IMPLEMENTATION IN UTAH OF THE IMMIGRATION REFORM AND CONTROL ACT: PHASES ONE AND TWO

UTAH ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

This summary report of the Utah 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.

A SUMMARY REPORT

JANUARY 1990

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 Act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of equal protection based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: the investigation of discriminatory denials of the right to vote; the study of legal developments with respect to discrimination or denials of equal protection; the appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection; the maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection; and the 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 State 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

JANUARY 1990

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

LETTER OF TRANSMITTAL

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Melvin L. Jenkins, Acting Staff Director

The Utah Advisory Committee submits this summary report as part of its responsibility to advise the Commission about civil rights issues in the State of Utah.

The report summarizes information received at a community forum conducted by the Advisory Committee at the State Office Building Auditorium in Salt Lake City on May 18, 1989. The Advisory Committee sought a balanced perspective on the implementation in the State of the Immigration Reform and Control Act of 1986, and invited participation from community representatives, State and Federal officials, and professionals involved in assisting with phase one (amnesty/legalization) and phase two (civics and English language training) requirements.

While not an exhaustive review or analysis, the material provides a historical view of the amnesty/legalization process and an overview of the programs, problems, and successes of the civics and English language training. The Advisory Committee hopes the summary report will be helpful to the Commission in its monitoring of civil rights issues related to the Immigration Reform and Control Act.

The Advisory Committee unanimously approved submission of the report (10-0, 1 not voting) to the Commissioners and believes it will add to the body of research being collected by the Commission on the Immigration Reform and Control Act.

Respectfully,

Robert E. Riggs, Chairperson
Utah Advisory Committee

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Acknowledgments

The Advisory Committee wishes to thank the staff of the Commission's Western Regional Division in Los Angeles, California, for its help in the preparation of this report. The project was the chief assignment of Thomas V. Pilla. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director of the Western Regional Division.

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I. INTRODUCTION

The Immigration Reform and Control Act

On November 6, 1986, President Ronald Reagan signed the Immigration Reform and Control Act (IRCA)[1] into law. The act ended more than 5 years of often bitter debate and controversy and is the most comprehensive reform of immigration law in the Nation since 1952.

The act is based on two cornerstones: employer sanctions for hiring aliens not authorized to work in the United States,[2] and legalization of aliens who have resided in the United States illegally on a continuous basis since January 1, 1982,[3] or who have worked in agriculture for the requisite period. The legalization or amnesty portion is the first phase of the process for illegal aliens to become citizens. The act went into effect May 1, 1987.

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[1]Also known as the Simpson-Rodino Immigration Act, S. 1200, 99th. Cong., 2d Sess., 132 Cong. Rec. H10, 068-95, Oct. 14, 1986. Pub. L. 99-603, 100 Stat. 3359. Amends the Immigration and Nationality Act (INA), 8 U.S.C. sections 1101 et seq.

[2]S. 1200, supra n. 1, Section 101. New INA 224A(a)(1), 8 U.S.C. 1324A(a)(1).

[3]S. 1200, supra n. 1, Section 201. New INA 245A(a)(2)(A), 8 U.S.C. 1255A(a)(2)(A).

IRCA provided an initial amnesty period of 1 year (May 5, 1987, through May 4, 1988) to allow undocumented aliens the opportunity to prove their continued residence in the United States since January 1, 1982. The Immigration and Naturalization Service (INS) extended this period an additional 90 days for those aliens needing documentation if they had filed their initial request within the year.

IRCA also provided for employer sanctions for employment of unauthorized aliens and for failure to comply with employment verification and recordkeeping requirements. Sanctions include fines for a first violation, which range from $250 to $2,000 to $10,000 for second and third violations. For violations of the employment verification and paperwork procedures, civil penalties can be imposed in the amount of $100 to $1,000 for each individual violation.

IRCA contains an antidiscrimination provision that prohibits employment discrimination on the basis of national origin and on the basis of citizenship status. This applies to hiring, firing, and referral or recruitment for a fee. The national origin category applies to all employers with more than three workers who are not already covered by Title VII of the Civil Rights Act of 1964. This provision is enforced by the Office of Special Counsel within the U.S. Department of Justice.

The second phase requires that those who have begun the process must show a basic knowledge of English and U.S. history and government. Those aliens who qualified during the first phase must apply for the second stage 18 months after they submitted their initial application. The INS has estimated that 800,000 of the Western Region's more than 1 million applicants for amnesty will have to complete phase two.

The earliest date a legalized immigrant can be granted full citizenship following completion of phase one and two requirements is November 1, 1993. Immigrant advocates have expressed concern that a shortage of English and civics classes and programs may cause some to miss the phase two deadlines.

State Advisory Committee

Utah, located in the southwest, and requiring migrant labor for its agricultural industry, is heavily affected by immigration concerns.

