U.S. COMMISSION ON CIVIL RIGHTS

IMPLEMENTATION IN NEW MEXICO OF THE IMMIGRATION REFORM AND CONTROL ACT: A PRELIMINARY REVIEW

NEW MEXICO ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

This summary report of the New Mexico Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or to the Advisory Committee but only to individual participants in the community forum where the information was gathered. The Committee recognizes that since it held its forum there may have been developments that affect the timeliness of some of the points made by the forum participants. The Committee will continue to monitor the issues discussed in this report and advise the Commission as appropriate. Meanwhile, the Committee hopes the Commission and the public will find this report of interest and value in terms of its identification of civil rights concerns surrounding the early stages of implementation of the Immigration Reform and Control Act and of the role of these concerns as benchmarks against which subsequent changes in the law or the manner in which it is enforced may be measured.

A SUMMARY REPORT MAY 1989

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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A SUMMARY REPORT MAY 1989

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

LETTER OF TRANSMITTAL

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The New Mexico Advisory Committee submits this summary report for the purpose of advising the Commission on the implementation in New Mexico of the Immigration Reform and Control Act of 1986.

The report summarizes information received at a community forum conducted by the Advisory Committee at the Convention Center in Albuquerque on June 25, 1987. The meeting was well attended by the general public and received extensive media coverage. The Advisory Committee sought a balance in perspective by inviting participation from government officials, community organizations, employers, immigration attorneys, and other knowledgeable citizens.

The Advisory Committee unanimously approved (11-0) submission of the report to the Commissioners, and although it is not an exhaustive study, believes it will add to the body of useful information being collected by the Commission on implementation of the new law.

Respectfully,

Vincent J. Montoya, Chairperson
New Mexico Advisory Committee

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* Was not a member at the time this forum was conducted.

Acknowledgments: The Advisory Committee wishes to acknowledge the effort expended on this project by Vincent J. Montoya, Chairperson, and to thank the staff of the Commission's Western Regional Division for its help in the preparation of this report. The project was the chief assignment of John F. Dulles II. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director, Western Regional Division.

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I. INTRODUCTION

In 1986, after more than 5 years of debate, the Congress enacted a major revision of the Nation's immigration laws. The Immigration Reform and Control Act of 1986 (IRCA)[1] was signed into law by President Reagan on November 6, 1986. It is the most comprehensive reform of United States immigration law since 1952.

The IRCA has two provisions of particular relevance with respect to civil rights: employer sanctions for hiring aliens not authorized to work in the United States and amnesty for undocumented aliens who have resided in the United States continuously since January 1, 1982, or who have worked in agriculture for a requisite period of time. The law also contains an amendment outlawing discrimination on the basis of national origin or citizenship status.

It is unlawful to hire, recruit, or refer for a fee a person knowing he or she is an "unauthorized alien,"[2] or to continue to employ a person hired after November 6, 1986, knowing the person is no longer authorized to work in the United States.[3] A key element of assuring compliance with the new law is the employment verification procedure and

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[1] Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections 8 USC § 1101 n.t.) (also known as the Simpson-Rodino Immigration Act). The text of the provisions of the Act discussed in this report can be found in Appendix A.

[2] 8 U.S.C. § 1324A (a)(1).

[3] 8 U.S.C. § 1324A (a)(2).

recordkeeping requirements. Employers are now required to examine certain types of documents to verify that the job applicant is eligible to work in the United States.[4] The employer is then required to complete a one-page form (I-9) which attests that he has examined the necessary documents. The applicant must also sign the form, stating that he is either a U.S. citizen, permanent resident, or otherwise authorized to work.[5] Employer sanctions for violations of unlawful employment may result in fines ranging from $250 to $2,000 for each unauthorized alien; for the second violation, from $2,000 to $5,000 for each violation; and for the third and subsequent violations, from $3,000 to $10,000 for each unauthorized alien.[6]

Two classes of undocumented aliens are entitled to the benefits of legalization (amnesty): aliens who resided unlawfully in the United States prior to January 1, 1982, and special agricultural workers. Under the first category, an alien must establish that he entered the U.S. prior to January 1, 1982, and that he has resided continuously in the U.S. in an unlawful status since that date.[7] Eligible applicants must apply no later than May 4, 1988.[8] Agricultural workers who can establish that they performed seasonal agricultural

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[4] 8 U.S.C. § 1324A (b)(1).
[5] 8 U.S.C. § 1324A (b)(2).
[6] 8 U.S.C. § 1324A (e)(4).
[7] 8 U.S.C. § 1255A (a)(2)(A).
[8] 8 U.S.C. § 1255A (a)(i)(A).

services in the United States for at least 90 days during the 12-month period ending on May 1, 1986, are also eligible for legalization.[9] They must apply for amnesty no later than November 30, 1988.

