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THE RODINO BILL: AN EXAMPLE OF PREJUDICE TOWARDS MEXICAN IMMIGRATION TO THE UNITED STATES

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The most significant immigration legislation in Congress since the Kennedy Immigration Act of 1965¹ is H.R. 981 and H.R. 982,² popularly known as the Rodino Immigration Bills. These Bills passed the House of Representatives in 1973 and have been referred to the Senate Committee on the Judiciary.³ If this legislation subsequently becomes law, it could result in cutting in half the present legal immigration from Mexico to the United States and thereby increase illegal immigration from Mexico. How the present proposed legislation would have such an effect and what amendments would be necessary to correct this situation are the subject of this article.⁴

To understand the potential effect of this legislation, the present immigration system must be examined first.

I. THE PRESENT IMMIGRATION SYSTEM

An alien immigrating to the United States under the terms of the Immigration and Nationality Act⁵ (hereinafter referred to

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1. 79 Stat. 911 (1965).

2. H.R. 981 & H.R. 982, 93rd Cong., 1st Sess. (1973) (hereinafter referred to as H.R. 981 and H.R. 982).

3. The legislative history is found in H.R. REP. No. 93-108 & 93-461, 93rd Cong., 1st Sess. (1973).

4. H.R. 981 and H.R. 982 present constitutional problems which will not be covered here. For example, H.R. 982 amends section 274 of the Immigration and Nationality Act (8 U.S.C. § 1324) to impose criminal penalties on employers who knowingly employ aliens in the United States not lawfully admitted for permanent residence. The criminal penalties in the amendment are structured to allow for the imposition of a citation for a first violation without benefit of a hearing. This in itself is innocuous; however, a citation is a condition precedent to criminal prosecution for subsequent violations. This raises procedural due process questions as to the imposition of the citation. A related issue on employment discrimination as to a particular ethnic group may also be present. Realistically an employer need only worry as to Mexican aliens who comprise the predominant illegal element. To such an employer criminal liability under the amendment can easily be avoided by not hiring persons who appear to be Mexicans. This would have an obvious adverse effect on Chicanos who in most respects are indistinguishable from Mexican citizens.

5. 66 Stat. 168 (1952), amended by 79 Stat. 911 (1965) & 84 Stat. 116 (1970).

as the INA) is said to be obtaining the status of a lawful permanent resident in the United States.⁶ In order to obtain this status, the alien must first acquire a "green card", or I-151 Form, from the Immigration and Naturalization Service (hereinafter referred to as INS).⁷ An I-151 Form, together with the passport of his country of citizenship, allows the alien to freely enter the United States and enjoy most of the rights and privileges of citizenship.⁸ Five years after this status is obtained,⁹ or three years in the case of an alien married to an American citizen,¹⁰ the alien is eligible for naturalization.

The actual immigration system centers upon where the alien is born. If the alien is born in the Western Hemisphere¹¹—comprised of North, Central, and South America—he can only immigrate as part of a yearly 120,000 immigrant hemispheric quota.¹² In order to be assigned one of these quota numbers the alien must show that he is not excludable from admission to the United States under INA section 212(a)(14),¹³ which denies entry to people who do not hold labor certification from the Department of Labor.¹⁴ Aliens who have the requisite family relationship to a United States citizen or alien permanent residents are exempted from the labor certification requirement and can also qualify for a quota number.¹⁵ Finally, the alien can qualify

6. The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. I.N.A. § 101(a)(20), 8 U.S.C. § 1101(a)(20) (1970).

7. Upon establishment of lawful admission for permanent residence under this part, an Alien Registration Receipt Card, Form I-151 shall be issued without requiring the submission of an application or fee. *See also* 8 C.F.R. § 101.3 (1974).

8. A legally residing alien is precluded from voting. *See* GORDON & ROSENFIELD, IMMIGRATION LAW & PROCEDURE § 1.38.

9. I.N.A. § 316(a), 8 U.S.C. § 1427(a) (1970).

10. I.N.A. § 319(a), 8 U.S.C. § 1430(a) (1970).

11. I.N.A. § 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A) (1970).

12. 79 Stat. 921 § 21(e) (1965); I.N.A. § 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A) (1970).

13. 8 U.S.C. § 1182(a)(14) (1970); *see also* 29 C.F.R. § 60 (1973).

14. I.N.A. § 212(a) provides numerous different grounds which can be used to exclude an alien from admission into the United States. Section 212(a)(14) provides that the following are excluded from admission:

Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

The determination of the Secretary of Labor that the alien is not excludable under the section is called a Labor Clearance Certification. *See also* 29 C.F.R. § 60 (1973).

