Education and Training Series

Major Issues in Immigration Law

A Report to the Federal Judicial Center

MAJOR ISSUES IN IMMIGRATION LAW

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Federal Judicial Center
1987

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I. INTRODUCTION

The immigration policy of the United States reflects a deep-seated national ambivalence. On the one hand, we pride ourselves on our heritage as a nation of immigrants, as a refuge for "huddled masses yearning to breathe free."[1] On the other hand, our laws have often manifested other, less generous themes—occasionally even outright hostility—in the nation's response to migration. Indeed, the laws had begun to do so well before Emma Lazarus penned those famous words for the Statue of Liberty. In 1875 Congress enacted the first enduring federal controls on the migration of aliens, beginning with attention to special categories that were seen to pose various kinds of dangers. Prostitutes, criminals, paupers, and Chinese laborers were among the earliest groups forbidden to enter. Anarchists joined the list around the turn of the century. Extensive additional controls were enacted in succeeding years, especially in an act adopted in 1917, in the midst of World War I.

In the 1920s, Congress added to these qualitative requirements a system of numerical ceilings, adopting the view that limits on the nation's absorptive capacity required some control on the large numbers of aliens who had immigrated in the early years of the century. (The peak year was 1907, when 1,285,000 immigrants gained entry.) Certainly such a perception was based in part on legitimate concerns—concerns that have grown in force as the planet has become more crowded and more volatile. But Congress's imposition of ceilings some sixty-five years ago also reflected other, more disturbing agendas. These were not simple ceilings, applied on a first-come, first-served basis. Instead, acting in part on the basis of explicit eugenic theories now readily seen as racist, Congress imposed a system of quotas based on the national origins of the would-be immigrants. The quota laws reserved the largest allocations for what Congress considered the more desirable nationalities of Northern Europe.

The national-origins system was perpetuated, with slight modifications, when Congress enacted a new, comprehensive codification

1. E. Lazarus, *The New Colossus,* reprinted in J. Higham, Send These to Me: Jews and Other Immigrants in Urban America 78 (1975).

of immigration and citizenship laws in the Immigration and Nationality Act of 1952 (INA).[2] Indeed, the national-origins scheme survived until the landmark amendments of 1965, which established a more neutral quota system based largely on family ties and employment skills.[3] The 1965 system remains in effect today, with only slight modifications. Even during the earlier era, however, the more generous theme in the American response to immigration found frequent expression, not only in the relatively large numbers of immigrants admitted throughout the period (compared with other countries' efforts at the time) but also in sizable refugee programs that began after World War II.

This tension between humanitarian impulse and concern over the numbers and character of immigrants has left us with a complex code of immigration and nationality laws.[4] Administrative forums, particularly in the Department of Justice and the Department of State, provide the principal venue for resolving the dilemmas, interpreting the statute, and deciding on individual controversies. With great regularity, however, that tension also results in litigation. Courts are asked to construe unclear provisions of the statute or regulations, or to declare invalid an exercise of the discretion explicitly and frequently granted by the INA to administrative agencies—a particularly striking feature of that statute. (This discretion to deny a benefit exists in addition to the ordinary authority to apply the statutory prerequisites, which themselves may be quite demanding.) Less often, for reasons to be explored later, litigation raises claims founded on constitutional law.

Court cases often present another, more immediate dilemma. On the one hand, the alien present in the courtroom may be motivated by understandable, even appealing and noble, plans and desires that simply happen to run afoul of the immigration laws. On the other side stand the equally important—but almost always less gripping—needs for bureaucratic regularity, effective enforcement,

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2. Act of June 27, 1952, Pub. L. No. 82-414, 66 Stat. 163. Although it has been frequently amended since 1952, the INA remains the major compilation of statutory law in the immigration field. It is codified in title 8 of the U.S. Code, using a numbering scheme that corresponds erratically to the numbering of the INA. Because practitioners and writers in the field often use INA section numbers, rather than the U.S. Code scheme, and because the regulations and INS Operations Instructions (an internal manual) are also numbered to correspond to INA numbers, this work provides citations both to the INA, as currently amended, and to 8 U.S.C.