Another provision in the new law provides protection for certain U.S. citizens and intending citizens who have been discriminated against based on their national origin or citizenship status. This section applies to employers of four or more persons and prohibits discrimination in both hiring and firing.[10] Penalties may include orders to hire, backpay, civil penalties up to $2,000, and attorneys' fees.[11]

On June 25, 1987, the New Mexico Advisory Committee to the United States Commission on Civil Rights convened a public forum in Albuquerque to obtain views and information concerning the civil rights impact of this new legislation in the State. The Advisory Committee was interested in learning about real as well as potential problems of discrimination which might result from its implementation. The forum consisted of three panels addressing each of the following topics:

Implementation of Immigration Reform in New Mexico

Immigration Reform: Policy and Legal Issues

Immigration Reform: Impact on Employers

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[9] 8 U.S.C. § 1160. (The so-called Schumer Amendment).
[10] 8 U.S.C. § 1324B (a)(3). (The so-called Frank Amendment).
[11] 8 U.S.C. § 1324B (g)(2).

Among those making formal presentations and responding to Advisory Committee questions were officials of the U.S. Immigration and Naturalization Service (INS), the Equal Employment Opportunity Commission, the Mexican Consulate in Albuquerque, private attorneys, social service agencies, representatives of business and industry, and others directly involved in the law's implementation.

A full transcript of the public forum is available for review at the Commission's Western Regional Division office in Los Angeles. This report consists of a summary of the proceedings, based entirely on the transcript. Because it is concise and intended only as a summary, it does not purport to include all of the information provided at the forum. Following this summary is a brief overview of some of the major concerns expressed by forum presenters and some potential issues for further Commission inquiry.

II. PANELS AND PRESENTERS

This section of the report summarizes the presentations made at the forum. The names of individual presenters, their topics and order of appearance were as follows:

IMPLEMENTATION OF IMMIGRATION REFORM IN NEW MEXICO

Douglas Brown

Mr. Brown is Officer in Charge of the Albuquerque office of the U.S. Immigration and Naturalization Service. He briefed the Advisory Committee on the implementation of the Immigration Reform and Control Act of 1986. Less than 2 months into the program (June 1987), he stated, the INS had received 163,000 applications for legalization and distributed more than 2,000,000 applications to persons at legalization offices nationwide. In New Mexico alone, he added, 1,330 applications for legalization had been processed as of May 5, 1987. The employer sanctions provisions that Mr. Brown referred to as "the crux of enforcement legislation," have had "the desired effect, with the number of persons attempting illegal crossings into the U.S. southern border dropping more than 40 percent since the passage of the bill." According to Mr. Brown, the major factor in this decline is the knowledge that illegal aliens will have difficulty finding employment in the United States because of employer sanctions.

Mr. Brown then described efforts to educate employers about the new law. Seven million informational handbooks had

been mailed nationally, with a target date of July 1987 for reaching all employers. In New Mexico, 52 presentations had been made by the INS to employers (over 2,000 nationally); in addition, newspaper, radio, and television coverage has expanded this outreach effort.

Mr. Brown told the Committee that employees hired on or after November 7, 1986, had to have on file with their employers a form (commonly referred to as the I-9), verifying their legal status to work. He added: "We believe that the enforcement provisions of this law will open some 3 million new jobs for U.S. citizens and permanent residents of the United States." He concluded by stating that the "immediate inconvenience...of the additional paperwork felt by employers, will be well worth it".

In response to questions from the Advisory Committee, Mr. Brown provided additional information:

- The New Mexico legislature has passed a new law, "probably the strongest in the United States," prohibiting unauthorized agencies from representing aliens in immigration matters.
- No grace period will be allowed for aliens to apply for amnesty status. If they do not apply before May 4, 1988, the process will be closed. This is in the law as currently

written.

- The individual INS districts do not have discretion in determining eligibility questions which might involve family unity. "There is not that kind of discretion. The law reads that each person must show eligibility is their right," Mr. Brown told the Committee.

- The INS has created administrative regulations to implement the IRCA. These regulations do allow some discretion in terms of apprehension policies. For example, the INS may selectively prioritize certain groups of undocumented persons for aggressive enforcement of deportation proceedings. According to Mr. Brown, apprehending housewives or wives with small children is "the very lowest priority."

- Persons hired after November 6, 1986, are eligible to work provided that they declare on their I-9 form that they are going to apply for amnesty. Under a special rule, they are given automatic authorization until September 1, 1987, to continue their employment. After that date, they must obtain a work authorization permit from the INS. Unfamiliarity with this rule has caused some employers to request employee documentation before this date and threaten to unnecessarily terminate workers.

- The Albuquerque INS office has only two persons available to go out and speak to employers. Because of the large numbers of ranches and farms in New Mexico, individual contact with each is impossible. However, the INS is working with the New Mexico Farm Bureau to set up regional meetings in rural areas.
- The law makes no exclusions for Indian reservations. Therefore, employer sanctions are applicable to the tribes, although Mr. Brown told the Committee that "we probably don't have the authority" to audit the personnel records of sovereign Indian nations.
- Most requests for seminars on employer sanctions have been initiated by the New Mexico Employment Security Division, which also hopes to assume the responsibility for verifying the employment eligibility of workers (thereby relieving employers of this burden).
- The Special Agricultural Workers (SAWS) provisions of the new law are working well in New Mexico. The U.S. Department of Agriculture has included in its list of eligible crops certain products unique to New Mexico, including green chilies. Any agricultural worker entering the U.S. by June 19, 1987, is eligible to apply for agricultural worker status without having to return to Mexico to file an application there.

