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Immigration Reform and the U.S. Labor Force

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The mass immigration that the United States has experienced since the late 1960s has disproportionately affected the nation's labor force. In 1994, for instance, the foreign born accounted for 8.7 percent of the population but constituted 10.8 percent of its labor force (according to official measures which are traditionally too conservative). This means that about one of every nine workers was foreign born.

These percentages are for the nation as a whole, which masks the key descriptive characteristics of the phenomenon: its geographic concentration. Five states (California, New York, Florida, Texas and Illinois) account for 65 percent of the entire foreign born population. These states accounted for 68 percent of all of the foreign born in the U.S. labor force. It is also the case that the foreign born are overwhelmingly concentrated in only a handful of urban areas. But these particular labor markets are among the nation's largest in size, which greatly increases the significance of their concentration. The five metropolitan areas that have the highest concentration of foreign born workers were Los Angeles, New York, Miami, Chicago, and Washington, D.C. Collectively, they accounted for 51 percent of all foreign born workers in 1994.

The flow of immigrants into the United States has tended to be bimodal in terms of their human capital attributes (as measured by educational attainment). The 1990 Census revealed that, on the one hand, the percentage of foreign born adults (25 years and over) who had less than a 9th grade education was 25 percent (compared to only 10 percent for native born adults) and whereas 23 percent of native born adults did not have a high school diploma, 42 percent of foreign born adults did not. On the other hand, both foreign born adults and native born adults had the same percentage of those persons who had a bachelor's degree or higher (20.3 percent and 20.4 percent respectively) but with regard to those who had graduate degrees, foreign born adults had a considerably higher percentage than did the native born, 3.8 percent versus 2.4 percent. Thus, it is at both ends of the U.S. labor force that immigration has its impacts -- at the bottom and at the top of the economic ladder. In the low skilled labor market, immigration has increased the competition for whatever jobs are available. In recent years, unskilled jobs have not been increasing as fast as have the number of unskilled workers. As for skilled jobs, immigration can be useful in the short run as a means of providing qualified workers where shortages of qualified domestic workers exist. But, the long term objective should be that these jobs should go to citizen and resident aliens. No industry should have unlimited access to the possibility of recruiting immigrant and non-immigrant workers. Shortages should be signals to the nation's education and

training system to provide such workers and for private employers to initiate actions to overcome these shortages.

The effects of the human capital variation between the foreign born and native born, not surprisingly, are reflected in a comparison of their 1994 occupational distributions. Over 42 percent of the foreign born labor force are employed in managerial, professional, technical and administrative occupations (as are 58 percent of the native born work force). Conversely, 26 percent of the foreign born were employed in the low skilled operative, laborer, and farming occupations (compared to 17 percent of the native born work force).

Immigration Policy and Labor Force Trends

With immigration at record heights, it is ironic that immigration policy functions with little concern for its congruity with emerging labor market and employment trends. As specified by the Immigration Act of 1990, family-related immigrants account for 71 percent of the available visas. There are no labor market tests applied to these applications. Such immigrants may or may not have human capital characteristics congruent with emerging labor force trends. It is clear that family-based immigrants are most likely to settle in the same communities as the relatives to whom their entry is keyed, whether or not local labor market conditions need such people or not. As for the independent immigrants that account for the other 29 percent of immigrant visas, there is no labor market test associated with diversity immigrants (except that they have a high school diploma). For the 140,000 visas for employment based immigration, the majority of those admitted under this category come as spouses and children. Hence, only a small fraction of those admitted each year are actually admitted on the basis that they have skills that employers claim they need but cannot find among available citizens and resident alien job seekers. When allowances are made for the estimated 300,000 illegal immigrants who annually enter regardless of whether they are needed or not plus 120,000 or so refugees who are annually admitted and who, obviously are not labor market tested, there is ample reason to conclude that the extant immigration policy is at odds with the national interest.

