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THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985" and Justice Response to Agency Comments on Earlier (H.R. 3080) Version of this Report

Counsel's Office has reviewed the above-referenced DOJ draft report and comments and finds no objection to them from a legal perspective.

RAH/JGR:jmk
cc: RAHauser
JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Draft DOJ Report on H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985" and Justice Response to Agency Comments on Earlier (H.R. 3080) Version of this Report

OMB has requested views on the above-referenced draft report. The bill in question is the latest House vehicle for comprehensive immigration reform. The Justice report reiterates the Administration's positions on immigration reform, which have been cleared and public for some time. Of particular interest, the Justice report objects to the House bill anti-discrimination provisions as unnecessary, objects to an effort to overturn Oliver v. United States (which upheld warrantless open field "searches"), and supports verification of citizenship or immigration registration as a condition of receipt of various welfare benefits.

Attachment

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. Murr

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Draft Department of Justice Report on H.R. 3810, The "Immigration Control and Legalization Amendments Act of 1985" and Justice response to agency comments on earlier (H.R. 3080) version of this report.

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL	ORIGINATOR	86102105			1 1
Referral Note:		for RAH signature			
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
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Comments: Questions to Brenden Blum (395-3454)

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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 4, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of Agriculture
Department of Commerce
Department of Education
Department of Health & Human Services
Deapartment of Labor
Department of State
Department of the Treasury
Small Business Administration
National Security Council
Council of Economic Advisers

SUBJECT: Draft Department of Justice report on H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985" and Justice response to agency comments on earlier (H.R. 3080) version of this report.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than February 11, 1986.

(NOTE -- H.R. 3810 is a substitute for H.R. 3080, reflecting changes made during subcommittee markup of H.R. 3080. Ful House Judiciary Committee markup of H.R. 3810 is expected to occur later this month or early March. Reviewers of this draft report should ignore the editorial annotations and underlines appearing in the text and margin.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Fred Fielding
John Cooney
Tara Treacy
Jim Barie
Sarah Brentling
Phil Hanna
Barry White
Andrea Hoffman
Frank Seidl
Carol Ballew
Roger Greene

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your request for the Department of Justice's views on H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985." The Department supports enactment of this legislation with certain major and several minor revisions. In this following bill report, omission of any section indicates that the Department supports the provision.

This Administration has consistently supported immigration reform, and the pressing need for legislation remains. We are pleased that you and Congressman Mazzoli are sponsoring H.R. 3810. We look forward to working with your Committee.

EMPLOYMENT OF UNAUTHORIZED ALIENS

SECTION 101

Section 101 of the bill amends present Section 274 of the Immigration and Nationality Act (the Act) to provide penalties for employers who commit two types of offenses: (1) knowingly hiring an alien who is not authorized to work; and (2) failing to comply with the requirements of the Employment Verification System.

Employment Verification

An employer must verify that each applicant for employment ("applicant") has established his or her authorization to work in the United States, including examining an applicant's identifying documentation and employment authorization. The applicant must also attest that he is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien authorized by the Attorney General to be employed. The employer must retain these records for a period of time specified by the Attorney General. Good-faith compliance with these requirements is an affirmative defense to a charge that the employer has knowingly employed an unauthorized alien.

Hearing Process

Section 101 also provides for a hearing, before an administrative law judge, to determine whether a violation has occurred. An employer who requests a hearing may, within 60 days of an adverse decision, file a petition for review with the appropriate court of appeals, of the administrative fine. If no hearing is requested, the fine assessed shall not be appealable. If the assessed penalty is not timely paid, the Attorney General must file a suit in a district court to enforce payment.

Delayed Effective Date

The penalty provisions have a delayed effective date. For the first six months after enactment, the Attorney General and the heads of certain Departments and agencies must disseminate information on these provisions, and no penalty may be imposed or proceeding conducted for a first violation. In the subsequent twelve months, the Attorney General is authorized to issue citations of violations. Again, no penalty may be imposed or proceeding conducted during this time.

Anti-discrimination Provisions

Section 101 also contains extensive procedures for dealing with discrimination in hiring or discharging based on an individual's national origin or citizenship status. The coverage is broad, encompassing citizens, "intending citizens," aliens who are permanent residents, aliens temporarily admitted under the "amnesty" provisions, and aliens granted either refugee status or asylum, and who have completed a declaration of intention to become a citizen.

All employers are subject to this anti-discrimination provision, except that claims of national-origin discrimination are barred if: (1) the complainant is covered by Section 703 of the Civil Rights Act of 1964; or (2) United States citizenship is required by Federal law, regulation, or executive order, a Federal, State or local-government contract, or by order of the Attorney General; or (3) English-language skill is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise.

An employer found to violate these provisions may be ordered to maintain a record-keeping system for all applicants, to hire or re-hire individuals directly and adversely affected by the employer's hiring or discharge practices, with or without back pay, to pay a civil penalty of $1,000 for each individual discriminated

against and to pay attorneys fees. A penalty of $2,000 per violation may be assessed against an employer previously found to have engaged in discrimination.

Procedurally, a person may complain to a Special Counsel appointed by the President with the advice and consent of the Senate. The Special Counsel must investigate all such complaints, to determine whether there is reasonable cause to believe that the charge is true. If so, then the Special Counsel may bring a complaint before an administrative law judge, who must be specially designated and trained by the Attorney General. The administrative law judge may subpoena witnesses and evidence, and hold hearings. Subpoena enforcement rests with the district courts.

An administrative order issued under this provision may be reviewed within 120 days under Section 10 (d), (e), (f), (g), and (j) of the National Labor Relations Act. The Special Counsel will exercise the powers of the National Labor Relations Board's General Counsel as specified by that Act.

