

immigration 101

**A Synopsis of the Briefing by the
LWV Denver Immigration Committee
Given
March 19, 2007**

IMMIGRATION 101

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Introduction

Migration of peoples has been going on since the beginning of human history. **Migration has historically occurred for three primary reasons: economics, escape from danger, family unification.** This remains true today.

Although the percentage of immigrants in the U.S. today in terms of current population is no larger than it was in the late 1800s and early 1900s, the current attention being focused on immigration control is generated in great part by the visible increase in immigration over the last several decades.

- Between 1970 and 2000, the naturalized citizen population increased by 71%.
- According to the 2000 Census, there were over 30 million immigrants in the U.S., 11% of the population at that time.
- One in five children in the U.S. was the native or foreign-born child of an immigrant.

(Source: National Immigration Law Center.)

The Pew Hispanic Research Center estimates that in 2005 there were about 11.5 to 12 million unauthorized migrants in the U.S. They estimate that there are about 200,000 – 275,000 such individuals in Colorado.

Administration of Immigration System

The immigration system is administered through three agencies of the Department of Homeland Security:

U.S. Citizenship and Immigration Service (**USCIS**) – Adjudicates applications to adjust immigrant status, naturalization petitions, asylum and refugee petitions, and all other adjudications previously performed by Immigration and Naturalization Service (**INS**).

Immigration and Customs Enforcement (**ICE**) – Interior enforcement of immigration law, including investigations, detention and removal, and intelligence.

Customs and Border Protection (**CBP**) – Border Patrol, inspections involving customs laws and immigration laws.

History

A Synopsis of Immigration Legislation

From a land bridge connecting Siberia to Alaska 30,000 years ago, to a 2,000 mile common border with Mexico of great interest today, people have crossed, coming, coming, coming and always changing the face of America. Poet Walt Whitman describes the face of America this way: “Here is not merely a nation, but a teeming nation of nations.”

1790: The Naturalization Act of 1790 granted citizenship to “free white persons of good moral character” who have lived in this country two years or more and swear loyalty to our constitution. Of course, the vast majority of the U.S. population of 3.2 million were from northern Europe; 75% were British, and those naturalized reflected the same group. This law also provided the right of individual states to attract settlers and immigrants, and many western states sent brochures abroad to bring in more people.

1830-1890: A variety of restrictive laws were passed which were designed to protect American wage earners, to restrict entry of prostitutes, felons, mentally deficient or insane. The **Chinese Exclusion Act** followed anti-Chinese riots, and limits were placed on the Irish.

1891: A swing to federal authority. The **Immigration and Naturalization Service** was created and took away all state authority to regulate immigration. Laws continued to become more exclusionary, but were not sufficient enough to slow down immigration numbers which grew significantly until the outbreak of World War I.

1921: The **National Origins Quota System** was born to reflect the nationalities of the American public. The number of immigrants of each nationality allowed was limited to 3% of that nationality in the U.S. This was a time of strong bias against Asian immigrants.

1940-1960: A period of little immigration with the exception of the **Displaced Persons Act of 1948** which allowed 400,000 people who had lost their homes during the war to come to America. A shortage of agricultural workers led to the **Mexican Bracero Program** which brought in needed farm workers during the 50s and 60s.

1965: Repeal of the national origins quota system, replaced by each country receiving an annual quota of 20,000. A time of social conscience, with preference for a VISA being given for family reunification and refugee needs.

1980: Refugee Act of 1980 provided for both a regular flow and the emergency admission of refugees and authorized federal assistance for the resettlement of refugees.

1986: Immigration to America grew greatly during the next fifteen years, largely from Latin America and Asia, from 4.5 million in the 1970s to 7.3 million in the 1980s. The **Immigration Reform and Control Act of 1986** allowed illegal immigrants of 4 years to apply for legal status. Also, at this time, employers are prohibited from “knowingly” hiring illegal aliens – with penalties.

FAMILY REUNIFICATION

“U.S. immigration laws have always included provisions designating persons eligible or ineligible to enter the country. The current policy originated with the Immigration Act of 1965. The new law eliminated the national origin quota system that had favored immigrants from Europe to the exclusion of those from other parts of the world. It created a system favoring diversity of country of birth. The 1965 Act also provided a “family preference” quota that systematized the sponsorship of relatives of legal immigrants, emphasizing the reunification of immigrant families.