Andrew Lopez

Mr. Lopez is a supervisor with the Albuquerque Office of the Equal Employment Opportunity Commission (EEOC). He noted that the new immigration law has a provision that prohibits discrimination based on citizenship status.[12] It is enforced by the Office of Special Counsel, U.S. Department of Justice. The EEOC will continue to handle cases of discrimination based on national origin for employers of 15 or more persons under Title VII of the Civil Rights Act.

The IRCA provides that it is an unfair immigration-related employment practice to discriminate against an individual based on national origin or, in the case of a citizen or intended citizen, because of citizenship status. A Special Counsel in the Department of Justice is charged with enforcing these antidiscrimination provisions. The procedure requires the filing of a charge within 180 days of the alleged unfair practice. Within 120 days after receipt of the charge, the Special Counsel must investigate and determine whether there is reasonable cause to believe the charge is true. If the Special Counsel has not filed a complaint before an administrative law judge within 120 days,

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[12]See page 3.

the individual may file his own complaint directly with the judge. If the judge determines that a violation has occurred, he must issue an order requiring the employer to cease and desist from the unfair practice. The order may also require the hiring of the individual adversely affected, as well as backpay. The order will also impose a $1,000 penalty for each individual discriminated against ($2,000 in the case of a second violation). Any order of an administrative law judge is subject to judicial review in an appropriate circuit court of appeals. The Office of Special Counsel was established on April 21, 1987.

According to Mr. Lopez, a Federal district court held on April 14, 1987, that the prohibition of discrimination against intending citizens applied to illegal aliens who would qualify and intended to apply for legalization and citizenship, even though they had not yet started the application process. The case affirming this, League of United Latin American Citizens v. Pasadena Independent School District,[13] is extremely significant, according to Mr. Lopez. The case involved an employer who fired several illegal aliens hired prior to November 6, 1986, because they had provided false social security numbers. The judge acknowledged that this personnel

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[13]662 F. Supp. 443 (S.D. Tex. 1987).

action might be justified under normal circumstances, according to Mr. Lopez. However, he added, because of the immigration reform act, current employment practices will have to be reconciled with new rights established under the act.

Mr. Lopez noted that the new law also requires the Comptroller General of the United States to issue a report each year (for 3 years) to determine whether discrimination is occurring as a result of employer sanctions. Mr. Lopez also told the Committee that a person cannot file a charge with both the EEOC and the Office of Special Counsel on the same set of facts unless the EEOC charge is dismissed without merit or for failing to meet the scope of Title VII.

Robert Henderson

Mr. Henderson serves as deputy director of the Catholic Social Services agency in Albuquerque. He informed the Committee that Catholic Social Services of Albuquerque has been involved with immigration refugee work since the early 1960s. The underlying goal and purpose of the agency is the strengthening of the family unit.

In January 1987, the agency began its community education efforts concerning the immigration reform law. Between

January and early May, approximately 2,000 persons were contacted. When the law went into effect on May 5, 1987, the outreach process was continued and expanded.

Catholic Social Services provides assistance to individuals in the amnesty application process as a part of the United States Catholic Conference, which has a Memorandum of Agreement with the INS. This provides the agency with the status of a Qualified Designated Entity (QDE). This designation allows it to prepare amnesty applications, although they still require submission to, and approval by, the INS. According to Mr. Henderson, the agency has 5 staff members and is relying on approximately 20 volunteers to assist in interviewing and assisting applicants.

The first priority is the handling of what Mr. Henderson referred to as "30-day cases." Those involve individuals who have been apprehended by the INS and have received a letter to show cause why they should not be deported. Instead of a year, these persons must satisfy legalization requirements in 30 days or face deportation.

Mr. Henderson continued his presentation by outlining several major areas of concern with the new law. First, large numbers of people have a level of literacy which does not

allow them to understand the amnesty application forms or the process. Second, certain groups will face a greater burden of paperwork, expense, and possible exclusion from the law. Among these are immigrant housewives who have come into the country after their husbands. They may have children here who are U.S. citizens. In these cases, it is very often the wife who is the family member not eligible for legalization.

Third, because the application process is on an individual basis, children who are minors must fill out separate forms, although they are part of one family unit. This creates additional work and expense. Fourth, the INS regulations allow an applicant to have a maximum of three misdemeanors before their applications will be denied. In New Mexico, this covers a variety of petty offenses, such as traffic tickets, littering, and disorderly conduct. This could create a serious hardship for many people.

