounts appropriated to the Department of Justice for the Immigration and Naturalization Service for fiscal year 1984, there are authorized to be appropriated \$80,000,000 for such fiscal year for improved service and enforcement activities. Amounts appropriated under this paragraph shall be available for expenditure during fiscal year 1985.

"(2) The Attorney General shall develop and transmit to Congress, not later than two months after the date of the enactment of the Immigration Improvements Act of 1984, a plan setting forth the levels of personnel and funding within the Service for fiscal year 1984 necessary to provide—

"(A) for adequate and sufficient border patrol activities, including personnel, equipment, training, and support services,

"(B) for the provision of immigration and naturalization services, including process of applications for legal entry, on a prompt and efficient basis, and

"(C) for an enhanced community outreach program described in section 103(e).

The plan shall incorporate the in-service training program described in section 103(d).

"(b) In addition to the funds authorized to be appropriated under subsection (a), there are authorized to be appropriated for each of fiscal years 1984, 1985, and 1986, not less than \$6,000,000, for the activities of the task force described in section 274A(g)(3).

"(c)(1) There are authorized to be appropriated to the Department of Justice for the Immigration and Naturalization Service—

"(A) for fiscal year 1985, \$700,000,000, and

"(B) for fiscal year 1986, \$715,000,000.

"(2) For each of fiscal years 1985 and 1986, the Attorney General shall develop and transmit to Congress on a timely basis a revision of the plan established under subsection (a)(2) or under this paragraph setting forth the levels of personnel and funding within the Service for that fiscal year necessary to provide for the items described in subsection (a)(2) for that fiscal year and to incorporate the in-service training program described in section 103(d).

"(d) In the case of any additional amounts appropriated pursuant to subsections (a)

and (c) in addition to the amounts that otherwise would have been appropriated in the absence of this section—

"(1) a significant proportion of such increase shall be used to improve the delivery of immigration and naturalization services, including timely processing of petitions and applications, and

"(2) any increased amounts used for immigration enforcement activities shall be used predominantly for increasing border area patrol and support staff."

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended—

(1) by inserting "or subsection (c)" in subsection (b)(1) after "subsection (a)",

(2) by redesignating subsection (c) as subsection (d), and

(3) by inserting after subsection (b) the following new subsection:

"(c) Any person who, for the purpose of commercial advantage or private profit, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States such alien by himself or through another in any manner whatsoever, regardless of whether or not fraudulent, evasive, or surreptitious means are used and regardless of any official action which may later be taken with respect to such alien, shall, for each transaction constituting a violation of this subsection (regardless of the number of aliens involved) be fined not more than \$10,000 or imprisoned not more than five years, or both."

FEES

SEC. 113. (a) Section 281 (8 U.S.C. 1351) is amended—

(1) by amending the heading to read as follows:

"NONIMMIGRANT VISA FEES AND ALIEN USER FEES";

(2) by inserting "(a)" after "Sec. 281."; and

(3) by adding at the end the following new subsection:

"(b) The Attorney General, in consultation with the Secretary of State, may impose fees on aliens with respect to their use of border facilities or services of the Service in such amounts as may reasonably reflect the portion of costs of maintenance and operation of such facilities and provision of such services attributable to aliens' use of such facilities and services."

(b) The item in the table of contents relating to section 281 is amended to read as follows:

"Sec. 281. Nonimmigrant visa fees and alien user fees."

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR OPERATIONS

SEC. 114. Section 287 (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service shall not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States or for activities related to that purpose."

TREATMENT OF IMMIGRATION EMERGENCIES

SEC. 115. (a) Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c)(1) The Attorney General shall develop, and may from time to time modify, a

contingency plan to provide for the allocation and management of personnel and resources of the Service and other Federal agencies in the event of an immigration emergency. Such plan shall provide for a prompt, efficient, and coordinated response at the Federal, State, and local levels, for the prompt delivery of assistance and necessary resettlement services, and for prompt assistance to States and localities adversely impacted in responding to any such emergency. In developing such as plan, the Attorney General shall consult with immigration experts and State and local governments.

"(2) The Attorney General shall submit the contingency plan to the Committees on the Judiciary of the House of Representatives and of the Senate within four months after the date of the enactment of this subsection.

"(3) If the President determines that an immigration emergency exists and has certified such fact to the Congress, the Attorney General may request necessary and urgent appropriations in a manner consistent with the contingency plan."

(b) Section 404 (8 U.S.C. 1101 note), as amended by section 111, is further amended by adding at the end the following new subsection:

"(e) There are authorized to be appropriated such sums as may be necessary to carry out section 103(c), which amounts shall be available without fiscal year limitation."

PROGRAM OF IN-SERVICE TRAINING

SEC. 116. Section 103 (8 U.S.C. 1103), as amended by section 115, is further amended by adding at the end the following new subsection:

"(d)(1) The Attorney General shall provide for such programs of in-service training for full-time and part-time personnel of the service in contact with the public as will familiarize the personnel with the rights and varied cultural backgrounds of aliens and citizens in order to ensure and safeguard the constitutional and civil rights, personal safety, and human dignity of all individuals, aliens as well as citizens, within the jurisdiction of the United States with whom they have contact in their work.

"(2) The Attorney General shall provide that the annual report of the service includes a description of steps taken to carry out paragraph (1)."

ENHANCEMENT OF COMMUNITY OUTREACH WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 117. Section 103 (8 U.S.C. 1103), as amended by sections 115 and 116, is further amended by adding at the end the following new subsection:

"(e)(1) The Attorney General shall enhance the responsibilities of the community outreach program within the service so that such program, acting in cooperation with the community relations service of the Department of Justice, has personnel located at the district level—

"(A) to assist in the provision of services, particularly naturalization services,

"(B) to provide outreach to deal generally with community problems with the Service arising at the district level, and

"(C) to receive and investigate complaints of abuse of authority by personnel of the Service and to transmit findings thereon to appropriate authorities for disposition or resolution.

In providing for the functions described in subparagraph (A), the Attorney General may secure the assistance and services of voluntary and community agencies.

"(2) The Attorney General shall provide that the annual report of the Service includes details concerning the progress of the

Service's community outreach program in carrying out the responsibilities described in paragraph (1)."

REPORT ON ESTABLISHMENT OF ANTISMUGGLING PROGRAM

SEC. 118. The Attorney General, jointly with the Secretary of State, shall initiate discussions with Mexico and Canada to establish formal bilateral programs with those countries to prevent and to prosecute the smuggling of undocumented aliens into the United States and shall report back to the Congress, not later than one year after the date of the enactment of this Act, concerning the progress made in establishing such programs. In any such program, major emphasis should be placed on deterring and prosecuting persons involved in the organized and continuing smuggling for profit.

LIABILITY OF OWNERS AND OPERATORS OF INTERNATIONAL BRIDGES AND TOLL ROADS TO PREVENT THE UNAUTHORIZED LANDING OF ALIENS

SEC. 119. Section 271 (8 U.S.C. 1321) is amended by inserting at the end the following new subsection:

"(c)(1) No person described in subsection (a) who establishes to the satisfaction of the Attorney General that such person has acted diligently and reasonably to fulfill the duty imposed by such subsection shall be liable for the penalty described in such subsection, notwithstanding the failure of such person to prevent the unauthorized landing of any alien.

"(2)(A) At the request of any owner or operator of any international bridge or toll road described in subsection (a), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such owner or operator for the purpose of complying with subsection (a). The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

"(B) Proof that any owner or operator has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which such approval is effective) shall be prima facie evidence that such owner or operator acted diligently and reasonably to fulfill the duty imposed by subsection (a) (within the meaning of paragraph (1))."

ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES

SEC. 120. It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly; and

(2) in enforcement of such laws, the Attorney General shall take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. Subsection (b) of section 235 (8 U.S.C. 1225) is amended to read as follows:

"(b)(1)(A) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(B) If the examining immigration officer determines that the alien seeking entry—

"(i) does not present the documentation required (if any) to obtain entry to the United States,

"(ii) does not have any reasonable basis for legal entry into the United States, and

"(iii) does not indicate an intention to apply for asylum under section 208, the alien shall be excluded from entry into the United States without a hearing.

"(C) If the examining immigration officer determines that an alien seeking entry, other than an alien crewman and except as otherwise provided in subparagraph (B), subsection (c), or section 273(d), is otherwise not clearly and beyond a doubt entitled to land, the alien shall be detained for a hearing before an administrative law judge on exclusion of the alien.

"(2) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before an administrative law judge for a hearing on exclusion of the alien.

"(3) The Attorney General shall establish, after consultation with the Judiciary Committees of the Congress, procedures which assure that aliens are not excluded under paragraph (1)(B) without an inquiry into their reasons for seeking entry into the United States.

"(4) In the case of an alien who would be excluded from entry under paragraph (1)(B) but for indicating an intention to apply for asylum, the exclusion hearing with respect to such entry shall be limited to the issues raised in connection with the alien's application for asylum."

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF ADMINISTRATIVE LAW JUDGES"

"SEC. 107. (a)(1) There is established, as an independent agency in the Department of Justice, a United States Immigration Board (hereinafter in this section referred to as the 'Board') composed of a Chairman and six other members appointed by the President by and with the advice and consent of the Senate.

"(2) The term of office of the Chairman and all other members of the Board shall be six years except that—

"(A) of the members first appointed under this subsection, two shall be appointed for a term of two years, two shall be appointed for a term of four years, and three shall be appointed for a term of six years.

"(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until reappointed or his successor has taken office.

"(3) A member of the Board may be removed by the President only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS-18 of such General Schedule.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board. The Board shall establish rules of practice and procedure for itself and for the administrative law judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of administrative law judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (3) or (6) of section 203(a) or petitions on behalf of a child described in section 101(b)(1)(F), and

"(ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

"(F) such other administrative decisions and determinations under this Act as the Attorney General may provide by regulation.

