

IMMIGRATION AND NATIONALITY ACT:
IMPACTS AND ISSUES ON GUAM

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INTRODUCTION

The Immigration and Nationality Act of 1952 and its regulations govern the admission of immigrants, refugees, and non-immigrants into the United States, its territories, and possessions. Recent problems and the changing world situation have called for a review and evaluation of the Act in order to determine whether administrative and legislative changes should be made so as to update and improve the Act.

To conduct the review and evaluation of the Act, a Select Commission on Immigration and Refugee Policy was created by Public Law 95-412. This Commission will review the Act and its rules and regulations and analyze, in part, whether and to what extent the Act should apply to Guam. The purpose of this paper is to provide the Select Commission with information on immigration issues which affect Guam.

PORT OF ENTRY STATUS

The Immigration and Nationality Act of 1952 designates Guam as a Class A port of entry. This classification status considers Guam as a United States port of entry and allows for the local inspection and admission of all aliens seeking to enter the United States through Guam. The major limitations for entry are the quota restrictions which limit the number of people who may enter the United States from one specific country or all countries together.

Guam's port of entry status is of great importance to local residents. Until 1962, entry into Guam was limited due to the imposition of a Naval security clearance requirement. During this period of military control, the island population sustained only minor changes resulting from the settlement of military personnel who were stationed, discharged or retired on Guam and the inter-marriages between imported construction workers and local residents.

The Naval security clearance requirement was rescinded in 1962, and as a result Guam experienced great population, economic, and social changes due in part to the influx of new peoples and new ideas into the island. These changes have been both positive and negative with a variety of lasting impacts.

1. Guam has no control over immigration.

Guam has no control over the administration of the Immigration and Nationality Act and its pertinence to Guam. As a result, Guam has experienced many social and economic changes due to an influx of immigrants and other aliens. While these changes have been both positive and negative in their effects, Guam still must face the lingering impacts resulting from immigration.

Guam is now at a point where we must begin effectively planning for our future. Without some measure of control over immigration to our island, certain economic and social aspects of Guam will be left under the purview of the Immigration and Nationality Act which fails to take into consideration Guam's uniqueness in size, location, needs and aspirations.

NON-IMMIGRANT ALIEN WORKERS

Presently, the Immigration and Nationality Act of 1952, as amended, allows non-immigrant aliens to enter the United States to work under the following visa provisions: Intra-Office Transfers (L-1 visa), Treaty Trader (E-1 visa), Treaty Investor (E-2 visa), Temporary Workers (H-2 visa), and Paroled Workers (Parolee visa). As Guam is considered a part of the United States in the Act's definition, all of these non-immigrant visa provisions apply to Guam.

Simply stated, the intra-office transfer provision (L-1) applies only to international organizations doing business abroad which have offices located within the United States. The provision applies equally to both U.S. and foreign-owned organizations and does not restrict itself to only those organizations engaged in foreign trade. The word organization is used loosely to include firms, companies, corporations, subsidiaries, and affiliates. The provision allows the organization to transfer an alien employee from the foreign office to the U.S. based office, provided that the employee has been employed for at least a full year within the foreign-based office before applying for the L-1 visa and that the employee is entering the United States to perform in a managerial or executive capacity or otherwise has specialized knowledge of value to the employer. Certification is required from the U.S. Department of Labor before this visa is issued by the Department of Justice.

The Treaty Trader provision (E-1) applies to non-immigrant aliens entering the United States to carry on substantial trade principally between the United States and the foreign state of which he is a national. The term substantial trade refers to the volume of trade and not its monetary value. Moreover, the trade must exist and not be potential. However, there must be a bilateral treaty of friendship, commerce, and navigation between the United States and the foreign state.

The United States has treaties with the following foreign states which affect Guam: China (Taiwan), Japan, Korea, Pakistan, Philippines, and Thailand. Lastly, the provision applies to both self-employed traders and aliens that are employees of the trader. In the latter case, the provision allows only those aliens employed in a supervisory or executive capacity or otherwise have specialized qualifications that are essential to the efficient operation of the employer's enterprise to enter the United States to work. A labor certification from the U.S. Department of Labor is not required before a visa is issued by the U.S. Department of State.

The Treaty Investor provision (E-2) applies to a non-immigrant alien entering the United States to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing a substantial amount of capital. What is meant by substantial capital is not defined other than it does not include a small amount of capital invested in a marginal enterprise solely for the purpose of earning a living. In order for a Treaty Investor to enter the U.S., there must be a bilateral treaty of friendship, commerce, and navigation between the United States and the foreign state of which the treaty investor is a national. The United States has treaties with the following foreign states which affect Guam: Japan, Korea, Pakistan, and the Philippines. The provision, in addition to allowing alien investors to enter the U.S., also allows the investor's business entity to employ persons of the same nationality, provided that the employees are employed in responsible capacities. Like the Treaty Trader provision, a labor certification from the U.S. Department of Labor is not required and the U.S. Department of State is responsible for issuing visas.

Temporary non-immigrant alien workers are allowed to enter under the H-2 and Parolee provision. (As the Parolee provision has not been heavily utilized to bring temporary workers to Guam, no further discussion regarding the provision will be provided.) The H-2 provision applies to non-immigrant aliens entering the United

States temporarily to perform services or labor that are temporary in nature if unemployed U.S. workers capable of performing the labor or service cannot be found. In addition, before an H-2 visa can be granted, the employer must demonstrate that the employment of non-immigrant workers will not adversely affect the working conditions and wages of U.S. workers employed in the same type of job. Employers of both U.S. and foreign-owned businesses may employ H-2 workers. Like the Intra-Office Transfer provision, an employer must obtain certification from the U.S. Department of Labor before the Department of Justice will issue a visa.

There are several similarities among the four visa provisions. First, the spouses and minor children of the alien are allowed to accompany or later join those admitted under the L-1, E-1, E-2, and H-2 visas; and are entitled to the same non-immigrant status. Secondly, except for the non-immigrant aliens admitted under the H-2 visa provision, non-immigrant aliens must renew their visas yearly in order to continue their stay in the United States; however, there is no limit on the number of continuous years they may stay without returning home. In the case of intra-office transfers, however, the employer must yearly submit a petition for certification and receive approval by the U.S. Department of Labor before the Department of Justice will grant the visa. In the past, the Department of Justice also granted H-2 visas on a yearly basis; however, the workers were only allowed to remain within the U.S. for three consecutive years without returning to their home country. The current policy, however, requires H-2 visa renewal upon completion of the task petitioned for, rather than on a yearly basis, with repatriation required after three consecutive years.

The impacts upon employment opportunities, brought about individually by non-immigrant aliens, admitted under the aforementioned visa provisions vary; but collectively, non-immigrant aliens admitted to Guam have had a significant impact upon U.S. resident workers' employment opportunities and conditions. Due to Guam's proximity to Asia, the island's labor force is comprised of a large number of non-immigrant alien workers, and in many instances these workers have caused wages and working conditions on Guam to be artificially depressed. This situation has been brought about as they accept lower wages and working conditions than U.S. workers accept, because the wages and working conditions offered on Guam to non-immigrant alien workers are, as a general rule, considerably higher than what they could obtain within their home country.

Generally, Guam's unemployment rate has averaged above six percent of the total work force, while non-immigrant alien workers have comprised over ten percent of the work force. Tables 1, 2 and 3 provide highlights of the total number of employees on Guam's payrolls and the number and distribution of non-immigrant alien workers on Guam.

