

A BRIEF HISTORY  
OF  
IMMIGRATION LAW

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ON JUNE 21, 1788, THE CONSTITUTION OF THE UNITED STATES WAS RATIFIED BY THE NINTH COLONY, MAKING IT THE GOVERNING DOCUMENT OF THE NEW COUNTRY. THE US CONSTITUTION DOES NOT ADDRESS IMMIGRATION OR IMMIGRANTS AND CONSEQUENTLY A BODY OF IMMIGRATION LAW HAS GROWN UP TO DEAL WITH THE ISSUE. IMMIGRATION, AND A LEGAL PATH FOR IMMIGRANTS TO BECOME CITIZENS, WAS, HOWEVER, CERTAINLY ON THE MIND OF THE FOUNDERS. THE FIRST CONGRESS CONVENED ON MARCH 4, 1789, AND “AN ACT TO ESTABLISH AN UNIFORM RULE OF NATURALIZATION” WAS PASSED MARCH 26, 1790. THE ACT STATED THAT ANY ALIEN BEING A “FREE WHITE PERSON”, WHO SHALL HAVE RESIDED WITHIN THE LIMITS AND UNDER THE JURISDICTION OF THE UNITED STATES FOR TWO YEARS MAY BECOME A CITIZEN BY MAKING APPLICATION TO ANY COMMON LAW COURT OF RECORD IN ANY ONE OF THE STATES, PROVING TO THE SATISFACTION OF THE COURT THAT HE IS A PERSON OF GOOD CHARACTER AND TAKING THE OATH OF AFFIRMATION TO SUPPORT THE CONSTITUTION. CHILDREN OF THE APPLICANT UNDER THE AGE OF 21 ALSO BECAME CITIZENS.

THUS, BEGAN THE LEGAL FRAMEWORK OF A PATH TO CITIZENSHIP FOR IMMIGRANTS TO THE UNITED STATES. TODAY WE WILL FOLLOW THE TIMELINE OF IMMIGRATION LAW FROM THIS BEGINNING IN 1790 WITH PAUSES ALONG THE WAY TO LOOK AT SIGNIFICANT LEGAL ACTS BEARING ON THE TOPIC. IMMIGRATION IS A LARGE AND COMPLEX TOPIC, FRAUGHT WITH CONTROVERSY, AND THE ATTEMPT TODAY WILL BE TO PRESENT SOME LEGAL HIGHLIGHTS OF OUR GRAPPLING WITH THIS ISSUE OVER THE PAST TWO HUNDRED PLUS YEARS. AT EACH STOP ON THE TIMELINE THERE WILL BE SOME SOCIAL, POLITICAL, AND ECONOMIC CONTEXT OFFERED

THAT INFLUENCED THE IMMIGRATION LAW ENACTED AT THAT TIME.

THE IMMIGRATION ACT OF 1790, REFERENCED ABOVE, WAS REPEALED AND REPLACED BY A MORE COMPREHENSIVE “ACT TO ESTABLISH AN UNIFORM RULE OF NATURALIZATION” DATED JANUARY 29, 1795. THE COUNTRY WAS GROWING AND WANTED TO ENCOURAGE CITIZENSHIP AMONG ARRIVING IMMIGRANTS. THE 1795 ACT MADE APPLYING FOR CITIZENSHIP MORE ACCESSIBLE, WHILE SETTING CONDITIONS FOR THOSE WISHING TO ENJOY THE NEW FREEDOM FOUND IN THE UNITED STATES. THE ACT EXPANDED THE COURTS THAT MAY TAKE AN APPLICATION FOR CITIZENSHIP TO INCLUDE COURTS IN TERRITORIES TO THE NORTHWEST AND SOUTH OF THE OHIO RIVER, LENGTHENED THE RESIDENCY REQUIREMENT TO FIVE YEARS AND REQUIRED THE RENUNCIATION OF ANY AND ALL TITLES OF NOBILITY. FURTHER, NO PERSON PROSCRIBED BY ANY STATE, OR WHO HAS BEEN LEGALLY CONVICTED OF HAVING JOINED THE ARMY OF GREAT BRITAIN DURING THE LATE WAR SHALL BE ADMITTED A CITIZEN WITHOUT THE CONSENT OF THE LEGISLATURE OF THE STATE IN WHICH SUCH PERSON WAS PROSCRIBED.