The Board shall also exercise functions described in subsections (h) and (i) of section 274A.

"(3) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or in banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4)(A) Appeals to the Board from final orders of deportation or exclusion (including an order respecting asylum contained in such an order) shall be filed not later than twenty days after the date of the final order.

"(B) The Board shall review the decision of an administrative law judge based solely upon the administrative record upon which the decision is made and the findings of fact in the judge's order, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all administrative law judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States.

"(6) In a case in which the Board is considering an appeal of a decision of an administrative law judge respecting an application for asylum, the Board shall render its decision on the appeal not later than sixty days after the date the appeal is filed.

"(c)(1) The Chairman, in accordance with sections 3105 and 5108 and other provisions of title 5, United States Code, relating to administrative law judges in the competitive service, shall—

"(A) appoint administrative law judges, and

"(B) designate one such judge to serve as chief administrative law judge.

"(2) In accordance with rules established by the Board, the chief administrative law judge—

"(A) shall have responsibility for the administrative activities affecting administrative law judges, and

"(B) may designate any administrative law judge in active service to hear and decide any cases described in paragraph (3).

"(3) Administrative law judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208,

"(E) the assessment of civil penalties under section 274A(d) and, with respect to judges designated to hear such cases, complaints under section 274A(h), and

"(F) such other cases arising under this Act as the Attorney General may provide by regulation.

"(4) In considering and deciding cases coming before them, administrative law judges may administer oaths, shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.

"(d)(1) The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel to the Board, to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) The Special Counsel shall be responsible, on behalf of the Board, for investigation of charges and issuance of complaints under subsections (h) and (i) of section 274A and in respect of the prosecution of all such complaints before the Board and the exercise of certain functions referred to in section 274A(i)(5)(A), and shall have such other duties respecting such section as the Board may prescribe.

"(3) The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General schedule, under section 5332 of title 5, United States Code.

"(4) The Special Counsel, in accordance with rules established by the Board, shall establish such regional offices as may be necessary to carry out his duties."

(b) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of administrative law judges."

JUDICIAL REVIEW

SEC. 123. (a) Subsection (a) of 106 (8 U.S.C. 1105a) is amended—

(1) by striking out "AND EXCLUSION" in the heading and inserting in lieu thereof "EXCLUSION, AND ASYLUM";

(2) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final

orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(3) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than sixty days from the date of the final order";

(4) inserting "in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(5)(A) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)";

(B) by striking out "The service of the petition" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the service of the petition";

(6) by inserting "exclusion or" before "deportation" in paragraphs (3) and (4);

(7) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order";

(8) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in";

(9) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination of an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the administrative law judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious";

(10) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order;";

(11) by striking out "and" at the end of paragraph (8) and inserting in lieu thereof a period; and

(12) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Nothing in the provisions of this section shall be construed as limiting the right of habeas corpus under chapter 153 of title 28, United States Code. Petitions for habeas corpus based upon custody effected pursuant to this Act may be brought individually or on a multiple party basis as the interests of the judicial efficiency and justice may require.

"(2) No court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under section 208 except in a petition for review under subsection (a).

"(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of administrative law judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum

because of changed circumstances, or the Attorney General's denial of a stay of execution of an exclusion or deportation order.

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an administrative law judge".

(d) Section 279 (8 U.S.C. 1329) is amended by striking out "The district courts" in the first sentence and inserting in lieu thereof "Except as otherwise provided under section 106, the district courts".

(e) The item in the table of contents relating to section 106 is amended to read as follows:

"Sec. 106. Judicial review of orders of deportation, exclusion, and asylum."

(f) In the case of a final order of deportation or exclusion entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) sixty days after the date of the enactment of this Act, or (2) the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

ASYLUM

SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) In the case of an alien against whom exclusion or deportation proceedings have been instituted, the alien's application for asylum may not be considered unless—

"(I) not later than fourteen days after the date of the service of the notice instituting such proceedings, the alien has filed notice of intention to file an application for asylum and, not later than thirty days after the date of filing such notice of intention, the alien has actually filed the application for asylum,

"(II) the alien can make a clear showing, to the satisfaction of the administrative law judge conducting the proceeding, that changed circumstances after the date of the notice instituting the proceeding have resulted in a change in the basis for the alien's claim for asylum, or

"(III) the administrative law judge determines, solely in his discretion, that the interests of justice require the consideration of the application.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances after the date of the denial of the previous application have resulted in a change in the basis for the alien's claim for asylum.

"(2) Applications for asylum shall be considered before administrative law judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. An individual who has served as a special inquiry officer under this title before the date of the enactment of the Immigration Reform and Control Act of 1983 may not be designated to hear applications under this section, unless the individual has received such special training after the date of the enactment of such Act.

"(3)(A)(i) Upon the filing of an application for asylum, an administrative law judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the

application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(II) Unless the applicant consents in writing to the contrary, the hearing on the asylum application shall commence not later than forty-five days after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(III) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if (I) a hearing on the application is not held on a timely basis under clause (II), (II) a decision on the application is not rendered on a timely basis under subparagraph (D), (III) in the case an appeal to the United States Immigration Board from a denial of an application for asylum has been taken under section 107(b), a decision of the Board is not rendered on the appeal within 60 days of the date the notice of appeal is filed with the Board, or (IV) in the case judicial review of a denial of an application for asylum has been taken under section 108(a), a decision of the reviewing court on the petition for review is not rendered within 30 days of the date the petition is filed with the court, and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien on parole subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community. Nothing in this section shall be construed as allowing for the detention of an alien without a showing that the alien has violated a reasonable condition of the release or that the continued release of the alien would pose a danger to any other person or to the community.

"(B)(1) A hearing on the asylum application shall be open to the public, unless the applicant requests that it be closed to the public.

"(ID) At the time of filing of notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented by counsel (in accordance with section 292) and of the availability of legal services.

"(III) The applicant is entitled to have the asylum hearing closed to the public, to present evidence and witnesses in his own half, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government.

"(C) A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General, and the United States Immigration Board, shall provide that a transcript of a hearing held under this section is made, available not later than ten days after the date of completion of the hearing.

"(D) The administrative law judge shall render a determination on the application not later than thirty days after the date of completion of hearing. The determination of the administrative law judge shall be based only on the evidence produced at the hearing.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) An alien may be granted asylum only if the administrative law judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42) (A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish that the alien is a refugee within the meaning of section 101(a)(42)(A).

"(6) After making a determination on an application for asylum under this section, an administrative law judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances have resulted in a change in the basis for the alien's claim for asylum."

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2)".

(3) Such section is further amended by adding at the end the following new subsections:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.

"(e) The Attorney General shall report to the Congress annually on the number of applications for asylum (by country of nationality of applicant) (1) submitted during the year, (2) approved during the year, (3) denied during the year, and (4) pending at the end of the year, and shall also include in such report such other general information relating to such applications as may be appropriate."

(b) Section 243(h) (8 U.S.C. 1253(h)) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section."

(c) Section 222(f) (8 U.S.C. 1262(f)) is amended—

(1) by inserting "(whether as an immigrant, non-immigrant, refugee, or otherwise)" after "enter the United States";

(2) by inserting "(1)" after "(f)" and

(3) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the approval or denial of any application for asylum or withholding of deportation under sections 207 and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records or document may be made available to a court which certifies that the information contained in such records or document is needed by the court in the interests of the ends of justice in a case pending before the court.

"(B) In the case of an applicant for asylum or withholding of deportation who seeks records or documents relevant to that particular application, subparagraph (A) shall not be construed as limiting that applicant's access to such records or documents except insofar as such records or documents

otherwise are exempt from disclosure under section 552(b) of title 5, United States Code."

EFFECTIVE DATES AND TRANSITION

Sec. 125. (a)(1) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121, 123(a)(2), 123(a)(3), 123(a)(6), 123(a)(10), 123(a)(12), 123(b), 123(d), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that administrative law judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as administrative law judges.

(B) Paragraphs (1)(B), (3)(B)(ii), (3)(B)(iii), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than 14 days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in any such paragraph to an administrative law judge shall be deemed (before the asylum transition date) to be a reference to the immigration officer conducting the asylum hearing.

(b)(1) The President shall nominate the Chairman and other members of the United States Immigration Board (hereinafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Board shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and administration law judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Chairman shall appoint at least ten administrative law judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these administrative law judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the administrative

law judge system, the Board in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A), and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of administrative law judges, in accordance with section 3105 of title 5, United States Code, under subsection (b)(3)(B).

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an administrative law judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) continue to conduct proceedings or hearings under the Immigration and Nationality Act after such transition date during the period ending two years after the date of the enactment of this Act.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before the date this Act takes effect.

(2) Under rules established by the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and administrative law judges shall be deemed to be continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) In the appointment of persons to the position of administrative law judge under section 107(c) of the Immigration and Nationality Act (added by this part) before the end of the two-year period beginning on the hearing transition date—

(1)(A) applications shall be accepted at any time before the hearing transition date from individuals acting as special inquiry officers on the date of the enactment of this Act, and (B) such individuals who apply before such date shall be considered to meet the minimum requirements for entrance to the examination for such position (and shall be awarded, in the application process, at least the minimum number of points for persons who otherwise meet such minimum requirements) and shall be given the examination for that position not later than the quarter following the application; and

(2)(A) each individual who is serving as a special inquiry officer on the date of the enactment of this Act and whose name is included on the certificate of eligibles furnished to the Chairman of the United States Immigration Board by the Director of the Office of Personnel Management for that position shall be treated, for purposes of section 3318(b) of title 5, United States Code, as a preference eligible (within the meaning of section 2108(3)(A) of that title)

and (B) the Chairman shall take into account (in selecting among persons whose names are on the certificate) the demonstrated abilities and expertise in immigration law of such individuals.