Needed Reforms

There are a number of reforms necessary to bring immigration policy into congruence with the national interest. Paramount among these is the necessity to recognize that immigration policy at this time in the nation's economic development must be viewed as primarily an instrument of economic policy. Currently, it is primarily a political policy designed to meet the private interests of individual persons, some employers, and a variety of special interests groups. To serve as an economic policy, it must first be flexible in terms of the annual number of people admitted for permanent settlement. The current system is rigid. It cannot respond to changing economic circumstances. A fixed number of immigrants are admitted each year regardless of the prevailing unemployment rate. What sense did it make in 1991 to expand legal immigration to the highest level since a ceiling was first set in 1921 at the precise time that the economy slipped into a deep recession? At the end of 1991 there

were a million fewer persons employed in the U.S. than there were at the beginning of the year -- yet the immigration level for that year was the highest in all of U.S. history. In my view, the level of immigration should be set annually by administrative action rather than fixed by legislation for whatever period that passes until Congress gets back to this issue. Congress could set an annual ceiling that could not be exceeded but the agency responsible for administering immigration policy should set the annual level (perhaps there could be an annual consultation with the appropriate congressional committee as is currently the case with annual refugee levels).

The government agency primarily responsible for immigration policy ought to be one with an employment mission and a human resource development orientation. As currently structured, the best suited agency is the U.S. Department of Labor. The Department of Labor had responsibility for immigration policy from the time it was set up in 1914 until 1940. Immigration during those years was clearly seen as being a labor issue. It was shifted to the Department of Justice in 1940 as a temporary move during wartime. But it now being 50 years after that war ended, it is time to return responsibility to that agency for this critical labor market policy. It should set the annual level of immigration.

As for immigration admissions, every effort should be made to reduce the current focus on family reunification. While there will always be a necessary element of family reunification involved to accommodate spouses and minor children of visa recipients, every effort should be made to reduce the other relatives entry categories. I believe the recognition given by the U.S. Commission on Immigration Reform in its recent recommendations that the nuclear family, rather than the extended family, as the basis for immigration admission is proper. The elimination of the current preference given to adult brothers and sisters is appropriate. If such adult relatives wish to immigrate, they should qualify on their own merits. They should not have a privileged status. I also agree that the category for adult married and unmarried children of immigrants should be dropped for the same reason.

As for the independent immigrant categories, I agree with the Commission and with the terms proposed in the pending H.R.1915 that the diversity immigrant category should be eliminated. It is a throw-back to the spirit of the national origins system and it is not labor market related. I would also delete the investor immigrant category because it is too easy to abuse and I do not favor the principle that someone can buy their way to the front of the line.

As for the employment-based immigrants, as noted earlier, I believe that no number should be fixed into law. Rather, it should be annually set administratively, subject to a ceiling that cannot be exceeded. I agree with the Commission and the House bill that the entry of unskilled workers should be prohibited. There is no shortage of unskilled workers in the U.S. The unemployment rate for adults without high school diplomas is more than twice the national average (about 13 percent in 1994).

As for the admission of skilled and educated workers (those adults with a bachelor's degree or more), their unemployment rates have been rising during the early 1990s (although still below the national average). The sudden end of the Cold War has led to major cutbacks by defense contractors as government spending on procurement as well as research and development have taken place. The corporate downsizing in the 1990s -- due to increased international competition and the spread of computer technology that has increased output with less need for inputs -- have contributed to the need for more careful monitoring of requests for immigrants to fill such jobs. I favor retention of the labor certification requirement for most of the employment-based visas. But, I believe these requests deserve more careful monitoring by the U.S. Department of Labor. Hopefully, if the numbers of such visas can be reduced (due to prevailing labor market conditions), the labor certification applications can be more carefully scrutinized. I also believe there should be no transfer rights of unused employment-based visas to family related categories. If authorized employment-based visas are not used or issued, they should simply be cancelled.