TABLE 1
NUMBER OF EMPLOYEES ON
GUAM'S PAYROLLS BY INDUSTRY
MARCH, 1972 - MARCH, 1977¹

Industries ²	March 1972	March 1973	March 1974	March 1975	March 1976	March 1977
<u>Industries</u>	30,365	37,779	38,480	34,938	30,060	30,816
<u>Private Industries</u>	17,010	20,684	22,530	19,241	15,615	16,901
Agriculture	29	51	120	111	131	147
Construction	7,149	7,700	8,280	5,380	3,319	4,019
Manufacturing	996	1,080	1,760	1,211	1,045	977
Transportation and Communication	777	1,712	1,530	1,587	1,417	1,476
Wholesale & Retail Sales	4,619	5,740	5,640	5,541	4,872	3,411
Finance, Insurance & Real Estate	643	797	1,170	1,363	1,295	1,268
Services	2,793	3,604	4,030	4,040	3,536	3,603
<u>Public Sector</u>	13,355	17,095	15,950	15,697	14,445	13,915
Federal Government	6,087	7,480	7,380	6,681	6,014	6,318
Territorial Government	7,268	9,615	8,570	9,016	8,431	7,597

¹Includes Non-immigrant alien workers, U.S. citizens and immigrant
Americans. Figures for 1978 are not available.

²Standard Industrial Classification Manual, 1967 Edition.

Source: Bureau of Labor Statistics, Department of Labor,
Government of Guam.

TABLE 2
NUMBER OF NON-IMMIGRANT EMPLOYEES ON
GUAM'S PAYROLLS BY INDUSTRY
MARCH, 1972 - MARCH, 1978¹

Industries ²	Total Number of Non-Immigrant Aliens						
	March 1972	March 1973	March 1974	March 1975	March 1976	March 1977	March 1978
<u>Industries</u>	7,264	7,684	8,900	5,747	3,283	3,938	3,755
<u>Private Industries</u>	6,821	8,460	8,460	5,618	3,229	3,899	3,716
Agriculture	18	41	70	52	81	94	66
Construction	5,727	5,741	6,800	4,409	2,375	2,986	3,041
Manufacturing	277	278	470	183	99	73	112
Transportation and Communications	70	114	120	66	79	131	67
Wholesale & Retail Trades	344	326	410	420	234	222	166
Finance, Insurance & Real Estate	52	13	50	59	52	48	22
Services	333	430	530	429	309	354	242
<u>Public Sector</u>	443	741	440	129	54	39	39
Federal Government	436	696	390	52	33	16	10
Territorial Govern- ment	7	45	50	77	21	23	29

Non-immigrant alien includes aliens admitted temporarily for specific purposes and periods of time. They include aliens admitted under H-2, Parolee, E-1, E-2 and L-1 visas.

Standard Industrial Classification Manual, 1967 Edition.

Source: Bureau of Labor Statistics, Department of Labor,
Government of Guam.

TABLE 3
DISTRIBUTION OF NON-IMMIGRANT EMPLOYEES ON
GUAM'S PAYROLLS BY INDUSTRY
MARCH, 1972 - MARCH, 1977¹

Industries ³	Percent Distribution by Non-Immigrant Alien Status ²					
	March 1972	March 1973	March 1974	March 1975	March 1976	March 1977
<u>Industries</u>	23.9%	33.6%	23.1%	16.4%	10.9%	12.8%
<u>Private Industries</u>	40.1%	33.6%	37.5%	29.2%	20.7%	23.1%
Agriculture .	62.0%	80.4%	58.3%	46.8%	61.8%	63.9%
Construction	80.1%	74.6%	82.1%	81.8%	71.6%	74.3%
Manufacturing	27.8%	25.7%	27.3%	15.1%	9.5%	7.5%
Transportation and Communications	9.0%	6.7%	7.8%	4.2%	5.6%	8.9%
Wholesale & Retail Trades	7.5%	5.7%	7.3%	7.6%	4.8%	4.1%
Finance, Insurance & Real Estate	8.1%	1.6%	4.3%	4.3%	4.0%	3.8%
Services	11.9%	11.9%	13.2%	13.2%	8.7%	9.5%
<u>Public Sector</u>	3.3%	4.4%	12.8%	0.8%	0.4%	0.3%
Federal Government	7.2%	9.3%	5.3%	0.8%	0.5%	0.3%
Territorial Government	0.1%	0.5%	0.6%	0.9%	0.2%	0.3%

Non-immigrant alien includes aliens admitted temporarily for specific purposes and periods of time. They include aliens admitted under H-2, Bolee, E-1, E-2 and L-1 visas. The percentage distribution is not provided for 1978 because of changes in the compilations of total labor force statistics.

Because of rounding, sums of individual items may not equal totals.

Standard Industrial Classification Manual, 1967 Edition.

Source: Bureau of Labor Statistics, Department of Labor,
Government of Guam.

Of all the non-immigrant visa provisions, the H-2 visa provision has had the greatest affect upon employment opportunities because over the past two decades large numbers of H-2 workers have been permitted to enter Guam. Generally, they have dominated the construction industry although H-2 workers are currently being extensively used in the service industry. Table 4 provides an indication of the number and distribution of non-immigrant aliens employed on Guam. Data prior to March 1976 is not available.

TABLE 4
NON-IMMIGRANT ALIENS ON GUAM'S PAYROLLS
BY MAJOR INDUSTRY AND VISA STATUS:
MARCH 1976 AND MARCH 1978

March, 1976							
Industry	Total	Visa Status					
		H-2 ¹	L-1 ²	E-1 ³	E-2 ⁴	Parolee	Other
All Industries	3283	2665	189	64	181	44	140
Agriculture	81	75	1	2	0	0	3
Construction	2375	2306	32	3	22	1	11
Manufacturing	99	95	0	0	1	2	1
Transportation & Communications	79	0	3	35	8	10	23
Wholesale & Retail Trade	234	75	42	18	58	10	33
Finance, Insu- rance & Real Estate	52	12	9	1	18	8	4
Services	309	102	95	3	74	9	24
Federal Gov't	33	0	0	0	0	13	20
Territorial Government	21	0	0	0	0	0	21

March, 1978							
Industry	Total	Visa Status					
		H-2	L-1	E-1	E-2	Parolee	Other
All Industries	3755	3315	146	60	145	13	76
Agriculture	66	62	1	2	0	0	1
Construction	3041	2970	34	0	30	2	5
Manufacturing	112	103	1	0	4	3	1
Transportation & Communications	67	5	8	31	7	4	12
Wholesale & Retail Trade	166	32	39	23	49	3	20
Finance, Insu- rance & Real Estate	22	4	4	4	5	1	4
Services	242	117	59	0	50	0	0
Federal Gov't	10	0	0	0	0	0	10
Territorial Government	29	22	0	0	0	0	7

- 1 Temporary Alien Worker
- 2 Intra-Office Transfers
- 3 Treaty Trader
- 4 Treaty Investor

Sources: Guam Department of Labor; and draft report entitled "A History of Temporary Employment of Aliens on Guam and Evolution of the U.S. DOL's Intervention Policies 1959-1979" by Center for Applied Manpower Research.

The non-immigrant visa provisions have also had an impact upon the island's overall ability to develop its economy. On one hand, the Treaty Trader, Treaty Investor, and Intra-Office Transfer provisions have enabled the island to attract industries from Asia which in turn have created employment opportunities for U.S. workers and new sources of revenue. However, these provisions also have a negative impact as U.S. owned companies often cannot compete with international companies in the same line of business because the international companies may pay lower wages and are not required to pay social security for their non-immigrant alien laborers.