Finally, there is continuing anxiety on the part of undocumented aliens regarding the use of the information gathered in the amnesty application process. While there is a good faith effort within the INS not to share this information with other agencies, persons are fearful that they may be prosecuted for failure to pay back taxes or for other possible

violations "where they may not have fulfilled the letter of the law." Mr. Henderson concluded by remarking that his agency has had "an extremely good working relationship" with the Albuquerque INS office.

IMMIGRATION REFORM: POLICY AND LEGAL ISSUES

John Lawit

Mr. Lawit is an attorney in private practice in Albuquerque who specializes in immigration and nationality law. He began his presentation by clarifying two issues raised by previous forum presenters. With respect to the matter of amnesty disqualifications based on misdemeanors, he told the Committee that the Federal Register definition refers to "crimes committed in the United States punishable by imprisonment for a term of one year or less, but more than five days, regardless of the term such alien actually served, if any." What this means, he emphasized, is that there is no requirement that there be actual jail time for a misdemeanor to disqualify someone for eligibility. He explained: "In this State, littering, spitting on the sidewalk, receiving a

parking ticket are all misdemeanors, and theoretically if the immigration service so chooses, people can be disqualified for legalization simply by having been issued three parking citations."

Mr. Lawit also told the Committee that there is no statute of limitations for the timeframe within which these crimes were committed. He suggested seeking a congressional amendment of this "very unnecessary and unjust penalty."

His second point dealt with the appellate process for persons denied legalization status, which he described as "an extremely difficult one." If a person receives a denial from the INS legalization center in Dallas, there is an administrative appeal to the INS in Washington, D.C. However, only 30 days are allowed for filing of the appeal. In complex immigration matters, Mr. Lawit continued, "30 days is no time at all." If the appeal is denied at the administrative level, "there is no access provided into the Federal district court," he asserted.

Mr. Lawit then told the Advisory Committee that when immigration reform was first introduced in the Congress, he began to receive "a disturbing series of phone calls... concerning individuals who had been let go by employers who

feared employer sanctions." The problem, he explained, is that most employers do not understand the technical provisions relating to amnesty eligibility. They believe that they must receive written documentation from the INS in order to allow an illegal alien to continue working. Until September 1987, no such authorization was required.

When individuals apply for legalization under the IRCA, it is their burden to prove that they will not become a public charge. But, according to Mr. Lawit, misunderstanding by some employers of this same law is resulting in the loss of jobs that would best demonstrate the aliens' financial ability to support themselves.

He pointed out that only 50 percent of his clients are Hispanic. Yet, he has not received "any call from a non-Hispanic who had been threatened with termination as a result of the fact that this new law has passed." He concluded that the greatest suffering (under employer sanctions) is being endured by people from Mexico and Central and South America. Mr. Lawit, therefore, proposed delaying implementation of employer sanctions until the end of the legalization period.

The new law provides that one of the best sources of

documentation that an applicant can provide is a letter or affidavit from employers. However, Mr. Lawit contended, employers are reluctant to cooperate for fear of their being discovered in violation of the internal revenue code.

In responding to questions from the Advisory Committee, he elaborated on the appeals process under the amnesty provisions of the new law:

> The nature of the appellate process is such that once you go through the brief appellate period before the board in Washington, in order to even raise the question concerning the eligibility for legalization, you have to have already gone through a deportation hearing. You have to have already been found deportable--therefore if you lose your appeal, you are gone. You've got one step on the boat, so to speak, and one foot in the courtroom at the same time.

Sarah Reinhardt

Ms. Reinhardt is an immigration attorney who recently wrote a book on the new immigration reform law. She also provides legal assistance to Catholic Social Services in Albuquerque.

Ms. Reinhardt began by discussing the problem of "splitting of families" which may occur under the new law. She gave the example of a family of five, where four members may be eligible for amnesty, but the father, because he returned to Mexico for a brief period as a result of death in the family, would be ineligible.[14]

Because the family is from Mexico, it would take a minimum of 7 or 8 years to help that one ineligible family member reunite with the rest of his family, under existing immigration regulations. The U.S. Congress, Ms. Reinhardt declared, needs to come to grips "with the problem of separation of families."

Another problem, she added, applies to aliens who are parolees or are involved in exclusion proceedings. Their status has not been addressed in the regulations except in "an extremely narrow fashion." She also expressed concern about housewives who have not worked outside the home. There is a general presumption that many women entered this county only after their husbands had been working in the United States for many years. The perception exists that their husbands "sent for them" and their children only upon learning of the amnesty program. "I don't think that's true," she told the

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[14]Under the IRCA, to be eligible for amnesty an individual is required to have resided illegally in the U.S. on a continuous basis since January 1, 1982.

Committee. Ms. Reinhardt also expressed concern that aliens in rural areas have insufficient information about the amnesty program and face many obstacles in securing legal assistance to file their applications. This will impede applications from qualified persons in remote communities, she added.