Penalties

For a first offense, under Section 101, an employer is subject to a $1 - 2,000 civil penalty for each unauthorized alien. For a subsequent offense, an employer is subject to a $2 - 5,000 fine for each unauthorized alien. An employer who engages in a pattern or practice of violations would be subject to a fine of $1,000, six-months imprisonment, or both. The Attorney General is authorized in such a case to bring a federal civil action to seek relief such as injunctions or restraining orders.

Violating the paperwork provisions of the Employee Verification System, subjects an employer to a $1,000 civil penalty for each individual for whom the employer failed to comply.

Comments

Barring the employment of unauthorized aliens is fundamental to curtailing illegal immigration. The Department supports Section 101 but suggests some revisions. Civil penalties should be fixed at specific amounts and not set within ranges. Fixed, specific fines would reduce potential litigation, and promote consistency in the assessment of fines. Moreover, fixed civil penalties will sufficiently deter the employment of unauthorized aliens; accordingly, we oppose criminal penalties, except possibly in "pattern and practice" situations.

Employers of three or fewer persons should be exempted from the record-keeping requirement, with mandated record-keeping if violations occur.

The bill's anti-discrimination provisions are both unnecessary and overly inclusive. Existing national-origin civil rights laws are sufficient protection for all from unfair treatment. Existing federal agencies are able to investigate and deal with discrimination on this basis. No new administrative law judges are needed, since the present immigration judges, already familiar with immigration laws, can readily handle the work. Creating new bureaucracies and uncontrollable new case loads is unwise, unnecessary and unacceptably expensive. (LINE DELETED)

FRAUDULENT USE OF IMMIGRATION DOCUMENTS

SECTION 102

Section 102 of the bill amends 18 U.S.C. 1546 to bar the fraudulent use of certain documents to establish employment authorization. Fines for such activity are increased from $2,000 to $5,000. Likewise, the use of a false identification document or a false attestation is prohibited. The penalty for violating this section is a $5,000 fine, or two years imprisonment, or both.

Comments

Employer sanctions will likely increase the manufacture and use of immigration documents for fraudulent purposes. Penalties of the type and magnitude contemplated by Section 102 should help deter this activity.

AUTHORIZATION OF APPROPRIATION FOR ENFORCEMENT AND SERVICE ACTIVITIES OF INS

SECTION 111

Section 111 provides for increased funding to increase INS enforcement and service activities, authorizing, for fiscal years 1986 and 1987 respectively, 422 million dollars and 419 million dollars over the regular authorization. These sums are to increase the border patrol and other INS enforcement activities to ensure prompt and efficient adjudications of applications under the Act. The funding is also to be used to improve out-reach programs and in-service training of INS personnel. We support increased funding for INS's enforcement activities, which now

results in apprehending more than one million illegal aliens each year. Compared to the same time period last year, there has been a forty percent increase in the number of illegal aliens that have been apprehended. Increased funding will enhance INS's enforcement activities and will also help to improve INS's service related activities. We support the increased authorizations.

Section 111(d) bars the INS from acquiring or installing data processing equipment. Section 111(d) should be dropped. These provisions are unnecessary, and will further delay sorely needed data automation systems. Further, the sole basis for inclusion of this provision has been the incorrect assumption that data systems contracts were improperly granted. This is not the case.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SECTION 112

Section 112 amends existing Section 274(a) of the Act to provide criminal penalties against anyone who unlawfully transports aliens to the United States. Criminal penalties can be imposed when: (1) a person knowingly brings or attempts to bring to the United States an alien at a place other than a port of entry or a place not designated by the INS Commissioner; (2) a person knowingly transports or moves, or attempts to transport or move, an illegal alien within the United States; (3) a person knowingly conceals, harbors, or shields from detection an alien; or (4) a person knowingly brings or attempts to bring an alien to the United States in any manner whatsoever. A person who violates any of the first three provisions can be fined up to $10,000, and imprisoned for up to five years. For the fourth provision, a fine of not more than $5,000, or imprisonment of not more than one year, or both can be imposed for each violation. A second offense, or an offense committed for commercial advantage or private financial gain, can result in a fine of not more than $10,000 or imprisonment for not more than five years, or both.

Comments

We support this section. It will reverse the judicial construction of Section 274 of the Act in United States v. Anaya, 509 F.Supp. 289, P. 297 (S.D. Fla. 1980), where the court held that Section 274 "was designed by Congress to prevent aiding and abetting the illegal entry of aliens into the United States in a fraudulent evasive or surreptitious manner." (emphasis added)

We propose two changes, first, subsection (a)(1)(C), should be amended to include language relating to attempts to conceal, harbor or shield. This language appears in subsection 274(a)(3), and should be retained. United States v. Cantu, 557 F.2d 1173 (5th Cir.), reh. den. 561 F.2d 831, cert. den. 434 U.S. 1063.

Second, language incorporating the present subsection 274 (a)(4), should be added. This provision subjects to criminal sanctions "any person . . . who willfully or knowingly encourages or induces or attempts to encourage or induce, either directly or indirectly the entry into the United States of any alien . . .not duly admitted by an immigration officer . . ." This provision has proven to be a useful tool in combatting alien smuggling. See, United States v. Nunez, 668 F.2d 10 (1st Cir. 1981); United States v. Castillio-Felix, 539 F.2d 9 (9th Cir. 1976). Moreover, this is the only provision in Section 274 that has extra-territorial application. See, Nunez, supra; United States v. Correa-Negron, 462 F.2d 613 (9th Cir. 1972), and cases cited therein.

TREATMENT OF IMMIGRATION EMERGENCIES

SECTION 113

Section 113 amends the Act's existing Section 103 to direct the Attorney General to develop a contingency plan in the event of an immigration emergency. This section also establishes an immigration emergency fund of 35,000,000 for use in such emergency. Before monies can be withdrawn from this fund, the President must determine that an immigration emergency has occurred, and must so certify to the House and Senate Judiciary Committees.