The temporary alien worker provisions have also had a positive impact upon the island's overall economic development as such workers have been traditionally paid low wages allowing the island to keep construction costs down and to be competitive with nearby Asian countries for the tourist market. However, it has been alleged that wages were artificially depressed by the hiring of temporary workers. Due to this allegation and the desire to attract local workers, the U.S. Department of Labor implemented the Adverse Effect Wage rate in 1977.

(1) Guam has no voice as to which treaty aliens (i.e., Treaty Trader and Treaty Investor) may or may not enter Guam.

The admission, actions, and rights of treaty aliens are governed by the provisions within treaties between the United States and foreign states. When friendship, commerce, and navigation treaties are being negotiated, the impacts of the treaty provisions upon Guam are not taken into consideration by the U.S. government. If Guam should find that the treaty provisions result in hindering its efforts to promote economic growth and to protect U.S. workers and businesses in Guam, there is very little action that the island can take to remedy the situation. Moreover, as decisions to grant or deny treaty alien status are usually made by a U.S. consular officer in an embassy or consulate outside of Guam and as treaty aliens have very

little contact with the Immigration and Naturalization Service, Guam can only complain to the U.S. State Department about the impacts of the actions after they have been implemented.

By the same token, if the United States does not have a treaty with a foreign state, treaty alien status cannot be bestowed to nationals of that foreign state. Thus, Guam cannot admit non-immigrant aliens from these countries even if such aliens would have a positive effect upon the island's economic growth. Nearby Asian countries that do not have treaties with the United States include: Indonesia, Melanesia and Singapore.

- (2) Neither the U.S. State nor Labor Departments are ensuring that non-immigrant alien workers meet the employment qualifications established for treaty aliens and intra-office transfer aliens while Immigration and Naturalization Service is not actively enforcing these provisions of the Immigration and Nationality Act of 1952, as amended.

When applying for E-1, E-2, or L-1 visas for their employees, many employers have learned to dress up their descriptions of the nature of services to be performed by the employee. In addition, the U.S. State Department has often directed U.S. embassies and consulates to take a liberal view of the provisions. As a result, a significant proportion of non-immigrant aliens admitted under the provisions are unskilled or semi-skilled workers, which is contrary to the intent of the Act. Unless there is a complaint, the Immigration and Naturalization Service does not initiate enforcement activities. This lack of enforcement can be attributed in part to the lack of enforcement staff within the Immigration and Naturalization Service on Guam.

- (3) The policies for the certification of temporary alien workers on Guam do not take into consideration the negative impacts upon the island.

The H-2 provision allows an alien having residence in a foreign country, which he has no intention of abandoning, to be admitted temporarily into the United States to perform services or labor that is temporary in nature, if unemployed persons capable of performing such services or labor cannot be found in the U.S. In addition, the Act mandates in Section 214(c) that the U.S. Attorney General, after consultation with appropriate government agencies, is responsible for making decisions regarding the importation of aliens upon receiving a petition from an employer.

As a result of Section 214(c), the U.S. Attorney General designated the U.S. Department of Labor (DOL) as responsible for certifying the unavailability of U.S. workers and the need to admit H-2 workers before final approval by the Immigration and Naturalization Service, an arm of the U.S. Attorney General. In addition, the U.S. Department of Labor was also given the responsibility for developing the regulations governing the H-2 certification process. However, an exception to this policy was made in the case of Guam as the Guam Department of Labor's Employment Service, rather than the U.S. Department of Labor, was given the responsibility for performing the certification function. In July, 1977, this exception was revoked by the U.S. Attorney General and the certification function for Guam was returned to the U.S. Department of Labor as a result of abuses within the H-2 program on Guam and the ineffectiveness of the Guam Employment Service to control importation.

As a result of its new responsibilities and the alien worker problems on Guam, the U.S. Department of Labor published its final rules and regulations governing the certification process for Guam in the September 13, 1977, Federal Register.

Although the regulations covered the certification process of H-2 workers in all industries, the regulations primarily focused upon the construction industry as

the vast majority of H-2 workers on Guam are recruited for this industry (see table 5). In particular, the regulations established adverse effect wage rates to be paid both to U.S. and H-2 workers within the construction industry by those contractors that employ a minimum of one H-2 worker. Although wages were not established for other industries, the U.S. Department of Labor reserved the right to do so if it found that H-2 workers have adversely affected the wages and working conditions of U.S. workers in other industries.

It is apparent from the policies promulgated by the Federal Government, that the Federal Government is not sensitive to the impacts of the Adverse Effect Wage policy upon the island's economic structure. Since the establishment of the policy, the number of U.S. workers within the industry has only slightly increased and H-2 workers continue to dominate the industry. In March, 1979, there were 4,900 individuals employed in the construction industry of which 57% were H-2 workers. Thus, H-2 workers are the primary group directly benefitting from the increased wages. As a general rule, H-2 workers are required by their home country to send home one-half of their earnings. Consequently, the policy instituted by the U.S. Department of Labor and supported by the Immigration and Naturalization Service has resulted in an estimated \$25,000,000 leaving the island yearly.

TABLE 5
H-2 ALIEN WORKERS BY INDUSTRY
MARCH 1978 - March 1979

INDUSTRY	1978 March	1979 March
<u>ALL INDUSTRIES</u>	<u>3,315</u>	<u>3,023</u>
Agriculture	62	2
Construction.	2,970	2,778
Manufacturing	103	72
Transportation & Communications	5	-0-
Wholesale & Retail Trade.	32	50
Finance, Insurance & Real Estate.	4	1
Services.	117	120
Federal Government.	-0-	-0-
Territorial Government.	22	-0-

Source: Guam Department of Labor, Annual Report 1979

- (4) Construction labor productivity and quality of workmanship are not compatible with the wages paid in the construction industry.

At present, the U.S. Department of Labor and the Immigration and Naturalization Service are primarily approving only those H-2 petitions requesting skilled craftsmen and journeymen. As skilled workers, these H-2 workers are required by the U.S. Department of Labor to be paid at the higher wage levels. While these individuals may be skilled by their home country's standards, they often do not meet U.S. skill standards for their trade. As a result, labor productivity and quality of workmanship are low.

On the other hand, during the first two years following the implementation of the adverse effect wage schedule, wages have almost doubled and the U.S. Department of labor is expected to continue increasing wages significantly in the next several years. Although wages have increased, labor productivity and quality of workmanship continue to be considerably lower than that of the U.S. Mainland and Hawaii. Table 6 shows the adverse effect wage rates imposed upon Guam by the U.S. Department of Labor.

LECT WAGE SCALE AND PERCENT INCREASES
FROM PREVIOUS INCREMENT

HOURLY WAGE BY INCREMENT DATE AND PERCENT INCREASE FROM PREVIOUS INCREMENT									
Skill Level	Sept. 13, 1977	Mar. 1, 1978	% +	Sept. 1 1978	% +	Mar. 1, 1979	% +	Sept. 1, 1979*	% +
Level I	\$3.00	\$3.65	21.6	\$4.30	17.8	\$5.00	16.2	\$5.80	16
Level II	\$3.25	\$4.00	23	\$4.75	18.7	\$5.00	15.7	\$6.40	16.3
Level III	\$3.75	\$4.50	20	\$5.25	16.6	\$6.00	14.2	\$7.00	16.6
Level IV	\$4.00	\$4.90	22.5	\$5.80	18.3	\$6.75	16.3	\$7.65	13.3
Level V	\$4.25	\$5.15	21.1	\$6.05	19.4	\$7.00	15.7	\$7.90	12.8

*Beginning September 1, 1979, the Davis-Bacon Act's prevailing wage determined for Guam as the minimum wages payable on federal and federally assisted construction projects to workers also becomes the adverse effect wage.