EVERY FEW YEARS SUBSEQUENT TO 1795 CONGRESS WOULD CHANGE SOME ASPECT OF IMMIGRATION LAW. IN 1798 THE RESIDENCY REQUIREMENT WAS RAISED TO FOURTEEN YEARS AND THEN IN 1802 THE RESIDENCY REQUIREMENT FOR CITIZENSHIP WAS REDUCED AGAIN TO FIVE YEARS. THE STEERAGE ACT OF 1819 REQUIRED SHIP CAPTAINS TO SUBMIT MANIFESTS TO THE COLLECTOR OF CUSTOMS, THE SECRETARY OF STATE AND CONGRESS WITH INFORMATION ABOUT IMMIGRANTS LANDED IN THE UNITED STATES FROM THEIR SHIP. THE ACT DID NOT PROVIDE ANY INFRASTRUCTURE OR BUDGET TO ENFORCE THIS REQUIREMENT ON SHIP’S CAPTAINS.

THE IMMIGRATION ACT OF 1864 WAS DESIGNED TO INCREASE THE FLOW OF LABORERS TO THE UNITED STATES DURING THE DISRUPTIONS OF THE CIVIL WAR (1861–65). IN HIS MESSAGE TO CONGRESS IN DECEMBER 1863, PRESIDENT ABRAHAM LINCOLN URGED “THE EXPEDIENCY OF A SYSTEM FOR THE ENCOURAGEMENT OF IMMIGRATION,” NOTING “THE GREAT DEFICIENCY OF LABORERS IN EVERY FIELD OF INDUSTRY, ESPECIALLY IN AGRICULTURE AND OUR MINES.” AFTER MUCH DEBATE, CONGRESS PASSED THE IMMIGRATION ACT OF 1864 ON JULY 4, 1864, PROVIDING FOR APPOINTMENT BY THE PRESIDENT OF A COMMISSIONER OF IMMIGRATION, OPERATING UNDER THE AUTHORITY OF THE SECRETARY OF STATE. THIS WAS THE BEGINNING OF CENTRALIZED CONTROL OVER IMMIGRATION. THE ACT AUTHORIZED IMMIGRANT LABOR CONTRACTS, UP TO A MAXIMUM OF ONE YEAR, PLEDGING WAGES AGAINST THE COST OF TRANSPORTATION TO AMERICA AND ALSO STIPULATED THAT LABOR CONTRACTS MADE BY IMMIGRANTS OUTSIDE OF THE UNITED STATES WERE ENFORCEABLE IN US COURTS.

THE CHINESE EXCLUSION ACT OF 1882 WAS A DIRECT CONSEQUENCE OF LARGE SCALE IMPORTATION OF CHINESE LABORERS USED IN CONSTRUCTION OF THE FIRST TRANSCONTINENTAL RAILROAD. PRIOR TO COMPLETION OF THE TRANSCONTINENTAL RAILROAD IN 1869, THE UNITED STATES CONSISTED OF TWO COASTS WITH A VAST EMPTINESS BETWEEN THEM. COMMUNICATION BETWEEN THE TWO COASTS TOOK WEEKS OR MONTHS, DEPENDING ON WHETHER YOU TRAVELLED OVERLAND OR BY SHIP, AND WAS HAZARDOUS BY EITHER METHOD OF TRAVEL. UNIFYING THE TWO COASTS INTO ONE COUNTRY WAS AN URGENT CONCERN WHICH REQUIRED FASTER AND SAFER COMMUNICATION ACROSS THE WHOLE COUNTRY AND THE RAILROAD PROVIDED THAT.

BUILDING A RAILROAD LINE THAT CONNECTED THE UNITED STATES COAST-TO-COAST WAS ADVOCATED IN 1832 BY DR. HARTWELL CARVER AND IN 1847, IN THE MIDST OF THE MEXICAN AMERICAN WAR, HE SUBMITTED TO THE U.S. CONGRESS A "PROPOSAL FOR A CHARTER TO BUILD A RAILROAD FROM LAKE MICHIGAN TO THE PACIFIC OCEAN", SEEKING A CONGRESSIONAL CHARTER TO SUPPORT HIS IDEA. CONGRESS AGREED TO SUPPORT THE IDEA BUT WAS STRONGLY DIVIDED ON WHERE THE EASTERN TERMINUS OF THE RAILROAD SHOULD BE IN A NORTHERN OR SOUTHERN CITY. AFTER THE SOUTHERN STATES SECEDED, THE PACIFIC RAILROAD ACT OF 1862 WAS SIGNED INTO LAW BY ABRAHAM LINCOLN ON JULY 1, 1862. THE CENTRAL PACIFIC WOULD CONSTRUCT THE RAILROAD IN THE WEST, BUILDING FROM SACRAMENTO, CA, EAST AND THE UNION PACIFIC WOULD CONSTRUCT THE MIDWEST PORTION, BUILDING WEST FROM OMAHA, NE. PRACTICALLY ALL THE MANUAL LABOR TO CONSTRUCT THE CENTRAL PACIFIC FROM SACRAMENTO, CA, TO PROMONTORY POINT, UTAH, WHERE THE TRACK FROM THE EAST JOINED THE TRACK FROM THE WEST, WAS PERFORMED BY CHINESE IMMIGRANTS. LABOR WAS SO ESSENTIAL TO CONSTRUCTION AND WAS SO SCARCE IN THE WEST THAT THE CENTRAL PACIFIC EVEN OPENED OFFICES IN CHINA TO RECRUIT LABORERS. UPON COMPLETION OF THE TRANSCONTINENTAL RAILROAD ON MAY 10, 1869, THE UNITED STATES AT LAST HAD SECURE INTERNAL COMMUNICATION BETWEEN THE ATLANTIC AND PACIFIC COASTS, BUT THE CHINESE IMMIGRANT LABORERS ON THE CENTRAL PACIFIC BECAME UNEMPLOYED AND WERE NOW COMPETING FOR JOBS WITH NATIVE BORN US CITIZENS. SUBSEQUENT TO 1869, A RAILROAD BUILDING MANIA PERSISTED IN THE UNITED STATES UNTIL THE FINANCIAL PANIC OF 1873, WHICH STARTED A WORLD-WIDE