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 126. (a)(1) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'administrative law judge' means such a judge appointed under section 107."

(2) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(c)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "administrative law judges";

(B) by striking out ", including special inquiry officers," in the fourth sentence and inserting in lieu thereof "and any administrative law judge";

(C) by striking out ", including special inquiry officers," in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and administrative law judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "administrative law judge".

(2) Subsection (c) of such section is amended—

(A) by striking out "the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an administrative law judge during an exclusion hearing";

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing";

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing";

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing", and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an administrative law judge".

(d) Sections 106(a)(2), 236, and 242(b)(8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(e)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1126) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "administrative law judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1126) is amended—

(A) by amending the first sentence to read as follows: "An administrative law judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing";

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing";

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the United States Immigration Board shall establish", and

(F) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended—

(A) by striking out "From a decision" and all that follows through "Attorney General" in the first sentence and inserting in lieu thereof the following: "From a decision of an administrative law judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file a timely appeal of the decision with the United States Immigration Board in accordance with rules established by the Board",

(B) by striking out "Attorney General" in the fourth sentence and inserting in lieu thereof "United States Immigration Board", and

(C) by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(f) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "administrative law judge";

(2) by striking out "shall administer oaths" and all that follows through "Attorney General," in the first sentence,

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "United States Immigration Board shall establish",

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence,

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the United States Immigration Board",

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "administrative law judge shall be final unless reversed on appeal".

(g) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(h) Section 292 (8 U.S.C. 1362) is amended—

(1) by striking out "In" and all that follows through "proceedings," and inserting in lieu thereof "In any proceeding or hearing before an administrative law judge and in any appeal before the United States Immigration Board from any such proceeding", and

(2) by inserting "and at no unreasonable delay" after "Government".

(i) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after "proceedings", and

(2) by striking out the second sentence.

(j) Any reference in section 203(h) of the Immigration and Nationality Act, as in

effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an administrative law judge under section 101(a)(43) of such Act.

PART D—ADJUSTMENT OF STATUS

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY OUT-OF-STATUS ALIENS

SEC. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by inserting after "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" the following: "or who is not in legal immigration status on the date of filing the application for adjustment of status".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status pending on the date of the enactment of this Act.

(c) For amendment prohibiting certain nonimmigrant students and visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

PART E—PRESIDENTIAL STUDY OF A COLLABORATIVE PEOPLE-TO-PEOPLE PROGRAM BETWEEN THE UNITED STATES AND MEXICO

STUDY

SEC. 141. (a) The Congress finds that—

(1) increases in illegal immigration from Mexico to the United States and social unrest in Central America have made it imperative that the people of the United States encourage efforts to strengthen economic and social relations with people of Mexico and to promote economic revitalization and economic expansion opportunities in Mexico;

(2) not addressing issues relating to illegal immigration from Mexico (such as the 220 percent increase from 1970 to 1982 in the number of illegal Mexican aliens apprehended in the United States) and the social instability in Central America to the south of Mexico (especially Communist influence in that area) may ultimately jeopardize the economic well-being and national security of both the United States and Mexico;

(3) financial stability, economic growth, and prosperity in Mexico would substantially help to address this problem; and

(4) the United States economy and the Mexican economy are inextricably linked to the extent that (A) Mexico is the third largest trading partner of the United States, (B) the United States is the predominant source of Mexico's exports, (C) Mexico is becoming an increasingly important consumer of the United States manufactured goods, machinery, and service, (D) Mexico is the fourth largest source of foreign oil for the United States and is of critical strategic importance as a stable supply of oil, (E) two-thirds of the foreign investment in Mexico are held by United States investors, and (F) United States banks have loaned Mexico an amount equivalent to 30 percent of Mexico's foreign debt.

(b) The President shall study the advisability and practicality of proposing to Mexico the establishment of a collaborative people-to-people program between Mexico and the United States. The President shall explore a program that would—

(1) be a bold new initiative to serve as the ultimate coordinating body of collaborative programs of mutual interest to Mexico and the United States and to create a climate of growth and economic prosperity in Mexico;

(2) contribute to economic development in Mexico, reinforcing measures in the fields of trade, investment, and financial assistance, in order to address current and anticipated needs and developments and to foster self-reliance;

(3) serve as a source of financial and technical assistance to carry out these goals drawing on, encouraging, and coordinating participation of existing United States programs and activities, international assistance programs of United States colleges and universities, programs of the Mexican Government, and any new programs or activities which would be established as part of the people-to-people program;

(4) target assistance based on findings of need in areas such as agricultural productivity, industrial research, building construction, transportation systems, research and development, and energy alternatives, and take into consideration the findings of the United States-Mexico Science and Technology Mixed Commission;

(5) draw extensively on and foster the development of local Mexican business, civic organizations, and labor organization, and rely on private sector local and foreign initiatives; and

(6) rely on volunteers in a composition which would provide a mixture of workers, advisers, and consultants with skills not sufficiently available in Mexico.

(c) In studying such a people-to-people program, the President shall consider how the program should be administered.

(d) Such study shall consider the possibility of the Governments of the United States and Mexico establishing a Mixed Commission for the formulation, orientation, and review of the program. The Commission would meet whenever necessary, alternately in Mexico and the United States. The Commission would meet at the request of either Government and be made up of Mexicans and Americans appointed, through diplomatic channels, whenever a meeting is held. The Mixed Commission would examine matters relating to the execution of the program, determine the plan of activities to be undertaken, examine periodically the program as a whole, and make recommendations to the two Governments. It could also suggest that special meetings be held on a specific project or subject.

(e) The President shall transmit to the Congress the results of the study under this section no later than one year after the date of the enactment of this Act.

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

PROVIDING ADDITIONAL IMMIGRANT VISA NUMBERS FOR NATIVES OF CONTIGUOUS COUNTRIES

SEC. 201. (a) Section 201 (8 U.S.C. 1151) is amended—

(1) by inserting "certain aliens provided immigrant visa numbers under subsection (c)," in subsection (a) after "subsection (b) of this section," and

(2) by adding at the end the following new subsection:

"(c)(1) In addition to the number of immigrant visas made available under subsection (a), there shall be made available to natives of each of the foreign states contiguous to the United States for each fiscal year a number of immigrant visas not to exceed the number specified under paragraph (2), not more than 26 percent of which may be made available in any of the first three quarters of such fiscal year:

"(2)(A) Except as provided in subparagraph (B), the number of additional visas made available to natives of either of the foreign contiguous states for a fiscal year is equal to 20,000.

"(B) If for a fiscal year one of the foreign contiguous states does not use the full number of additional immigrant visa numbers made available under this subsection, then the number of additional visas made available to natives of the other foreign con-

tiguous state for the following fiscal year shall be increased by the number not used by the other foreign contiguous state for the previous fiscal year."

(b) Section 202 (8 U.S.C. 1152) is amended—

(1) by inserting "and (c)" in subsection (a) after "section 201(b)";

(2) by striking out "under section 207" in the matter in subsection (e) before paragraph (1) and inserting in lieu thereof "under subsection (a)", and

(3) by adding at the end of subsection (e) the following: "This subsection shall not apply to visas made available under section 201(c) and allotted under section 203(f)."

(c) Section 203 (8 U.S.C. 1153) is amended by adding at the end the following new subsection:

"(D)(1) Aliens who are subject to the numerical limitations specified in section 201(c) shall be allotted visas in the same manner, subject to the same conditions, and in the same order as aliens are subject to the numerical limitations specified in section 201(a) are allotted visas under subsection (a), except that the percentage limitations specified in paragraphs (1) through (6) thereof shall not apply.

"(2) Requirements respecting acquisition of preference status by reason of a relationship or occupational qualification described in a paragraph of subsection (a) shall apply, in the same manner, for the acquisition of preference status under paragraph (1) of this subsection."

(d) The amendments made by this section shall apply to fiscal years beginning with fiscal year 1984.

CHANGE IN COLONIAL QUOTA

SEC. 202. (a)(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "three thousand".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "3,000".

(b) The amendments made by subsection (a) shall apply to fiscal years beginning with fiscal year 1984.

REPORT ON ADMISSIONS AND NUMERICAL LIMITATIONS

SEC. 203. (a) Chapter 1 of title I is amended by adding at the end the following new section:

"PRESIDENTIAL REPORT ON IMMIGRATION ADMISSIONS AND IMPACTS

"SEC. 210. (a) The President shall transmit to the Congress, not later than January 1, 1987, and not later than January 1 of every third year thereafter, a comprehensive report on the impact on the economy, labor market, housing market, educational system, social services, foreign policy, environmental quality, resources, and population growth rate of the United States of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the preceding three-year period and on the projected impact (based on reasonable estimates substantiated by the best available evidence) on such factors of admissions and other entries during the succeeding five-year period.

"(b)(1) The President shall include in such report the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum during the relevant as well as a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241.

"(2) The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under this title bearing on the admission and entry of such aliens to the United States.

"(c) Not later than ninety days after the date of receipt of such a report, the Committees on the Judiciary of the House of Representatives and of the Senate shall hold public hearings to review the findings and recommendations contained in such report."

(b) The table of contents is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Presidential report on immigration admissions and impacts."

G-4 SPECIAL IMMIGRANTS

SEC. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(I) an immigrant who entered the United States with the status of a nonimmigrant under paragraph (15)(G)(iv) and who—

"(i) is the unmarried son or daughter of an officer or employee of an international organization described in paragraph (15)(G)(iv), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and eighteen years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later; or

"(ii) is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later."