Lack of consistency among States in defining the severity of crimes is another issue. In Texas, driving while intoxicated (DWI) is a felony, and one conviction will disqualify an applicant for amnesty. In New Mexico, where DWI is a misdemeanor, the same result would not apply. There is great unevenness throughout the country, and the IRCA regulations should have incorporated clearer definitions, according to Ms. Reinhardt.

In her remarks before the Committee, Ms. Reinhardt contended there are other problems with the new law. First, an alien deported after 1982 is statutorily ineligible for amnesty. However, in many cases, these individuals were not present for their hearings. Second, in many cases, the fact that a child received cash public assistance can be held against the parent, thereby making the parent ineligible for amnesty. As the child may be a U.S. citizen, this is

"inherently unfair." Third, the appeals process for a denied amnesty application is confusing and lengthy. The only opportunity for judicial review comes through deportation proceedings. "You almost have to beg or trick the immigration service to 'please put me into [deportation] proceedings so I can please appeal this issue'," said Ms. Reinhardt.

Fourth, persons detained by the Border Patrol may not be asked the appropriate questions to determine their eligibility for amnesty. They may be summarily removed from this country, even though they meet eligibility criteria.

Ms. Reinhardt concluded by expressing concern about the trend of removing authority from district INS offices and transferring it to the regional legalization centers. This creates a situation where it is difficult to resolve problems. "There is no calling a person and asking 'What was wrong?' They have no phone numbers. You cannot get through to them," said Ms. Reinhardt.

In response to an Advisory Committee inquiry, Ms. Reinhardt stated there is a bill pending in Congress to address the family unity problem, "although apparently many members of Congress feel that this is a problem that should be addressed by [the] INS and they are very reluctant to deal with it legislatively."

Ms. Astrid Galindo Sardoz

Ms. Galindo is the Mexican Consul in Albuquerque. She began her remarks by reminding the Committee that there is great movement of persons between Mexico and the United States "in both directions." Because of this, she said, Mexicans are very conscious of the effects of the new immigration reform law. All of the Mexican consulates in the United States are monitoring its implementation, she added, "in accordance with international law and with the consulate convention in force" between the two countries.

As a result of close communications with Mexican workers, her office is aware of the problems confronting those persons attempting to adjust their status. These include: disqualification due to misdemeanors, reluctance of employers to issue affidavits, and financial problems for large families in covering the fees required by the INS for legalization. Also, these families do not request public assistance for fear of jeopardizing their eligibility. Thus, said Ms. Galindo, their financial troubles are compounded.

She told the Committee that many studies have concluded that the employment of undocumented workers is beneficial to

the United States economy. "It is well known that you as citizens do not like to do hard, unskilled labor and in many instances...prefer to receive unemployment benefits," stated Consul Galindo. Because of their status, many undocumented workers "are in constant fear and are subject to discrimination and violation of human rights and fundamental freedom," she added.

She concluded her remarks with the following observation:

> I believe that the economic structure of this country is strong and that progress and development cannot be stopped. Within the framework of that economic structure are the immigrant workers, whether documented or undocumented, and this is a reality. This structure cannot allow absurd violations of personal dignity and human rights of those persons who render valuable services for this country.

In responding to questions by the Advisory Committee, Consul Galindo maintained that employers are reluctant to give affidavits to legalization applicants verifying their

employment history. "The employers usually haven't been complying with the wage and hour [laws]," she observed.

IMMIGRATION REFORM: IMPACT ON EMPLOYERS

Bob Tinnin

Mr. Tinnin is an attorney representing the New Mexico Association of Commerce and Industry. His presentation (as well as the others on this panel) related specifically to the employer sanctions provisions in the IRCA.

Mr. Tinnin reported to the Advisory Committee that in New Mexico, "contrary to what I have read elsewhere...there [do] not seem to be any real major problems other than those which relate to concern by employers regarding the burdens which will be placed upon them with regard to recordkeeping and monitoring...and concerns and confusion because of the lack of education." He suggested that there be an extension of the time period for employer education (before employer sanctions are enforced) because "there are many employers out there who know that this act is there, but they still really don't know what they need to do to comply with it."

Mr. Tinnin then provided the Committee with a list of his concerns relating to the new law. He prefaced these by suggesting that the legislation was enacted hurriedly and the regulations were not well drafted because there was "not enough time." The first issue he cited involved a potential conflict between the immigration reform law and Title VII of the Civil Rights Act. The former allows employers to favor citizens in employment while under Title VII, EEOC may well find this to be an illegal violation. A second problem is caused by the lack of subpoena requirements in the immigration law. Mr. Tinnin advised the Committee:

> I don't think under any piece of legislation, no matter what the intended purpose is in the country, we want to get to the point where the government can come any time they want to and look into your private business. They've got to have probable cause to do so, and I think you will probably see litigation in this particular area.

Another danger in the law, according to Mr. Tinnin, is

created by the necessity of maintaining the I-9 information on individual employees. Once again, EEOC may tell employers that they are collecting nonrelevant information in possible violation of Title VII. Such information might include race and age and be necessary only to demonstrate compliance with the immigration law.