DEPRESSION THE LIKES OF WHICH WAS NOT SEEN AGAIN UNTIL THE 1930'S. AS INTEREST RATES ROSE, WAGES WERE CUT, REAL ESTATE VALUES FELL, BANKS AND RAILROADS FAILED BY THE SCORE AND CORPORATE PROFITS EVAPORATED. A NEED IN THE COUNTRY FOR LABOR TURNED INTO A SURPLUS OF LABOR AND IMMIGRANTS, PARTICULARLY CHINESE IMMIGRANTS, WERE IMPACTED BY THIS CHANGE PROMPTLY. ALL ASIANS WERE HELD TO BE INFERIOR, BOTH MENTALLY AND PHYSICALLY, TO PEOPLE OF THE UNITED STATES AND THUS INCAPABLE OF BECOMING PRODUCTIVE CITIZENS. THERE HAD BEEN HUE AND CRY IN THE WEST AGAINST THE CHINESE, WHO WERE CHARACTERIZED AS "THE YELLOW PERIL", SINCE THEY HAD ARRIVED TO WORK IN THE GOLD FIELDS SHORTLY AFTER THE GOLD RUSH STARTED IN CALIFORNIA IN 1849. THIS UPROAR INTENSIFIED AFTER COMPLETION OF THE TRANSCONTINENTAL RAILROAD AND IN 1882 CONGRESS RESPONDED BY PASSING THE CHINESE EXCLUSION ACT, WHICH BANS "SKILLED AND UNSKILLED CHINESE LABORERS" FROM ENTERING THE COUNTRY FOR TEN YEARS AND EXPLICITLY DENIES CHINESE IMMIGRANTS ALREADY IN THE COUNTRY A PATH TO CITIZENSHIP. IN 1892 THE CHINESE EXCLUSION ACT IS STRENGTHENED AND EXTENDS FOR ANOTHER 10 YEARS THE BAN ON CHINESE BECOMING CITIZENS. THIS EXCLUSION OF CHINESE IMMIGRANTS REMAINED CODIFIED IN LAW UNTIL WORLD WAR II, WHEN CHINA WAS AN ALLY OF THE UNITED STATES. CONSIDER HOW ENDURING THE ATTITUDE EXPRESSED IN THE CHINESE EXCLUSION ACT IS, BY CONSIDERING THE LAWSUITS CURRENTLY PROGRESSING AGAINST HARVARD AND UNIVERSITY OF NORTH CAROLINA OVER THEIR ADMISSION POLICIES, AS THESE POLICIES RELATE TO ASIANS.

THE INTERVAL ON THE IMMIGRATION LAW TIMELINE BETWEEN THE CHINESE EXCLUSION ACT IN 1882 AND OUR NEXT STOP

IN 1924, WAS A TIME OF FOMENT IN MACHINES, IDEAS, GOVERNMENT, AND SOCIAL ORDER. DURING THIS TIME THE UNITED STATES HAD VIRTUALLY OPEN BORDERS FOR MIGRANTS FROM WESTERN AND NORTHERN EUROPE, WHILE THE REST OF THE WORLD WAS EXCLUDED BECAUSE THEY WERE NOT “FREE WHITE MEN”, A REQUIREMENT STIPULATED IN THE 1795 ACT.