According to Bureau of the Census data, Utah had a population of 1,462,037 in 1980 including 1,383,000 white; 60,302 Spanish origin; 9,000 black; 19,300 American Indian; 2,700 Chinese;

900 Filipino; 5,500 Japanese; 800 Asian Indian; 1,300 Korean; 2,100 Vietnamese; and 36,000 all other. Persons of Spanish origin included 38,021 Mexican; 1,494 Puerto Rican; 283 Cuban; and 20,054 other Spanish origin.[4]

The impact of both phases of IRCA on the States's resources and economy concerned the Utah Advisory Committee to the United States Commission on Civil Rights. At its September 20, 1988, planning meeting, the Advisory Committee discussed IRCA. Members of the Advisory Committee questioned whether phase one had been successful, wanted to ascertain the availability of phase two programs, and raised general concerns about IRCA's implementation in Utah.

At its November 16, 1988 meeting, the Advisory Committee invited Dr. Brent Gubler, adult education services, Utah Office of Education, to discuss the act's educational

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[4]Edith R. Hornor, editor. Almanac of the 50 States: Basic Data Profiles with Comparative Tables, Information Publications, Palo Alto, Calif., 1988, p. 356. The figures may not add to the total due to double counting and the Bureau of the Census' use of self-identification. The estimate of the Hispanic population as of July 1, 1985 was 70,600 or 4.3 percent of Utah's population. Bureau of Census, Current Population Reports, P-25, No. 1040, Table 11B, June 1989. The same report noted that blacks had increased to 11,700.

component and programs the State anticipated to meet the needs of aliens attempting to qualify for citizenship. According to Dr. Gubler, the State office of education had identified certain areas that might present problems to the successful implementation of phase two requirements. For example, the law requires a minimum of 40 hours of success in a citizenship training program, but adequate funds were not provided and success was not defined. Other Federal guidelines on numbers of students required for proposal purposes and school district programs were alleged to be unrealistic.

The Advisory Committee believed that confusion about phase two could hamper legalization efforts for those who had qualified during phase one. The Advisory Committee determined that a review of the implementation of IRCA in Utah was critical, and that special emphasis should be placed on gathering information on phase two. An open community forum was proposed as a method to obtain data on the implementation of the act and its impact throughout the State. The forum was conducted May 18, 1989 in Salt Lake City, and the Advisory Committee received information from State and Federal officials, community service organizations, attorneys, and professionals involved in assisting with phase one (amnesty

process) and phase two programs (English and U.S. history and government).[5] The subjects addressed at the forum were: discrimination, amnesty and legalization, employer sanctions, agricultural workers, employment, and phase two programs.

From the information collected at the forum and additional data gathered by Advisory Committee members, the Committee prepared this summary report of what it learned from participants concerning the implementation of IRCA in Utah.

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[5]Participants included: Curtis Garner, special assistant, Office of the Governor; Cindy Haig, director, Office of Assistance Payments, State Department of Social Services; Dr. Brent Gubler, adult education services, State Office of Education; Sue Breckenridge-Potterf, State Department of Health; Sherman Roquiero, State Department of Social Services; Silvia Pena-Chacon, Utah Legal Services; Mani Seangsuwan, English, Citizenship and Opportunity Program, Asian Association of Utah; Filia Uipi, attorney; Louis Pickett, director, Utah Employment Service; Joan Gardner, assistant director, Catholic Community Services; Paco Rueda, staff case worker, Catholic Community Services; Patricia Stevens, Catholic Community Services; Meryl Rogers, officer-in-charge, Immigration and Naturalization Service (INS), Salt Lake City; Allan Speirs, chief legalization officer, INS, Salt Lake City; John Renteria, Migrant Seasonal Worker Program, Office of Rehabilitation Services; Rogilio Garza, Utah Rural Development Corporation; Grant Cooper, community representative; Miguel Esquivel, community representative.

II. PHASE ONE

Amnesty/Legalization

IRCA permits undocumented or illegal aliens to establish special status that allows them to remain and work in the United States under certain conditions. Under section 201 of the act, undocumented aliens may qualify if they have been in the United States illegally and continuously since 1982, except for short visits to other countries (45 days per visit; 180 days total). If they are agricultural workers, they must have worked in agriculture for at least 90 days and resided in the United States for at least 6 months in each of the years 1984, 1985, and 1986. In order to qualify, they cannot have more than three misdemeanors and no felonies, and have not and will not receive any form of welfare assistance.

According to INS officials, when undocumented persons applied for legalization, they were issued form I-688A, which allowed them to work for 6 months while their applications were being processed. In April 1988 INS extended this deadline 90 days to accommodate the backlog in processing applications.