Mr. Tinnin also told the Committee that there are no provisions in the new law for conciliation procedures before the issuance of a complaint against an employer. This, he observed, is a significant and inexplicable omission in the employer sanctions portion of the IRCA.

Mr. Tinnin proceeded to describe other aspects of the antidiscrimination provisions which he felt were defective. These include: inadequate time for hearing preparations, allowing full hearings for frivolous complaints, and concerns by employers that they must determine the authenticity of documents provided by employees.

In response to an Advisory Committee member's question, Mr. Tinnin expressed the opinion that illegal layoffs by employers unfamiliar with the new law would more likely occur among small employers and those who operate "fly-by-night" businesses. He also observed that there is "mass confusion"

among employers, in large measure due to the fact that the final IRCA regulations have yet to be issued, "so it's hard to tell people what their ultimate obligations are going to be...."

Jack Ruggs

Mr. Ruggs is the executive vice president of the New Mexico Restaurant Association. He depicted the reaction of member restaurant owners to the new law as "confusion...confusion...confusion." Prior to attending this forum, Mr. Ruggs asked his office manager to call nine restaurants. Eight of the respondents had never heard of an I-9 form. He related to the Committee the experience of a friend who, he said, was laid off for 2 days until he could come up with a birth certificate. His friend was white, according to Mr. Ruggs.

He concluded by observing that his industry has been struggling with the Internal Revenue Service over tip reporting requirements for the past 3 years. "With the new immigration law," he said, "they are just throwing up their hands and saying 'we've got another one that's going to give us 2 or 3 years to figure out'."

Ray Davenport

Mr. Davenport is executive director of the New Mexico Hotel and Motel Association. He observed that his members are doing their best to comply with "not only the letter but the spirit of the new law."

One problem with the original regulations has been rectified, he commented. Initially, it appeared as if a new I-9 form would have to be filed each time an employee was hired. For hotels with large banquet facilities this presented a problem, according to Mr. Davenport. The same individuals may be rehired many times over a period of years, depending on need. The revised regulations allow employers to keep an I-9 form on file for 3 years, and to hire an individual as many times as necessary during this period without filing a new form.

Mr. Davenport also expressed concern with the inspection of records provisions of the law "without subpoena" and with the 3-day notice prior to INS inspections. This may have sounded generous to the drafters of the regulations, he explained, but in fact is cause for "some grave concern." He concluded by pleading for continued heavy emphasis on education before penalties are imposed on employers.

Lawrence Maxwell

Mr. Maxwell serves as executive vice president of the Associated General Contractors of New Mexico. He told the Advisory Committee that there is a "very dangerous crossfire" between the employer sanctions provision of the immigration law and the Federal requirement that contractors hire certain percentages of minorities for all federally assisted construction projects. The immigration law could have the effect of "targeting Hispanics," particularly in southern New Mexico, thereby resulting in fewer Hispanics being employed. This would make it more difficult for employers to meet their minority hiring goals under Federal contract compliance laws, Mr. Maxwell explained.

He also stated that in his industry (highway construction), there are serious financial penalties for failure to complete jobs on time. Many of these jobs are in remote, rural areas of the State. Mr. Maxwell explained:

> When your foreman shows up at the job at 6:00 in the morning and you've got a bunch of trucks out there with asphalt and that stuff has to be laid

> and laid pretty promptly or else it's wasted, which is an additional cost, you have to have people on the job and sometimes it's a little difficult when you have a foreman who may not understand some things like the fancy law.

Peter Mocho

Mr. Mocho is president of the New Mexico Cattle Growers Association. He owns a feed lot and a feed manufacturing plant south of Albuquerque.

Mr. Mocho told the Advisory Committee that the new immigration law "will seriously affect the economy of the Nation, particularly in agriculture." This country, he said, has benefited from "the unrestrained energies of the [immigrants]...." The new law, he continued, is built on the pretext of preserving jobs for American workers. However, he continued: "Our social programs for the needy and underemployed enable the American worker to refuse to collect the garbage, dig the ditches, herd the sheep, harvest the crops, scrub the floors, and perform the many tasks our school teachers proclaim to be undignified work." Mr. Mocho also told the Committee that it is unfair to reward illegal aliens with amnesty while there are many persons in foreign countries

who have applied for legal immigration permits under existing codes.

He expressed concern that the agricultural provision (SAWS) in the new law would apply only to workers who serve less than 12 months at a time. Such a definition, he explained, would exclude "most of New Mexico's agricultural industries...cattle, sheep, dairy and certain horticultural industries which require year-long labor efforts."

In conclusion, Mr. Mocho offered the following observations about the new immigration law:

> It is truly an injustice on employers to be responsible for the implementation and reporting requirements. They will not in the long run replace or correct the failed government policies which the [law] proposes to accomplish....
> Our cost in money, while significant, is not as great as the misuse of employers' time and talent away from his business obligations to attend to some government regulations that afford him no benefit.

