

November 2016

The New Immigration Law

John E. McCarthy

Follow this and additional works at: <http://scholarship.law.stjohns.edu/tcl>



Part of the [Immigration Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

John E. McCarthy (2016) "The New Immigration Law," *The Catholic Lawyer*: Vol. 11: No. 4, Article 5.
Available at: <http://scholarship.law.stjohns.edu/tcl/vol11/iss4/5>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

THE NEW IMMIGRATION LAW

JOHN E. MCCARTHY*

WE, AS A NATION, who through our long history were most provincial in our international outlook, have since World War II come of age as a responsible partner in the family of nations. In the fields of international cooperation, foreign assistance, and aid to displaced and refugee peoples, we have gone far beyond the limits ever envisioned by our forefathers. We are no longer the young upstart in the international system of colonial empires, but are now making every effort to be a stabilizing force in a world of independent nations with rising expectations of a better way of life.

This change is evidenced in the legislative field, where barriers based on race, national origin and cultural backgrounds are being eliminated as a matter of domestic and foreign policy.

In the domestic field we are all well acquainted with the measures instituted to grant all our citizens the rights and opportunities guaranteed them under our Constitution. In the foreign field, recent changes in the immigration law have granted equality in rights and opportunities for those seeking admission to our shores.

These latter changes do not have the immediate impact of the civil rights legislation since there is a process of built-in delayed reaction to any changes in immigration law. However, the long range effect will definitely be evidenced in the mores and cultural mosaic that is identified with Americana.

Any liberalization of the immigration laws is most meaningful when we stop to consider that an innate anti-foreign feeling has long been demonstrated in our culture. This was evidenced in our early Colonial history. No sooner had the first colonists arrived at our shores than they sought to prevent the admission of others, basing such discrimination on the religious and political background and the moral and economic fitness of the newcomer.

From a legislative point of view, during its first hundred years the United States encouraged immigration to settle the new frontier. Despite this definite and urgent need the underlying anti-foreign feeling continued to grow, and was evidenced by the rise of the native American and the "know-nothing" movements of the 1830's and 1850's.

* Director, Department of Immigration of the National Catholic Welfare Conference.

Our concern about the foreign stranger was legislatively evidenced for the first time with the enactment of the Chinese Exclusion Act of 1882. This was followed by the continued rise of anti-foreign sentiment culminating in the Immigration Acts of 1907, 1917 and the Quota Acts of 1921 and 1924.

It is the latter Act which has caused most controversy in that it was based on a theory of racism. This Act has been condemned by religious, civic and nationality groups since the day of its enactment. In fact, the Catholic Bishops of the United States, speaking through the Department of Immigration of the National Catholic Welfare Conference, stated in 1924 to the Chairman and members of the Committee on Immigration and Naturalization of the House of Representatives:

We protest against the principle and purpose underlying this bill (H.R. 101 which instituted the quota system) which excludes immigrants from certain countries and favors admission of immigrants from other countries. Such a policy is a distinct and deplorable departure from our enduring tradition as a nation. Our fundamental tradition is fair treatment to all nations. The proposed bill involves an evident discrimination and a substantial injustice to certain particular nations. No reason of statesmanship can be advanced in its defense.

Under the 1924 Act, visas were allocated with strict reference to the country of birth of the applicant on the basis of the number of persons with like ethnic background in the United States as shown by the census of 1920.

This, as intended, allocated most visas to natives of Anglo-Saxon countries, our first settlers, while discriminating remarkably against the Southern European and persons from the Near and Far East.

The controversy over this racist immigration raged through the 1930's and 40's and was climaxed in 1952, when President Truman vetoed H.R. 5678, a bill to codify and amend the immigration laws. In the strongest terms, President Truman stated that this was an immoral law in that it retained the provisions of the previous Quota Act as a basis of the admission of the newcomer. However, the bill—Public Law 414, commonly known as the McCarran-Walter Immigration Act—was passed over the President's veto. The controversy continued, and numerous bills have been introduced in every Congress since 1952 in an attempt to change this law. Both President Eisenhower and President Kennedy spoke out against this quota measure but the situation persisted, despite the fact that the system never worked as intended from the day it was enacted. The visas allocated for high quota countries were never fully used, while the backlog of applicants in low quota countries necessitated periodic stop-gap immigration legislation to relieve the pressures and take care of emergent situations. In the interim, because of the inflexibility of the law, thousands of private immigration bills had to be introduced to provide relief in appealing cases.

In fact, over the past ten years, only one person in three has been admitted to the United States under the quota system. This is further evidence that a change in this law was necessary on realistic as well as humanitarian grounds.

With the advent of the 89th Congress there appeared a forum for a strong, unified appeal and a renewed effort to blast racism from our immigration law. With the support of civic groups, labor unions, and the leaders of religious denominations, a bill was presented to eliminate the quota system in our immigration law. This bill

was amended in the House and Senate Committees but an acceptable measure was reported out, and was signed by the President on October 31, 1964. This bill does not, of course, provide an answer to the myriad of problems that continually arise in dealing in an area so complex as immigration, but it does evidence that our nation has eliminated the idea of Nordic superiority from its laws, and has, instead, stressed the equality of man. The new statute, which becomes effective on December 1, 1965 provides that:

- (1) The National Origins quota system will be abolished as of July 1, 1968. During the three-year phase-out period a pool of unused visas will be made available to clear up backlogs on preference waiting lists.
- (2) The Asia-Pacific Triangle provision is repealed immediately.
- (3) A limitation of 170,000 immigrant visas, exclusive of parents, spouses and children of U.S. citizens, is established for countries outside the Western Hemisphere on a first come, first served basis.
- (4) A ceiling of 20,000 visas per year is imposed for any one such country.
- (5) For natives of independent Western Hemisphere countries, an overall ceiling of 120,000 visas, exclusive of parents, spouses and children of U.S. citizens, is established, effective July 1, 1968. This is a definite area of controversy since such persons previously had no numerical restriction.
- (6) Seven preference categories are established—four for the purpose of family reunification, two for professional and skilled or unskilled workers needed in the country and the last for refugees including those displaced by natural calamity.
- (7) A Select Commission on Western Hemisphere Immigration is established to study all aspects of immigration from the Hemisphere, including the problem of the Cuban refugees.
- (8) Natives of the Western Hemisphere are no longer eligible for adjustment of status under section 245 which permits persons temporarily in the United States to apply for permanent residence without leaving the country.
- (9) Labor Department clearances must be had for all non-preference visa applicants as well as for natives of the Western Hemisphere, other than members of the immediate family of citizens or lawful residents of the United States.
- (10) Waivers of inadmissibility are now available to mentally retarded aliens, or those with a past history of mental illness, who are close relatives of citizens or lawful residents of the United States.

The new legislation appears to be an attempt at fairness in a complex field. However, it does not provide all the relief many had hoped for, and the numerical restriction on natives of Western Hemisphere countries is sure to be a matter of continued international discussion. It will be necessary for the administrative agencies of our Government to render many decisions defining the scope of the law, and these will undoubtedly be tested in the courts.

(Continued on page 346)

IMMIGRATION

(Continued)

It must always be remembered that the personal effect of our immigration law on

any individual can be most dramatic. It may be the opening of the door to a new future, new hopes, new aspirations. In turn, when the issue of deportation or exclusion arises for the few, it may mean the loss of all we hold dear, even life itself.