When the application was accepted, the applicant received form I-688, an 18-month work permit. Only after receiving the I-688 could an undocumented alien apply for permanent residence. Meryl Rogers, officer-in-charge, Immigration and Naturalization Service (INS), Salt Lake City, said that the amnesty part of the law is virtually completed.[6] Allan Speirs, chief legalization officer, INS, said the Salt Lake City office processed nearly 3,000 amnesty and over 4,500 special agricultural worker applicants for an approximate total of 7,500 for its region which includes Utah, Colorado, and Wyoming. INS officials noted that the alien must still comply with naturalization requirements.

Sherman Roquiero, Department of Social Services, stated that in Utah 6,378 individuals had become eligible legalized aliens (ELAs). This figure included 4,004 special agricultural workers (SAWs) and 2,352 pre-1982 aliens.

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[6]This comment is taken from the transcript of the Salt Lake city forum; unless otherwise noted, forum quotations and comments are taken from this transcript. Forum on the Impact in Utah of the Immigration Reform and Control Act, Utah State Advisory Committee to the United States Commission on Civil Rights, May 18, 1989, Salt Lake City, Utah. The transcript is on file in the Commission's Western Regional Division, Los Angeles, Calif.

Silvia Pena-Chacon, an attorney with Utah Legal Services, said IRCA has been good because it gave undocumented people an opportunity to become legalized, but a lot of people had problems. Her agency handled about 40 IRCA applicants and is presently involved in 8 appeals for SAW denials. Although her agency could only help SAW-approved aliens, she had heard that a lot of people were being denied amnesty unfairly because they did not have sufficient proof of their residency and employment records due to uncooperative farmers and farm labor contractors. Their lack of sophistication also hindered their ability to take advantage of the appeal process and many had missed the 30-day appeal period. Ms. Pena-Chacon alleged that there was not enough help for the undocumented. She did not think that the 1 year period for people to apply was long enough. She saw a lot of people who thought they could apply but missed the application deadline because they were not aware of it.

Filia Uipi, an attorney and member of the Tongan community, reported that there are 7 to 10 thousand Tongans in the Salt Lake City area, and he has helped approximately 50 Tongan

individuals obtain amnesty under IRCA. He alleged that there has never been a direct channel to inform the Tongan community of this law, and, as a consequence, he has individuals who come to his office asking whether the opportunity still exists. He believed the Tongan community was hindered from taking advantage of amnesty, adding:

> At the very heart of the legalization process was cost and a lot of Tongans could not afford it. The complexity of the process was threatening because they could not get information. Some were afraid to apply because they said, "oh, we are going to be picked up." The availability of support services for the Tongan community is basically nil. Nobody involved appeared to be helping out with the exception of the Tongan Methodist Church and the Asian Association of Utah. A lifetime opportunity has passed because of lack of information and assistance.

According to Allan Speirs, chief legalization officer, the INS opened more than 100 special legalization offices around the

country. In Salt Lake City the INS opened a legalization office and hired and trained 13 new employees.

Anticipating the need for assistance with the amnesty process for undocumented aliens, the INS also created a network of qualified designated entities (QDEs) to provide support in preparing legalization applications. A major QDE in Utah was Catholic Community Services, a nonprofit agency funded primarily by private foundations and donations that established five outreach offices throughout Utah. According to Joan Gardner, assistant director, Catholic Community Services, in addition to its Salt Lake City office, its QDEs were located in Price, which assisted people from Helper and Green River; Provo, which covered Payson, Elberta, and Genoa; Ogden, which covered Brigham City, Tremonton, Logan, and Wendover; and Richfield, which assisted 24 communities located throughout central and southeastern Utah.

Ms. Gardner told the Advisory Committee that Catholic Community Services is:

> still assisting people who have applied and who are in the appeal process. Catholic Community Services worked from May 5, 1987, through November 30, 1988,

> setting up appointments and participating at the interview with the client. The appeals are still going in. When people are notified that they are denied, they have 30 days to appeal the case to the INS Regional Office in Lincoln, Nebraska.

Paco Rueda, staff case worker with Catholic Community Services, said that his agency submitted around 1,000 cases to the INS office in Salt Lake City from Idaho, Wyoming, and Utah. Of these cases, he estimated that 55 percent were SAWs and the other 45 percent were regular amnesty applicants.[7] Sixty-five percent of the cases submitted by Catholic Community Services' QDEs have been approved to date, and the impact has been positive. Those who have been denied face uncertainty and problems. Mr. Rueda noted:

> The impact on people who have been denied has been negative. Some have returned to their

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[7]Mr. Rueda estimated that 94 percent of the applications were from Mexico, and the remaining 6 percent were composed of other Latin Americans and Iranians. Of the 35 percent denials, he estimated that 80 percent were SAWs and 20 percent were regular amnesty cases.