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(N)(i) the parent of an alien accorded the status of a special immigrant under paragraph (27)(IX)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(IX)(ii)."

MISCELLANEOUS PROVISIONS

SEC. 205. (a) Section 101(b)(1)(XD) (8 U.S.C. 1101(b)(1)(XD)) is amended by inserting "or natural father" after "natural mother".

(b) Section 19(2) of Public Law 97-116 is amended by inserting "(A)" after "because" and by adding before the semicolon at the end the following: ", or (B) the alien was entering the United States for the purpose of retirement, would not seek gainful employment in the United States, had purchased property in the United States before such

date, and had demonstrated the ability for self-support while in retirement".

(c) In the case of an alien—

(1) who was in the United States on October 1, 1982,

(2) who, as of such date—

(A) had a petition approved for classification under section 203(a) (3) or (6) of the Immigration and Nationality Act, and

(B) had been issued a labor certification under section 212(a)(14) of such Act with respect to employment for an employer,

(3) who intends to remain in the United States for the purpose of performing such employment, and

(4) with respect to whom the Attorney General estimates that an immigrant visa will become available before October 1, 1984,

the Attorney General may provide that, notwithstanding any provision of section 214 of the Immigration and Nationality Act, the alien may be classified as a nonimmigrant under section 101(a)(15)(H)(ii) of such Act with respect to such employment until October 1, 1984, or, if earlier, one month after the date the alien's immigrant visa becomes available. For purposes of applying section 245 of such Act to an alien classified as a nonimmigrant under this subsection, the alien shall be considered to have been inspected and admitted into the United States and subsection (c)(2) of that section shall not apply.

(d) Section 204(g)(3)(A) (8 U.S.C. 1154(g)(3)(A)) is amended by striking out "(C)(i) of paragraph 2" and inserting in lieu thereof "(C)(ii) of paragraph (2)".

(e) Section 212(a)(14)(A) (8 U.S.C. 1182(a)(14)(A)) is amended—

(1) by inserting "(i)" before "who are members",

(2) by striking out "or who have" and inserting in lieu thereof ", (ii) who have", and

(3) by inserting after "sciences or the arts" the following: ", or (iii) who have doctoral degrees and are seeking to enter the United States to be employed as researchers at colleges, universities, or other nonprofit educational or research institutions".

(f) Section 244(b) (8 U.S.C. 1254(b)) is amended by inserting "(1)" after "(b)" and by adding at the end the following new paragraph:

"(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States did not meaningfully interrupt the continuous physical presence."

PART B—NONIMMIGRANTS

H-2 WORKERS AND TRANSITIONAL NONIMMIGRANT AGRICULTURAL WORKER PROGRAM

SEC. 211. (a)(1) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

(2) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section 204(b) of this Act, is further amended by striking out "or" at the end of subparagraph (M), by striking out the period at the end of subparagraph (N) and inserting in lieu thereof

"; or", and by adding at the end the following new subparagraph:

"(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform temporary services or labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) under the transitional agricultural labor program provided for under section 214(e)."

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences:

"An alien may not be admitted to the United States as a nonimmigrant—

"(1) under section 101(a)(15)(H)(ii)(a) for an aggregate period longer than the period (or periods) determined by regulations of the Attorney General, or

"(2) under section 101(a)(15)(H)(ii) if the alien was admitted to the United States as such a nonimmigrant within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A."

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c)(1), as so redesignated, the following:

"For purposes of this paragraph the term 'appropriate agencies of Government' means the Department of Labor and includes, with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the Department of Agriculture.

"(2)(A)(i) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(ii) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(b) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient qualified workers available in the United States to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(iii) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraph (A)—

"(i) if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification,

"(ii) with respect to an employer if the employer during the previous two-year period employed nonimmigrant aliens ad-

mitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification which respect to the employment of domestic or nonimmigrant workers, or

"(iii) for an employer unless the Secretary has been provided satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employments.

No employer may be denied certification under clause (ii) for more than three years for any violation described in such clause.

"(3)(A) In the case of an application for a labor certification for a nonimmigrant described in section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that the application be filed more than 50 days before the first date the employer requires the labor or services of the alien;

"(ii) the employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in paragraph (2)(A)(i)(I) for approval and if it does not, such notice shall include the reasons therefor and permit the employer an opportunity to resubmit promptly a modified application for approval;

"(iii) the Secretary of Labor shall make, not later than twenty days before the date such labor or services are first required to be performed, the certification described in paragraph (2)(A)(i) if the employer has complied with the criteria for certification, including criteria for the recruitment of eligible individuals as prescribed by the Secretary, or if the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary, except that the terms of such a labor certification remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply or are referred to the employer; and

"(iv) in the employer's complying with terms and conditions of employment respecting the furnishing of housing, the employer shall be permitted, at the employer's option and in lieu of arranging for suitable housing accommodations, to substitute payment of a reasonable housing allowance, but only if housing is otherwise available in the proximate area of employment.

"(B) A petition to import an alien as a nonimmigrant described in section 101(a)(15)(H)(ii)(a), and an application for a labor certification with respect to such an alien, may be filed by an association representing agricultural producers which use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application.

"(C)(i) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2)(A)(i) or, at the applicant's request, for a de novo administrative hearing respecting the denial.

"(ii) The Secretary of Labor shall expeditiously, but in no case later than seventy-two hours after the time a new determination is requested, make a new determination on the request for certification in the case of importing a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not able, willing, or qualified, the burden of proof is on the employer to establish that the individuals referred are not able, willing, or qualified because of employment-related reasons as shown by their job performance.

"(D) For purposes of this paragraph, the term 'eligible individual' means with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection and on the work permits issued under subsection (e), the impact of aliens admitted pursuant to such certifications or permits on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, \$10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in sections 101(a)(15)(H)(ii) and 101(a)(15)(O), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection or subsection (e).

"(6) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this subsection and under section 212(a)(14).

"(7) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities as set forth under the provisions of this Act."

(4) by adding at the end thereof the following new subsection:

"(e)(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall by regulation establish a three-year transitional agricultural labor program (hereinafter in this subsection referred to as 'the transitional program') to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals (described in subsection (c)(3)(D)).

"(2)(A) No person is eligible to employ a nonimmigrant described in section 101(a)(15)(O) unless the person (or a person or association representing the person) applies for registration with the Attorney

General during the first year of the transitional program (as designated by the Attorney General). In such application, the person shall provide such information relating to the person's requirements for seasonal agricultural labor in months or other periods in previous and future years as the Attorney General may specify.

"(B) In approving applications for registration under this paragraph and taking into consideration the needs specified in the applications, the historical employment needs of agricultural employers for seasonal agricultural labor, and the availability of domestic agricultural labor, the Attorney General shall specify, with respect to each registration, the maximum number of nonimmigrants described in section 101(a)(15)(O) the person can employ during the various months in the first year of the transitional program, which number shall approximate the employer's maximum reasonable requirement for nondomestic seasonal agricultural workers. The approval of an employer's application for registration under this paragraph and the issuance of work permits thereunder is conditioned upon the employer's compliance with the terms and conditions of this subsection and regulations issued thereunder.

"(C) If the Attorney General approves the employment of a number of such nonimmigrants for a month or other period in the first year of the transitional program, the Attorney General shall issue to the employer a nonimmigrant labor form (hereinafter in this subsection referred to as a 'work permit') for each such nonimmigrant for the month or other period specified. The Attorney General may require by regulation, as a condition of issuing work permits, the payment of a fee to recover the reasonable cost of processing registration applications and issuance of work permits under this subsection.

"(D) For months or other periods in the second or third years of the transitional program, the Attorney General shall provide for the issuance (to each registered employer who has complied with the terms of the program and of the program described in subsection (c) in previous years of the program) of a number of work permits equal to 67 or 33 per centum, respectively, of the number of such permits issued with respect to that month or period for that employer in the first year of the transitional program.

"(E) No work permit shall be issued under this subsection with respect to the employment of any alien for any period after the third year of the transitional program.

"(3) An agricultural employer desiring to employ in seasonal agricultural labor for a month or other period an alien who is not otherwise an eligible individual (as described in subsection (c)(3)(D), but for this subsection) must—

"(A)(i) complete and endorse a copy of a work permit for that month or other period directly to the alien, who shall retain a copy of the work permit for inspection, (ii) transmit a copy of such endorsed permit to the Attorney General, and (iii) retain a copy for the employer's records; or

"(B) provide for transmittal of the work permit to an appropriate consular officer to provide for the issuance of a visa to a qualified alien as a nonimmigrant described in section 101(a)(15)(O) to perform seasonal agricultural employment for that employer for the period specified.

Upon the receipt of an endorsed copy of a work permit of an alien under subparagraph (A), the Attorney General shall provide for the recordation of the alien as a nonimmigrant described in section 101(a)(15)(O).

except that such recordation shall not prevent the deportation of the alien after the expiration of the work permit or on any ground (other than on the ground described in section 241(a)(2) or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a)).

"(4)(A) An agricultural employer employing an alien with a work permit must provide for the same wages and working conditions as those which would be required with respect to the employment of nonimmigrants described in section 101(a)(15)(H)(ii)(a), and, in the case of such an alien described in paragraph (3)(B), must meet such other transportation and similar conditions as are required with respect to the importation of nonimmigrants described in section 101(a)(15)(H)(ii)(a).