3. Act of Oct. 3, 1965, Pub. L. No. 89-236, § 3, 79 Stat. 911, 912-13.

4. One court found that the INA bears a "striking resemblance" to "King Minos' labyrinth in ancient Crete." Lok v. INS, 548 F.2d 37, 38 (2d Cir. 1977). Another voiced a more despairing sentiment: "We are in the never-never land of the Immigration and Nationality Act, where plain words do not always mean what they say." Yuen Sang Low v. Attorney Gen., 479 F.2d 820, 821 (9th Cir. 1973).

consistency, and clear line drawing that must characterize a system coping with millions of applications, covering a wide variety of benefits, each year.[5]

This monograph offers a somewhat selective introduction to the immigration laws of the United States.[6] It describes the major features of the relevant substantive and procedural law and highlights several areas in which controversies persist, particularly those controversies that judges are most likely to encounter. The monograph goes to press shortly after enactment of the landmark Immigration Reform and Control Act of 1986 (IRCA),[7] a long-debated measure designed primarily to master the problem of illegal migration to the United States. The act's major features are described in chapter 9: new sanctions applied to employers of undocumented aliens, a limited antidiscrimination provision, an amnesty meant to legalize the status of aliens who have been here unlawfully since January 1, 1982, and special arrangements for agricultural workers. A few other provisions of the IRCA are noted at the appropriate places in chapters 2 through 7. In addition, two other statutes containing significant amendments to the INA also passed during the waning hours of the Ninety-ninth Congress, although with much

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5. *See generally* Achacoso-Sanchez v. INS, 779 F.2d 1260, 1265 (7th Cir. 1985).

6. This monograph does not discuss U.S. citizenship law. It may be helpful in evaluating some provisions of the immigration laws, however, to recount three basic provisions. With extremely limited exceptions, anyone born in the territorial United States is a U.S. citizen by birth even if the parents are aliens temporarily or illegally present. *See* C. Gordon & H. Rosenfield, Immigration Law and Procedure §§ 12.4b, 12.5, 12.6 (rev. ed. 1987); U.S. Const. amend. XIV, § 1. In addition, under current law, children born abroad to an American citizen gain U.S. citizenship from birth, unless the citizen parent failed to satisfy certain minimal requirements of residence in the United States prior to the birth. *See* INA § 301(c)–(e), (g); 8 U.S.C.A. § 1401(c)–(e), (g) (1970 & Supp. 1987); C. Gordon & H. Rosenfield, *supra,* at § 13.1d. Naturalization is also available to lawful permanent resident aliens, on a fairly routine basis, after five years of residence in this country (three years for spouses of U.S. citizens). *See* C. Gordon & H. Rosenfield, *supra,* at § 15.5.

7. Pub. L. No. 99-603, 100 Stat. 3359 [hereinafter IRCA of 1986]. Various versions of this legislation, often known as the Simpson-Mazzoli bill or the Simpson-Rodino bill, have been debated in Congress for at least six years. Earlier versions dealt with a much wider array of issues than the 1986 legislation (including proposals for changes in legal immigration quotas and categories, political asylum, and adjudication mechanisms), but all failed to pass. The successful 1986 legislation concentrated almost exclusively on illegal migration in order to minimize the controversy that had blocked earlier enactment. The relevant congressional committees, however, have vowed renewed efforts in 1987 to deal with many of the other issues not resolved in the 1986 legislation.

less fanfare.[8] The most important such changes are also noted in the chapters that follow.[9]

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8. Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 [hereinafter IMFA of 1986]; Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 [hereinafter INA Amendments of 1986].

9. The changes enacted in the three 1986 laws usually take the form of amendments to the INA. The new or amended provisions therefore are usually cited here by INA section number, with a parallel citation to 8 U.S.C.A. (Supp. 1987), often supplemented by a citation to the appropriate 1986 statute, using the abbreviations appearing in the preceding footnotes. It should also be noted that descriptions of these provisions are offered without benefit of the implementing regulations and administrative interpretations, which may have considerable bearing on the ultimate effect and effectiveness of the new legislation, particularly of the IRCA.