> native country, while others are gathering the documentation for appeals. The main problem for those who have been denied is that they can no longer work. There are also a lot of families in which one spouse has obtained amnesty and the other has not, and these people are uncertain as to what will occur.

Ms. Gardner said a lot of people did not come forth in the beginning because there was a lot of fear. Even though INS established separate legalization offices, the undocumented, she added, were not a population that arose and readily ran to immigration.

The INS was cognizant of this fear. Mr. Speirs said:

> To encourage the maximum number to come forward, information submitted in support of legalization could not by statute be used for the purpose of deportation. The aspect of confidentiality was such that I could not tell the officer-in-charge about particular cases under penalty of law.

> Employees of INS legalization offices would be subject to fines and imprisonment for improperly divulging information provided by applicants. The INS sought to make this clear to the public through as many means as possible including press interviews, radio and television appearances, information supplied through the Spanish-speaking media, and various ethnic and support organizations.

Mr. Rogers said, "I can assure the Advisory Committee unequivocally that there has been no breach in the Salt Lake City office of the confidentiality aspect of IRCA." Mr. Speirs added, "80 percent of the applicants came directly to the INS without going through private attorneys and QDEs." He believed this fact disspelled fear of the INS as an issue. According to INS data, nationwide, approximately 3.1 million individuals applied for amnesty/legalization.

Employment Documentation

IRCA prohibits employers from hiring undocumented aliens and requires that they determine the identity and the eligibility to work of all persons hired since November 6, 1986.[8] The

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[8]Under a "grandfather clause" in IRCA, employers may lawfully continue to employ undocumented aliens hired prior to Nov. 6, 1986.

statute also allowed employees, who had to order documents such as birth certificates from another State or country, or a social security card, to remain working for 21 days while they awaited the requested documentation. For persons hired between November 7, 1986, and May 31, 1987, the employer had to obtain the required documentation by September 1, 1987.

Once the documentation was obtained, the employer and employee were required to fill out an official INS form I-9,[9] attesting, under penalty of perjury, that the appropriate documents were provided. The attestation form must be kept on file for 3 years after the date of hire or 1 year after termination, whichever is later. According to Mr. Rogers, the I-9 provides the job applicant's biographic information and attests to the applicant's U.S. citizenship or status as a legally authorized alien worker. It must be completed and supported with appropriate documentation within 72 hours after the commencement of employment by everyone. Mr. Rogers said, "this form has never taken me more than 5 minutes to prepare."

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[9]The I-9 is an Immigration and Naturalization Service form required from each employee hired after Nov. 6, 1986, which certifies the employee is a citizen of the United States and lists those documents utilized by the employee to verify his or her status.

According to INS officials, the first year of the act's implementation was devoted to educating employers about the provisions; the second year, warnings were issued to employers; and thereafter, fines and, in some instances, imprisonment could follow intentional violations of the employer sanctions provisions of the statute.[10]

Mr. Louis M. Pickett, director, employment service, Department of Employment Security, reported that from May to October, 1987, the employment service, in some instances with INS, conducted about 30 seminars throughout the State to educate employers on IRCA. About 800 or 2 percent of the State's employers participated.

The Phoenix District Office of the U.S. Equal Employment Opportunity Commission (EEOC) worked jointly with INS and with community groups to disseminate information regarding IRCA, including distributing INS materials to employers to assist them in conforming with the act.[11]

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[10]Enforcement of employer sanctions did not begin until June 1, 1988.

[11]Hermilo R. Gloria, district director, Phoenix District Office, U.S. Equal Employment Opportunity Commission, May 2, 1989, letter to Thomas V. Pilla, civil rights analyst, Western Regional Division, U.S. Commission on Civil Rights. Hereafter cited as Gloria Letter. On file in the Western Regional Division.

Mr. Pickett noted that his agency trained staff on IRCA and the I-9 forms at all 24 local offices scattered throughout the State. According to Mr. Pickett:

> At these local offices, receptionists and interviewers were being hassled by irate clients who often said, "you know I was born here", or "I am a citizen, why are you putting me through this?" Well, we were putting them through the procedure because the law says every one must have an I-9 on file.

In February 1988, Mr. Pickett added, his agency obtained permission from INS to modify its procedure so that an I-9 was no longer required of each client who used the service, but each was advised that he or she would need the I-9 for job referral.

The act provides both civil and criminal penalties for noncompliance with the I-9 certification. Mr. Pickett said that major employers with sophisticated personnel sections pay attention to this detail, but he believed it was not an issue with a lot of Mom and Pop type operations who go about their

business of hiring and do not worry about an I-9. He noted that the employment service anticipated a lot of publicity and frequent cases of sanctions so that employers would be aware, but sanctions have not been that many or that well-publicized to have gotten anybody's attention.