"(B) In accordance with regulations of the Attorney General, a work permit issued under this section shall be considered an alien registration card for purposes of section 274A(b)(1)(B)(ii)(I) and an alien employed by an employer and in possession of a properly endorsed work permit for a period of time shall be considered (for purposes of section 274A(a)(4)) to be authorized by the Attorney General to be so employed during that period of time. For purposes of section 3121(a)(1) of the Internal Revenue Code of 1954 and section 219(a) of the Social Security Act, a nonimmigrant described in section 101(a)(15)(O) performing seasonal agricultural services for a registered employer with a properly endorsed work permit shall be considered to be lawfully admitted to the United States on a temporary basis to perform agricultural labor.

"(5)(A) The Attorney General may provide for such suspensions and conditions on participation in the transitional program as are consistent with suspensions and conditions of participation of agricultural employers under the program described in subsection (c).

"(B) The Attorney General shall suspend the registration of an agricultural employer under the transitional program, and may prohibit the employer from participating in the program under subsection (c), for a period of up to three years if the Attorney General determines, after opportunity for a hearing, that the employer, during the previous two-year period (after the effective date of the transitional program)—

"(i) has knowingly discriminated in terms or conditions of employment against eligible individuals without work permits,

"(ii) has knowingly hired aliens not permitted under law to be so employed,

"(iii) has employed an alien classified or recorded as a nonimmigrant described in section 101(a)(15)(O) for services other than seasonal agricultural employment or for a period for which a work permit has not been issued and is not in effect,

"(iv) has become ineligible for a certification under subsection (c)(2)(B)(ii), or

"(v) otherwise has at any time during the period substantially violated a material term or condition of the registration with respect to the employment of domestic or nonimmigrant workers.

"(6) Aliens employed pursuant to work permits issued under this subsection are fully protected by all applicable Federal and State laws and regulations governing the employment of migrant and seasonal agricultural workers.

"(7) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating admissibility of nonimmigrant workers."

(c) The amendments made by this section apply to petitions and applications filed

under section 214(c) of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(d) The Attorney General, in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing the amendments made by this section shall first be issued, on an interim or other basis, not later than the effective date.

(e) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall report to the Congress no later than eighteen months after the effective date on recommendations for improvements in the temporary alien worker program amended by this section, including recommendations—

(1) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(2) removing any current economic disincentives to hiring United States citizens or permanent resident aliens where temporary foreign workers have been requested, and

(3) improving the cooperation among Government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

(f) It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 214(c) of the Immigration and Nationality Act and of the transitional seasonal agricultural worker program under section 214(e) of such Act.

(g) For amendments prohibiting nonimmigrants under the seasonal agricultural worker program from adjusting their status to immigrant or other nonimmigrant status, see sections 212(b) and 213(d) of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by striking out "(e) No person" and inserting in lieu thereof "(e)(1) No person (A)";

(2) by inserting after "training," the following: "or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission";

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (A)(iii) or clause (B) of the first sentence";

(4) by striking out "Provided, That upon" and inserting in lieu thereof "Upon";

(5) by striking out "And provided further, That except" and inserting in lieu thereof "Except"; and

(6) by adding at the end the following:

"The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of the first sentence who is an immediate relative (as specified in section 201(b)).

"(2) The Attorney General, in the case of an alien described in clause (B) of the first sentence of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive the two-year foreign residence requirement of paragraph (1)

if the Attorney General determines that the waiver is in the public interest and that—

"(A) the alien—

"(i)(I) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

"(II) has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research or technical position by a employer in the field in which he obtained the degree, or

"(III) has obtained an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered employment which requires such exceptional ability;

"(ii) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a),

"(iii) has received a certification under section 212(a)(14) with respect to position referred to in clause (i), and

"(iv) has applied for a waiver under this paragraph before September 30, 1989; or

"(B) the alien—

"(i) has obtained a degree in a natural science, mathematics, computer science, or in a field of engineering or business,

"(ii) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii),

"(iii) will receive no more than three years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof, and

"(iv) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the training program in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the training program."

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: "or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver under section 212(e)(2)(A)) who entered the United States classified as a nonimmigrant under subparagraph (F), (M), or (O) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212".

(c) Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)", and

(2) by adding at the end the following:

"(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be included any period in which the alien was in the United States as—

"(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

"(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(2)(B)."

(d)(1) The amendments made by subsection (a) apply to aliens admitted to the United States as a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act after the date of the enactment of

this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsections:

"(1)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends or agrees to extend reciprocal privileges to citizens and nationals of the United States; and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4); and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival and departure into the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to

ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for national of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.

"(6) The Attorney General and the Secretary of State shall jointly monitor the program and shall report to the Congress not later than two years after the beginning of the pilot program, and shall include in such report recommendations respecting extension of the pilot program period and of the number of countries that may be designated under paragraph (3)(A).

"(m) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determine that—

"(1) the territory of Guam has developed an adequate arrival and departure control system, and

"(2) such a waiver does not present a threat to the welfare, safety, or security of the United States."

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to subsection (1) or (m) of section 212 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days or fifteen days, respectively, from the date of admission."

(c) For amendment prohibiting nonimmigrant visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

(d) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof "and" and by adding at the end thereof the following new paragraph:

"(4) an alien classified as a nonimmigrant under section 101(a)(15)(O) or admitted as a nonimmigrant visitor without a visa under subsection (1) or (m) of section 212."

NONIMMIGRANT SEASONAL AGRICULTURAL PROGRAM

SEC. 214. (a) Section 101(a)(15) (8 U.S.C. 1101(a)(15)); as amended by sections 204(b) and 211(a)(2) of this Act, is further amended by striking out "or" at the end of subparagraph (N), by striking out the period at the end of subparagraph (O) and inserting in lieu thereof "or", and by adding at the end the following new subparagraph:

"(P) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States for a period of not longer than 11 consecutive months to perform services or

labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) in the production of perishable commodities (as defined in regulations of the Secretary of Agriculture)."

(b) Section 214 (8 U.S.C. 1184), as amended by section 211(b) of this Act, is further amended—

(1) in subsection (a)—

(A) by striking out "or" at the end of paragraph (1),

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", or", and

(C) by inserting after paragraph (2) the following new paragraph:

"(3) under section 101(a)(15)(P) during the five-year period beginning on the most recent date (if any) on which the alien violated (as determined by the Attorney General) a term or condition of a previous admission as such a nonimmigrant or who enters the United States unlawfully after the date the program under subsection (f) first takes effect."; and

(2) by adding at the end the following new subsection:

"(F)(1)(A) The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereinafter in this subsection referred to as 'the program') for the admission into the United States of nonimmigrants described in section 101(a)(15)(P). The program shall include the imposition of monthly and annual numerical limitations, established under paragraph (2)(B), on the issuance of nonimmigrant visas for such nonimmigrants by agricultural employment region. These visas shall be made available subject to such limitations to aliens described in section 101(a)(15)(P) in accordance with the preference system established under paragraph (2)(C).

"(B) Except as provided pursuant to paragraph (3)—

"(i) aliens shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program, and

"(ii) such a nonimmigrant visa shall not limit the geographical area (other than by regions established under subparagraph (C)) within which an alien may be employed or limit the type of agricultural employment, within the production of perishable commodities, the alien may perform.

"(C) For purposes of administering the program, the Attorney General shall designate not more than ten agricultural employment regions within the United States.

"(2)(A) Each person who employs individuals to perform agricultural employment (including an association of such persons and a person who contracts for the performance of such employment) in the production of perishable commodities may submit to the Attorney General, at such time and in such manner as the Attorney General specifies, an application specifying, for each month concerned and for the agricultural employment region in which the person is located, (i) the total number and qualifications of agricultural workers required in the production of perishable commodities in each month and (ii) the type of agricultural work required to be performed by these workers. The person may also include a statement indicating a preference as to country of nationality of aliens (or names of particular aliens) desired to perform labor in any such month.

"(B)(i) Based upon such petitions, taking into consideration the historical employment needs of agricultural employers and

the availability of domestic agricultural labor, and after consultation with the Secretary of Agriculture and the Secretary of Labor, the Attorney General shall establish a numerical limitation, by month and by agricultural employment region, on the issuance of nonimmigrant visas to aliens described in section 101(a)(15)(P).

"(ii) If an agricultural employer (or association or representative thereof) establishes that extraordinary and unusual circumstances have resulted in a significant change in the employer's need for seasonal agricultural workers specified in the application or in the availability of domestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the employer may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under clause (i) to accommodate such emergency need. The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate numerical limitation.

"(C) Nonimmigrant aliens who are subject to the numerical limitation specified in this paragraph shall be allotted nonimmigrant visas as follows:

"(i) Visas shall first be made available to qualified nonimmigrants specifically identified in petitions submitted under paragraph (2)(A).

"(ii) Visas shall next be made available to qualified nonimmigrants who have previously been employed in seasonal agricultural employment in the United States, providing priority in consideration among such aliens in the order of the length of time in which they were so employed.

"(iii) The remaining visas shall be made available to other qualified nonimmigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State.

A spouse or child of such a nonimmigrant is not entitled to a visa or such status by virtue of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided the same status as such a nonimmigrant if the spouse or child also in a qualified nonimmigrant to perform seasonal agricultural employment in production of a perishable commodity.

"(3)(A)(i) The Attorney General shall approve an application submitted under paragraph (2)(A) authorizing a person to employ a nonimmigrant described in section 101(a)(15)(P) if—

"(i) the person is a producer, and the nonimmigrant is to be employed in the production, of perishable commodities (as defined by the Secretary of Agriculture under such section),

"(ii) the application complies with the provisions of paragraph (2)(A) and sets forth the need for such nonimmigrants,

"(iii) the person has not employed or petitioned for a nonimmigrant described in section 101(a)(15)(H)(ii)(a) in the production of perishable commodities at the time when an application on behalf of the person is pending or approved under this subsection, or during any previous period during which the employer had an application approved under this subsection, and

"(iv) the person is not disqualified under subparagraph (C).