Family immigration currently accounts for the majority of immigrant petitions filed and visas granted each year.

Current law determining eligibility for Permanent Residency gives first priority to immediate relatives of U.S citizens - spouses, children under 21 years, who are unmarried, orphans adopted abroad, parent of a U.S citizen, the widow/widower of a US citizen who was married more than 2 years, and Amerasian children There are no annual caps for these petitions.

Other family based Immigrant Visas have an annual cap set by the Department of State. In order of preference these are:

- 1A Unmarried children who are over 21 (children of U.S citizen)
- 2A Spouse or unmarried children of a Permanent Resident
- 2B Unmarried children over 21 of a Permanent Resident
- 3rd Married Children over 21 of a Permanent Resident
- 4th Brothers and sisters of a U.S citizen

Among current immigrants, family unity is one of the most powerful motivators. Since 1965, between 50 and 70 percent of U.S. immigrant visas distributed annually have been allotted to close family members of U.S. citizens and legal permanent residents.

In 2005 39 % of those who received visas were immediate relatives of U.S. citizens. During the past ten years, more than 200,000 persons per year have been admitted as beneficiaries of family preference visas.

Those immigrants that fall under the jurisdiction of the preference category framework ((the 2nd family based visa) currently face long waits. Their wait can vary depending on the relationship category or the country of origin. For example, the spouse or minor child of a permanent resident from Mexico can wait more than a decade to receive a visa to enter the U.S..

The current family unification system is not working well for many legal permanent residents and their immediate family members. The long waits often mean that an individual's productive working years that make immigration a good investment will have passed by the time that they arrive in the U.S. Clearly the system is not working well

In Search of a Solution:

Some have suggested eliminating the family preference categories for everyone except the spouses and minor children of U.S. citizens and permanent residents and reallocating to those nuclear family members the visas currently designated for adult sons and daughters and the siblings of U.S. citizens. There would be a transition period to “grandfather” those who have waited many years.

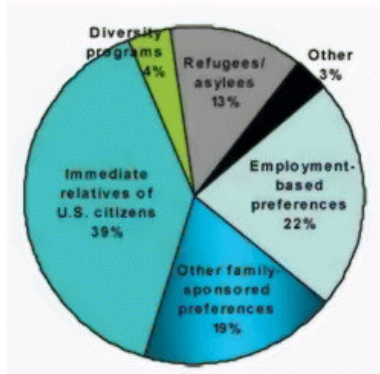
There are no easy fixes for our family based immigration system. Unless our nation find the political courage to come to grips with the short and long term implications of our current untenable policy, tens of thousands of families desperate to be together rather than face interminable separations are likely to continue resorting to unauthorized immigration.”

League of Women Voters

U.S. Immigration Policy: Family Reunification Patricia Hatch

Quotas: How Many May Settle in the U.S.?

The U.S. admits persons wanting to come to live as permanent residents under a quota system in three categories:



- 1) Family Reunification,
- 2) Employment based preference,
- 3) Diversity.

Also, each year the President decides how many refugees will be accepted into the U.S.

Family Reunification.

“Immediate Relatives” (spouses, children, parents) of U.S. citizens are exempt from any quota. To qualify as an “immediate relative,” a “child” must be under the age of 21. To qualify a “parent” for permanent legal residence, a U.S. citizen child must be at least 21. “Immediate relatives” was by far the largest group entering the U.S. in 2005.

226,000 other close relatives may be admitted to the U.S. each year:

- 1) 23,400, Unmarried sons and daughters aged 21 or older of U.S. citizens.
- 2) Spouses and children of LPRs (legal permanent residents – not citizens):
 - A) 87,934, spouses and children under 21.
 - B) 26,266, unmarried sons and daughters 21 or older.
- 3) 23,400, Married sons and daughters of U.S. citizens.
- 4) 65,000, Brothers and sisters of adult citizens.

There is a multiplier effect from allowing family reunification. Immigrants allowed to enter because of family reunification rules are able to qualify their other close relatives, etc., etc., etc.