Comments

This section, as drafted, does not provide the President with any new legal authority. Nonetheless, because this section reaffirms existing authority, and provides a funding mechanism we support its enactment.

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR AGRICULTURAL OPERATIONS

SECTION 114

Section 114 amends existing Section 287 of the Act to restrict warrantless entries into open fields used for agricultural purposes. INS officers may not enter outdoor agricultural areas without a warrant or the consent of the owner or his agent, to

interrogate persons as to their right to be in the United States. The only exception to these requirements is existing Section 287(a)(3), which permits access to private lands within 25 miles of the border.

Comments

The Department of Justice strongly opposes this provision, and urges that it be entirely deleted. The Supreme Court in Oliver v. United States, 104 S.Ct. 1735 (1984), held that the Government's entry onto an open field is not a search in the constitutional sense, and no privacy expectation can attach to such fields. Under this provision, INS will be the only law-enforcement agency precluded from entering "open fields," and this will curtail a major aspect of INS's enforcement operations.

This section undercuts one of the principal reasons for immigration reform, namely, the control of illegal aliens and the concurrent enhancement of INS enforcement capabilities. Specifically, INS will be unable to verify and monitor the employment of temporary workers in agriculture. This provision is especially undesirable if a special temporary agricultural program is enacted for the benefit of growers of perishable commodities.

VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

SECTION 121

Section 121 establishes a verification requirement for persons applying for benefits under the AFDC, Medicaid, Unemployment Compensation and Food Stamp Programs. Each applicant or recipient must present proof of citizenship, or proof of immigration registration if the person is not a citizen. The state must verify an alien's status with the INS to determine the alien's eligibility for the benefits.

In addition, this section provides a definition of "Permanently Residing in the United States Under Color of Law" (PRUCOL) for purposes of the Social Security Act, the Unemployment Tax Act and Section 484 of the Higher Education Act of 1965. Basically, the definition limits "PRUCOL" to refugees, asylees, persons granted withholding of deportation, registrants under Section 249, aliens paroled into the United States, and persons granted deferred action.

Comments

The Department strongly supports Section 121. The "Systematic Alien Verification for Entitlements" Program (SAVE) presently in effect on a limited basis, has shown the practical and fiscal usefulness of this approach, and it has been enthusiastically supported by participating states. The definition will go far to reduce the amount of litigation generated by the term "PRUCOL", as well as to curb the inclination of courts to expand this category to include persons who are not lawfully in the United States. This approach along with employer sanctions and strengthened border enforcement, is a necessary element to deter illegal immigration into the United States.

LEGALIZATION STATUS

SECTION 201

Section 201 legalizes the status of certain aliens unlawfully in the United States. In general, this sanction applies to an alien who entered the United States prior to January 1, 1982, and who has continuously and unlawfully resided in the U.S. since January 1, 1982. The alien must also show that he has continuously, physically resided here since enactment. An alien shall not be considered to have failed to maintain continuous physical presence in the United States for a brief, casual, and innocent absence from the United States. In the case of the nonimmigrant, the alien must show that his period of authorized stay expired before January 1, 1982, through the passage of time or that the alien's unlawful status was known to the Government on that date.

Although eligibility is specifically confined to aliens who have entered the United States, an exception is made for "Cuban/Haitian Entrants (Status Pending)" described in paragraph (1), or (2)(a), of Section 501(e) of Public Law 96-422. Persons in this category are deemed to have entered the United States for purposes of this section.

The applicant must also show that he is admissible as an immigrant with certain grounds of admissibility specifically waived, and others which may be waived in the discretion of the Attorney General. The applicant is not admissible if he has been convicted of any felony, or has committed three or more misdemeanors in the United States.

An alien who meets these requirements shall be granted temporary resident status. Twelve months after this grant, the alien must apply for permanent resident status, and must do so within the next twelve months. If he does not, then his temporary

resident status automatically expires on the twenty-fifth month following the date it was granted.

A temporary resident may seek to adjust his status to permanent resident if he can establish continuing eligibility for temporary resident status, plus several additional criteria. He must show that he has not meaningfully interrupted his continuous physical presence in the United States, and that he has attained a minimal understanding of ordinary English, and a knowledge or understanding of the history and government of the United States, or he is satisfactorily pursuing a course of study in these fields.

An alien apprehended in the United States prior to the start of the application period who can establish a "nonfrivolous case of eligibility" for temporary residence may not be deported, and is authorized to work at least through the first thirty days of the application period. An alien apprehended during the application period is also not deportable, if he or she makes a nonfrivolous application, until after a final determination is made on the application. He is also authorized to work.

Administrative and judicial review of determination

An applicant denied temporary or permanent resident status is entitled to appeal to an administrative authority established by the Attorney General. This review is to be based "solely upon the administrative record" of the application, although updating the record is permitted.

Judicial review of denial of an application for temporary or permanent residence is to be based "solely upon the administrative record" as part of an order of deportation. The court may review the record for abuse of discretion, or to determine if the findings are directly contrary to clear and convincing facts contained in the record as a whole.

Disqualification from certain public-welfare benefits

An alien granted temporary resident status is generally ineligible for certain public welfare assistance programs for five years beginning with obtaining that status. The Attorney General will identify the programs covered in consultation with other federal agencies and departments. Participation in the Medicaid and Food Stamp programs is specifically prohibited. In addition, State and municipal governments may refuse financial or medical assistance to aliens in this category. Exceptions are made for "Cuban/Haitian Entrants (Status pending)," aged, blind or disabled individuals, aliens under 18 years of age and pregnant women.

For purposes of this section, "financial assistance" is defined not to include certain programs such as the National School Lunch Act, the Child Nutrition Act of 1966, the Headstart-Follow Through Act and others.