Source: Federal Register, Volume 44, No. 190; September 28, 1979 and Volume 42, No. 177; September 13, 1977

In order to increase productivity and quality of labor commensurate with higher wages, it has been recommended that efforts be increased to recruit U.S. off-shore workers to Guam, and in particular off-shore workers from Hawaii due to lower plane fares. This, however, is not a viable solution since wages are generally not high enough to attract U.S. off-shore workers. However, if wages are increased to a level attractive to U.S. off-shore workers, Guam's economic base would be unable to support the inflated construction labor costs.

- (5) There are no federal or Government of Guam agencies legally authorized to enforce payment of the adverse effect wage rates.

Adverse wages are set above the Fair Labor Standard Act minimum wage. If the Contract Services Act or overtime requirements are not violated and even if the adverse wage is not paid correctly, the Wage and Hour Division of the Employment Standards Administration (ESA) cannot correct the violation. The only enforcement tool currently available is through alien certification. The violating contractor can be debarred from importing H-2 aliens for a full year if it can be proven that the conditions and terms of alien and local hire were not followed. The complainant, both H-2 and U.S. workers, can only recover wages through a civil suit.

- (6) Regulations requiring funds to be placed in escrow for the return of H-2 workers to countries of origin are not enforced.

Many of Guam's construction companies often cease to do business and leave the island. If there are wage and hour violations against these companies, there is little chance that complainants will recover lost wages. Moreover, all too often when companies close, there is no money in escrow for use by H-2 workers to return home. As there is no money in escrow and the Federal Government does not have funds readily available to assist H-2 workers to return home, these workers often become illegal aliens and continue to work on Guam.

- (7) H-2 workers are not required to be screened for tuberculosis or other communicable diseases before being allowed to enter Guam to work.

Aliens under other types of visas are required to be screened and to possess health certificates before being allowed to enter Guam. The same requirements are not imposed on H-2 workers. During 1978, four H-2 workers were identified as active tuberculosis carriers. Generally, H-2 workers live with 50 to 60 other H-2 workers in barracks; and if an active case of tuberculosis is identified, everyone living in the barracks must be screened. The treatment of workers and the screening and treatment of their contacts uses valuable health services manpower.

- (8) The U.S. Department of Labor lacks the necessary staff to ensure that apprenticeship ratios are met on federal or federally assisted construction projects.

The Davis-Bacon Act of 1931, as amended, requires that, on federal and federally assisted construction projects, a percentage of the work force must be apprentices. However, many contractors are not meeting the requirement which serves as a tool by which to increase local participation and training within Guam's construction industry. Since it is the joint goal of the INS and the U.S. DOL to reduce Guam's dependence upon an H-2 workforce, the regulation must be enforced.

- (9) Wage and hour complaint investigation on Guam is inadequate.

From July 1, 1978 through September 30, 1979, the Guam Department of Labor reported that 842 H-2 workers were involved in payments of back wages as a result of employers' non-compliance with the Fair Labor Standard, Minimum Wage and Hour Act's provisions, and the Adverse Effect Wage Policy. (The latter was a result of civil suits.) These reported violations are but a small percentage of the total number of violations currently taking place.

The Guam Department of Labor does not have the necessary manpower needed to continually monitor construction activities to ensure compliance. In addition, the ESA of the U.S. DOL does not have a full-time staff person on Guam, but instead assigns staff to Guam on a temporary, rotating basis. As a result, most federal ESA officials are unable to establish community contacts necessary for effective enforcement.

- (10) There is asymmetry in the labor market operations: H-2 workers have the U.S. DOL and INS legal protection for their contract, which delineates their craft tasks, while U.S. workers specifically trained to replace them have no protection.

In order to obtain an H-2 worker, an employer must file an application with the U.S. DOL and INS which delineates the craft tasks to be performed

by the worker. As the U.S. DOL and INS policies mandate one H-2 worker to one job, a contractor can lose his privilege to import and use H-2 workers for one year if it is found that one of his H-2 workers is performing a task not identified in the petition filed with the U.S. DOL and INS. However, in the case of U.S. workers employed by contractors that also use H-2 workers, the contractor does not have to use the U.S. worker solely for the task he was hired for. Often contractors utilize U.S. workers in a variety of crafts, at various pay rates and in work gangs. (Work gangs are often utilized by contractors whenever there are common labor jobs to perform and every U.S. worker, regardless of craft training, does that work.) Thus, a U.S. worker hired as a carpenter at a higher pay rate can be required by his employer to perform tasks such as digging holes or pouring concrete at lower pay rates or be fired if he refuses.

ECONOMIC IMPACTS

In order to achieve economic stability and self-sufficiency, obstacles to increase foreign investments and expand Guam's tourism industry must be removed. The Immigration and Nationality Act of 1952 is a source of some obstacles. Issues directly related to the Act are presented below.

- (1) Foreign investments entailing the establishment of a business outlet are hindered by the restrictions placed on the importation of skilled labor.

Foreign investors encounter various problems associated with the establishment and operation of an investment outlet in an area in which skilled labor is scarce. Current immigration laws and regulations restrict the types of skilled laborers which may be brought into Guam. These restrictions, coupled with the fact that Guam has a large but unskilled labor force, act as impediments to foreign investments preventing the necessary manpower needs of the investor from being met.

- (2) The intra-office transfer, treaty trader, and treaty investor provisions, which allow for the importation of multi-national company transferees and employees in executive, management, or other technically skilled employment positions, give the foreign investor a material advantage over the local businessman.

The importation of laborers through the above means or the limited H visa creates a situation in which the foreign investor has an unfair advantage over the local businessman offering the same type of services. With the importation of laborers, the foreign investor must only pay the minimum wage and does not have to pay social security. Consequently, the foreign investor is able to offer services at a lower cost than can be offered by the local businessman.

While the lower cost benefits the consumer, the profits and a portion of the employee wages which are returned to the home country are not recycled into

the local economy. This lessens the contributions to the economy made by foreign investors and reduces the multiplier effect of expenditures on Guam.

(3) Visa requirements and the inconsistency of visa issuances hinder the economic growth of Guam.

The current visa restrictions imposed by the Immigration and Nationality Act fail to consider Guam's location and socio-economic conditions. This, coupled with the problems of inconsistent visa issuances by the American Consulates, create various burdens on those wishing to visit or invest in Guam thereby stunting the potential economic growth Guam stands to achieve.

At the present time, foreign corporations with investments on Guam obtain visas from the American Consulate in the country of origin in order to travel to Guam. The Consulates, however, tend to issue single entry visas, and a new visa must be obtained for each trip. If American Consulates issued multi-entry visas to foreign investors, this problem could be eliminated.

The recent change in the Immigration and Nationality Act regulations concerning the entry status of foreign film crews has resulted in a loss of revenues for Guam. Before the recent rulings, foreign film crews were issued business visas which were easier to obtain than the current H visas which are now required. The H visa provision requires that U.S.-based employers apply for the visa. As foreign film crews only enter Guam to film Guam's scenic background and otherwise have no U.S. ties, it is impossible for foreign film crews to enter Guam. As a result, they now travel to the Commonwealth of the Northern Marianas where entry requirements are easier to meet. Guam's exclusion as a filming site has resulted in a loss of advertisement of Guam's attractions as well as a loss in revenues.

*No longer a constraint as of 6/82 they
can now enter Guam under B122
visa headings*

Current regulations require visas for entry into Guam by Japan, HongKong, Philippines, and other Asian and Pacific residents. The visa requirement also applies to those countries which do not require visas for tourists entering their country from the United States. Legislation seeking to extend reciprocal agreements for entry to those waiving the United States entry visa requirement is currently before the U.S. House of Representatives. The Government of Guam and its Washington Representative have expressed the desire to be included in the legislative action as such an agreement will increase tourist arrivals on Guam. If this agreement was extended to HongKong, for example, many of the problems currently being experienced by potential tourists would be alleviated. Currently, problems in procuring a tourist visa are being experienced because of the existence of two different types of passports from the same country.