Relatedly, I think major changes are needed in the non-immigrant admission categories. There are too many accounts of violations of the B-1 and H-1B programs to allow them to continue in their present form. Stiffer penalties may be in order for violations of a B-1 visas by both U.S. firms and those immigrants found to be employed illegally should be treated as illegal immigrants. As for H-1B visa requests for foreign nationals to work in highly skilled occupational categories, the numerous media accounts of abuse by U.S. firms -- especially in the computer software industry indicate that there is a real problem. Unless the Department of Labor can be staffed at a level that allows it to evaluate the validity of these requests, consideration should be given to the elimination of this category. At a minimum, the length of such visas should not be longer than 2 years and the opportunity to adjust status from an H-1B visa to a legal immigrant visa category should be prohibited. A non-immigrant visa should mean just that. The H-1B category should not be permitted to serve as a holding tank for would-be immigrants.

Lastly, it should go without saying that major changes are needed to tighten current enforcement procedures against illegal immigrants. Proposals by both the Commission on Immigration Reform and in H.R.1915 for stronger border management in terms of funds for more border patrol officers and support personnel; for improved physical barriers; and for the acquisition of advanced technology are long overdue. The expenditure of funds is the real test of the commitment of Congress to make whatever immigration policy it adopts have true meaning. I support the provision of imposing civil fines on illegal immigrants proposed in H.R.1915. I also enthusiastically support proposals to increase the number of workplace officials of government empowered to enforce both employer sanctions against the hiring illegal immigrants and fair labor standards with respect to wage, hour, and child labor laws. The growth and spread of "sweatshops," fueled by the hiring of illegal immigrants, represents a seamy side of contemporary American life.

But the greatest weakness in the existing efforts to enforce employers sanctions against the employment of illegal immigrants remains with the identification issue. I doubt

whether the creation of either a national registry to verify the authenticity of social security numbers or any form of telephone call-in verification system will prove very effective. I believe it is past time to set up some form of national identification system or labor permit system. A job is the most important single thing that this nation can provide for a citizen and or resident alien. Illegal immigrants steal jobs, to put it bluntly. The fact that jobs for unskilled workers, in particular, are so difficult to find makes it imperative that unskilled workers be protected from all competition with illegal immigration. The issuance of a counter proof card with a picture to all valid holders of a social security card, or something similar, is the only way to make an employer sanctions system work. As Fr. Hesburgh said over ten years ago (in his role as Chairman of the Select Commission on Immigration and Refugee Policy):

"Identification systems to be used for application for a job and for work purposes are no different from other forms of identification required by our society and readily accepted by millions of Americans. Credit cards which must be checked by merchants, identification cards... to cash checks; social security cards to open bank accounts, register for school or obtain employment ...Raising the specter of "Big Brotherhood," calling a worker identification system totalitarian or labeling it "computer taboo" does not further the debate on U.S. immigration policy; it only poisons it", (New York Times, September 24, 1982, p. A-26).

It is time to take this necessary step. Otherwise, I can guarantee we will all be here again to debate why illegal immigration continues to undermine the credibility of whatever legal immigration system is in place at that time.

Reactions to Proposed Senate Bill

My most immediate reaction to the Senate bill is that it is not anywhere near as comprehensive as I had anticipated. I am assuming, therefore, that this bill does not preclude the incorporation of many of the major recommendations already made by the Commission on Immigration Reform or that are included in the pending House bill (H.R.1915). I assume that this bill is essentially designed to raise additional issues.

The proposal to tighten the requirements on who qualifies as "parents" under the immediate relatives category of existing law seems reasonable. There certainly should be minimal labor market impact if such entries are restricted to people over age 65. I certainly support the requirements with respect to closing the loopholes on citizens who renounce their financial obligations to support their immigrant parents and to provide for their health care.

As indicated elsewhere in my testimony, I support most proposals to reduce the number of visas available for family sponsored immigration. Hence, I would support the reduction in the current number of spouses and children of permanent resident aliens to 85,000. As indicated, this would not be my highest priority of reducing such visas but I

would not oppose it. I would prefer to see the elimination of all preferences for all adult brothers and sisters of U.S. citizens and for married and unmarried adult children of U.S. citizens.