15. Those exempted from labor certification requirements as stated in I.N.A. § 212(a)(14) are "parents, spouses, or children of United States citizens or of

by showing that he is otherwise exempt from the labor clearance certificate requirement.¹⁶

The Western Hemisphere alien who shows that he is not excludable under INA section 212(a)(14)¹⁷ is allowed to register on the immigrant visa waiting list¹⁸ at the United States Consulate abroad nearest his last place of residence.¹⁹ Quota numbers throughout the hemisphere are assigned to aliens on the waiting list in order of priority set by date of acceptance for registration.²⁰

When a quota number is reached for a Western Hemisphere alien, the consulate which accepts him on its waiting list interviews and medically examines the alien.²¹ Upon successful completion of these steps, an immigrant visa is stamped in the alien's passport.

If the alien is not born in the Western Hemisphere, he has to qualify under the quota system as set forth in INA sections 201 (a), 202(a) and 203. These provisions limit immigration to the United States for anyone born outside of the Western Hemisphere to 170,000 per fiscal year²² with no country exceeding 20,000 immigrants.²³

To qualify for an Eastern Hemisphere quota number, the alien must show that he is within one of the eight subsections set out in INA section 203(a).²⁴ A person falling within one of these

aliens lawfully admitted to the United States for permanent residence." See also 8 C.F.R. § 212.8(b) (1974), for aliens who are not required to obtain labor certifications.

16. 22 C.F.R. § 42.91(a)(14)(ii) (1974), lists other categories of aliens who fall within the purview of I.N.A. § 212(a)(14) and do not require labor certification: (a) alien not seeking employment; (b) spouse or child; (c) woman applicant who intends to marry a United States citizen; (d) alien who intends to engage in a commercial or agricultural enterprise and has invested at least \$10,000; (e) member of Armed Forces of the United States.

17. See text accompanying notes 14-16 *supra*.

18. I.N.A. § 221, 8 U.S.C. § 1201 (1970), details the procedure for issuance of visas. 22 C.F.R. § 42.100 (1974), provides for the establishment of a waiting list when it becomes administratively impractical for a consular office to take immediate final action on an application.

19. According to 22 C.F.R. § 42.110 (1974), an applicant must apply at the consular office in the consular district of his residence. The consular officer shall also accept an application if the applicant is physically in his district. Further, the consular officer has the discretion to accept an application even if the applicant is neither physically present, nor has a residence in the consular district. If an alien is residing temporarily in the United States, he must apply for a visa at the consular district of his last residence abroad.

20. Acceptance for registration is established either by being granted a labor certification under I.N.A. § 212(a)(14), or if the applicant is exempt from the requirement of labor certification as outlined in notes 15 & 16 *supra*. See 22 C.F.R. §§ 42.62-42.63 (1974).

21. 22 C.F.R. § 42.113 & § 42.114 (1974).

22. I.N.A. § 201(a), 8 U.S.C. § 1151(a) (1970).

23. I.N.A. § 202(a), 8 U.S.C. § 1152(a) (1970).

24. 8 U.S.C. §§ 1153(a)(1)-(8) (1970). The preference categories are as follows: first preference: unmarried sons and daughters of United States citizens; second preference: spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence; third preference: members of professions or persons of exceptional ability in the sciences and arts; fourth preference: married

sections can normally obtain a quota number and eventually immigrate to the United States, together with his accompanying spouse and children.²⁵ Of these sub-sections, the first, second, fourth and fifth preferences²⁶ deal with relative relationships. This involves the filing of a petition by a relative in the United States at a local office of the INS.²⁷

The third, sixth and eighth (or nonpreference) quotas²⁸ require that the alien prove that he is not excludable under INA section 212(a)(14). In the case of the third and sixth preferences, after the alien has shown that he is not excludable under INA section 212(a)(14), a petition setting forth other facts must be filed with the INS.²⁹ The seventh preference is based on a petition showing that the alien qualifies as a refugee.³⁰

If an alien born outside the Western Hemisphere can obtain a quota number through one of the methods of qualification described above, he has the choice of either obtaining his immigrant visa in the United States by filing an application for adjustment of status under INA section 245,³¹ or by obtaining the immigrant visa at the United States Consulate abroad nearest his last place of residence.

Regardless of what Hemisphere he is born in, an alien who can show that he is the immediate relative of a United States citizen in a familial relationship of either child, spouse or parent can obtain an immigrant visa without being subject to any of the numerical limitations placed on his place of birth.³² However, if the

sons and daughters of United States citizens; fifth preference: brothers and sisters of United States citizens; sixth preference: skilled and unskilled workers in short supply; seventh preference: refugees; nonpreference: other immigrants who require quota numbers not used by the first seven preference categories.