- (4) The Immigration and Nationality Act definition of crewmen fails to consider the Pacific location and labor force conditions of Guam resulting in a loss of revenues for Guam.

The current definition of crewmen in the Immigration and Nationality Act does not grant any foreigner serving on a U.S. owned ship the privilege of leaving the ship while it is in a U.S. port. While it appears that the definition excludes foreigners in order to encourage the hiring of U.S. crewmen, it is rare that a supply of able and experienced U.S. crewmen will be waiting employment by ships and boats sailing in the Micronesia area. Therefore, it is not unusual for U.S. owned boats in this region to employ foreigners as crew members. This problem is another example of a federal regulation which applies to Guam yet fails to consider Guam's location or condition of its labor force. In such cases, Guam loses the revenues these crewmen might have contributed if they were allowed to disembark and spend their money on the island.

- (5) The Immigration and Nationality Act does not allow for the limitation or control of foreign investments thereby limiting Guam's ability to plan for the future.

Development and growth of Guam must proceed in an integrated and coordinated fashion. Under current Immigration and Nationality regulations, Guam has no control over foreign investments as there is no limit on the amounts or types of investments which may be made on Guam. Without a means to regulate these foreign investments, Guam stands to loose control of the island's limited economic resources. The need for such regulation is indicated by the presence of foreign investments on Guam which occur in a rather haphazard fashion with little or no planning and coordination with regard to Guam's future and aspirations.

- (6) Guam residents must be processed through the immigration inspection stations when entering the United States.

Guam residents are U.S. citizens and as such should be allowed to enter the United States following domestic Immigration regulations. This, however, is not the case and much discomfort is experienced by residents who must wait immigration processing upon arrival in Hawaii and the West Coast. If U.S. Customs and U.S. Public Health officials were located on Guam, residents traveling to the mainland would not have to undergo the present discomforts.

- (7) The intent of the U.S. Department of Labor's regulations and the policies of other federal departments which provide federal funds for the construction of facilities are inconsistent.

The Economic Development Administration and other federally funded construction contracts are awarded only to those companies with the lowest bid. Those contractors that hire exclusively U.S. workers are usually unable to bid lower than those contractors that predominately use non-immigrant workers as these contractors are not required to pay social security for non-immigrant workers. Even though the U.S. DOL and Immigration and Naturalization Service (INS) have made it more difficult to obtain H-2 workers, the fact that a contractor is able to reduce his costs is an incentive for contractors to continue using non-immigrant workers.

SOCIAL SERVICES

Since Guam is included in the Immigration and Nationality Act, Guam's population will increase and create a greater demand for public services.

1. Permanent resident aliens are eligible to participate in public programs resulting in a decrease in resources and opportunities available for U.S. citizens.

In education, it is difficult to project the number of non-immigrant and immigrant children that will utilize educational programs and facilities. Therefore, effective long-range planning becomes impossible. As shown in Table 7, there is a change almost every month in the number of aliens in our school system. Enrollment of PRA's and non-immigrant aliens is averaging about 2,000 students per year. At an estimated cost of \$2,000 per child, approximately \$4,000,000 per year is spent in educating permanent resident aliens and non-immigrant aliens.

In Public Assistance Programs, the federal contribution is set at 1.1 Million Dollars per year and the local government is required to match this federal contribution. This is becoming burdensome as the local government is absorbing more than half its share. In 1979, public assistance expenditures reached 4 Million Dollars and this year 4.2 Million Dollars, while federal assistance remained at 1.1 Million Dollars.

Permanent Resident Aliens granted entry into the U.S. must have an affidavit of support signed by the sponsor. If these PRA's apply for public assistance, the sponsor is not required to pay because the affidavit of support is not legally binding. Most PRA's receive immediate assistance within five years of entry into the United States as Table 8 indicates. Also, there are common law wives of H-2 workers who apply for public assistance under AFDC because the H-2 worker is not required to give child support.

TABLE 7
PUBLIC SCHOOL ENROLLMENT
SCHOOL YEAR 1979-80

	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.
U.S. Citizens	25,398 (93%)	25,305 (93%)	25,754 (95%)	25,165 (93%)	25,263 (93%)	25,666 (95%)	24,259 (93%)	25,450 (93%)
PRA's	1,280 (5%)	1,579 (6%)	1,057 (4%)	1,542 (6%)	1,554 (6%)	1,101 (4%)	1,478 (6%)	1,515 (6%)
Non-Immigrant Aliens	548 (2%)	423 (1%)	436 (1%)	366 (1%)	366 (1%)	373 (1%)	372 (1%)	376 (1%)
Total	27,226	27,307	27,247	27,073	27,183	27,140	26,109	27,341

1 - Statistics on aliens for previous years are unavailable

Source: Guam Department of Education

TABLE 8
PUBLIC ASSISTANCE PROGRAMS FY-1977¹

<u>Time in U.S. Prior to Application</u>	<u>Total</u>		<u>Adult²</u>		<u>AFDC</u>	
	<u>Cases</u>	<u>Percent</u>	<u>Cases</u>	<u>Percent</u>	<u>Cases</u>	<u>Percent</u>
0-6 months	2	3.0	2	5.9	0	0
7-12 months	1	1.5	0	0	1	3.2
1-2 years	9	13.8	1	2.9	8	25.8
2-3 years	11	16.9	10	29.4	1	3.2
3-4 years	6	9.3	3	8.8	3	9.7
4-5 years	6	9.3	6	17.7	0	0
Over 5 years	30	46.2	12	35.3	18	58.1

¹ This reflects only a sample of 245 cases from the Public Assistance Program.

² Adult includes Old Age Assistance, Aid to the Permanently and Totally Disabled and Aid to the Blind programs.

Source: Federal Comptroller Audit of FY 1977.

In regards to public housing, there are three major types of housing assistance programs. First, there is the Guam Housing and Urban Renewal Authority's Low Income Housing Program which offers housing at reduced rental rates. All 350 units in this program are currently being rented. Of these, 108 units or 30% are rented to PRA's. The second program, Section 8 Rental Subsidy, allows applicants to rent from a private owner and pay only 25% of his net income and the Federal Government will subsidize the remaining fair market value of the rent. There are 137 units or 14% occupied by PRA's under this program.

Although PRA's are eligible to apply under the GHURA-500 Home Ownership Program, numerous PRA's were found to be ineligible because they were not capable of obtaining financing for GHURA-500 homes. These ineligible applicants then participate in the GHURA Low Income Housing Program and the Section 8 Program (see Table 9).

TABLE 9

PARTICIPATION OF PERMANENT RESIDENT ALIENS
IN HOUSING PROGRAMS AS OF JUNE 1980

Programs	Available Units	Units Committed	Units Committed to PRA's	Waiting ¹ List
1. GHURA Low Income Housing	350	350	108 (30%)	
2. GHURA 500	500	497	-0-	300
3. Section 8	988	988	137 (14%)	280

¹ Includes all applicants.