Mr. Rogers reported that since June 1, 1987, the INS has issued 16 to 17 notices of intent to fine in Utah, and about $20,000 in fines has been collected to date (as of May 18, 1989). He added:

> It has been our experience in followup to businesses that have been fined that there are no further violations encountered and all followup visits have shown compliance. Probably 90 percent of the businesses we visit are in compliance or if they are not in compliance, they have minor paperwork mistakes that are a reflection of a need for instruction rather than any willful violation. We are obtaining overwhelming voluntary compliance.

Discrimination

Advisory Committee members were concerned about the potential for discrimination in employment. Section 274B of IRCA prohibits discrimination in employment on the basis of national origin or citizenship status. Mr. Rogers stated:

> It is an unfair immigration-related employment practice to discriminate against individuals in hiring, recruitment, or referral solely on the basis of alienage or citizenship status and for the sole purpose of evading the law. To enforce the antidiscrimination provisions of IRCA, a special counsel [in the U.S. Department of Justice] has been appointed to investigate such charges.

Under existing antidiscrimination law, the EEOC also has responsibility for assuring that employers do not discriminate based on national origin. The Phoenix District Office of the EEOC wrote the Advisory Committee:

> The District Office has not received any charges or inquiries in the State of Utah, nor have we received any information from the Utah

> Anti-Discrimination Division regarding possible IRCA charges.
>
> To date, EEOC has not seen any major impact of IRCA related problems in our district and have yet to see a IRCA-related employment discrimination charge filed in the State of Utah.[12]

Mr. Picket sees no evidence of discrimination on the part of employers. He noted:

> I have asked the Anti-Discrimination Division of the Industrial Commission whether they have observed any increase in employment discrimination as a result of this new law and they said no. I also asked the managers of our agency's statewide offices whether minorities, specifically Hispanic, are being avoided as potential employees, and they have responded that they have not seen any indication of such behavior. The Labor Information Section provided data on the percentage of Hispanics as a part of the applicant file and placements from employment service for the past 3 years and these figures have increased.

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[12]Gloria Letter.

Rogilio Garza, staff, Utah Rural Development Corporation, said the I-9 has made more of those who are undocumented go underground than the pre-IRCA undocumented. They will not be using State job services to find employment and will continue to be exploited.

Ms. Pena-Chacon said employers are not going to be hesitant in hiring the undocumented even if it is just on a temporary basis, and this may lead to these people working for lower wages and in worse conditions because they do not have papers.

Mr. Rogers noted that exploitation is the big advantage of illegal alien labor, and this will cause hardship to some people who cannot qualify for legalization. But, he added, one of the big benefits of IRCA is the employer sanctions statute that will deny employers that group of exploitable labor.

Mr. Picket suggested that perhaps it is too early to assess employment discrimination concerns based upon IRCA and that additional data would be necessary.

Agricultural Workers

IRCA contains special provisions for agricultural workers. Aliens who could establish that they performed qualifying agricultural field labor[13] in the United States for at least 90 days during the 12 months ending May 1, 1986, could apply for temporary resident status during the application period from June 1, 1987, to November 30, 1988. According to Mr. Speirs, only a handful of the applicants in Utah qualified under this provision.

Aliens who were granted temporary status through the special agricultural worker (SAW) program may become permanent residents 2 years after the close of the application period. Ranchers and growers in the State were alarmed that labor shortages would occur due to the implementation of IRCA. Mr. Pickett said that agricultural employers were quite concerned about the impact on migrant farm workers upon whom they have relied over the years. Employers were worried that

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[13]Mr. Speirs noted that the law is quite specific in regard to precisely what sort of agricultural work made a person eligible. Field work is specified. The U.S. Department of Agriculture issued regulations which define the products and as a general rule that definition includes all plant crops grown for human food consumption with the exception of sugar cane, dairy products, poultry, and livestock. IRCA also contains a provision for a visa program (H-2A) designed to assist growers in obtaining necessary farm labor when a petitioning employer meets wage, housing, and other standards and the Department of Labor has certified that domestic workers are not available to provide those services.

legalization would remove potential employees from the migrant stream causing labor shortages during harvest times. Mr. Pickett noted that for the present, he was not aware of any serious agricultural labor problems in the State.[14]

Perhaps the major problem with the SAWs program has been the number of fraud cases. According to Mr. Speirs:

> The people who are inclined to take advantage of situations were out there selling phony documents. We have had a case in Idaho where a man was convicted of selling 300, and in Utah another individual sold 200 fraudulently signed support documents. In the Regional Office, they have thousands upon thousands of cases which are suspected of being fraudulent, and INS staff are moving as quickly as they can to review those.

Ms. Pena-Chacon said that under the SAW portion of the law, the percentage of denials has been very large, and she has heard that maybe up to 60 percent of the applications are being denied on the basis of fraud.