WHEN THE IMMIGRANT PORTAL ON ELLIS ISLAND OPENED IN 1892, THE DEPRESSION WHICH STARTED IN 1873 HAD PASSED, THE COUNTRY WAS LOOKING FORWARD TO THE 1893 COLUMBIAN EXPOSITION IN CHICAGO AND WAS DISCUSSING AND EVALUATING THE SCIENCE OF EUGENICS. EUGENICS WAS A SCIENCE DEVOTED TO IMPROVING THE HUMAN RACE THROUGH SELECTIVE BREEDING AND WAS BASED ON THE TENET THAT LIKE BEGETS LIKE. IMBECILES, LUNATICS, AND PEOPLE WITH OTHER MENTAL AND PHYSICAL LIMITATIONS BEGET IMBECILES, LUNATICS AND OFFSPRING WITH OTHER MENTAL AND PHYSICAL LIMITATIONS. PEOPLE WITH THESE SHORTCOMINGS SHOULD NOT BE ALLOWED TO CIRCULATE OR REPRODUCE IN THE GENERAL POPULATION, WHICH OVER TIME WOULD REDUCE OR ELIMINATE THESE AFFLICTIONS IN THE UNITED STATES. THIS PLAYS INTO THE IMMIGRATION DEBATE BECAUSE THE SCIENCE OF EUGENICS PROVED THAT SOUTHERN EUROPEANS, PEOPLE FROM THE MIDEAST, AND ESPECIALLY PEOPLE FROM ASIA ARE MENTALLY AND PHYSICALLY INFERIOR TO THE GENERAL POPULATION OF THE UNITED STATES AND HENCE SHOULD BE DENIED ENTRY TO THE COUNTRY. LABOR UNIONS AND POLITICIANS SUPPORTED BY THEM WERE LARGELY SYMPATHETIC TO THIS POSITION BECAUSE IMMIGRANT LABOR WAS CHEAP LABOR AND TOOK UNION JOBS. THE OWNERS OF FACTORIES, MILLS AND MINES WERE GENERALLY UNSYMPATHETIC TO THIS VIEWPOINT BECAUSE THE COUNTRY

WAS CHRONICALLY SHORT OF LABOR, AND THEY WERE ATTRACTED BY CHEAP LABOR FROM IMMIGRANTS. THE BACK AND FORTH BETWEEN THESE TWO VIEWPOINTS, TOGETHER WITH THE ANTI-IMMIGRANT EUGENICS ARGUMENT, LASTED ABOUT 30 YEARS IN CONGRESS, FROM THE EARLY 1890'S UNTIL 1921. IN THE MEANTIME, STEAMSHIP LINES WERE TRANSPORTING GOODS AND AGRICULTURAL COMMODITIES TO EUROPE AND FILLING THE SHIPS WITH IMMIGRANTS FOR THE RETURN TRIP TO THE UNITED STATES. BY THE END OF WORLD WAR, I, EUGENICS WAS IN FULL BLOOM AS SCIENTIFIC JUSTIFICATION FOR ANTI-IMMIGRANT POSITIONS AND THE BOLSHEVIK REVOLUTION IN RUSSIA IN 1917 RAISED FEARS OF ARMED REVOLUTION IN THE UNITED STATES. THESE FEARS WERE STOKED BY ACTIONS OF IMMIGRANTS FROM EASTERN EUROPE AND RUSSIA WHO WERE ANARCHISTS AND COMMUNISTS. FOREIGN BORN IMMIGRANTS, AS A PERCENTAGE OF THE UNITED STATES POPULATION, WAS AT THE HIGHEST POINT IN THE HISTORY OF THE COUNTRY, ABOUT 14% AND THERE WAS GRAVE CONCERN THAT THE COUNTRY COULD NOT ASSIMILATE SUCH A LARGE NUMBER OF PEOPLE. SEVERAL VIOLENT EVENTS IN 1919 INDICATED THE DEPTH OF PUBLIC UNEASE. A GENERAL STRIKE OF 100,000 WORKERS SAW THE CITY OF SEATTLE, WA, SHUT DOWN AND ALL ESSENTIAL PUBLIC SERVICES UNDER CONTROL OF THE STRIKERS. ALTHOUGH THE STRIKE WAS PEACEFUL, POLITICAL LEADERS CONSIDERED IT AN ATTEMPT TO OVERTHROW THE GOVERNMENT, AND US MARINES WERE SENT IN RESPONSE TO A PLEA FROM THE MAYOR. RACE RIOTS IN SEVERAL DOZEN CITIES LED TO THE DEATHS AND INJURY OF HUNDREDS DURING THE SUMMER OF 1919 AND THERE WAS THINKING THAT THIS MIGHT BE THE START OF A VIOLENT REVOLUTION. THE DEBATE IN CONGRESS OVER WHAT TO DO ABOUT THE THREATS POSED BY IMMIGRATION CULMINATED IN THE