There are per country quotas as well as the worldwide quotas listed above. The number from a single country cannot exceed 7% of worldwide total. For this reason persons wanting to immigrate from Mexico, India, The Philippines, and China (countries where many want to emigrate to U.S.) will be put on waiting lists of many years.

Employment based preference 140,000/year:

- 1) 40,040, Priority workers, persons with *extraordinary* ability in sciences, arts, education, business or athletics.
- 2) 40,040, Members of professions with graduate degrees or aliens of *exceptional* ability.
- 3) 40,040, Skilled workers, professionals, and others who can show their labor is needed.
- 4) 9,940, Special immigrants including religious workers and long-term government workers.
- 5) 9,940, Employment creation investors, those who agree to invest one million dollars to employ 10 US citizens.

Diversity immigrants: 50,000/year

This category was created to smooth a path for persons wanting to emigrate to the U.S. from areas that are not currently sending immigrants. As most immigration these days is from Mexico, Latin America, Asia, and the Caribbean, most of these visas go to residents of Europe or Africa. Actually, it is a lottery; in 2005 there were 6,300,000 applications for these 50,000 visas.

Refugees, persons fleeing persecution in their own countries.

In October of 2006 the President announced that the U. S. would accept 70,000 refugees in 2007. More recently it was announced the U.S. would accept 12,000 refugees from Iraq. A high percentage of refugees to settle, then, in the United States will be from Iraq.

Refugees and Asylees

A **refugee** is a person who has fled his or her country of origin because of a well-founded fear of persecution based on race, religion, or political views. An **asylee** must meet the same criteria as a refugee, but is somebody who is already in the United States.

Helping the world's refugees is the job of the United Nations High Commissioner for Refugees (UNHCR). It was created by the UN General Assembly and began work in 1951. Despite the efforts of more than 5,500 UNHCR workers in 244 offices in 118 countries, the refugee problem remains a worldwide tragedy.

The President of the United States signs a new Presidential Determination each year regulating the number of refugees who may enter the U.S. each year. The number for **2007 is 70,000** refugees. Each refugee is carefully screened by the UNHRC and the U.S. Citizenship and Immigration Service to verify proof of actual persecution and to determine that there has been no criminal behavior. All refugee resettlement in the U.S. is federally regulated as Voluntary Agencies (VOLAGS) partner with the government to help resettle newly arriving refugees.

Colorado has many such **resettlement agencies**, such as Lutheran Family Services, Jewish Family Services, Ecumenical Refugee Services, and The African Community Center. It is the responsibility of the agency to meet arriving families at the airport, after an apartment has been found and furnished. For the first eight months "intensive" services are provided: locating schools for the children, arranging transportation, arranging for medical assessment as soon as possible, finding appropriate clothing and food, and making appointments for referral services, such as food stamps, Medicaid, applying for a Social Security card, and learning English. It is a large responsibility for the volunteers, many of whom are church members of different denominations. Besides learning the cultural differences in the U.S., the refugee is expected to be employed after a certain length of time. The object of most agencies is to guide the refugee to self-sufficiency, usually within one year.

This program is a work in progress according to the Colorado Department of Human Services **Colorado Refugee Services** Coordinator, Paul Stein. The VOLAGS all receive funding from the federal government plus each agency has its own source of funding, generally private grants, matching grants, nonprofit local funding, churches, etc. The funding picture is complicated as there are many streams of funding. Agencies often hire executive directors, translators, case workers, full and part time workers.

GOVERNMENT SERVICES AVAILABE FOR UNDOCUMENTED IMMIGRANTS:

- K-12 education
- Emergency Medical Care
- Subsidized school lunches
- Immunizations
- Women, Infants and Children (WIC) nutrition program
- Workers compensation benefits
- Police and fire services
- Business licenses

GOVERNMENT SERVICES THAT MAY BE AVAILABLE TO LEGAL IMMIGRANTS :

- Temporary Assistance to Needy Families
- Medicaid
- Child Health Plan
- Social Security
- Supplemental Security Income ***
- Medicare
- Food Stamps***
- Public housing assistance
- Low Income Housing energy Assistance (UHEAP)
- Unemployment Insurance benefits
- In-state tuition
- Student loans
- College financial aid
- Driver's Licenses

*** Legislature passed in 1996, denying benefits to legal immigrants under a welfare overhaul act. Legal immigrants were denied Supplemental Security Income (SSI) and were excluded from receiving food stamps until they became citizens or had worked in the U.S. for at least 10 years. States could also choose to deny federal welfare, Medicaid and social services block grant funds. Refugees, veterans and those granted asylum were exempted from these restrictions. Legal Immigrants already in the U.S. were allowed to continue to receive SSI payments after the law was challenged in 1997.