"(ii) Except as provided under subparagraph (C), a person who is determined not

to be eligible under clause (i) (other than because of subclause (IV) thereof) is entitled to an expedited review of the determination by the Attorney General.

"(B) Any person whose application to employ a nonimmigrant described in section 101(a)(15)(P) has been approved shall—

"(i) make a good faith effort to recruit in the area of intended employment willing and qualified domestic agricultural workers to perform agricultural employment in the production of perishable commodities until the date any nonimmigrants under section 101(a)(15)(P) admitted to the United States to perform such employment report to work,

"(ii) provide for such wages and working conditions (including conditions respecting the furnishing of housing) as do not adversely affect the wages and working conditions of workers in the United States similarly employed,

"(iii) provide (if the employment is not covered by State workers' compensation law), at no cost to the worker, insurance covering injury and disease arising out of and in the course of the workers employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment,

"(iv) not employ a nonimmigrant described in section 101(a)(15)(P) if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such employment,

"(v) not employ a nonimmigrant described in section 101(a)(15)(P) for services other than seasonal agricultural services in the production of perishable commodities, and

"(vi) be permitted, in complying under clause (i) with applicable conditions of employment respecting the furnishing of housing for such nonimmigrants and at the person's option, in lieu of arranging for suitable housing accommodations, to substitute payment of a reasonable housing allowance to the provider of such housing, but only if such housing is in the proximate area of employment.

"(C) If the Attorney General determines, after opportunity for a hearing, that an employer has participated under the program and has violated a provision of subparagraph (B) or any other provision of this Act, the employer shall be disqualified from future eligibility under the program for a period of not longer than three years.

"(D)(i) It is unlawful for a person or other entity to hire, or recruit or refer, for employment in the United States a nonimmigrant alien described in section 101(a)(15)(P) unless the person or entity has an application approved under paragraph (3) with respect to the hiring of the alien.

"(ii) A person or entity that violates clause (i) shall be subject—

"(I) in the case of a person or entity which has not previously been determined (after opportunity for judicial review) to have violated such clause, to a civil penalty of up to \$1,000 for each alien so hired,

"(II) in the case of a person or entity which has previously been determined (after opportunity for judicial review) to have violated such clause in only one occasion, to a civil penalty of up to \$2,000 for each alien so hired, or

"(III) in the case of a person or entity which has previously been determined (after opportunity for judicial review) to have violated such clause in more than one occasion, to a civil penalty of up to \$3,000 for each alien so hired.

"(4) An alien admitted as a nonimmigrant under the program is not eligible for any

program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(5)(A) Funds appropriated under subsection (c)(5) shall be available for the purposes (i) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(P), and (ii) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

"(B) The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.

"(6) The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall report to Congress semiannually regarding the program. Each such report shall include a statement of the number of nonimmigrant visas issued under the program, an evaluation of the effectiveness of the program, a description of any problems related to the enforcement of the program, and any recommendations for legislation relating to the program.

"(7) The provisions of this subsection preempt any State or local law on the same subject.

"(8)(A) The Attorney General shall establish by regulation a trust fund the purpose of which is to provide funds for the administration and enforcement of the program and to provide a monetary incentive for nonimmigrants participating in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this paragraph.

"(B) In the case of employment of a nonimmigrant described in section 101(a)(15)(P)—

"(i) the employer shall provide for payment into the trust fund established under this section of (I) an amount equivalent to the amount of excise taxes which the employer would pay under the Federal Insurance Contributions Act with respect to such employment if it were considered employment for the purpose of such Act, and (II) an amount equivalent to (and in lieu of) the amount of excise taxes which the employer would otherwise pay under the Federal Unemployment Tax Act with respect to such employment, and

"(ii) there shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount equivalent to the amount of excise taxes that the employee would pay under the Federal Insurance Contributions Act with respect to such employment if it were considered employment for the purposes of such Act.

"(C)(i) Amounts described in subparagraph (B)(i) paid into the trust fund shall be used for the purpose of administering and enforcing the program.

"(ii) Amounts described in subparagraph (B)(ii) paid into the trust fund with respect to a nonimmigrant shall, upon application by the nonimmigrant at the United States consulate nearest the nonimmigrant residence in the country of origin, be paid to the nonimmigrant if the nonimmigrant demonstrates his or her compliance with the terms and conditions of the program."

"(c) The Attorney General, in consultation with the Secretary of Agriculture, the Secretary of State, and the Secretary of

Labor, shall promulgate all regulations implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing such amendments shall first be issued, on an interim or other basis, not later than the first day of the seventh month beginning after the date of the enactment of this Act.

(d) It is the sense of Congress that the President should negotiate with representatives of the governments of labor source countries to establish bilateral advisory commissions in order to consult with and advise the Attorney General regarding—

- (1) the regulations to be promulgated,
- (2) the monthly and annual numerical limitations to be established,
- (3) the entry, and preference, and visa issuance systems to be established, and
- (4) problems arising under the program established.

under section 214(f) of the Immigration and Nationality Act.

(e)(1) The first sentence of section 204(a) (8 U.S.C. 1154(a)) is amended by inserting before the period the following: "except that no petition for a preference immigrant under section 203(a)(3) or 203(a)(6) may be filed respecting an alien who is a nonimmigrant described in section 101(a)(15)(P)".

(2) Section 212(a) (8 U.S.C. 1182(a)) is amended by striking out the period at the end of paragraph (33) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(34) Aliens admitted as nonimmigrants under section 101(a)(15)(P) who fail to be continuously employed or actively seeking employment in agricultural labor or services in the production of perishable commodities (as defined for purposes of section 101(a)(15)(P)) in accordance with the usual and customary employment patterns and practices."

(3) Section 244(b)(2)(A) (8 U.S.C. 1254(b)(2)(A)), as added by section 212(c)(2) of this Act, is amended by striking out "or (M)" and inserting in lieu thereof ", (M), or (P)".

(4) Section 245(c)(4) (8 U.S.C. 1255(c)(4)), as inserted by section 212(b) of this Act, is amended by striking out "or (O)" and inserting in lieu thereof ", (O), or (P)".

(5) Section 248(4) (8 U.S.C. 1258(4)), as added by section 213(d) of this Act, is amended by inserting "or (P)" after "101(a)(15)(O)".

TITLE III—LEGALIZATION

LEGALIZATION

SEC. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulation as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(1) the alien has entered the United States, is physically present in the United States, and applies for such adjustment during the eighteen-month period beginning on a date (not later than 180 days after the date of the enactment of this section) designated by the Attorney General.

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1982, and has resided continuously in the United States in an unlawful status since January 1, 1982, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1982, the alien's period of authorized stay as a

nonimmigrant expired before January 1, 1982, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1982, and the alien has resided continuously in the United States in an unlawful status since January 1, 1982; and

"(C) in the case of an alien who at any time was in a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject of the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; and

"(3) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3).

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States.

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 98-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in paragraph (1)) is the subject of an order to show cause issued under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later.

"(b)(1) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the one-year period beginning with the thirteenth month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), and

"(ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States;

"(D) can demonstrate that he either (i) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or (ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States; and

"(E) can demonstrate, in the case of an alien who is accompanied by a dependent child who is subject to a State law requiring compulsory school attendance, that the child is enrolled (or arranging for enrollment) in an elementary or secondary school or other course of instruction which complies with such law.

An alien shall not be considered to have lost the continuous residence referred to in sub-

paragraph (B) by reason of an absence from the United States permitted under paragraph (3)(A). The Attorney General may, in his discretion, waive all or part of the requirements of subparagraph (D) in the case of an alien who is 65 years of age or older.

"(2) The Attorney General shall provide for the rescission of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status,

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(C) at the end of the twenty-fifth month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) In the case of an alien during the period he is granted lawful temporary resident status under subsection (a)—

"(A) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need,

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit, and

"(C) the alien shall not be deported or otherwise removed from the United States by the Attorney General or other law enforcement agent of the United States except pursuant to a lawful deportation proceeding or other due process of law.

"(c)(1)(A) The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be made to and received, on behalf of the Attorney General, by qualified voluntary agencies and other qualified State, local, and community organizations, which have been designated for such purpose by the Attorney General and by other persons, so designated, who the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

"(B) Files and records of designated agencies, organizations, and persons under this paragraph are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(C) In the case of an alien who submits an application under subsection (a) or under subsection (b)(1) to the Attorney General (or to an agency, organization, or person designated under subparagraph (A) and who approves the forwarding of the application to the Attorney General), the alien is subject to a criminal penalty under section 1001 of title 18, United States Code, for knowingly and willfully making false, fictitious, or fraudulent statements in the process of submitting the application. An agency, organization, or person designated under subpara-

graph (A) which receives such a statement and which, without knowledge that it is false, fictitious, or fraudulent and with the consent of the alien involved, forwards the statement to the Attorney General is not subject to such a penalty.

"(2) The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(3)(A) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i) and (b)(2)(B)(i) and the Attorney General, in making such determination, may waive any other provision of such section other than paragraph (9), (10), (15) (except as it applies to the adjustment to lawful temporary resident status under subsection (a)), (23) (except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana), (27), (28), (29), or (33) with respect to the alien involved for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. For purposes of this section, an alien shall not be excludable under section 212(a)(15) if the alien demonstrates a history of employment evidencing self-support without reliance on public cash assistance.