IMMIGRATION ACT OF 1924, WHICH ESTABLISHED ANNUAL IMMIGRATION QUOTAS BASED ON NATIONAL ORIGIN. THE ACT SET QUOTAS FOR ANY NATIONALITY AT 2% OF THE NUMBER OF FOREIGN-BORN PERSONS OF SUCH NATIONALITY RESIDENT IN THE UNITED STATES IN 1890. ALL ASIAN IMMIGRANTS, EXCEPT THOSE FROM THE PHILIPPINES, WERE EXCLUDED BECAUSE THEY WERE NOT WHITE AS STIPULATED IN THE 1795 ACT. ASIANS ALREADY IN THE COUNTRY WERE DENIED CITIZENSHIP AND PREVENTED FROM OWNING LAND. AS TESTAMENT TO THE FEARS AND CONCERNS IN THE UNITED STATES AT THE TIME, THE ACT PASSED WITH NINE DISSENTING VOTES IN THE SENATE AND SCANT OPPOSITION IN THE HOUSE. CONGRESS MADE ADJUSTMENTS AROUND THE EDGES OF THE 1924 ACT FROM TIME TO TIME, PARTICULARLY IN THE AFTERMATH OF WORLD WAR II, BUT NATIONAL ORIGINS REMAINED THE GOVERNING PRINCIPLE OF LEGAL IMMIGRATION UNTIL 1965.

AT THE END OF WWII THE COUNTRIES OF WESTERN EUROPE WERE DEVASTATED AND POSSESSED NEITHER THE WILL NOR MEANS TO HOLD THE COLONIES WHICH THEY HAD ACCUMULATED AROUND THE WORLD OVER THE PREVIOUS CENTURIES. THIS POLITICAL VACUUM AND THE DESIRE OF NATIVE PEOPLE TO GOVERN THEMSELVES LED TO A HOST OF NEWLY INDEPENDENT COUNTRIES IN ASIA AND AFRICA.

THESE NEWLY INDEPENDENT COUNTRIES FELT THE NATIONAL ORIGINS BASIS OF THE IMMIGRATION ACT OF 1924 CLASSIFIED THEM AS SECOND-CLASS CITIZENS, AND THE NEWLY FORMED UNITED NATIONS PROVIDED A FORUM THAT GAVE THEIR VIEWS SIGNIFICANT INFLUENCE. THE COLD WAR BETWEEN THE UNITED STATES AND RUSSIA WAS IN FULL SWAY AND THE UNITED STATES STANCE ON IMMIGRATION BASED ON NATIONAL ORIGINS IN THE 1924 ACT WAS AN INCREASINGLY NEGATIVE INFLUENCE ON POTENTIAL ALLIES.

PRESIDENT HARRY TRUMAN CREATED THE COMMISSION ON IMMIGRATION AND NATURALIZATION IN 1952 TO HOLD HEARINGS ON IMMIGRATION REFORM. THE COMMISSION'S REPORT, "WHOM WE SHALL WELCOME" AFFIRMED THE NATIONAL ORIGINS BASIS OF IMMIGRATION, BUT FORESHADOWED CHANGES THAT FORMED THE OUTLINE OF THE IMMIGRATION AND NATIONALITY ACT OF 1965. WHILE IT CONTAINED NODS TO OUR LIBERAL DEMOCRATIC CREEDS AND REJECTED EUGENICS AS A BASIS FOR DISCRIMINATION, FOREIGN POLICY CONCERNS DOMINATED THE REPORT'S ARGUMENTS.

DOMESTIC PRESSURE WITHIN THE UNITED STATES WAS ALSO MOVING PUBLIC OPINION TOWARD A SHIFT IN IMMIGRATION POLICY. THE 1950'S AND 60'S WERE TIMES OF STRUGGLE OVER CIVIL RIGHTS IN THIS COUNTRY, AND THIS STRUGGLE SPILLED OVER INTO THE DISCUSSION OF NATIONAL ORIGINS IMMIGRATION RESTRICTIONS WHICH WERE CONSIDERED RACE-BASED. IMMIGRATION REFORM BILLS WERE OFFERED IN CONGRESS BUT WERE BOTTLED UP IN COMMITTEE UNTIL REP. FRANCIS WALTER (D-PA), CHAIR OF THE HOUSE SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION, DIED IN MAY, 1963

THE TIMING OF THE END OF THE NATIONAL ORIGINS QUOTAS WAS AFFECTED BY THE WAY THE U.S. LEGISLATIVE PROCESS WORKS, BY ETHNIC LOBBYING AND BY THE CIVIL RIGHTS MOVEMENT. SEISMIC GEOPOLITICAL SHIFTS WERE, HOWEVER, THE MAJOR DRIVER THAT CREATED THE CHANGES CONTAINED IN THE 1965 IMMIGRATION AND NATIONALITY ACT.