II. BASIC PROCESS AND ADMINISTRATIVE STRUCTURE

Process and Players

Aliens may come to the United States as immigrants or nonimmigrants. Immigrants are admitted for permanent residence, and most become eligible for U.S. citizenship after five years of residence. They need not naturalize, however; they may maintain lawful permanent resident status indefinitely. Nonimmigrants come for a particular purpose (e.g., as students, tourists, diplomats, or temporary workers) and are generally admitted only for specified time periods.[10] It is usually possible to extend those time periods, and under certain limited circumstances nonimmigrants may "adjust status" to that of an immigrant, thereby gaining the right of permanent residence.

Consuls and the Visa Process

Virtually all aliens must obtain a visa before coming to the United States.[11] A visa does not guarantee entry; it represents only a kind of advance permission to come to the United States and apply for admission at the border. The immigration inspector at the port of entry is empowered to decide that an alien is inadmissible despite his or her possession of a valid visa, although this rarely happens. Transportation companies are subject to fines and other expenses if they bring an alien to this country without the proper documents[12]—ordinarily, a valid passport issued by the country of nationality and a visa issued by a U.S. consul.

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10. The basic provisions for nonimmigrant admission appear in INA §§ 101(a)(15), 214; 8 U.S.C.A. §§ 1101(a)(15), 1184 (1970 & Supp. 1987). Reference is often made to nonimmigrant visa categories and equivalent admission categories based on the lettered subparagraphs of INA § 101(a)(15). For example, tourists receive B-2 visas, students F-1 visas, and fiancés and fiancées K visas. Immigrant categories are covered in greater detail in chapter 4.

11. *See* INA §§ 211(a), 212(a)(20), (26); 8 U.S.C.A. §§ 1181(a), 1182(a)(20), (26) (1970 & Supp. 1987). The 1986 IRCA also authorized a visa waiver pilot program for tourists from a maximum of eight countries with low visa abuse rates. INA § 217, 8 U.S.C.A. § 1187 (Supp. 1987).

12. INA §§ 233, 273; 8 U.S.C. §§ 1223, 1323 (1982).

Consuls are officials of the Department of State. Stationed only in foreign countries, consular officers not only issue visas to aliens who want to come to the United States as immigrants or nonimmigrants but also provide assistance of various kinds to American citizens in the country to which they are posted.

For most nonimmigrant admission categories, the applicant simply applies to the consul for a visa and demonstrates his or her qualifications. For a few nonimmigrant categories and nearly all immigrant categories, however, the consul will not consider the case until the applicant has gained preliminary approval by means of a petitioning process carried out in the United States. Such "visa petitions" are usually filed by a U.S. citizen or lawful permanent resident, *not* by the alien who hopes ultimately to receive the visa (the "beneficiary" in immigration parlance). The petitioner takes the initiative to demonstrate to the attorney general's representatives in this country that certain qualifications are met—for example, that he or she has the family relationship to the petitioner necessary for certain immigrant categories, or that there is an insufficient supply of American workers for the job the beneficiary would fill.[13]

Adjustment of Status

Adjustment of status is a procedure whereby some aliens already in the United States can become lawful permanent residents without having to travel abroad in order to receive an immigrant visa from a consul.[14] It is employed most commonly by nonimmigrants who marry U.S. citizens during their time in this country. The Justice Department official adjudicating the application must determine that the usual requirements for approval of a visa petition are met and also must make the determinations ordinarily made by a consular officer (primarily, that the alien is not disqualified under one of the exclusion grounds set forth in INA § 212(a)).[15] As in consular determinations, the burden is on the alien to demonstrate that he or she is not excludable.[16]

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13. For most employment-based immigration, the process begins with the filing of a request for "labor certification," which is ultimately adjudicated by the Department of Labor's Employment and Training Administration. *See* INA § 212(a)(14); 8 U.S.C. § 1182(a)(14) (1982); 20 C.F.R. §§ 656.20–.21 (1985).