"(B) In determining whether or not an alien is admissible to the United States for purposes of this section, the alien shall be required, at the alien's expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

"(4) Beginning not later than the date designated by the Attorney General under subsection (a)(1) the Attorney General in cooperation with agencies, organizations, and persons designated under paragraph (1), shall broadly disseminate, in English and other appropriate languages" after "broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits. Such information shall include (A) information respecting the requirements that aliens with lawful temporary resident status would have to meet to have their status adjusted to permanent resident status under subsection (b)(1) and the facilities available to provide education and employment training and opportunities in order to meet such requirements, (B) information on the conditions under which temporary lawful residence status can be rescinded under subsection (b)(2), (C) information on conditions for employment and foreign travel of aliens with lawful temporary residence status under subsection (b)(3), and (D) information respecting compulsory school enrollment requirements for minors in the various States and localities and the identification of the appropriate schools in which children should be enrolled.

"(5)(A) Notwithstanding any other provision of law, the Attorney General (and, to the extent applicable, the Secretary of Health and Human Services) shall first issue, on an interim or other basis and before the beginning of the one-year period described in subsection (a)(1), such regulations as are necessary to implement this section on a timely basis.

"(B) The Attorney General, after consultation with the Committee on the Judiciary of the House of Representatives and the Senate and with agencies, organizations, and persons designated pursuant to paragraph (1)(A), shall prescribe regulations establish a definition of the term 'resided continuously', as used in this section, and for

establishing the requirements necessary to prove eligibility for immigration benefits under this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(6)(A) The Attorney General shall provide that in the case of an alien who is apprehended before the end of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until such period), until the alien has had a reasonable opportunity to complete the filing of an application for adjustment during the period, the alien—

"(i) may not be deported or excluded, and

"(ii) shall be granted authorization to engage in employment in the United States, and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(B) The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during such application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(i) may not be deported or excluded, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(C) The Attorney General shall provide that in the case of an alien who is apprehended before the end of such application period, the alien shall be advised that—

"(i) the alien may be eligible to have his status adjusted under this section,

"(ii) an alien who can establish a nonfrivolous case of eligibility for such adjustment under this section shall not be deported or excluded until a final determination on the application has been made in accordance with this section, and

"(iii) the alien may contact such voluntary agencies, or other qualified State, local, and community organizations, as are designated by the Attorney General, for assistance in determining whether or not the alien has a nonfrivolous case for adjustment of status under this section.

The Attorney General shall make available a list of voluntary agencies or other qualified organizations to such aliens.

"(7) The provisions of this section shall not apply to an alien described in section 2(b) of Public Law 97-271.

"(d)(1) During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) and during the five-year period beginning on the date an alien is provided a record of lawful admission for permanent residence under section 249 based on an entry into the United States on or after June 30, 1948, and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Programs authorized under the National School Lunch Act, the Child Nutrition Act of 1966, the Vocational Education Act of 1963, chapter 1 of the Education Consolidation and Improvement Act of 1981, the Headstart-Follow Through Act, the Job Training Partnership Act, and subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965 shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i). Programs authorized under the Public Health Service Act and title V of the Social Security Act shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i).

"(2) Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983);

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in subparagraph (C) and paragraph (1)(A)(ii). The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out subparagraphs (B) and (C).

"(3) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-422), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(e)(1) There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) An alien whose application for adjustment of status under this section is denied is entitled to a de novo hearing with respect to such application if a notice of request for such hearing is made within a reasonable time (of not less than thirty days, as established by the Attorney General) of the date of the notice of the denial. Only one such de novo hearing may be requested with respect to any alien. The hearing shall be conducted before an administrative law judge in accordance with the requirements of section 554 of title 5, United States Code, and rules of the United States Immigration Board established under section 107.

"(3)(A) If such a hearing is timely requested, any further administrative or judicial review (whether in a deportation proceeding or otherwise) of the determination on the application for adjustment shall be based solely upon the administrative record upon which the order is based and the administrative law judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(B) If an alien does not make a timely request for a de novo hearing under paragraph (2), any administrative or judicial review shall be based solely on the administrative record upon which the determination on the application was made.

"(4) An applicant may elect to have administrative appellate review by the United States Immigration Board of a determination respecting an application for adjustment under this section only once, either in a review of a determination after a de novo hearing under paragraph (2) or in a review of a deportation order respecting the applicant.

"(5) There shall be no judicial review of a denial of an alien's application for adjustment except in the judicial review under section 106 of an order of deportation with respect to the alien."

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence."

(c) The President shall transmit to Congress, not later than 27 months after the date of the enactment of this Act, a report on the impact of the enactment of the legalization program described in section 245A of the Immigration and Nationality Act, including such impact on State and local governments and on public health and medical needs of individuals in the different regions of the United States.

CUBAN-HAITIAN ADJUSTMENT

Sec. 302. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act and the Attorney General shall not be required to charge the alien any fee.

(f) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

UPDATING REGISTRY DATE TO JANUARY 1, 1973

Sec. 303. (a) Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "June 30, 1948" in the heading and inserting in lieu thereof "January 1, 1973", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1973".

(b) The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof "January 1, 1973".

STATE LEGALIZATION ASSISTANCE

Sec. 304. (a) There are authorized to be appropriated to carry out subsections (b) and (c) of this section such sums as may be necessary for fiscal year 1984 and for each of the three succeeding fiscal years.

(b)(1) Subject to the amounts provided in advance in appropriation Acts, the Secretary of Health and Human Services shall provide reimbursement to each State (as defined in paragraph (2)(A)) for 100 per centum of the costs of programs of public assistance (as defined in paragraph (2)(B)) provided to any eligible legalized alien (as defined in paragraph (2)(C)).

(2) For purposes of this subsection:

(A) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(B) The term "programs of public assistance" means programs existing in a State or local jurisdiction which—

(i) provide for cash, medical, or other assistance designed to meet the basic subsistence or health needs of individuals or required in the interest of public health.

(ii) are generally available to needy individuals residing in the State or locality, and

(iii) receive funding from units of State or local government.

(C) The term "eligible legalized alien" means—

(i) an alien who was granted lawful temporary resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status; and

(ii) an alien who has been provided a record of lawful admission for permanent residence under section 249 of such Act

based on an entry into the United States on or after June 30, 1948, but only until the end of the five-year period beginning on the date the alien was provided such record.

(c)(1) Subject to the amounts provided in advance in appropriation Acts and in accordance with this section, the Secretary of Education shall make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens (as defined in subsection (b)(2)(C)).

(2) The definitions and provisions of titles I through IV of Refugee Education Assistance Act of 1980 shall apply to payments under this subsection in the same manner as they apply to grants and payments under those titles, except that, in applying this paragraph, any reference in such titles to an "eligible participant" shall be deemed to be a reference to an "eligible legalized alien".

AMENDMENTS TO THE REFUGEE EDUCATION ASSISTANCE ACT

SEC. 305. The Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is amended—

(1) by striking out "each of the fiscal years 1981, 1982, 1983," in section 102(a) and inserting in lieu thereof "fiscal year 1981 and for each subsequent fiscal year";

(2) in the first sentence of section 201(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates";

(3) in the first sentence of section 301(c) by inserting "from State or local educational agencies" after "not available" and by inserting "from the most recent data available from the Immigration and Naturalization Service" after "of estimates"; and

(4) by adding at the end of section 402(a) the following new sentence: "Funds available under this title shall, to the maximum extent feasible, be used for programs of instruction of such adult refugees in order that they may gain an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States."

TITLE IV—EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

SEC. 401. It is the sense of Congress that in the case of nationals of El Salvador who otherwise qualify for voluntary departure (in lieu of deportation) under the Immigration and Nationality Act, the Attorney General shall extend the date such aliens are required to depart voluntarily until such date as the Secretary of State determines that the situation in El Salvador has changed sufficiently to permit their safely returning to El Salvador.

TITLE V—NATIONAL COMMISSION ON IMMIGRATION

NATIONAL COMMISSION ON IMMIGRATION

SEC. 501. (a) There is established a National Commission on Immigration (hereinafter in this section referred to as the "Commission") to conduct studies and analyses and to report to Congress concerning—

(1)(A) the push and pull factors affecting unauthorized immigration to the United States,

(B) the development, in partnership with Latin American countries, of reciprocal trade and economic development programs of mutual benefit,

(2) the incentives for employers in the United States to employ aliens who are not authorized to be so employed,

(3) the reliance of the agricultural industry on the employment, on a temporary basis, of aliens not authorized to be employed in the United States, and

(4) the existence and extent of backlogs for the issuance of immigrant visas to aliens who have approved petitions for immigrant preference status.

(b)(1) With respect to the topics described in subsection (a), the Commission shall—

(A) review and analyze the economic and social conditions, patterns, and trends in the United States and in foreign countries which affect unauthorized immigration into the United States, the short-term and long-term problems in the United States and elsewhere associated with such unauthorized immigration, and potential solutions to such problems;

(B) take into account, in such reviews and analyses—

(i) prevailing and projected demographic, technological, and economic trends affecting immigration into the United States;

(ii) the impact of immigration laws, and their enforcement, on unauthorized immigration and on social and economic conditions in foreign countries;

(iii) how unemployment in particular areas and occupations in the United States is affected by unauthorized immigration; and

(iv) the laws, policies (including trade policies), and procedures governing economic and diplomatic relations between the United States and foreign countries; and

(C) make recommendations respecting additional statutory and other changes that should be made to best deal with unauthorized immigration into the United States.

(2) With respect to the topic described in subsection (a)(1)(B), the Commission shall review and study the short- and long-term measures promoting reciprocal trade and economic development programs of mutual benefit to the United States and Latin American countries. The Commission's reviews and analyses under this paragraph shall focus on, and be conducted in close consultation with the governments of, those foreign countries from which nationals are most likely to immigrate without prior authorization to the United States. The Commission shall present its recommendations to the Congress with respect to this topic not later than 18 months after the date of the enactment of this Act.

(c)(1) The Commission shall be composed of fifteen members as follows:

(A) Five members appointed by the President, not more than three of whom are members of the same political party and not more than three of whom are officers or employees of the Federal Government.