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[14]Mr. Speirs said within IRCA there is a provision for replenishment agricultural workers (RAWs) should there be future labor shortages in the agricultural sector. Beginning in fiscal year 1990 and for 4 additional years, alien farm laborers may be granted temporary residence if there is a scarcity of agricultural workers.

Mr. Rogers noted:

> The lax nature of the SAW requirements invited fraud and it got plenty of takers. Thus far, we have had four individuals indicted on felony fraud charges for facilitating submissions of large numbers of fraudulent applications. These indictments do not involve individual applications for SAW status. They involve third parties who are soliciting business for fraudulent affidavits of farm labor employment.

Mr. Rueda wondered if the appeal process for SAW denials could be expedited. Mr. Speirs said that there may be some good cases among the denials, but there is no way that INS manpower can get around to those any quicker than they are.

III. PHASE TWO

State Legalization Impact Assistance Grants

Congress was mindful of the potential costs to States in implementing IRCA and provided reimbursement guidelines in

Section 204 of the act in the form of State Legalization Impact Assistance Grants (SLIAG).[15]

SLIAG may be used for education, health care, and other social programs for immigrants. According to Sherman Roquiero, Department of Social Services, SLIAG is a reimbursement program through the Federal Government for State costs related to eligible legalized aliens in three program areas: public health, education, and public assistance.

Curtis Garner, special assistant, Office of the Governor, reported that in September 1987, Utah's Governor Norman Bangerter designated the State Department of Social Services as the contact agency for securing and submitting information to administer the funds under SLIAG. According to Cindy Haig, director, Office of Assistance Payments, Department of Social Services, the money that comes to the State of Utah for SLIAG is to provide funds for education, health, and assistance programs.

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[15]This provision appropriates $1 billion per year for 4 years (beginning in FY 1988) to reimburse, using a designated formula, State and local governments for the cost of providing public assistance and medical benefits to newly legalized aliens. Funds that are not used may be utilized through FY 1994. Thirty percent of the appropriated funds must be allocated equally among education, health, and public assistance programs.

Ms. Haig noted:

> The Office of Assistance Payments contracts with the Department of Health and County Public Health Clinics for public health assistance programs. We contract for education services through the State Office of Education, and they subcontract to local school districts and some private, nonprofit agencies. In 1988, the first year of the program, Utah was allocated $1.8 million. The allocation is based upon population. Excluding health expenditures which have yet to be tabulated, the State has spent approximately $900,000 of its allocation. Administration costs for the State are about 10 percent.

Mr. Roquiero said:

> SLIAG has appropriated $4 billion for 4 years. Ten States received 94 percent of the first year's billion dollars and California received 60 percent of that money. Thirty-three States including Utah received 6 percent of the SLIAG program money.

Ten States have no SLIAG program. Of the 3.1 million people who have applied nationwide for amnesty/legalization, 1.3 or 42 percent have been SAWs and 1.8 or 58 percent have been pre-1982 applicants. In Utah, there are 6,378 ELAs with 4,004 SAWs (64 percent) and 2,352 (36 percent) pre-1982 applicants.

Programming for phase two is now their major concern.

Education

Phase two, the path to permanent residency, applies to those granted legalization under section 245(a) or amnesty provisions of IRCA and not those under the section 210 or SAW program provisions. Mr. Speirs said that those applicants who have been temporary residents[16] for 18 months become eligible for permanent residency beginning with the 19th month

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[16]According to Mr. Speirs, temporary resident alien status never existed in law prior to the passage of IRCA. This category of temporary resident alien is something new that Congress enacted. Citizenship is another area. Individuals would have to be a permanent resident for at least 5 years before they become eligible to ask for citizenship with certain exceptions.

after they originally filed for temporary residency. In most cases this date coincides with the issue date on their temporary resident cards, the form I-688.

The law states that in order to become permanent, applicants must meet an education requirement regarding English and knowledge of history and government of the United States. The applicant may either attend an INS-approved class or pass an INS test. All eligible legalized aliens (ELAs) may take the classes, but only the section 245(a) applicants who have been here since before 1982 are required to do so.

The Utah State Office of Education is administering the adult education component of SLIAG. According to Mr. Speirs, there are more than 30 sites operating INS-approved educational courses throughout the State.

Dr. Brent Gubler, State Office of Education, noted that since October 1, 1988, Utah has had 1,592 eligible legalized aliens enter the State's educational structure. He said that the educational system provides a very limited opportunity to obtain speaking and listening skills through up to 40 hours of instruction. Dr. Gubler added, "we are saying that if you

attend school for 40 hours you will meet the INS requirement." The problem, he believes, is that this minimum level of education will not provide the labor force that the Nation needs, adding:

> We have 1980 census data which tells us that if a female has 8 years of schooling and is employed full-time, she has an average annual income of $7,649.00; for males it's $15,547.00. If you have 12 years of schooling, females are earning $9,337.00 and $16,864.00 for males. It is estimated that by the year 2000 anyone with less than a 12th grade reading level will have a very difficult time obtaining and retaining employment.