14. Adjustment is authorized by INA § 245; 8 U.S.C.A. § 1255 (1970 & Supp. 1987), which imposes several additional requirements. Adjustment is considered further in chapters 4 and 6.

15. 8 U.S.C.A. § 1182(a) (1970 & Supp. 1987). *See* Yui Sing Tse v. INS, 596 F.2d 831, 834 (9th Cir. 1979).

16. Ahwazi v. INS, 751 F.2d 1120, 1122 n.1 (9th Cir. 1985).

Immigration and Naturalization Service

Other than the responsibility for issuing visas, nearly all of the authority to administer and enforce the immigration laws is vested in the attorney general, who in turn delegates most of his or her responsibilities to other officials in the Department of Justice. The most important unit in the department is the Immigration and Naturalization Service (INS), headed by the commissioner of immigration and naturalization. The INS maintains a central office in Washington, D.C., as well as four regional offices and thirty-four district offices throughout the United States. The district office, headed by a district director, is the basic working unit of the INS. Most aliens—as well as citizens petitioning to bring in aliens as immigrants or nonimmigrants—come into contact only with a district office. Immigration examiners in the district office rule on a wide variety of matters, including visa petitions, requests for extensions of stay filed by nonimmigrants, requests for permission to work filed by nonimmigrants in those categories to which such permission may be granted, and applications for adjustment of status.[17] In addition, INS inspectors examine persons arriving at more than two hundred designated ports of entry. Each district office also has an investigatory staff that carries out enforcement of the immigration laws in the interior of the country. The Border Patrol, a separate enforcement arm of the INS, is charged with the duty to police our extensive national boundaries and apprehend people attempting clandestine entries.

Immigration Judges and the Board of Immigration Appeals

The second important administrative unit in the Department of Justice is the Executive Office of Immigration Review (EOIR), which consists of two subunits, the immigration judges and the Board of Immigration Appeals (BIA).[18] Immigration judges are referred to as "special inquiry officers" in the INA. The "immigration judge" label entered into usage in the early 1970s and now appears in the regulations; the terms are synonymous. Apparently seen as a more prestigious title than special inquiry officer, immi-

17. For the past few years, the INS has also been using a system of four Regional Adjudication Centers (RACs) for centralized high-volume processing of a few categories of applications that do not require a personal interview. *See* 62 Interpreter Releases 531, 542 (1985) [hereinafter "Interp. Rel."]; 8 C.F.R. § 103.1(s) (1986). Recently the official title was changed to "Regional Service Center," 51 Fed. Reg. 34,439 (1986), but the nickname "RAC" seems likely to survive.

18. 8 C.F.R. §§ 3.0, 3.1 (1986). Although the functions are somewhat similar, immigration judges are not administrative law judges within the meaning of 5 U.S.C. §§ 3105, 7521 (1982).

gration judge may also reflect more accurately the growing independence and "judicialization" of these officials over the three decades since the INA was adopted. Until 1983, immigration judges were formally part of the INS, although even there they had gradually achieved enhanced professionalism and greater insulation from enforcement functions.[19] A 1983 reorganization separated the corps of immigration judges from the INS altogether and made them accountable to the attorney general through the EOIR. Most immigration judges, however, still maintain their courtrooms in the same buildings occupied by INS district offices. The primary business of immigration judges is to hear exclusion and deportation cases brought by the INS, although they also have jurisdiction over a narrow range of other matters.[20] There are currently approximately sixty immigration judges throughout the country.