(B) Five members appointed by the Speaker of the House of Representatives, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

(C) Five members appointed by the President pro tempore of the Senate, not more than three of whom are members of the same political party and not more than two of whom are members of Congress.

In making such appointments, due consideration shall be given to securing representatives on the Commission from a variety of constituencies, including State and local government officials and individuals and representatives of organizations with experience or expertise in immigration matters. Appointments to the Commission shall be made within ninety days after the date of the enactment of this section. Members

shall be appointed in a manner that provides for balanced representation of all interests.

(2) The chairman and the vice chairman of the Commission shall be elected from among the members. The term of office of the chairman and vice chairman shall be for the life of the Commission.

(3) The chairman may invite for the purpose of participating in any meeting or hearing held by the Commission, and for the purpose of contributing to the studies to be conducted and the recommendations to be developed by the Commission, such representatives of the governments of countries as the Commission deems desirable.

(d)(1) Members shall be appointed for the life of the Commission.

(2) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(4) The Commission shall meet at the call of the chairman or a majority of its members.

(e)(1) Each member of the Commission who is not an officer or employee of the Federal Government shall, subject to such amounts as are provided in advance in appropriations Acts, receive \$150 for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission.

(2) Members of the Commission who are officers or employees of the Federal Government shall receive no additional pay on account of their service on the Commission.

(3) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(f)(1) The Commission shall have a director who shall be appointed by and whose rate of pay shall be fixed by the chairman.

(2) The chairman may appoint and fix the rate of pay of such additional personnel as the chairman deems desirable.

(3) The director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(g)(1) The Commission may for the purpose of carrying out its duties hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems advisable. To the extent feasible, the Commission shall hold at least some hearings in the border regions of the United States.

(2) The Commission shall, to the maximum extent feasible, conduct its activities through the establishment of three expert panels, each of the panels to provide detailed information and recommendations to the Commission respecting one of the topics described in subsection (a).

(3) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants at a rate to be fixed by the Commission, but not in excess of \$150 per diem (including traveltime). While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses including per diem in lieu of subsistence.

(4) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties. Upon request of the chairman, the head of such agency or department of the United States shall furnish all information requested by the Commission which is necessary to enable it to carry out its duties.

(5) The Commission may accept, use, and dispose of gifts or donations of services or property.

(6) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(7) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h)(1) The Commission shall transmit a report to the Congress not later than three years after the date of the enactment of this Act. Such report shall include a summary of the reviews and analyses conducted by or on behalf of the Commission and such recommendations as the Commission deems appropriate.

(2) The Commission shall cease to exist on the thirtieth day beginning after the date of the transmission of the report under paragraph (1).

(i) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE VI—CONSULTATION IN IMPLEMENTATION OF ACT

COOPERATION WITH STATE AND LOCAL TASKFORCES

Sec. 601. In order to provide for a highly coordinated and cooperative effort in the implementation of this Act and to insure that such implementation is fair and effective, the Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall regularly consult and maintain close contact with regional and local advisory taskforces established by State and local governments composed of interested private public sector organizations. These task forces may—

(1) review and comment on regulations and procedures proposed to carry out this Act;

(2) monitor and evaluate the implementation of this Act; and

(3) recommend such actions as may be necessary to improve implementation of this Act in their respective areas.

The Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall consider the recommendations of these taskforces in the implementation.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey [Mr. RODINO].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 1510) was laid on the table.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF HOUSE AMENDMENT TO S. 529

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the Clerk, in engrossing the House amendment to S. 529, make such corrections in sec-

tion and title numbers and references, indentation and punctuation, as may be necessary to reflect the actions of the House.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation may have permission to sit while the House is under the 5-minute rule on Thursday, June 21, 1984.

The minority is in agreement with this request.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE COMMITTEE ON THE JUDICIARY TO MEET TOMORROW DURING 5-MINUTE RULE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary be permitted to meet tomorrow, June 21, 1984, during proceedings in the House under the 5-minute rule.

We have cleared this with the minority.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

REPORT ON H.R. 5898, MILITARY CONSTRUCTION APPROPRIATIONS BILL, 1985

Mr. HEFNER, from the Committee on Appropriations, submitted a privileged report (Rept. No. 98-850) on the bill (H.R. 5898) making appropriations for military construction for the Department of Defense for the fiscal

year ending September 30, 1985, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

Mr. REGULA reserved all points of order on the bill.

REPORT ON H.R. 5899, DISTRICT OF COLUMBIA APPROPRIATION BILL, 1985

Mr. DIXON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 98-851) on the bill (H.R. 5899) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

Mr. REGULA reserved all points of order on the bill.

THE ORGAN TRANSPLANT ACT OF 1984

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 507 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 507

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of clause 2(1)(5)(B) of rule XI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of H.R. 5580, the House shall proceed, section 401(b)(1) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, to the consideration of the bill S. 2048, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H.R. 5580 as passed by the House.

□ 1720

The SPEAKER. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTI], for purposes of debate only, pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

ORGAN TRANSPLANT ACT

Mr. MOAKLEY. Mr. Speaker, House Resolution 507 provides for the consideration of H.R. 5580, the Organ Transplant Act of 1984. The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. It is an open rule. The rule waives clause 2(1)(5)(B) of rule XI which requires the cover of the committee report to bear a recital that minority views are included in the report.

The rule further provides that the bill be read by titles instead of by sections with each title considered as having been read, and provides one motion to reconsider.

After passage of H.R. 5580 the rule makes in order consideration of the Senate comparison bill, S. 2048. The rule waives section 401(B)(1) of the Congressional Budget Act against S. 2048. That section of the Budget Act prohibits consideration of legislation providing new entitlement authority which would become effective before October 1 of the calendar year in which the bill is reported. This waiver is necessary because the Senate bill provides daily rate of pay for the members of the organ transplant task force and provides an entitlement for the compensation of the executive director at level V of the Federal pay scale. Since these provisions would immediately be effective upon enactment of the bill and possibly prior to the beginning of fiscal year 1985, the waiver was granted.

Mr. Speaker, H.R. 5580 is designed to strengthen the ability of the Nation's health care system to provide organ transplants to thousands of patients across the country. The bill provides the framework for a nationwide organ transplantation network. Funds are authorized to assist communities in developing and strengthening local organ procurement agencies. These local agencies will be linked together by a 24-hour computer matching system and National Patients Registry. H.R. 5580 would authorize appropriations of \$10 million in fiscal year 1985 and \$20 million in fiscal year 1986 to implement these programs.

Mr. Speaker, one of the issues of concern in the 98th Congress is the need for a more efficient and comprehensive nationwide network to match organ donors with the many individuals in the country who are in desperate need of a transplant. The transplantation of human organs has revolutionized the practice of medicine and prolonged human existence; for previ-

ously fatal or debilitating disease there is now hope for recovery.

Mr. Speaker, you may recall that during the fall of 1982, the plight of a 3-year-old, Jamie Fisk of Bridgewater MA became known throughout the Nation when her parents went before the American Pediatrics Association Conference to appeal for assistance in locating a critically needed liver donor for Jamie. With the help of the medical community, a compatible donor organ was found and successfully transplanted, today Jamie is a healthy and happy little girl. Without this transplant Jamie would not be alive today.

Mr. Speaker, Jamie Fisk is the best example of the hope that exists through this extraordinary surgical procedure and also of the immense need for a nationwide network to match organ donors with those individuals who are in desperate need of transplants.

This is a worthwhile program which I enthusiastically support. I urge my colleagues to adopt House Resolution 507 so that the House will have an opportunity to consider this very important legislation.

Mr. LATTI. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTI asked and was given permission to revise and extend his remarks.)

Mr. LATTI. Mr. Speaker, in the Rules Committee there was no objection to the provisions of the rule, which have been fully explained. However, there was difference of opinion over the provisions in the bill.

This bill is supposed to increase the number of organs donated by providing grants to local organ procurement organizations. It specifically authorizes appropriations of \$4 million in 1985, \$8 million in 1986, \$12 million in 1987, and \$16 million in 1988 for grants to organ procurement organizations for planning, establishment, and initial operation.

The bill also permits funding of up to \$2 million each fiscal year for a U.S. Transplantation Network.

In addition appropriations of \$10 million in 1985 and \$20 million in 1986 are authorized to allow the Secretary of Health and Human Services to provide, free of charge, immunosuppressive drugs to transplant centers. According to the Congressional Budget Office this level of funding is relatively small compared to the amount that would be necessary to supply immunosuppressive drugs to all transplant patients.

The bill establishes an identifiable administrative unit in the Public Health Service to coordinate Federal organ transplant policies and programs. The bill mandates an annual report on the scientific status of transplant procedures and provides for a task force to study the medical and ethical issues raised by organ transplantation.

The bill specifically prohibits the buying and selling of human organs.

Mr. Speaker, at the time of the Rules Committee meeting, the Office of Management and Budget provided a statement of administration policy opposing enactment of this bill in its present form.

The administration would support amendments to: First, eliminate the requirement for the Secretary of Health and Human Services to make immunosuppressive drugs available at no cost to certain transplant centers for distribution; and second, to eliminate the establishment and operation of the U.S. Government Transplantation Network to procure and distribute organs. The administration would support the establishment of a task force to develop a plan for a national organ procurement and distribution network which would emphasize private sector involvement.

Mr. Speaker, under the open amending procedure in this rule, the House will be able to make necessary improvements in the bill. I support the adoption of the rule so that the House may proceed to consider the organ transplant legislation.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. Pursuant to House Resolution 507 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5580.

□ 1729

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5580) to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes, with Mrs. Boggs in the Chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. WAXMAN] will be recognized for 30 minutes and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

□ 1730

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.