Source: Guam Housing and Urban Renewal Authority

PERMANENT RESIDENT ALIENS

The admission of aliens allowed to settle permanently in the U.S. is generally governed by a numerical limitation system and a visa allocation preference system as established by the Immigration and Nationality Act. The Act sets an annual ceiling of 290,000 immigrants which may enter the U.S. yearly and the Act also limits the number of immigrants which may enter from any one nation to 20,000 immigrants. In addition to the numerical limitation, an immigrating alien is also subject to meeting the documentary requirements of a visa allocation system of preferences, as follows:

- First: Unmarried sons and daughters, 21 years of age or older, of U.S. citizens (20 percent).
- Second: Husbands, wives, and unmarried sons and daughters of permanent resident aliens (20 percent).
- Third: Professionals and people of exceptional ability in sciences and arts who will benefit the economy, culture, or welfare of the U.S. (10 percent).
- Fourth: Married children of U.S. citizens (10 percent).
- Fifth: Brothers and sisters of U.S. citizens 21 years of age or older (24 percent).
- Sixth: Skilled or unskilled workers needed in the U.S. labor market who will not displace citizens or legal alien workers (10 percent).
- Seventh: Refugees from Communist or Communist-dominated countries, the Middle East, or areas struck by natural disaster (6 percent).
- Non Preference: Any applicant not entitled to one of the above preferences for which a visa is available by virtue of the non-use of the seventh preference (6 percent).

The following immigrants, however, are exempt from the numerical and visa preference provisions: husbands, wives, and minor children of U.S. citizens; the parents of an adult U.S. citizen; and refugees admitted under the parole authority of the Attorney General.

Guam is the closest U.S. soil to Asian countries, such as Hong Kong, the Philippines and Korea. As a result, many immigrant aliens wishing to live in the United States, but who cannot afford to move to Hawaii or the continental U.S., are able to finance a move to Guam. Often, as wages are considerably higher on Guam than the immigrant's home country, the immigrant alien is able to raise the additional capital needed to finance the move from Guam to the continental U.S. During the 1970's, approximately 2,000 immigrant aliens per year have entered Guam as evident in the following table:

TABLE 10
PERMANENT RESIDENT ALIENS IMMIGRATING TO GUAM:
Fiscal Year 1963 - 1978

Fiscal Year	Number of Immigrants
1963	689
1964	621
1965	651
1966	741
1967	1,016
1968	1,226
1969	1,413
1970	1,989
1971	1,772
1972	2,162
1973	2,295
1975	2,541
1976	2,824
1977	2,448
1978	1,818
1979	2,724

Note: For any one year, the total numbers of PRA's on Guam exceed the number entering.

Sources: Guam Department of Commerce (for the years 1963-1976) and Immigration Naturalization Service (for the years 1977-1979)

The availability of visas based upon preference status and numerical limitations of those countries of concern to Guam are provided in Table 11.

TABLE 11
AVAILABILITY OF IMMIGRANT VISAS OF COUNTRIES
OF CONCERN TO GUAM FOR JUNE 1974 and MAY 1980¹

Availability of Visas as of June, 1974							
Foreign State	1st	2nd	3rd	4th	5th	6th	Non-Preference
Korea	C	C	8-1-73	C	C	U	U
Philippines	C	C	9-1-69	U	U	U	U
Hong Kong	C	10-15-71	U	U	U	U	U
China (Taiwan)							

Availability of Visas as of May, 1980							
Foreign State	1st	2nd	3rd	4th	5th	6th	Non-Preference
Korea	C	C	10-8-79	C	C	6-8-78	C
Philippines	C	7-1-78	U	U	U	U	U
Hong Kong	C	2-1-76	3-22-69	11-16-75	12-16-68	2-15-77	U
China (Taiwan)	C	10-8-79	C	C	2-22-79	10-1-79	U

1

A date listed under any category means that visas are being issued to those individuals that applied for visas on or before the date listed. As allocation for following months will be based on reports of applicants who have subsequently become documentarily qualified, it is not possible to predict whether these dates will change appreciably in the near future. "C" means current; i.e., numbers were available for all qualified applicants under the category as noted at the time the allocations were made. "U" means that no visas are being issued because the numerical limitation for that category has been met.

Source: Immigration and Naturalization Service and A Study and Review of Laws Pertaining to Alien Investment on Guam, Stanford Research Institute, 1974.

- (1) There are no available administrative controls to ensure that immigrant aliens entering Guam do not exceed the number of available employment opportunities.

Although Guam is in the process of expanding and diversifying its economy, a limited number of job opportunities exist. Thus, the possibility exists that the number of immigrant aliens entering the island could exceed employment opportunities and result in either high unemployment or depressed working conditions for U.S. workers. From 1973-1978, approximately 5,000 permanent resident aliens per year occupied jobs in Guam's public and private employment sectors constituting 19 percent of the island's U.S. resident labor force. Tables 12 and 13 depict the number of permanent resident aliens and their distribution within Guam's labor force for the years 1973 through 1978.

TABLE 12

NUMBER OF PERMANENT RESIDENT ALIENS
ON GUAM'S PAYROLLS BY INDUSTRY
MARCH, 1973 - MARCH, 1978

Industry ¹	Number of Permanent Resident Aliens					
	March 1973	March 1974	March 1975	March 1976	March 1977	March 1978
<u>All Industries</u>	4,000	5,650	5,537	5,166	5,027	4,884
<u>Private Sector</u>	3,535	4,640	4,496	4,310	4,076	4,098
Agriculture	1	10	14	21	15	10
Construction	499	510	431	435	470	441
Manufacturing	273	470	289	403	313	324
Transportation and Communications	155	310	280	254	198	190
Wholesale & Retail Trade	1,558	1,870	1,955	1,680	1,893	1,913
Finance, Insurance, and Real Estate	130	260	302	304	273	215
Services	919	1,210	1,225	1,213	914	1,005
<u>Public Sector</u>	465	1,010	1,041	856	951	786
Federal Government	344	730	804	577	656	487
Territorial Govern- ment	121	280	237	279	295	299

¹

Standard Industrial Classification Manual, 1967 Edition

Source: Guam Department of Labor, Bureau of Labor Statistics

TABLE 13
DISTRIBUTION OF PERMANENT RESIDENT ALIENS
ON GUAM'S PAYROLLS BY INDUSTRY
MARCH, 1973 - MARCH, 1977¹

Industry ²	Percent of Permanent Resident Aliens ³				
	March 1973	March 1974	March 1975	March 1976	March 1977
<u>All Industries</u>	13.3%	19.1%	19%	19.3%	18.7%
<u>Private Sector</u>	25.7%	33%	33%	34.8%	31.3%
Agriculture	10%	20%	23.7%	42%	28.3%
Construction	25.5%	34.5%	44%	46.1%	45.5%
Manufacturing	34%	36.7%	28.1%	68.8%	34.6%
Transportation & Communications	9.7%	22%	18.4%	19%	14.7%
Wholesale & Retail Trade	29.3%	35.7%	38.2%	36.2%	36.5%
Finance, Insurance and Real Estate	16.6%	23.2%	23.2%	24.6%	22.4%
Services	29%	34.6%	34%	37.6%	28%
<u>Public Sector</u>	2.8%	6.5%	6.7%	5.9%	4.2%
Federal Government	5.1%	10.4%	12.1%	9.6%	4.7%
Territorial Government	1.3%	3.3%	2.7%	3.3%	3.9%

¹ Total labor force excludes non-immigrant aliens. The percentage distribution is not provided for 1978 because of changes in the compilation of labor force statistics by industry.

² Standard Industrial Classification Manual, 1967 Edition.

³ Because of rounding, sums may not total 100%.

Source: Guam Department of Labor, Bureau of Labor Statistics.

- (2) The certification regulations promulgated by the U.S. Department of Labor for third and sixth preference admissions are designed to reflect the needs of the continental U.S. rather than those of Guam.