The BIA is a five-member appellate body, appointed by the attorney general and located in metropolitan Washington, D.C. Unlike the position of special inquiry officer, the BIA is not established by statute. Throughout its lengthy history the board has been solely a creature of regulation. Many judicial opinions have mistakenly considered it part of the INS, but the BIA has always been maintained as a separate and independent entity, directly accountable to the attorney general.[21]

The BIA's most important jurisdiction consists of appeals from immigration judges in exclusion and deportation cases.[22] Both the alien and the INS may appeal adverse decisions.[23] The BIA also has significant appellate authority over a variety of other decisions of the district directors, on matters that never go before an immigration judge.[24] For example, if a newly wed U.S. citizen files a visa petition seeking to bring in her alien husband as an immigrant, and the district office denies the petition on the ground that the marriage is a sham, the petitioner may appeal directly to the BIA.

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19. Some commentators, however, question the extent of this evolution. *See, e.g.,* Note, *Developments in the Law: Immigration Policy and the Rights of Aliens,* 96 Harv. L. Rev. 1286, 1363-66 (1983).

20. *See* 8 C.F.R. § 3.10 (1986).

21. Occasionally, the BIA's decisions are subject to further administrative review by the attorney general personally, under a process known as "referral." 8 C.F.R. § 3.1(h) (1986).

22. *See id.* § 3.1(b).

23. *See generally* Borden v. Meese, 803 F.2d 1530 (11th Cir. 1986).

24. *See* 8 C.F.R. § 3.1(b)(3), (5), (6) (1986).

Other Appeals

The BIA's appellate authority does not extend over the full range of decisions made by immigration examiners in the district office, however. Some of these decisions (e.g., denial of a transfer from one nonimmigrant category to another) are simply not appealable administratively.[25] Others (e.g., a district office's denial of a visa petition based not on family relations but on proposed employment) are appealable to the associate commissioner for examinations in the INS central office, rather than the BIA. Such appeals are actually considered by the Administrative Appeals Unit (AAU), which is part of the central office and is staffed by a half-dozen nonattorney examiners.[26] The division of administrative appellate jurisdiction between the BIA and the AAU is complex,[27] and the Administrative Conference of the United States has recently issued recommendations for improved allocation of such jurisdiction.[28] A mere handful of the thousands of administrative decisions issued each year are published as "precedent decisions." Most are from the BIA; others are decisions by the associate commissioner, the commissioner, other INS officials, and occasionally the attorney general.

Terminology: Exclusion Versus Deportation

It is important to understand the difference between *exclusion* and *deportation* of aliens in immigration parlance. The application of many statutory provisions turns on the distinction, and the degree of constitutional protection afforded to an alien may also be affected by whether that individual is in exclusion or deportation proceedings.[29] Aliens *seeking to enter* the United States have their

25. *Id.* § 248.3(g).

26. *Id.* § 103.1(f). *See* Legomsky, *Forum Choices for the Review of Agency Adjudication: A Study of the Immigration Process,* 71 Iowa L. Rev. 1297, 1308 (1986).

27. The proper avenue for review of a particular issue can usually be determined by consulting 8 C.F.R. § 3.1(b) (1986) (appellate jurisdiction of the BIA) and *id.* § 103.1(f) (appellate jurisdiction of the associate commissioner), and occasionally the part of 8 C.F.R. containing the substantive regulations governing the particular immigration benefit at issue. The details of these regulations may also have an important bearing on whether judicial review of the matter must be sought in the district court or the court of appeals. A chart showing the major patterns for administrative and judicial review of decisions under the immigration laws appears as figure 1 in chapter 8, which deals generally with judicial review.

28. 1 C.F.R. § 305.85-4 (1986).

29. *See, e.g.,* Mansoor v. Montgomery, 620 F. Supp. 708 (E.D. Mich. 1985) (relief under INA § 244 available only to deportable, not excludable, aliens even though excludable alien had been present in the country for more than seven years as a "parolee"); Matter of Torres, Interim Dec. No. 3010 (BIA 1986) (same). Some deci-

admissibility determined in exclusion proceedings, should the border inspector challenge their qualifications. Aliens *who have entered* and whom the government seeks to expel are placed in deportation proceedings, where the procedures and the burden of proof are somewhat more favorable to the alien.[30]