Comments

The Department supports the concept contained in Section 201 but certain revisions are necessary to establish a workable, cost-effective program. We believe that a January, 1980, cut-off date is preferable to January 1982. A 1982 cut-off date will result in entry of aliens who have no pressing claim to remain here permanently. A 1982 date will encourage more aliens to enter illegally, and attempt to establish eligibility fraudulently. It will substantially increase the cost of the legalization program. The 1980 date, by contrast, will benefit illegal aliens who have been in the United States for a significant period of time. We note that the Select Commission on Immigration Reform recommended a 1980 cutoff date.

The provisions for both administrative and judicial review of applications for adjustment of status are unnecessary and likely to significantly increase the costs of administering this provision, particularly since this section makes no distinction between review of temporary and permanent resident applications. The Department considers a single administrative review sufficient to safeguard the interests of an applicant.

The provisions relating to administrative and judicial review are also ambiguous. Administrative review is to be limited to the record existing at the time an application is denied, but the record on review may be updated. Judicial review is to be based solely upon the administrative appellate authority. Its findings and determinations are to be conclusive, unless the court finds an abuse of discretion or that the "findings are directly contrary to clear and convincing facts." These standards of review are not the same, and will only invite controversy and litigation.

The Department also believes that the provisions relating to "brief, casual and innocent" absences from the United States will be extremely difficult to administer. Application of this standard is not supported by Rosenberg v. Fleuti, 374 U.S. 449 (1963). Fleuti applied only to lawful permanent resident aliens, not aliens illegally in the United States. We suggest that absences of a specific period of time, i.e., no more than fifteen days in the aggregate, from the date chosen for legalization, constitute the qualifying limit. The bill should also specifically state that absences related to violations of the immigration laws would

automatically interrupt the physical presence requirement, regardless of the period of absence.

The Department finds particularly objectionable Section 201 (b)(5)(c), which provides for five years imprisonment and a $5,000 fine for using, publishing or permitting information from legalization files to be used in an unauthorized manner. No intent to disclose is required, and the penalty is greatly excessive. By contrast, Section 102 provides only two years imprisonment for the fraudulent use of documents. The Department strongly urges that Section 201(b)(5)(c) be deleted. Information may be safeguarded by disciplinary proceedings against government employees who engage in unauthorized disclosure.

The Department has several problems with the bill's disqualifications from certain public-welfare benefits. Certain programs for which newly legalized aliens should logically be eligible are absent from the list of education programs. This provision could prove to be an administrative nightmare for the Department of Education, the States, and local educational agencies if an attempt was made to exclude the newly legalized aliens from certain programs while including them in others.

We are concerned that there is no provision in H.R. 3810 relating to assistance furnished on a basis other than financial need. Certain merit-based education programs, such as the tuition portion of the National Graduate Fellows Program (20 U.S.C. 1134 (h) et seq.) and certain international education programs, may be affected. H.R. 3810 may imply that newly legalized aliens are eligible for these merit-based programs despite their temporary resident status; which would normally be insufficient for eligibility in accordance with the Education Department's regulations. We support addition of language stating that nothing in the bill is designed to affect eligibility for non-need-based programs.

Finally, including certain TRIO programs on the list of prescribed education programs presents substantial problems for institutions of higher education and for student aid. In certain programs, if a participant was a newly legalized alien and thus under H.R. 3810 ineligible for Federal student aid, a participating institution could be faced with a substantial and unexpected demand on its resources. Under such circumstances, it is conceivable that some schools would withdraw from the program, resulting in the denial of program benefits for other disadvantaged students.

In view of these problems, the Department objects to proposed Section 245A(h)(3) of the Act as drafted. It should either be clarified to contain merely an illustrative list of programs that newly legalized aliens would be eligible for (with the TRIO programs discussed above deleted), or that provision should be deleted in its entirety.

We are also concerned about the proposed requirement that the Attorney General must approve courses of study in English and American history and government in order to satisfy the bill's requirements. This course-approving function could potentially require a very substantial commitment of the Attorney General's time and resources. Additionally, this provision might create strong pressure for Federal funding for courses to satisfy this requirement. A provision stating that no new Federal funds are to be authorized or expended would provide a simple remedy to this issue.

In addition, there are certain technical changes such as waivers of standard government personnel, procurement, contracting, real and personal property, printing, and forms-clearance requirements. These changes, many of which were in last year's bills, will be submitted to the Committee shortly.

CUBAN-HAITIAN ADJUSTMENT OF STATUS

SECTION 202

Section 202 provides for the adjustment of status to permanent resident of all Cuban or Haitian nationals who fall within two categories. The first consists of those persons who have been designated "Cuban/Haitian Entrants (Status Pending)." The second consists of those Cuban and Haitian nationals who arrived in the United States before January 1, 1982, and with respect to whom INS established a record as of that date. A Cuban or Haitian national admitted as a nonimmigrant who did not apply for asylum before that same date is not eligible for adjustment of status.

The applicant must also be otherwise eligible for admission as an immigrant, except for the documentary requirements of Section 212(a) of the Act, and not come within Section 243(h)(2) of that Act. The alien must be physically present in the United States on the date the application is filed, and also have continuously resided in the United States since January 1, 1982. An applicant has two years from the date of enactment to apply. If adjustment of status is granted, a record of permanent residence as of January 1, 1982 will be established. A grant of adjustment of

status under this section will not count against the immigrant visa allocation for either Cuba or Haiti.

Comments

Separate procedures for adjustment of status of "Cuban/Haitian Entrants (Status Pending)" are unnecessary. Section 201 specifically confers eligibility for legalization upon the same persons covered by this provision. There is no substantial reason to accord these Cuban and Haitian nationals preferential treatment. All aliens unlawfully in the United States should meet the same eligibility requirements, regardless of the country of origin, a principal adopted in the 1965 amendments to the Act. The Cuban Adjustment Act of 1966 should be repealed.