He suggested that as we tender the American dream to these people we need to shoulder the responsibility of additional legislation, funding, and programming. At present, he noted, the regulations limit administrative costs to .0125 percent, and this is not adequate to even conduct meaningful onsite program evaluations. Because the program is so new, he noted further, there is not a good data base as relates specifically to the eligible legalized aliens.

According to Dr. Gubler, a major problem with the legislation is that before the State can obtain Federal SLIAG funds, there must be a minimum of 500 eligible individuals in individual local school districts. He added:

> Although statewide we probably exceed the number, there is not one school district in Utah that has that minimum number and so the State does not qualify for SLIAG funds for children and youth under age 16. These children and youth are being provided for in local school districts utilizing State funds.

Dr. Gubler said he is the only State employee administering, tracking, and programming in education for the eligible legalized aliens over the age of 16. He noted:

> There is a lack of awareness of the tremendous costs that are going to be associated with doing the outreach and providing literacy training. Facilities happen to be a major barrier because in some communities the school districts are taxed to the limit and they have been going on year round schools. We will have need for both day and

evening programs to handle those who work. There are other problem areas such as baby-sitting, transportation, materials, and supplies.

Because of the need for services, the State has contracted with private providers and presently has six non-State programs. Mani Seangsuwan, coordinator, Citizenship, English and Opportunity Program, Asian Association of Utah, said that it has enrolled 50 Tongans, 10 Samoans, 7 Hispanics, and 2 Asians in its training program offered at two classroom sites. Some of the problems this program faced included a lack of adequate funding, lack of native language instructors, different levels of English speaking and writing competency within classes, and confusion over the procedure for final certification for the INS.

Ms. Gardner said that a Catholic nun in the Wendover area is providing English language and civics history training to about 150 ELA students, but the funds are being provided by her religious order. She also noted that there is confusion regarding what is required as far as English and civics for the INS test and problems with funding for phase two. Although the programs are receiving SLIAG funds for the classroom hours that students are putting in, it is not enough.

Mr. Speirs noted that phase two education programs only began in February of this year and there has been a very high rate of approval because the ELAs can either take the test or take the 40 hours of instruction. In Utah only about 3,000 applicants will have to take the test. Nationwide, he said, there has not been one final denial of phase two applicants, but we are very early in the program.

Public Assistance and Health

Under the act, the alien is not eligible for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need [including the program of aid to families with dependent children (AFDC)], medical assistance under a State plan approved under Title XIX of the Social Security Act, and assistance under the Food Stamp Act of 1977."[17]

Sherman Roquiero reported that public assistance is basically barred to ELAs for a period of 5 years, adding, "if they were

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[17]Pub. L. No. 99-603, 100 Stat. 3359 (1986) Sec. 201(h)(1)(A). See also, 42 USC 601; 42 USC 1396; and, 7 USC 2026.

to apply for Federal public assistance programs such as AFDC that could jeopardize their legalization efforts."

The Advisory Committee has learned[18] that a lawsuit[19] was filed in the Federal Eastern District Court[20] in California to assist those amnesty/legalization applicants who may have been denied or chose not to apply because of the public charge issue. The matter is pending,[21] and any decision may not be binding in Utah.

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[18]Linda Mitchell, Coalition for Humane Immigrant Rights of Los Angeles, "Victory for Immigrant Rights; Judge orders INS to reopen amnesty in Zambrano Lawsuit," News Alert, August 2, 1989.

[19]Zambrano v. Immigration and Naturalization Service

[20]The Federal Eastern District Court of California is located in Sacramento.

[21]On July 31, 1989, Federal District Court Judge Edward Garcia ruled in favor of the plaintiffs in the Zambrano lawsuit. The court decision covers two groups that will now be eligible for amnesty: (1) those applicants that have been denied or those pending denial because of the public charge issue; and, (2) those individuals because of the "public charge" issue who did not file an application prior to May 4, 1988.

Applicants or members of their families must have received some type of public assistance and failed to apply for amnesty because they thought they were ineligible for the legalization program due to INS's overly restrictive interpretation of the law.

On Aug. 10, 1989, the INS appealed the decision to the Ninth Circuit (Doc. No. 89-16014). The Ninth Circuit includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, and the territory of Guam. If the INS appeal is not successful, it is unclear whether the decision will be applied nationwide.

Ms. Pena-Chacon pointed out that the ELAs are being set loose in the country without any kind of help, and they cannot get public or general assistance.

Mr. Roquiero said that ELAs may be eligible for State-funded public assistance programs such as general assistance and the emergency work program. He added that his department had no ELAs in those programs, and no one had applied for them.