Before an alien is granted a third or sixth preference visa, certification must be made by the U.S. Department of Labor (DOL) that the alien possesses skills of exceptional ability or skills in which there are labor shortages. To facilitate the certification process, the U.S. Department of Labor has developed and uses two occupation schedules: one that lists occupations for which certification can be made and the other that lists occupations for which certification cannot be made.

The certification of an occupation does not mean a visa will be automatically issued by INS. There is also a numerical limitation on the number of aliens that can enter the U.S. under the third and sixth preference categories. The Act, as amended, establishes a quota of 20,000 immigrant aliens from any one country of which no more than ten percent may fall under the third preference category and no more than ten percent may fall under the sixth preference category. Of the immigrants entering Guam, approximately six percent are third and sixth preference immigrants. They are predominantly from the Philippines, Korea, Hong Kong and China (Taiwan). Table 14 shows the number of third and sixth preference immigrants entering Guam from 1975 to 1979.

TABLE 14
PERMANENT RESIDENT ALIENS ENTERING GUAM
UNDER THE THIRD AND SIXTH PREFERENCES: 1975-1979

<u>Year</u>	<u>Number of Immigrant Aliens</u>
1975	158
1976	166
1977	134
1978	147
1979	172

Source: Immigration and Naturalization Service.

Of concern, are the schedules used by the U.S. Department of Labor to determine eligible and ineligible occupations and skills for which the issuance of third and sixth preference visas are based. Presently, the list of occupations within the two schedules are based upon national employment conditions which do not necessarily reflect Guam's employment conditions. Thus, a visa can be issued even if the occupation is not needed on Guam or denied even if the occupation is needed. Also of concern is the case where a visa is requested for an occupation not listed on either schedule. In this case, the decision is left entirely to the discretion of the U.S. Secretary of Labor or his designee.

(3) Temporary non-immigrant alien construction workers are being converted to permanent resident aliens under the sixth preference.

Immigrant aliens migrating to Guam under the sixth preference for their construction related skills are of particular concern. As a result of the Adverse Effect Wage Policy mandated by the U.S. Department of Labor during September, 1977, there has been a substantial move by employers to convert their H-2 workers to permanent resident aliens under the sixth preference category. The advantages of conversion are that the contractor is no longer subjected to the long, involved process to import workers and that the contractor can pay wages below the adverse effect rate.

The move to convert H-2 workers by construction employers is evident by the increased number of sixth preference visa applications received by the U.S. Department of Labor and Immigration and Naturalization Service following the implementation of the adverse wage policy. In early 1978, there were twelve (12) applications on file for sixth preference visas; and by December, 1978, there were over 500 approved sixth preference visa applications with an additional 200 applications being processed. Moreover, these converted construction workers are not necessarily skilled workers. For example, a local contractor, after converting six of his H-2 workers to permanent resident aliens under the sixth preference, enrolled the workers in the Guam Community College Skill Training Program.

The conversion of H-2 workers to permanent resident aliens under the sixth preference visa provision circumvents the primary purpose of the Adverse Effect Wage Policy developed for Guam's temporary alien workers. First, the regulations were developed to encourage the construction industry to hire U.S. workers as the industry depended heavily upon H-2 workers.

Secondly, the regulations were developed and imposed on Guam because H-2 workers artificially depressed the working conditions and wages of U.S. workers similarly employed. It is felt that H-2 workers who are converted to permanent resident under the sixth preference will continue to accept lower wages and working conditions because these wages and conditions are often higher than those in the worker's country of origin. Consequently, working conditions and wages for U.S. workers employed in similar jobs may continue to be depressed.

The H-2 provision, by definition, gives temporary immigrant status. On the other hand, sixth preference provides permanent status. Unless the nature of the job performed by the H-2 worker has changed, it is inconsistent that a temporary H-2 worker can be converted to permanent status.

NATURALIZATION

Naturalization is the process through which immigrant aliens may obtain United States Citizenship. Current regulations allow for immigrants under the permanent resident alien status to apply for U.S. citizenship after having resided in the U.S. for five years and upon the successful completion of the citizenship examination. An exception to these regulations occur in the case where an alien marries a U.S. citizen and immediately becomes a permanent resident. In this case, permanent resident aliens need only reside within the U.S. for a period of three years after which they can apply and be examined for U.S. citizenship. Once these aliens become U.S. citizens, they obtain voting rights and are eligible to bring relatives into the United States.

- (1) The Immigration and Nationality Act does not allow for control of the number of persons naturalized and the subsequent migration of new aliens under the immediate relative clause.

Naturalization of permanent resident aliens on Guam occur at a rate of approximately 1000 persons per year. According to the current naturalization procedures, a naturalized citizen over 21 years of age is eligible to apply for the entrance of their immediate relatives as immigrants to the United States. Once these new immigrants are naturalized, they too may petition for their relatives, and so on.

ILLEGAL ALIENS

There is a conservative Immigration and Naturalization Service estimate of 2,000 H-2 and 1,500 all other non-immigrant illegal aliens on Guam. They have become illegal aliens because the work for which the visa was issued has been completed.

1. Enforcement activities to ensure that aliens have left Guam are inadequate.

In September of 1979, a crackdown of illegal aliens was conducted by the Immigration and Naturalization Service. A total of 534 illegal aliens were taken into custody. However, only half of this number was deported while the remainder stayed on Guam because they disputed their wages or were given a 30-60 day extension of stay for voluntarily reporting themselves to INS.

Guam was able to conduct this crackdown of illegal aliens because the INS office on Guam was fortunate to acquire an enforcement task force from one of the United States. As soon as funds were exhausted, the enforcement task force was returned to the state. Our present enforcement task force consists of only one investigator.

The following are reasons contributing to the illegal alien problem on Guam:

1. Regulations which require the employer to place funds in escrow for the return of the employee are not strictly enforced.
2. No agency is responsible for ensuring that the adverse effect wage rate is paid to employees which results in the employee remaining on Guam to secure back pay.

REFUGEES

The Immigration and Nationality Act allows refugees to enter into the U.S. in two ways: (1) Entry of 17,400 refugees per year under the conditions that a) They be examined by an immigration officer in a non-communist or non-dominated communist country, and b) They are fleeing because of fear of being persecuted on the grounds of race, religion, or political opinion; and (2) Through the U.S. Attorney General paroling them for emergency reasons or for the public interest.

The first provision allows entry of only 17,400 refugees per year and these refugees must meet ideological and geographical requirements. Refugees frequently utilize the second provision as it is more liberal in the sense that it does not set a numerical limitation on refugees. To understand this provision, one must realize that not only refugees are paroled, but any person that the Attorney General and appropriate members of the House and Senate Judiciary Committees see fit to permit entry into the U.S. for emergency reasons, humanitarian reasons, and other reasons under their discretionary authority.

The refugees on Guam are Indo-Chinese who are either Vietnamese, Cambodians, or Laotians. There are approximately 367 Indo-Chinese refugees on Guam.

(1) Federal funds for assisting refugees may be terminated.

The Indo-Chinese Refugee Assistance Program (IRAP) administered by the Guam Department of Public Health and Social Services aides refugees in money payments for basic livelihood requirements such as food, clothing, shelter, personal incidentals, and medical services. Approximately 80 cases are currently being assisted. Last year a gradual reduction of 25% in federal funds per year for the IRAP was contemplated. However, the states that would be affected by the reduction complained that if funds were reduced, the states' financial situation would suffer. Therefore, the Federal Government, at least for now, has borne 100% of the cost for the IRAP.