STATE LEGALIZATION ASSISTANCE

SECTION 204

Section 204 directs the Secretary of Health and Human Services to reimburse States for all of the costs of public assistance provided to any legalized alien, such as those which provide cash, medical or other assistance designed to meet basic subsistence or health needs, or public health interests.

Comments

The requirement for 100-percent reimbursement should be dropped. While there may be costs associated with the legalization program which may fall on the States, we believe that the newly legalized population will be an asset to the States, consisting of productive, hard-working people. Similarly, education has always been a State responsibility, and no States currently bar the education of illegal alien children. Accordingly, we see no rationale for Federal reimbursement.

Finally, the SAVE program shows that states can save millions by appropriately verifying the status of applicants for assistance, and by not paying benefits to illegal aliens. The provisions of the bill mandating the use of the SAVE program are very important to the States.

LINE DELETED

H-2A WORKERS

SECTION 301

Section 301 establishes a nonimmigrant classification for temporary agricultural workers (H-2A), and adopts a new program for admitting them. A labor certification shall not be issued under certain circumstances, e.g., a strike or lockout during a labor dispute; employer violation of a previous labor certification; or employer failure to provide workers' compensation, if not otherwise covered by State law.

Rules for consideration of applications

Applications must be filed with the Secretary of Labor not more than sixty days before an employer requires the services of a temporary worker. The employer must be notified within seven days of the filing if the application is deficient. The certification must be made not later than twenty days before the employer requires the services of a temporary worker. The certification remains effective only if the employer continues to accept for employment, qualified individuals who apply or are referred to him until the date when the H-2A workers depart. The employer, in lieu of providing housing, may provide a reasonable housing allowance if housing is available near the employment. An H-2A petition may also be filed by an agricultural association. When a petition is denied because there are sufficient workers who are able, willing and qualified, or because employment of the temporary worker will adversely affect the wages and working conditions of similarly employed U.S. workers, there is an expedited administrative appeal.

In administrative appeal circumstances, the Secretary of Labor must make a new determination within 72 hours of a request. The employer has the burden of proof to establish that an eligible U.S. worker is not able, willing, or qualified to perform the requested labor.

The temporary worker cannot be admitted for longer than that determined by regulation. He may also not be admitted if in the previous five-year period he had violated the terms of his admission.

Funding

Section 301 also authorizes the appropriation, for fiscal year 1986 and after, of 10 million dollars, to recruit domestic workers for temporary services, and to monitor the H-2A program.

The Secretary of Labor is authorized to impose appropriate penalties and seek appropriate relief to ensure an employer's compliance with the terms of the employment. The Secretary is also authorized such sums of monies as may be appropriate to make H-2A determinations and certifications.

Advisory Commission

Subsection 301(e) expresses the sense of Congress that the President should establish an advisory commission to consult with governments and advise the Attorney General regarding the operations of the H-2A program and the agricultural labor transition program.

Comments

The Administration supports S. 1200's temporary worker reforms, however, we believe that the Secretary of Labor should issue the regulations governing labor certification under this program after meaningful consultation with the Departments of Justice and Agriculture. Both the regulatory authority provision and the consultation requirement will be statutory.

The Department of Labor, acting independently and in response to recommendations from the Agricultural Workers' Commission, will take meaningful steps to improve the H-2 program as a workable and acceptable means of meeting shortages in the domestic agricultural labor market.

The Administration opposes Section 301(e). The United States has already established lines of communication with the government of Mexico and other sending countries on immigration matters, with particular regard for the protection of foreign worker's rights in our country. We believe that the establishment of an additional channel of these foreign governments would be inappropriate, duplicative and bureaucratic.

CHANGE IN COLONIAL QUOTA

SECTION 311

The quota for immigrants born in a colony, as set forth in Section 202(c) of the Act, is increased from 600 to 3,000, starting with fiscal years beginning after enactment.

Comments

The Department supports increasing the colonial quota, but recommends that it be raised to 5,000 to meet projected demand.

STUDENTS

SECTION 312

Section 312 requires a two-year foreign residence for nonimmigrants admitted as students. The Attorney General may waive, under certain circumstances, the foreign-residency requirement for alien students, if he determines that the waiver is in the public interest.

If the alien applies for a nonimmigrant visa he must meet additional requirements. Moreover, the alien must annually furnish an affidavit attesting that he is in good standing with the training program, and will return to his country upon completion of the program. Section 312 would also make certain other amendments relating to adjustment of status and deportation.

Comments

We oppose Section 312. The two-year foreign residence requirement will be burdensome on bona fide students and U.S. employers. It will also create a strong impetus for students to enter into fraudulent marriages to circumvent the foreign-residence requirement.

G-IV SPECIAL IMMIGRANTS

SECTION 313

Section 313 would add a special immigrant category to benefit officers or employees of international organizations and their immediate family members. An individual could qualify for special immigrant status if he resided in the United States for only seven out of twenty-one years, as long as he had resided for some unspecified time in the United States within the last seven years. In contrast, an alien who has been employed by the United States abroad must have "performed faithful service for a total of fifteen years, or more," to qualify as a special immigrant.

Comments

We oppose Section 313 because it would grant an unnecessary special preference.

SECTION 314

Section 314 provides authority to establish a pilot visa-waiver program for certain nonimmigrant visitors. The waiver would apply to visitors from countries providing a reciprocal waiver for U.S. citizens.

Comments

The Department of Justice supports the pilot visa-waiver program. The program will facilitate legitimate travel to and from the United States.

MISCELLANEOUS PROVISIONS

SECTION 315

Section 315(a) gives equal treatment to fathers to allow immigration benefits for an illegitimate child. This amendment overrules Fiallo v. Bell, 430 U.S. 787 (1977), which held that an illegitimate child can claim immigration benefits only through its mother.