As for changes proposed in the employment-based preferences, I have serious reservations about the merits of raising the number of admissions of aliens exempt from labor certification to 75,000 by adding an additional category of multi-national executive and managers and including investor immigrants in the existing category for persons of extraordinary ability. I see no reason to do this, if the actual purpose is to admit people of extraordinary ability as defined in current legislation. I would prefer to see more opportunities given to U.S. citizens to become "extraordinary" rather than to use immigration to fill the limited number of senior, high paying, positions at universities or in businesses enterprises and to "brain drain" or "skill drain" the rest of the world of such talent. I have no idea why athletes continue to be included in such an expansion for, after 10 years of participation in a sports life, its hard to imagine that the country would benefit from their presence except to provide a place to retire.

But if the intention is not really to bring in more persons of extraordinary ability but, rather, to use whatever the residual of unused slots is to admit executives and managers of multinational enterprises and investor immigrants, oppose the change. There is ample reason to believe that many multinational firms already have a "glass ceiling" that keeps U.S. citizens and resident aliens from qualifying for the best jobs that foreign-based firms operating in the United States provide. This practice should not be encouraged. In fact, it ought to be legislatively discouraged. Corporate downsizing is already a rampant practice. There is no shortage of which I am aware of, of business executives or managers but there is a substantial desire by foreign-based firms to avoid promoting and developing corporate talent from the available pool of Americans. If foreign based enterprises want to set up business in the U.S., they should hire U.S. workers -- whether it be on the shop floor or in the corporate offices. If there are temporary needs to fill such high positions, the non-immigrant L-1 visa program should be the vehicle for its accomplishment.

Likewise, I am vehemently opposed to the inclusion of investor immigrants in this highest priority category. In fact, as noted elsewhere, I do not believe that this category should be anywhere in U.S. immigration systems. It is a category ripe for abuse, it cannot be adequately enforced, and I do not believe that anyone should be able to buy their entry into the United States citizenry. It is the wrong principle to advertise to the world.

As for the proposal to set the number of visas available for less prominent professionals with advanced degrees, professionals with baccalaureate degrees, and skilled workers (all of whom require labor certification) at 75,000, I would still prefer to see the actual number each year be administratively set in accordance with prevailing labor market conditions rather than be set legislatively. All of the occupations in this category possess the likely possibility of competing with members of the citizen labor force. The idea of making their entry "conditional" on the fact that, after 90 days, they are still employed by the

employer who "sought" them and are being paid the approved wage rate is novel. In principle, I would support this proposal because it simply says that there should be an official verification to see that what was promised to occur, actually happened. It would be imperative, however, that the additional funds required to monitor and to meet the outlined obligations by INS be provided and that these duties not be added to an already overburdened agency.

As for the labor certification changes, I support the idea that employers who seek to hire immigrant workers should pay a substantial fee for the privilege (30% of the value of the annual compensation package). It would help to validate the authenticity of the employers claim that qualified citizens cannot be found. Under present circumstances, it is often not possible to discern what is a legitimate need by an employer and what is simply a preference. The earmarking of the proceeds from the fund to be used by the Secretary of Labor for education and training purposes for citizens and resident aliens is certainly laudable.

I do worry about the open-ended nature of the provision that would allow the labor certification requirement to be essentially waived if the Secretary of Labor declares that a labor shortage exists for a specific occupational classification. This could be abused by pressures from special interest groups. If the need is real, a request should be able to pass the labor certification tests. On the other hand, I would support the notion that if a labor surplus is deemed to exist by the Secretary that no certification to admit immigrant labor could be issued for such occupations. This would reduce some of the paperwork burdens on INS and it protects the economic interests of U.S. workers as the law requires.

For present purposes, I have restricted my comments to those proposals that pertain to the level of immigration and that have labor market implications.