THE 1965 IMMIGRATION AND NATIONALITY ACT ABOLISHED THE NATIONAL ORIGINS QUOTA SYSTEM AND REPLACED IT WITH A PREFERENCE SYSTEM BASED ON IMMIGRANTS' FAMILY

RELATIONSHIPS WITH U.S. CITIZENS OR LEGAL PERMANENT RESIDENTS AND, TO A LESSER DEGREE, THEIR SKILLS. THE LAW ORIGINALLY PLACED AN ANNUAL CAP ON THE NUMBER OF VISAS BY EASTERN AND WESTERN HEMISPHERE PLUS A MAXIMUM NUMBER OF VISAS ALLOWED BY ANY INDIVIDUAL COUNTRY. THESE CAPS HAVE BEEN ADJUSTED AND CHANGED FROM TIME TO TIME AND CURRENTLY THE TOTAL NUMBER OF LEGAL IMMIGRANT VISAS ALLOWED WORLD WIDE ARE 675,000 PER YEAR. THIS TOTAL CONSISTS OF 480,000 VISAS FOR FAMILY MEMBERS OF U.S. CITIZENS AND LEGAL PERMANENT RESIDENTS, 140,000 VISAS FOR IMMIGRANT EMPLOYMENT AND 55,000 VISAS FOR DIVERSITY. THIS CAP ON IMMIGRANT VISAS IS FLEXIBLE THOUGH, BECAUSE IMMEDIATE RELATIVES OF ADULT U.S. CITIZENS ARE EXEMPT FROM THE CAP. FLEXIBLE CAP MEANS THE NUMBER OF IMMEDIATE RELATIVES IS SUBTRACTED FROM THE 480,000 CAP ON FAMILY-BASED IMMIGRATION TO DETERMINE THE NUMBER OF OTHER FAMILY-BASED IMMIGRANTS THAT MAY BE ADMITTED IN THE FOLLOWING YEAR. HOWEVER, NO FEWER THAN 226,000 VISAS FOR FAMILY, OTHER THAN IMMEDIATE FAMILY, ARE AVAILABLE EACH YEAR.

THE TERM “IMMEDIATE RELATIVE” IS DEFINED IN THE ACT TO BE A SPOUSE, A CHILD WHO IS UNMARRIED AND UNDER THE AGE OF 21, AND PARENTS OF A U.S. CITIZEN. THE FAMILY PREFERENCE SYSTEM IS SUMMARIZED IN THE FOLLOWING TABLE.

TABLE 1: FAMILY-BASED IMMIGRATION SYSTEM

CATEGORY	U.S. SPONSOR	RELATIONSHIP	NUMERICAL LIMIT
IMMEDIATE RELATIVES	U.S. CITIZEN ADULTS	SPOUSES, UNMARRIED MINOR CHILDREN, AND PARENTS	UNLIMITED
PREFERENCE ALLOCATION			
1.	U.S. CITIZEN	UNMARRIED ADULT CHILDREN	23,400*
2A.	LPR	SPOUSES AND MINOR CHILDREN	87,900
2B.	LPR	UNMARRIED ADULT CHILDREN	26,300
3.	U.S. CITIZEN	MARRIED ADULT CHILDREN	23,400**
4.	U.S. CITIZEN	BROTHERS AND SISTERS	65,000***
* PLUS ANY UNUSED VISAS FROM THE 4TH PREFERENCE. ** PLUS ANY UNUSED VISAS FROM 1ST AND 2ND PREFERENCE. *** PLUS ANY UNUSED VISAS FROM THE ALL OTHER FAMILY-BASED PREFERENCES.			

LPR = LEGAL PERMANENT RESIDENT

IMMEDIATE FAMILY IMMIGRANTS HAVE EXCEEDED THE 480,000 CAP REGULARLY, SO THAT FAMILY PREFERENCE VISAS ALLOWED OUTSIDE OF IMMEDIATE FAMILY HAS BEEN THE MINIMUM OF 226,000.