We support 315(a) because it provides equal treatment without regard to a parent's sex.

Section 315(b) permits an alien to maintain continuous physical presence if his absence from the United States was brief, casual, and innocent. This amendment would overrule INS v. Phinpathya, 104 S.Ct. 584 (1984), which held that any absence, however brief, breaks the continuity of physical presence.

Comments

We oppose this amendment because its vagueness invites judicial lawmaking and encourages litigation. We recommend either deleting this provision or amending it to preclude the establishment of continuous physical presence if the alien's departure is 15 days or longer, or where the alien has engaged in activities contrary to the immigration laws.

TRIENNIAL REPORTS CONCERNING IMMIGRATION

SECTION 401

Section 401 requires that the President submit to the House and Senate Judiciary Committees a triennial report on the Act. The comprehensive report must include the number of aliens admitted in various immigrant and nonimmigrant categories, and their impact on the economy, labor and housing markets, educational quality systems, social services, and population growth rate of the United States. The President must also provide a reasonable estimate of the number of aliens who entered the United States illegally, or who became deportable during the three-year period. The report must also project for the following five-year period the information contained in the report. The President must also include in the report any appropriate recommendation bearing on the admission and entry of aliens in the United States.

REPORTS ON UNAUTHORIZED EMPLOYMENT AND DISCRIMINATION

SECTION 402

Section 402 requires the President to report on the implementation of the employer-sanctions provisions to the House and Senate Judiciary Committees every six months beginning the twelfth month after enactment. This report must contain an analysis of the employment verification system and status of the telephone-verification project. The President must also report on the impact of the employer-sanctions provisions on the employment, wages and working conditions of United States workers, illegal immigration, and violation of status by nonimmigrant visa holders.

A separate report on the effect of the employer-sanctions provision on discrimination against minority group citizens and permanent residents and the paperwork and record-keeping burden of employers must be submitted. This report is due 18, 36 and 54 months following enactment.

The Civil Rights Commission must submit its own report, due 18 months after enactment, on the implementation and enforcement of this section. The Commission must additionally investigate allegations that there has been unlawful discrimination based on race or nationality against citizens or aliens authorized to work.

REPORTS ON H-2A PROGRAM AND ON AGRICULTURAL LABOR TRANSITION PROGRAM

SECTION 403

Section 403 requires the President to transmit to the House and Senate Judiciary Committees an annual report for three continuing years on the agricultural transition program, and a bi-annual report on the H-2A program, including the number of foreign workers employed under each program, compliance of employers with the terms and conditions of the program, and impact of the programs on the labor needs of the United States agricultural employers. The report must also include recommendations for modifications of the programs.

REPORT ON THE LEGALIZATION PROGRAM

SECTION 404

Section 404 requires the President to transmit to Congress two reports. The first report, required within 12 months after the end of the application period for temporary residence, is to include a significant amount of data relating to the legalized population, describing the geographical origins and manner of entry of these aliens, their demographic characteristics and a general profile of the population. The second report, due three years after the first report, is to contain information describing the impact of the program on State and local governments, public health and medical needs, patterns of employment and participation of legalized aliens in social service programs. The Department generally opposes the proliferation of statutorily mandated reporting requirements, preferring instead to provide the Congress with information requested on an as needed basis.

Conclusion

Finally, in response to requests from members of your Committee, we have submitted amendments to H.R. 3080, and we will be submitting amendments to H.R. 3810. These amendments were prepared expressly at the request of members of Congress and they do not necessarily represent the position of this Department or this Administration.

The Department would like to reiterate its strong support for immigration reform. We know that we share a mutual interest in enacting legislation that will be most beneficial to the people of the United States.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

John R. Bolton
Assistant Attorney General

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 1986

Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20530

Dear Mr. Miller:

This responds to the revisions suggested by the Office of Management and Budget (OMB) and other agencies, to the Department of Justice's report on H.R. 3080, (presently H.R. 3810), the "Immigration Control and Legalization Amendments Act of 1985," and to amendments adopted by the House Subcommittee on Immigration, Refugees and International Law. A copy of the revised report is attached.

The Department of Education (DOE) was particularly concerned about Sections 201 and 203 of the bill, relating to impact-assistance grants, and the eligibility of newly legalized aliens for certain education programs. Most of the additional language suggested is included in our revised bill report.

The Department of State suggested that our report should recommend an increase in the "colonial quota" from 3,000 to 5,000. State also recommended that the report reflect the Administration's opposition to establishing a bilateral advisory commission to consult with foreign governments on the H2-A agricultural workers program. Both suggestions are included.

The Small Business Administration (SBA) suggested that the Department oppose the record-keeping requirements of Section 101. SBA supports the S. 1200 approach, under which an employer who has an employment verification and record-keeping system has an affirmative defense to a charge of illegal employment. An employer without such a system would face the rebuttable presumption that the alien was illegally hired. These comments are not included in the report because the Administration opposes optional employment-verification systems.

The Department of Agriculture (USDA) offered extensive comments. In response we included the Administration's statement of principles on agricultural workers. Our report does not make all of USDA's suggested revision's because many were too detailed and narrow in scope. Additionally, many of USDA's comments pertained to issues that are being debated within the Administration.

The Department of Health and Human Services (HHS) submitted only an annotated copy of Justice's report. It was difficult to understand the rationale behind the annotations, since HHS provided no explanation.

We have included most of the revisions suggested by OMB. However, we feel that we should retain the Department's support for the reporting requirements of the Systematic Alien Verification for Entitlement (SAVE) program. We strongly believe that H.R. 3810 should require a report on the effects of the SAVE program on state and local governments. The present SAVE program has already resulted in substantial cost reductions in entitlement programs. A reporting requirement would enable the government to obtain highly useful information on this program's continued impact.