III. SUMMARY

No specific findings of fact or recommendations are included in this summary document. The forum was intended as a mechanism for the New Mexico Advisory Committee to learn about the Immigration Reform and Control Act of 1986 and to consider the potential civil rights impact in the State due to its enactment and implementation. Nonetheless, there were several general observations and concerns expressed by the participants at the forum which the Advisory Committee believes warrant careful consideration and close scrutiny by the U.S. Commission on Civil Rights. They are as follows:

1) There appears to be confusion and uncertainty within the immigrant community as well as among employers about the specific benefits and requirements of the legislation, based on comments heard by the Advisory Committee at the forum.

2) Many immigrants are fearful that the amnesty application process may render them vulnerable to serious adverse consequences, including the forced deportation of ineligible

family members. Concern about the potential disruption of the family unit is widespread and may be deterring eligible persons from applying for legalization, according to several forum participants.

3) Because each individual family member must apply separately for legalization, large families are faced with additional financial costs as well as requiring much more documentation to establish eligibility. Furthermore, immigrant homemakers with no history of employment in this country may have difficulty demonstrating their eligibility. Also, immigrants who do have a work history may have great difficulty in securing documentation of their employment. Employers concerned about tax liability and labor law violations may be reluctant to provide workers with necessary verification. These concerns were brought to the Committee by social service agency representatives working directly with amnesty applicants.

4) The legalization regulations deny eligibility to applicants with one felony or three misdemeanor convictions. Because there is no consistency among the States in defining the

severity of crimes, unequal treatment may result. For example, in New Mexico, a parking violation is considered a misdemeanor. This problem was raised by several presenters at the forum.

5) Some employers expressed concerns about the added burden and costs which they must incur to comply with the employer sanctions provisions of the new law. Not only do they object to the paperwork and inconvenience, but they lack confidence that the Federal Government will be fair in its enforcement and afford them adequate due process and other legal protections.

6) Lack of a detailed knowledge of the employer sanctions provisions may result in some employers illegally terminating immigrant employees who are authorized to work in this country. This fear was expressed by several participants.

7) Under the new law, an immigrant whose application for amnesty is denied has no right to a judicial review of his or her case. The only judicial recourse requires that the person submit to a deportation hearing. This is clearly too late in

the process to ensure adequate safeguarding of individual rights, according to immigration attorneys appearing at the forum.

APPENDIX A

Public Law 99-603
99th Congress

An Act

To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

Nov. 6, 1986
[S. 1200]

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

Immigration Reform and Control Act of 1986.
8 USC 1101 note.

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Reform and Control Act of 1986".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—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 V—STATE ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

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TITLE VI—COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Sec. 601. Commission for the Study of International Migration and Cooperative Economic Development.

TITLE VII—FEDERAL RESPONSIBILITY FOR DEPORTABLE AND EXCLUDABLE ALIENS CONVICTED OF CRIMES

Sec. 701. Expeditious deportation of convicted aliens.
Sec. 702. Identification of facilities to incarcerate deportable or excludable aliens.

SEC. 102. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Chapter 8 of title II is further amended by inserting after section 274A, as inserted by section 101(a), the following new section:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

8 USC 1324b.

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) GENERAL RULE.—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, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

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

"(B) 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

42 USC 2000e-2.
State and local governments.

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and 8 USC 1255. 8 USC 1157. 8 USC 1158.

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

"(4) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

"(b) CHARGES OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service 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 (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail 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 10 days.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section. 42 USC 2000e.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for President of U.S.

Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice 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) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(d) INVESTIGATION OF CHARGES.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 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 an administrative law judge. 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 paragraph (3), file a complaint before such a judge.

"(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—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. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge 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, upon the motion of the party filing the complaint, in the judge's 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.

"(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

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

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges 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 administrative law judge, 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.

"(g) DETERMINATIONS.—

"(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the evidence, an administrative law judge determines that 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 judge shall state his 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.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; *Ante*, p. 3360.

8 USC 1324.

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274(b)(5), 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, for employment in the United States;

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

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—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, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

"(i) REVIEW OF FINAL ORDERS.—

"(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

"(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its

judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

"(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

"(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

"(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

"(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

"(k) TERMINATION DATES.—

"(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring after the date of any termination of the provisions of section 274A, under subsection (l) of that section.

Ante, p. 3360.

"(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if—

"(A) the Comptroller General determines, and so reports in such report that—

"(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

"(ii) such section has created an unreasonable burden on employers hiring such workers; and

"(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (l) of such section.".

(b) NO EFFECT ON EEOC AUTHORITY.—Except as may be specifically provided in this section, 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 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein.

8 USC 1324b note.

(c) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 274A (as added by section 101(c)) the following new item:

"Sec. 274B. Unfair immigration-related employment practices.".