THOUGH RATIFIED OVER FIFTY YEARS AGO, THE 1965 ACT STILL DEFINES TODAY'S LEGAL IMMIGRATION SYSTEM AND CONTINUES TO SHAPE THE DEMOGRAPHICS OF THE UNITED STATES. AT THE BILL'S SIGNING ON OCTOBER 3, 1965, TED KENNEDY, WHO WAS THE FLOOR MANAGER OF THE BILL, STATED "IT WILL NOT UPSET THE ETHNIC MIX OF OUR SOCIETY". THIS PREDICTION, AND OTHERS LIKE IT, TURNED OUT TO BE FAR OFF THE MARK. A BRIEF SUMMARY OF HOW FAR OFF THE MARK WILL BE OFFERED IN THE PAPER'S CONCLUSION.

RONALD REAGAN WAS ELECTED PRESIDENT IN NOVEMBER, 1980, DURING A BRUTAL BOUT OF INFLATION THAT TYPIFIED THE ECONOMIC MALAISE DURING THE DECADE OF THE 1970'S. INTEREST RATES ROSE TO 20 PERCENT AND THE HOSTAGE CRISIS IN IRAN WOULD CONTINUE FOR ANOTHER SIX MONTHS. THERE WAS NO APPRECIATION IN THE EARLY 1980'S OF HOW MUCH RUSSIA WAS STRUGGLING TO RESPOND TO REAGAN'S AGGRESSIVE FOREIGN POLICY INITIATIVES, BUT THERE WAS MUCH DOMESTIC CRITICISM OF THE PRESIDENT'S POLICIES. THESE WERE TRYING TIMES AND A DIFFICULT TIME TO FOCUS ATTENTION ON ILLEGAL IMMIGRATION.

THE PROSPECT OF EMPLOYMENT IN THE UNITED STATES IS AN ECONOMIC MAGNET THAT DRAWS ALIENS INTO THE COUNTRY ILLEGALLY. RESOURCES TO ENFORCE IMMIGRATION LAWS HAVE NOT KEPT PACE WITH THE APPETITE FOR IMMIGRANT LABOR AND MANY OF THE ALIENS WHO

ENTERED THE COUNTRY FOR SEASONAL AGRICULTURAL WORK REMAINED IN THE U.S. WHEN THEIR SEASONAL EMPLOYMENT ENDED. MANY OF THEM WERE ABLE TO FIND WORK IN OTHER INDUSTRIES, WHICH LEFT A VACANCY IN THE AGRICULTURAL LABOR POOL TO BE FILLED WITH NEW ALIENS. CONTROL OF ILLEGAL IMMIGRATION WAS NOT ADDRESSED IN THE IMMIGRATION AND NATIONALITY ACT OF 1965, BUT REFORM OF THE LAW RELATING TO ILLEGAL IMMIGRATION HAD BEEN UNDER CONSIDERATION SINCE THE EARLY 1970'S. THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 WAS CRAFTED TO ADDRESS THIS ISSUE AND CONTAINED THREE MAJOR ELEMENTS. THE FIRST ELEMENT WAS EMPLOYER SANCTIONS, WHICH HAS ALWAYS BEEN THE LEGISLATIVE REMEDY FOR ILLEGAL ALIENS WORKING IN THE COUNTRY, AND THAT REMEDY WAS CONTINUED IN THE 1986 ACT. AN EFFECTIVE WORKER VERIFICATION PROGRAM WOULD BE IMPLEMENTED TO ENSURE THAT ONLY LEGAL WORKERS WERE HIRED, AND EMPLOYERS FOUND VIOLATING THE LAW WOULD BE SUBJECT TO FINES AND JAIL TIME. THE SECOND ELEMENT OF THE 1986 ACT WAS A ONE-TIME AMNESTY WHICH WOULD PROVIDE A PATH TO LEGAL RESIDENCE AND POTENTIAL CITIZENSHIP FOR IMMIGRANTS WHO MET CERTAIN CONDITIONS AND THE THIRD ELEMENT WAS EXPANDING THE H-2 VISA PROGRAM TO PROVIDE ADDITIONAL ITINERANT LABOR, PRINCIPALLY TO SUPPLY THE DEMAND FROM AGRICULTURE.

IT WAS ESTIMATED DURING DEBATE ON THE 1986 ACT THAT THERE WERE 2 MILLION ILLEGAL IMMIGRANTS IN THE COUNTRY, SOME OF WHOM HAD BEEN IN THE COUNTRY SINCE CHILDHOOD. IN THE AFTERMATH OF THE 1986 ACT, NEARLY 3 MILLION ILLEGAL IMMIGRANTS WERE LEGALIZED THROUGH THE AMNESTY PROGRAM.