We hope that the views included in the revised bill report, meet with your support.

Sincerely,

John R. Bolton
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: HHS Proposed Amendment to Immigration Reform Legislation (H.R. 3810/S. 1200) to Require Verification of Immigration Status of Aliens Applying for Benefits under Certain Assistance Programs

Counsel's Office has reviewed the above-referenced amendment and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
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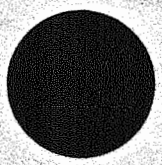
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: James Munn

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: HHS proposed amendment to Immigration Reform Legislation (H.R. 3810 / S.1200) to require verification of immigration status of aliens applying for benefits under certain assistance Programs

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOL		ORIGINATOR	86/02/13			1 1
		Referral Note:				
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
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Type of Response = Initials of Signer
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 12, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO: Department of Justice
Department of Agriculture
Department of Labor
Council of Economic Advisers

SUBJECT: Department of Health & Human Services propsed amendment to Immigration Reform legislation (H.R. 3810/S. 1200) to require verification of immigration status of aliens applying for benefits under certain assistance programs.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than February 20, 1986.

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: John Cooney Sarah Brentlinger Phil Hanna
Tara Treacy Andrea Hoffman Fred Fielding

VERIFICATION OF IMMIGRATION STATUS OF ALIENS
APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

Sec. __. (a) REQUIRING ALIEN VERIFICATION SYSTEM.--

(1) UNDER AFDC, MEDICAID, ADULT ASSISTANCE, UNEMPLOYMENT COMPENSATION, AND FOOD STAMP PROGRAMS.--

Section 1137 of the Social Security Act is amended --

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(B) by inserting after subsection (a) a new subsection (b) as follows:

"(b) In order to meet the requirements of this section, a State also must have in effect for fiscal years after 1988 an alien verification system under which --

"(1) the State shall --

"(A) require, as a condition of eligibility for benefits under any program listed in subsection (c), that each applicant for such benefits (other than an applicant for medical assistance under title XIX whose eligibility for such assistance is determined by the Secretary in accordance with an agreement entered into by the State and the Secretary pursuant to section 1634) --

"(i) declare in writing, under penalty of perjury, whether or not the individual is a citizen of the United States, and

"(ii) if not a citizen of the United States, present alien registration documentation or such other proof of immigration registration as may be required by the Immigration and Naturalization Service for this purpose, and

"(B) exchange with the Immigration and Naturalization Service (by means of an automated or other system designated by the Immigration and Naturalization Service for this purpose) such information as may be necessary for the purpose of determining whether an individual who is not a citizen of the United States is in an immigration status that renders the individual ineligible for benefits under such program, and

"(C) if advised by the Immigration and Naturalization Service that an individual is in such a status, afford such individual the opportunity to prove otherwise by submitting satisfactory evidence of an immigration status that does not render the individual so ineligible, prior to making any decision to deny or terminate the individual's benefits under the applicable program;

"(2) the State shall follow the procedures described in subparagraphs (B) and (C) of paragraph (1) whenever a reconsideration or redetermination is made of the continued

eligibility of a recipient of benefits under a program listed in subsection (c) who is not a citizen of the United States (other than a recipient of medical assistance under title XIX whose continued eligibility for such assistance is determined by the Secretary in accordance with an agreement entered into by the State and the Secretary pursuant to section 1634), and in no case less frequently than annually in the case of such a recipient;

"(3) the State shall have in effect such safeguards as assure that information received from an individual or the Immigration and Naturalization Service pursuant to paragraph (1) is used only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and is adequately protected against unauthorized disclosure for other purposes; and

"(4) the State shall have in effect laws that --

"(A) authorize the solicitation of written declarations under penalty of perjury, and

(B) provide that any individual who, in any declaration required under paragraph (1)(A), willfully subscribes as true any material matter which he does not believe to be true, is guilty of perjury;

unless the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture), in consultation with the Commissioner of Immigration and Naturalization, determines on or before July 1,

1988, on the basis of an application for a waiver received prior to April 1, 1988, that the State has in effect an alternative system which is as effective for purposes of verifying alien eligibility for the applicable program in that State.";

(C) in subsection (c) (as redesignated by paragraph (1)(A) of this subsection), by striking out "income verification system" and inserting in lieu thereof "income verification and alien verification systems"; and

(D) in subsection (a) and subsection (d) (as redesignated by paragraph (1)(A) of this subsection), by striking out "subsection (b)" each place it occurs and inserting in lieu thereof "subsection (c)".

(2) UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM.--Section 1631(e)(1)(B) of such Act is amended in the first sentence by inserting "the requirements of section 1614(a)(1)(B) and other" after "concerning".

(b) PROVIDING 50 PERCENT MATCHING FUNDS FOR THE COSTS OF DEVELOPMENT, INSTALLATION, AND OPERATION OF SYSTEM.--

(1) UNDER THE AFDC PROGRAM.--Section 403(a)(3)(C) of such Act is amended --

(A) by inserting "(i)" after "subparagraph", and

(B) by inserting ", (ii) all expenses related to the development, installation, and operation of an alien verification system that meets the requirements of section 1137(b)" after "section 402(a)(35)(B)".

(2) UNDER THE MEDICAID PROGRAM.--Section 1903(a)(7) of such Act is amended by inserting "(including as expenditures under this paragraph all expenses related to the development, installation, and operation of an alien verification system that meets the requirements of section 1137(b))" after "State plan".

(3) UNDER THE ADULT ASSISTANCE PROGRAMS.--Sections 3(a)(4)(B), 1003(a)(3)(B), 1403(a)(3)(B), and 1603(a)(4)(B) of such Act (as in effect with respect to Puerto Rico, Guam, and the Virgin Islands) are each amended by inserting "(including as expenditures under this paragraph all expenses related to the development, installation, and operation of an alien verification system that meets the requirements of section 1137(b))" after "expenditures".