The lack of ELAs in these programs did not surprise community activists, who suggested that aliens rarely distinguished between Federal and State programs. Ms. Gardner noted that there is a great deal of confusion over public benefits and whether accepting any form of public benefit will jeopardize their permanent residency.

Sue Breckenridge-Potterf, Department of Health, said that health programs that are available to ELAs are exactly the same basic public health services that are available to every individual in the State of Utah, such as immunizations, TB control, health education, food handlers training, and environmental control issues. She believed health services were adequate, but the problem was in the lack of outreach

that she attributed to the act's lack of funding for such efforts. As a consequence of the lack of information, she believed, most ELAs are fearful of applying for any kind of public assistance because of the public charge issue. Rather than jeopardize their legalization efforts, they just stay away from any assistance including health.

In addition to lack of funding for outreach, Ms. Breckenridge-Potterf noted that she could not contract with migrant health programs because those services are mostly supported by Federal funds. She added that migrant health programs serve an incredibly large ELA population and that she cannot contract with them because of the fact that the alien is not eligible for any program of financial assistance furnished under Federal law.

Mr. Roquiero said that all of the State's costs in public assistance have been in the Medicaid program and that "Medicaid in Utah served 522 ELAs for a cost of $439,000.00 in 1988."

Ms. Breckenridge-Potterf said:

> This has been a very frustrating program to administer and operate. In Utah, the Department of Health is responsible for some programs that Federal agencies consider public assistance and therefore ELAs cannot apply. At the local level some covered programs include mental health and TB immunizations. Determining which are allowed expenses and which are not is burdensome administratively.

Another problem is that SLIAG will only reimburse for health programs that are already in place. Ms. Breckenridge-Potterf suggested that for this population, existing programs are only part of the health picture, and she is prevented from developing new programs for any special needs.

Participants suggested that Federal agencies reevaluate their interpretations of the statute so that services can be provided without jeopardizing the path to permanent residency for this population.

IV. SUMMARY

Amnesty/legalization, phase one, has been completed. The Advisory Committee gathered data on the implementation of amnesty/legalization for historical purposes and to assess the problems and successes encountered by applicants, INS, and community activists who assisted in the process. Participants in the Advisory Committee's forum suggested that the 1 year period was not long enough to accommodate the need, and that certain communities did not take advantage of the opportunity. They attributed this to a lack of communication and education about IRCA, costs associated with the process, and fear of the INS.

The INS representatives indicated that the issue of fear was overblown because 3.1 million applicants were processed nationally, and in Utah over 80 percent of those who qualified utilized the INS rather than QDEs for amnesty/legalization. Approved applicants have experienced a positive impact and can move about freely. Community activists are concerned about those applicants whose applications have been denied and are no longer able to find employment. Participants alleged that these individuals will experience exploitation by employers,

poor wages, and difficult working conditions. It was suggested that it is too soon to determine if employment discrimination is occurring.

It was alleged that only a small percentage of Utah's employers took advantage of sessions sponsored by the INS and State agencies to provide information about IRCA. The INS indicated that the majority of employers in the State are complying with I-9 certification procedures and fines have been minimal to date. The impact of employer sanctions has not been determined.

According to INS, the greatest problem during phase one has been the number of fraudulent documents submitted for amnesty/legalization in the SAW program. Final determinations for those SAW applicants who have appealed their denials has been delayed because the INS must take additional time to research the legitimacy of documents and does not have the manpower to expedite this process.

Although it is too early to assess the impact of phase two programs, certain problems have emerged. Participants alleged that funding is not adequate to meet service needs in education, health, and public assistance. Community activists

argued that confusion exists among ELAs over phase two procedures and requirements for final certification. Perhaps the greatest phase two problem is the confusion over public assistance. Because the act prohibits amnesty/legalization applicants from receiving certain public assistance for a period of 5 years, ELAs have been avoiding all public aid including public health. Public health officials believe the guidelines for SLIAG monies are burdensome administratively and do not allow them to meet the health needs of this population.

The 40 hours of basic instruction will meet the INS requirement for temporary resident status. However, education officials questioned whether this limited instruction in English and civics will assist ELAs in furthering their lives. Education officials doubt that this will prepare them for the challenges of a changing workplace.

Participants were concerned that ELAs, particularly in rural areas of Utah, have been cut adrift without access to education, health care, and public assistance.

Participants suggested that Federal agencies reevaluate their interpretations of the statute so that services can be provided without jeopardizing the path to permanent residency for this population.

Participants noted that phase two is a transition period that will allow ELAs an opportunity to participate in society without fear of deportation. The next step, one participant acknowledged, will require individual initiative.

Participants agreed that significant problems will be faced by denied applicants who have chosen to remain and hope for a new amnesty program. An assessment of the success of the 1986 act remains, and the Advisory Committee plans to monitor developments in Utah.