CONGRESS MADE ADJUSTMENTS TO LEGAL IMMIGRATION IN THE IMMIGRATION ACT OF 1990, WITH THE PRIMARY FOCUS BEING THE NUMERICAL LIMITS AND PREFERENCE SYSTEM WHICH REGULATE PERMANENT LEGAL IMMIGRATION. THE CHANGES INCLUDED AN INCREASE IN TOTAL IMMIGRATION TO A PERMANENT ANNUAL LEVEL OF APPROXIMATELY 700,000 FROM THE PREVIOUS 675,000. IT ESTABLISHED A THREE TRACK PREFERENCE SYSTEM FOR FAMILY SPONSORED, EMPLOYMENT BASED, AND DIVERSITY IMMIGRANTS AND AMENDED THE WORK RELATED NONIMMIGRANT CATEGORIES FOR TEMPORARY ADMISSION. IN RESPONSE TO CRITICISM OF EMPLOYER SANCTIONS, THE 1990 ACT EXPANDED THE ANTI-DISCRIMINATION PROVISIONS OF THE 1986 ACT AND INCREASED EMPLOYER PENALTIES FOR UNLAWFUL DISCRIMINATION.

CONGRESS AGAIN ADDRESSED ILLEGAL IMMIGRATION IN THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996, WHICH CONTAINS PROVISIONS FOR MORE BORDER PATROL AGENTS AND MORE INVESTIGATORS TO PURSUE EMPLOYER SANCTIONS VIOLATIONS, DOCUMENT FRAUD, AND VISA OVERSTAYS. IT LIMITED JUDICIAL REVIEW OF DEPORTATION IN SOME CASES, PROVIDED FUNDS FOR FINGERPRINTING OF ALL ILLEGAL AND CRIMINAL ALIENS APPREHENDED NATIONWIDE, PLUS NUMEROUS OTHER PROVISIONS TO DEAL WITH ILLEGAL IMMIGRATION.

A CURRENT READING OF THE NEWSPAPER WOULD CONFIRM THAT THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AS WELL AS THE ILLEGAL IMMIGRATION REFORM ACT OF 1996 AND OTHER LAWS ENACTED IN THE INTERIM, HAVE FAILED TO CONTROL ILLEGAL IMMIGRATION. ILLEGAL IMMIGRATION IS AN EXPANDING CHALLENGE TO THE RULE OF

LAW AND NATIONAL SOVEREIGNTY WHICH SHOWS NO SIGN OF ABATING.

THE 1965 IMMIGRATION AND NATIONALITY ACT, WHOSE FAMILY UNITY PRINCIPLE STILL GOVERNS LEGAL IMMIGRATION, HAS BEEN IN PLACE OVER FIFTY YEARS. HOW HAS THE ETHNIC MAKE-UP OF THE UNITED STATES POPULATION CHANGED SINCE 1965?

PRIOR TO 1965 IMMIGRATION FLOWS WERE ALMOST ENTIRELY EUROPEAN, WHILE FLOWS SINCE 1965 HAVE BEEN MORE THAN HALF LATIN AMERICAN AND ONE QUARTER ASIAN. WHITES OF EUROPEAN DESCENT COMPRISED 84 PERCENT OF THE U.S. POPULATION IN 1965, WHILE HISPANICS ACCOUNTED FOR 4 PERCENT AND ASIANS FOR LESS THAN 1 PERCENT. AFTER 50 YEARS UNDER THE 1965 ACT, 62 PERCENT OF THE U.S. POPULATION IS WHITE, 18 PERCENT IS HISPANIC AND 6 PERCENT ASIAN. WITH NO CHANGE TO CURRENT LAW THE PEW TRUST PROJECTS THAT BY 2065 46 PERCENT OF THE U.S. POPULATION WILL BE WHITE, 24 PERCENT WILL BE HISPANIC AND 14 PERCENT ASIAN.

NEW LAWFUL PERMANENT RESIDENTS (GREEN CARD HOLDERS) ROSE FROM 297,000 IN 1965 TO AN AVERAGE OF ABOUT ONE MILLION EACH YEAR SINCE THE MID 2000'S. THE FOREIGN-BORN POPULATION HAS RISEN FROM 9.6 MILLION IN 1965 TO 45 MILLION IN 2015. FOREIGN BORN IMMIGRANTS ACCOUNTED FOR 5 PERCENT OF THE U.S. POPULATION IN 1965 AND COMPRISE 14 PER CENT IN 2015; A HIGHER PERCENTAGE OF THE U.S. POPULATION THAN IN 1924 WHEN NATIONAL ORIGIN QUOTAS WERE ENACTED.

THAT SUMMARIZES THE SITUATION UNDER CURRENT LAW.  
THANK YOU.



1. FAMILY-BASED IMMIGRATION: IMMEDIATE RELATIVES AND THE PREFERENCE SYSTEM  
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2. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS  
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