(4) UNDER THE UNEMPLOYMENT COMPENSATION PROGRAM.--The first sentence of section 302(a) of such Act is amended by inserting before the period at the end thereof the following: ", including 50 percent of so much of the reasonable expenditures of the State as are attributable to the development, installation, and operation of an alien verification system that meets the requirements of section 1137(b)".

(5) UNDER THE FOOD STAMP PROGRAM.--Section 16(a) of the Food Stamp Act is amended by striking out "and (4) fair hearings" and inserting in lieu thereof "(4) fair hearings, and (5) the development, installation, and operation of an alien verification system that meets the requirements of section 1137(b) of the Social Security Act".

(c) SOCIAL SECURITY ACT DEFINITION OF PERMANENTLY RESIDING IN THE UNITED STATES UNDER COLOR OF LAW.--

(1) IN GENERAL.--Section 1101(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(10) The term "alien permanently residing in the United States under color of law" means an alien who is lawfully present in the United States as a result of the application of the provisions of --

"(A) section 207 of the Immigration and Nationality Act (relating to refugees);

"(B) section 208 of such Act (relating to asylum);

"(C) section 203(a)(7) of such Act as in effect prior to April 1, 1980 (relating to conditional entry prior to such date);

"(D) section 212(d)(5) of such Act (relating to parole) at least five years earlier; or

"(E) section 243(h) of such Act (relating to a decision of the Attorney General to withhold deportation).".

(2) CONFORMING AMENDMENTS.--(A) Section 1614(a)(1)(B) of the Social Security Act is amended by striking out "otherwise permanently residing" and all that follows, and inserting in lieu thereof "(iii) an alien permanently residing in the United States under color of law (as defined in section 1101(a)(10)).".

(B) Section 402(a)(33)(B) of such Act is amended by striking out "otherwise permanently residing" and all that follows, and inserting in lieu thereof "(C) an alien permanently residing in the United States under color of law (as defined in section 1101(a)(10));".

(C) Section 3304(a)(14)(A) of the Federal Unemployment Tax Act is amended by striking out "was permanently residing" and all that follows, and inserting in lieu thereof "was an alien permanently residing in the United States under color of law (as defined in section 1101(a)(10) of the Social Security Act) at the time such services were performed,".

(3) EFFECTIVE DATE.--The amendments made by this subsection shall be effective upon the date of enactment of this Act, except that such amendments shall not apply in the case of any alien who, on the basis of an application filed prior to such date, is eligible to receive benefits under the program of aid to families with dependent children authorized by part A of title IV of the Social Security Act or the supplemental security income program authorized by title XVI of such Act (which includes, for

purposes of this subsection, the program of State supplementary payments which are made pursuant to section 1616(a) of such Act or section 212(b) of Publib Law 93-66) for the month in which this Act is enacted, for such time as such alien continues without interruption to be eligible to receive such benefits.

VERIFICATION OF IMMIGRATION STATUS OF ALIENS
APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS

Section 1137 of the Social Security Act currently requires States to have in place a system to verify income eligibility for purposes of the AFDC, Medicaid, adult assistance, unemployment compensation, and food stamp programs. Subsection (a) of section ___ would amend section 1137 to additionally require that States have in operation by October 1, 1988 a system to determine whether aliens who apply for or receive benefits under those programs are in an immigration status compatible with the receipt of such benefits.

Under the amendment, States would require program applicants to declare whether or not they are citizens of the United States and, if not citizens, to furnish alien registration documentation or such other proof of immigration registration as the Immigration and Naturalization Service (INS) determines to be appropriate. States would then be required to exchange information with the INS by means of an automated or other system designated by the INS for the purpose of determining whether the individual's immigration status renders him ineligible to participate in the applicable program. If INS furnishes unfavorable information with respect to any individual, the State would be required to afford the individual the opportunity to submit satisfactory evidence of a favorable immigration status prior to making any decision with respect to the individual's eligibility for benefits.

As is the case with any individual whose claim for benefits is denied, any alien who is denied benefits due to a determination that his immigration status renders him ineligible for program participation would be afforded the opportunity to contest that determination at a hearing in accordance with program practices. The amendment does not create any right to a hearing prior to a denial of benefits.

States also would be required to re-examine the alien status of any non-citizen program recipient whenever any redetermination of the recipient's eligibility is made, and in no case less frequently than annually.

The Secretary of Health and Human Services (or the Secretary of Labor or the Secretary of Agriculture, as appropriate), in consultation with the Commissioner of Immigration and Naturalization, may waive the requirement for an alien verification system if the Secretary determines, on the basis of an application for a waiver submitted before April 1, 1988, that the State has in place an equally effective alternative for verifying the alien status of program applicants and recipients.

Due to the possibility of short-term difficulties in adopting systems to conform with the requirements of these amendments, it is the intent of Congress that the Departments of Agriculture and Health and Human Services will, for purposes of their quality control systems, forgive errors directly resulting from implementation of these amendments for a period of not more than one year.

Subsection (b) of the amendment provides 50 percent matching funds to States for expenses associated with the cost of developing, installing, and operating alien verification systems.

Subsection (c) adds to the Social Security Act a definition of the term "alien permanently residing in the United States under color of law". This term currently appears as an eligibility criterion in the AFDC, SSI and unemployment compensation programs, and has been the subject of recent litigation in connection with the former two programs. The new definition would specifically enumerate, by means of explicit references to the Immigration and Nationality Act, the categories of aliens who could henceforth be considered as "permanently residing in the United States under color of law".

The new definition would be effective upon enactment. A grandfather clause would exempt from the application of the amendment those "color of law" aliens who, based on applications filed prior to the date of enactment, are eligible for benefits for the month of enactment, for such time as they continuously maintain their eligibility