TITLE II—LEGALIZATION

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM.—(1) 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

8 USC 1255a. "SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

"(1) TIMELY APPLICATION.—

"(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

"(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

8 USC 1252.

"(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

8 USC 1154.

"(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

"(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

"(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such

date through the passage of time or the alien's unlawful status was known to the Government as of such date.

"(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that 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. 8 USC 1101. 8 USC 1182.

"(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

"(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

"(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

"(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

"(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

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

"(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) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act. 50 USC app. 451.

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 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. 8 USC 1522 note.

"(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

"(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall 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 meets the following requirements:

"(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

"(B) CONTINUOUS RESIDENCE.—

"(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

"(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

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

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

"(D) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—The alien must demonstrate that he either—

8 USC 1423.

"(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 (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

"(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

"(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

8 USC 1401.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination 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 (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(C) at the end of the thirty-first 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) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

"(A) AUTHORIZATION OF TRAVEL ABROAD.—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) AUTHORIZATION OF EMPLOYMENT.—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.

"(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(A) with the Attorney General, or

"(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

"(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

"(B) may designate such other persons as 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.

8 USC 1159, 1255.

"(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

8 USC 1255 note.

"(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section 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.

"(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with

respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Law enforcement and crime.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) APPLICATION FEES.—

"(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

"(B) USE OF FEES.— The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

"(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

8 USC 1151, 1152.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

8 USC 1182.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraphs (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a).

42 USC 1381.
42 USC 1382 note.

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. 8 USC 1182.

"(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

"(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—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) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section 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.

"(3) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(4) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

8 USC 1105a.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(g) IMPLEMENTATION OF SECTION.—

"(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

"(A) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(B) such other regulations as may be necessary to carry out this section.

"(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

"(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

"(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

"(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

"(ii) 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 section.

"(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subpara-

graph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

"(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

"(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

"(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

"(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

"(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraphs (2) and (3), 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 (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act), 42 USC 601.

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and 42 USC 1396.

"(iii) assistance under the Food Stamp Act of 1977; and 7 USC 2026.

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), 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.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

"(2) EXCEPTIONS.—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), or 8 USC 1255 note.

"(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien

Aged persons.
Blind persons.
Handicapped persons.

who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

"(3) RESTRICTED MEDICAID BENEFITS.—

"(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

"(i) paragraph (1) shall not apply,

"(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

42 USC 1396.

"(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

"(B) RESTRICTION OF BENEFITS.—

"(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

Ante, pp. 201, 208.

"(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

Ante, p. 209.

"(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

"(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

"(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term 'medical assistance' refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

42 USC 1396.

"(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

42 USC 1751 note.
42 USC 1771 note.
20 USC 2301 note.
20 USC 3801 *et seq.*
42 USC 2921.
29 USC 1501 note.
20 USC 1070.
42 USC 201 note.
42 USC 701, 1381, 1397, 620, 651, 670.
42 USC 301, 1201, 1351, 1381.
42 USC 1381-1383e.
8 USC 1522 note.

"(A) The National School Lunch Act.

"(B) The Child Nutrition Act of 1966.

"(C) The Vocational Education Act of 1963.

"(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"(E) The Headstart-Follow Through Act.

"(F) The Job Training Partnership Act.

"(G) Title IV of the Higher Education Act of 1965.

"(H) The Public Health Service Act.

"(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

"(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be contin-

ued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.".

(2) 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.".

(b) CONFORMING AMENDMENTS.—(1) Section 402 of the Social Security Act is amended by adding at the end thereof the following new subsection: Children and youth. 42 USC 602.

"(f)(1) For temporary disqualification of certain newly legalized aliens from receiving aid to families with dependent children, see subsection (h) of section 245A of the Immigration and Nationality Act. *Ante*, p. 3394.

"(2) In any case where an alien disqualified from receiving aid under such subsection (h) is the parent of a child who is not so disqualified and who (without any adjustment of status under such section 245A) is considered a dependent child under subsection (a)(33), or is the brother or sister of such a child, subsection (a)(38) shall not apply, and the needs of such alien shall not be taken into account in making the determination under subsection (a)(7) with respect to such child, but the income of such alien (if he or she is the parent of such child) shall be included in making such determination to the same extent that income of a stepparent is included under subsection (a)(31).".

(2)(A) Section 472(a) of such Act is amended by adding at the end thereof (after and below paragraph (4)) the following new sentence: "In any case where the child is an alien disqualified under section 245A(h) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 473(a)(1)(B)), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.". 42 USC 672.

(B) Section 473(a)(1) of such Act is amended by adding at the end thereof (after and below subparagraph (C)) the following new sentence: 42 USC 673.

"The last sentence of section 472(a) shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.".

(c) MISCELLANEOUS PROVISIONS.—

(1) PROCEDURES FOR PROPERTY ACQUISITION OR LEASING.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this 8 USC 1255a note. 8 USC 1101 note.

section. This authority shall end two years after the effective date of the legalization program.

(2) USE OF RETIRED FEDERAL EMPLOYEES.—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 who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.

5 USC 8301 *et seq.*; *ante*, p. 516.