Refugees are also assisted by Catholic Social Services, a private, non-profit organization, which will continue to receive 100% federal funding until August 1, 1980. Thereafter, Catholic Social Services presumes that a restructuring of the channeling of funds by the Federal Government will take place. They feel that funding will not altogether cease because the President has increased the number of refugees allowed into the U.S. What may happen, however, is that the Department of Health, Education, and Welfare will channel funds to Government of Guam which would then be responsible for disbursing funds to qualified applicants. However, if this does not occur, then Catholic Social Services from Guam will request their parent company, the United States Catholic Conference, to assist them in their refugee reunification program, educational program (driver education and English Language), and employment program. The third option, is to face the hard reality of no federal funding at all.

- (2) Third Country Nationals who are considered by the Immigration and Naturalization Service (INS) to be Parolees are here on Guam for an indefinite period of time with minimal assistance from the U.S. Government.

Presently, there are 90 Third Country Nationals on Guam who were evacuated along with the Indo-Chinese refugees. The Immigration and Naturalization Service has given them an indefinite parolee status which means that they are free to live and work in the U.S. However, they are not entitled to refugee assistance programs and if they travel outside the U.S. or Guam, they jeopardize their status.

RECOMMENDATIONS

As presented in this paper, the Immigration and Nationality Act and its attendant rules and regulations, as they pertain to Guam, dramatically affect the island and its residents. Frequently, provisions of the Act and its regulations are not sensitive to the needs and aspirations of the island even though the basic intent is to protect the interests of the United States, of which Guam is a part.

The Government of Guam must eventually obtain complete control over immigration to the island. This entails that Guam be given the authority to develop, regulate, and enforce rules, regulations, and laws which are sensitive to local needs and aspirations. In effectuating this recommendation, the Immigration and Nationality Act of 1952 itself must be amended.

In the interim, however, immediate changes to the Act, its regulations, and its administration must be made such that the negative impacts currently being experienced can be nullified. A basic tenet of these changes is that all work performed by alien workers be considered temporary in nature to recognize that U.S. workers should eventually replace all temporary workers. These changes are presented below.

Statutory Changes

If Guam is not immediately given the authority to develop, regulate, and enforce immigration laws and regulations, certain immediate changes to the law must be implemented.

1. Guam must be exempted from that provision which prohibits foreign crew members employed on U.S. ships from disembarking in Guam's port. Although designed to encourage the hiring of U.S. crew members, U.S. shipping lines that operate in this part of the world frequently hire foreigners due to the unavailability of U.S. workers. Once hired, foreign crew members should not be penalized for actions taken by U.S. shipping lines.

2. The Act must be revised to give the Government of Guam the authority to regulate and enforce the H-2 work program. As it is not likely that U.S. construction workers from Hawaii and the West Coast would migrate to Guam, the Government of Guam must be in a position to protect local U.S. workers from the impacts of importing H-2 workers.
3. The Act must be revised to require that all H-2 workers be screened for communicable diseases prior to arrival on Guam by the American Consulate and upon arrival on Guam by U.S. health officials.
4. The Act must be revised to allow Guam to control naturalizations. This does not entail that Government of Guam should restrict the number of naturalizations, but entails that Government of Guam should be in a position to plan for population growth due to immigration and naturalization. Local control becomes more important as each naturalized person can bring in a large number of relatives.
5. As the Act vaguely defines upper managerial, technical staff, and other potential staff in relation to intra-office transferees, the Act must be revised to ensure that only exceptionally qualified transferees be allowed entry.
6. Laws which provide for 100% federal assistance to refugees must be maintained as the local government is not able to absorb these costs.
7. Since firms which employ H-2 workers and other types of non-immigrant employees have a competitive advantage over other firms which only employ U.S. workers, certain laws which require the selection of the lowest bidder (e.g., the Economic Development and Public Works Act) must be revised to ensure fair competition.
8. As the Federal Government negotiates treaties with foreign countries that ultimately affect Guam, a mechanism by which the local government can participate in or review these treaties prior to implementation must be established.

9. The Immigration and Nationality Act must also be revised to delegate to Government of Guam the authority to enforce payment of the adverse effect wage rate. Firms which employ at least one H-2 worker must pay all its workers the adverse effect wage rate. In many instances, however, the adverse effect wage rate is not paid and the employee (especially U.S. workers) can only recover lost wages through the judicial process. As part of the designation of Government of Guam, the enforcement function should address the concern that employees should be able to obtain fair compensation through an administrative process and not just through the judicial process.
10. The Act must be revised to establish a quota on the number of immigrant aliens that may migrate to Guam.
11. The Act must be revised to more clearly define what constitutes "substantial investment," "supervisory position," "special qualifications," or "responsible capacity" within the meaning of the Treaty Trader and Treaty Investor visa provisions.
12. The Act should be revised to provide that, in the case of Guam, labor certification would be required and must be obtained from the Government of Guam before treaty trader and treaty investor visas can be issued to those entities desiring to locate their foreign based personnel on Guam.
13. Employment laws should be revised to protect U.S. workers so that they cannot be forced to perform those duties not normally associated with their job title.
14. The statute must be changed to reflect that the Affidavit of Support which is signed by a sponsor of a permanent resident alien must be a binding legal document.
15. Temporary alien workers must be required by law to provide child support payments.

Administrative Changes

A multitude of adverse impacts have been experienced on Guam due to the administration of the Immigration and Nationality Act. The recommended changes to rules and regulations are presented below.

1. As in the past, the responsibility for the certification of H-2 workers should be returned to the Government of Guam since it is more sensitive to the needs of the island.
2. The regulations governing the H-2 program must also be changed to include the requirement that skill tests be administered to all H-2 workers upon arrival on Guam.
3. Regulations must also be changed to require that U.S. Customs and Public Health Officials be brought to Guam to further assist in processing immigrants and U.S. citizens.
4. Regulations which result in the designation of Third Country Nationals as indefinite parolees must be changed so that these parolees can be returned to their home country. *They were given Permanent Alien Resident Status by I NS*
5. The administrative practice of issuing single entry visas to substantial investors must be changed so that these investors be granted multiple entry visas.
6. At present, the U.S. Department of Labor will only certify H-2 workers in certain industries (e.g., agriculture, construction, entertainment, etc.). However, as there is a need for workers in other industries (e.g., manufacturing), the interpretation of the regulations must be expanded to include alien workers in these industries provided that U.S. workers are not available. Moreover, regulations must continue to require that U.S. workers be trained.
7. The requirement that foreign film crews must obtain H visas should be changed so that they only be required to obtain business visas as was originally practiced.

8. Certification regulations for H-2 workers should be strengthened by prohibiting contractors from being able to require U.S. workers to perform tasks that are not a part of the craft that he was hired for, at various pay rates and in work gangs.
9. The responsibility for performing the labor certification required for third and sixth preference immigrant visas should be given to the Government of Guam and the occupations for which the issuance of visas are based should reflect Guam's employment conditions and not national employment conditions.
10. Federal funds for housing and welfare programs must be increased to accommodate the needs of Permanent Resident Aliens.

Enforcement

Of paramount importance to the resolution of existing and potential problems is the need for a greater federal commitment toward the enforcement of the Immigration and Nationality Act, existing regulations, and proposed amendments. Although enforcement activities in total must be increased, the following major enforcement activities must be addressed.

1. Increased enforcement is needed to ensure that employees are paid the adverse effect wage rate.
2. Increased enforcement is needed to ensure that apprenticeship ratios are followed.
3. Enforcement activities must be increased to ensure that funds are placed in escrow to provide for the return of temporary workers after job completion.
4. Enforcement activities must be increased to ensure that illegal aliens are deported on a continuing basis.
5. Enforcement activities must be increased to ensure that alien workers possess the skills for which they were imported.