Steps to Becoming a U.S. Citizen

Naturalization is the process by which U.S. citizenship is conferred upon a foreign citizen or national after he/she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA). Approximately 500,000 people are naturalized each year.

Who can become a U.S. citizen?

1. Be at least 18 years old.
2. Live in the U.S. for at least 5 years as a permanent legal resident (or 3 years if married to an living with a U.S. citizen).
3. be present in the U.S. for at least 30 months out of the past 5 years (or 18 mos out of the past 3 years if married to and living with a U.S. citizen).
4. Live within a state or district for at least 3 months before applying.

Requirements for Naturalization

1. Physical presence (as described above)
2. Good moral character. Behave in a legal and acceptable manner
3. Ability to read, write, and speak English
4. A knowledge and understanding of U.S. history and government
5. Attachment to the principles of the U.S. Constitution
6. Favorable disposition toward the U.S.

The applicant is placed under oath and asked to give truthful testimony. The citizenship test is to answer 6 out of 10 questions correctly. A study guide is provided. If the applicant passes the test he/she will be scheduled for the oath ceremony. If the applicant fails the test, he/she will be informed of the reasons. Applicants are given two opportunities to take the test with each application.

NON IMMIGRANT VISITORS/WORKERS

DEFINITION & PURPOSE:

This category of immigrants is specific to people who come to our country with the initial intentions of not staying here and not to become a citizen. Foreign born persons sometimes want to come here to visit or share the opportunities and take back to their countries their experiences and/or economic gain for their families and countries of origin. The mutually beneficial purpose has been found not only to be economically beneficial but allows for us to have a greater understanding of other cultural differences in the world. Our country has traditionally changed and grown based on ideas that allow us to keep pace with growing global interdependence.

PROCESS & OUTCOME:

They must apply for a limited term visa to enter through the US borders. This can take a long period of time to attain, as the approval process for the security check on the status of the visitor must be conducted in conjunction with the foreign and US governments. The US government's process is outdated and cannot keep up with the demand, constantly increasing the application timing. There are very strict and complicated rules to reapply after the visa term expires, with the many different categories listed below requiring different processes of returning to the foreign born country, etc. To keep up with the fluctuating demand for foreign workers by US businesses is the outdated portion of the visa process. Workers are currently recruited from all over the world, not just Mexico as is commonly referred to by the media.

TEMPORARY WORKER CATEGORIES:

There are a portion of the 80+ categories of non-immigrants, which you may view on the Homeland Security/Immigration Services website. These were developed via The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. But the most common categories that you see in the media are listed below with their descriptions:

- H-1A,B,C registered nurse, other health care industry specialties
- H-2A Agricultural workers, non highly skilled professionals, mostly seasonal
- H-2B Non agricultural workers, includes construction workers, domestic help, Food service workers, ski industry, etc.
- H-3 trainees hired by US businesses for non-US positions, other than graduate Medical education or training (can include outsourcing training)
- O-1,2,3 extraordinary abilities or achievement in the sciences, arts, education, business, or athletics and their accompanying families and associates
- P-1,2,3,4 Athletes and entertainers at an internationally recognized level of Performance, reciprocal exchange programs, with families and assoc.
- Q -1,2,3 International cultural exchange program (Irish Peace Process), families
- R-1,2 religious occupations and families

FUTURE OUTLOOK:

The dilemma the US faces is the increase in employment needs related directly to our aging workforce of the baby boomer generation. The lower skilled service positions, which are needed for the retired lifestyle, will increase. Also the increasing vacancy of higher skilled jobs will present a huge resource problem. Add these factors with the current trend of our younger workforce refusing to work the low paid jobs, as well as the long hours, leaves a big void in our economy. The solution is in the balancing act and response time of supply vs. demand. A very complicated issue.