The distinction between exclusion and deportation rests on a certain obvious logic, for our laws often differentiate between those first applying for a benefit and those whose previously awarded benefits the government seeks to take away. Unfortunately, the evident logic does not always carry through in drawing the line between exclusion and deportation, for three reasons. First, the distinction turns largely on whether the alien has entered the country, and the concept of *entry* is highly technical.[31] An alien's mere physical presence in U.S. territory is not enough to demonstrate that he or she has entered; otherwise, persons in line to meet the immigration inspector in the airport arrival area would have accomplished an entry. Instead, entry has occurred only when the alien either has been inspected and admitted or has successfully evaded inspection. Some cases require extremely difficult line drawing to determine whether an alien adequately evaded inspection.[32] Paradoxically, the doctrine places a clandestine entrant in a better position, for some purposes, than an alien who complies with the law and applies for admission at the inspection station: Once the INS catches a clandestine entrant, it will have to process him or her for removal through deportation proceedings, whereas an alien at the border is subjected to the somewhat less protective exclusion procedure.

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sions, however, have found ways to make the broader array of deportation-type protections available to paroled aliens who are technically excludable. *See, e.g.,* Patel v. Landon, 739 F.2d 1455 (9th Cir. 1984); Joshi v. District Director, 720 F.2d 799 (4th Cir. 1983).

30. The terms *deportation* and *exclusion* are somewhat slippery. In the statute *deportation* sometimes refers merely to the physical removal of an alien; thus, INA § 236(a); 8 U.S.C. § 1226(a) (1982), for example, grants special inquiry officers the power to decide that an alien seeking admission "shall be excluded and deported." This monograph attempts to avoid that usage; unless otherwise indicated, *deportation* refers solely to the expulsion of aliens who had already made an entry (under INA §§ 241-242; 8 U.S.C. §§ 1251-1252 (1982)), in contrast to the exclusion of aliens at the border or its legal equivalent (under INA §§ 235-237; 8 U.S.C. §§ 1225-1227 (1982)).

31. *Entry* is defined in INA § 101(a)(13); 8 U.S.C. § 1101(a)(13) (1982). The BIA's complex test for determining whether an entry has occurred is set forth in Matter of Pierre, 14 Administrative Decisions Under Immigration and Nationality Laws 467 (BIA 1973) [hereinafter "I. & N. Dec."].

32. *See, e.g.,* Pierre v. Rivkind, 643 F. Supp. 669, 671 (S.D. Fla. 1986); *In re* Application of Phelisna, 551 F. Supp. 960 (E.D.N.Y. 1982); Matter of Lin, 18 I. & N. Dec. 219 (BIA 1982).

Second, some aliens who have been at liberty inside the country for months or years remain subject to exclusion proceedings, should the INS seek their removal, because they are considered "parolees." Beginning early in this century, immigration authorities found it expedient to permit the physical presence of certain aliens—for example, for urgent medical care or to appear as witnesses in criminal prosecutions—despite some unwaivable ground of inadmissibility. Thus began the practice of "paroling" aliens into the United States. Parolees remain constructively at the border throughout their stay, no matter where they travel. Officially, they have not made an entry and so are considered excludable aliens rather than deportable aliens.[33] The 1952 INA endorsed the practice and codified the standards, although in highly general terms.[34] Parole also came to be used extensively for the release from detention of arriving aliens awaiting an exclusion hearing before an immigration judge, although the INS has curtailed such releases in recent years.[35]

Third, for most purposes, resident aliens who leave for a trip abroad and then seek reentry will be treated the same as first-time applicants for admission.[36] As a result of this so-called reentry doctrine, virtually all of the statutory grounds for exclusion are applicable afresh each time a resident alien reenters, and a contested admission will be tried in exclusion, rather than deportation, proceedings. There is a possible exception to this treatment, however, established by the Supreme Court's decision in *Rosenberg v. Fleuti*.[37] The Court held that a permanent resident alien's trip to Mexico lasting "about a couple hours" might not have resulted in a technical entry upon his return. The case was remanded for the lower court to determine whether the trip was "innocent, casual, and brief," and therefore not "meaningfully interruptive" of the alien's permanent residence. Application of this rather ill-defined exception remains a fruitful source of litigation.[38]

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33. *See* Leng May Ma v. Barber, 357 U.S. 185 (1958); Kaplan v. Tod, 267 U.S. 228 (1925).

34. INA § 212(d)(5); 8 U.S.C. § 1182(d)(5) (1982). From 1956 until 1980, parole was also used to bring in large groups of refugees—principally from Hungary, Cuba, and Indochina—largely because no adequate alternative for their admission existed. (The regular refugee provisions were subject to ceilings that proved unrealistic in some years.) When Congress improved the ordinary refugee provisions in 1980, it forbade further use of the parole power in this manner. *See* INA § 212(d)(5)(B); 8 U.S.C. § 1182(d)(5)(B) (1982), added by the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

35. For a more complete account of the parole power, see T. Aleinikoff & D. Martin, Immigration: Process and Policy 232–36 (1985).

36. *See* United States *ex rel.* Volpe v. Smith, 289 U.S. 422 (1933).

37. 374 U.S. 449 (1963).

38. *See, e.g.,* Dabone v. Karn, 763 F.2d 593, 595–97 (3d Cir. 1985); C. Gordon & H. Rosenfield, *supra* note 6, at §§ 2.3e, 4.6c, 7.9d. The BIA considers the *Fleuti* excep-

Key Documents

Two documents that the INS provides to arriving aliens deserve special mention. Those admitted as nonimmigrants or parolees usually receive an Arrival-Departure Record (form I-94). Stapled into the passport, this form contains important information, including the nonimmigrant category in which the alien is admitted and the length of stay allowed. If employment is authorized (most nonimmigrants will not receive such permission), INS will endorse the I-94 to this effect. If the alien receives an extension of stay or a transfer to another nonimmigrant category (e.g., from student to tourist), the changes in the terms and conditions of admission will be reflected on the I-94. To secure such changes after entry, the alien need apply only to the INS, not to a consular officer. Unless he or she plans a trip abroad and will then reenter the country after expiration of the original visa, the alien need not apply for a new visa.[39]

Persons admitted as immigrants receive (after a processing delay) a plastic laminated card (form I-551). Officially called the Alien Registration Receipt Card, it is more widely known as the "green card."[40] Technically it serves to signify compliance with the alien registration requirements of the INA.[41] But because only lawful permanent resident aliens legally receive the card, and because all such aliens are given virtually unlimited access to the U.S. employment market, it is often thought of as a kind of work

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tion available only to persons once admitted as immigrants, and not to nonimmigrants, owing to the language of INA § 101(a)(13); 8 U.S.C. § 1101(a)(13) (1982), on which *Fleuti* was based. *See, e.g.*, Matter of Legaspi, 11 I. & N. Dec. 819 (BIA 1966). The 1986 IRCA employs terminology and concepts similar to those derived from *Fleuti* at several points, as applied to many different categories of aliens, and the INS is expected to adopt regulations that should help clarify when departures are "meaningfully interruptive" and when they are instead "innocent, casual, and brief." *See, e.g.*, INA §§ 244(b)(3), 245A(a)(3); 8 U.S.C.A. §§ 1254(b)(3), 1255A(a)(3) (Supp. 1987) (relating to "continuous physical presence" in the United States). *Cf.* INA § 245A(b)(3)(A), (g)(1), (g)(2); 8 U.S.C.A. § 1255A(b)(3)(A), (g)(1), (g)(2) (Supp. 1987) (relating to "continuous residence").

39. Because the INS, not the consular officer, determines the ultimate admission category and length of stay, the category and end date shown on the I-94 are usually more important, after entry, than the equivalent information shown on the visa. For these reasons, it is slightly inaccurate—but extremely common—to speak of a nonimmigrant as being in the country "on a tourist visa" or "on a student visa."

40. Earlier versions of the card, principally form I-151, are also still in use.

41. INA §§ 261-266; 8 U.S.C.A. §§ 1301-1306 (1970 & Supp. 1987).