Non Immigrants Temporary Worker Core Issues

- Responding to the constant balancing of economic need vs societal responsibilities and morals between the US govt. and employers and citizens
- Filling the increased demand for low paying service positions in our country due to the declining, aging US workforce compounded by a birth rate decline
- Uncomplicating the government processes allowing employers to bring in temporary workers as well as workers applying for visas
- Finding the balance of level of security and enforcement for the US citizens while still keeping the flow of processing temporary workers and visas
- Investigating all of the contributing factors to determine if the US economic growth vs output of public services to support temporary workers is justified the means to the ends balancing act and quotas
- Distributing all of the taxes properly to the municipalities where infrastructure services are required for the temporary workers
- Identification standards to determine documented and undocumented workers for employers and services deserved.
- Insuring that the temporary labor force does not displace US citizen workers in our lower economic categories, due to low wages, illegal hiring practices and other related issues
- The prevailing wage is not necessarily a livable wage, which is creating unstable, undesirable living conditions, then resulting in an ever increasing crime factor. This affects not only temporary worker safety but also the US citizens
- Insuring that American businesses are not expecting to make greater profits by relying permanently on new sources of low income labor, squelching new innovative resources (ie prison labor, etc.)
- To what extent are US businesses be held responsible and penalized for immigrations laws including documented employment, insured return back to homeland after the visa expires, etc.
- Educating our temporary workers and families to US standards, along with the right to education for their children, has met with a complicated language barrier and increased school services of this highly mobile population
- Health issues are not always discovered before temporary workers and their families enter the US, placing a burden on our healthcare system. Communicable diseases are increasing, where once in our history they were under control. Immunization is becoming a major concern for our children and food services industry, as the temp. worker population is very transient, not conducive to treating and containing the diseases.
- Children of temporary workers born in the US automatically become US citizens, which complicate family unit dynamics vs US Immigration laws.
- Remittances – the transfer of money by foreign workers back to their families and communities in their homeland – have reached record numbers. But is this really sending aid back to the countries where their governments have a difficult and sometimes corrupt system of dispersing US foreign aid to the proper people. The remittances are used primarily for food and shelter.

COLORADO IMMIGRATION LAW AS OF JULY 6, 2006
dealing with Colorado's ILLEGAL immigrants.

Authoritative sources, including the Pew Hispanic Center, estimate that 225,000 to 275,000 undocumented immigrants live in Colorado. The Bell Policy Center estimates the costs of federally mandated services to undocumented immigrants in Colorado totals nearly \$225 million a year. .

Governor Bill Owens convened a Special Session of the legislature in July 2006 to enact laws dealing with the provision of services to illegal immigrants. The session resulted in the passage of 10 bills and two measures to be placed on the November 2006 ballot. All ten bills and the two referendums passed.

The centerpiece of the ten bills passed was HB 1023 which prohibited spending taxpayers' money on illegal immigrants. HB 1023 "dealt with restrictions on defined public benefits. It requires state agencies and local governments to verify the lawful presence in the U.S. of any person 18 or older who applies for public benefits." (The federally mandated services for immigrants, illegal or legal, were excluded from this bill

To figure out whether this law is working, the Joint Budget Committee asked each department where a service would be provided to report how much it was spending to enforce the law and how much the department was saving as a result. Illegal immigrants were to be identified by running the applicant's name through the federal online program called Systematic Alien Verification of Entitlement Program (SAVE). This check would determine whether the person is in the U.S. legally and therefore whether he/she were here illegally and therefore not permitted to have any service by the new law. The result of the first JBC report, dated January 2007, stated that 18 departments reported adding \$2.03 million in costs for the investigation. None of the departments could say how many, if any, illegal immigrants were being denied state-funded services.

HB 1017 has to do with employer fines for fraudulent documents. It requires all Colorado employers to attest verification of legal work status of all employees, that ID documents haven't been altered, and that the employer hasn't knowingly hired an unauthorized immigrant. No report on the implementation of this Bill is yet available.

There are no reports available yet about the results of Referendum H, regarding employers' ability to deduct wages of an unverified employee. The law suit against the federal government required by Referendum K was dismissed recently.