25. I.N.A. § 202(b)(1), 8 U.S.C. § 1152(b)(1) (1970). Note that according to 22 C.F.R. § 42.51 & § 42.52 (1974), an immigrant child or spouse born in a dependent area or in an independent country of the Western Hemisphere can be charged to the quota of the foreign state of birth of the accompanying parent or spouse.

26. I.N.A. § 203(a)(1), (2), (4), & (5); 8 U.S.C. § 1153(a)(1), (2), (4), & (5) (1970).

27. I.N.A. § 204(a); 8 U.S.C. § 1184(a) (1970). See also 8 C.F.R. § 214.1(a) (1974) & 22 C.F.R. § 42.41 (1974).

28. See note 24 *supra*.

29. I.N.A. § 204(a), 8 U.S.C. § 1154(a) (1970). See also 8 C.F.R. § 204.1(c) & 22 C.F.R. § 42.42 (1974). The petition shall be in such form as the Attorney General may prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require.

30. I.N.A. § 203(a)(7). Also in conjunction with the provisions of I.N.A. § 203(a)(7), 8 C.F.R. § 235.9 (1974) establishes the procedure of application for persons classified as conditional entries.

31. 8 U.S.C. § 1255 (1970); 8 C.F.R. §§ 245.1-245.7 (1974). An alien can become a lawful permanent resident by entering the United States with an immigrant visa issued to him by a consulate abroad or, after entry on a visitor's visa, asking the Attorney General to change his temporary status to that of a lawful permanent resident by "Adjustment".

32. I.N.A. § 201(a) & (b), 8 U.S.C. § 1151(a) & (b) (1970); 79 Stat. 921 § 21(e) (1965).

alien is born in the Western Hemisphere he has to obtain the immigrant visa at the American Consulate abroad because he is not eligible, as is the Eastern Hemisphere alien, for adjustment of status under INA section 245.³³

II. THE CHANGES IN THE PRESENT SYSTEM PROPOSED BY THE RODINO BILL

There are three main problems in the present system that the Rodino Bill addresses itself to. *First*, the distinctions for qualification between Eastern and Western Hemisphere aliens are irrational and unjust. For example, a lawful permanent resident alien can sponsor the immigration of an unmarried son or unmarried daughter over the age of 21 years if born in the Eastern Hemisphere;³⁴ if the son or daughter is born in the Western Hemisphere he or she is ineligible for an immigrant visa.³⁵ In contrast, a minor United States citizen child can "sponsor" the immigration of his parents born in the Western Hemisphere;³⁶ he can not do so if they are born in the Eastern Hemisphere.³⁷ One of the most unjust discrepancies in the treatment of the two different groups of immigrants is the requirement that qualified Western Hemisphere-born aliens living in the United States must return to the country of their last previous residence in order to obtain their visas, whereas qualified Eastern Hemisphere-born aliens need not return.³⁸

Second, demand for immigration from the Western Hemisphere far exceeds the 120,000 limitation. As of Jan. 1, 1975, the only aliens who qualified for immigration from the Western Hemisphere were those with priority dates of Sept. 15, 1972 and earlier.³⁹ This backlog means that Western Hemisphere aliens, including skilled workers and professionals certified by

33. For a brief discussion on this disparate treatment, see GORDON & ROSENFELD, *IMMIGRATION LAW AND PROCEDURE*, § 7.7b (1974).

34. I.N.A. § 203(a)(2), 8 U.S.C. § 1153(a)(2) (1970).

35. See I.N.A. § 212(a)(14), 8 U.S.C. § 1182(a)(14). The term "child" as found in this section is defined at I.N.A. § 101(40)(c)(1), 8 U.S.C. § 1101(40)(c)(1) (1970).

36. I.N.A. § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1970). Western Hemisphere parents, spouses or children of United States citizens and/or of aliens lawfully admitted to the United States for permanent residence are exempted from the labor clearance certification requirement.

37. No such provision is made available under I.N.A. § 203(a)(1)-(8), 8 U.S.C. § 1153(a)(1)-(8) (1970), or under the "immediate relative" exemption under I.N.A. § 201(b), 8 U.S.C. § 1151(b) (1970).

38. I.N.A. § 245(a) & (c), 8 U.S.C. § 1255(a) & (c) (1970). Section 245(a) specifies that the status of an alien may be adjusted by the Attorney General, while § 245(c) provides that this section is not applicable to an alien who is native to a country of the Western Hemisphere.

39. VISA OFFICE BULLETIN, Vol. 2, No. 84, Bureau of Security and Consular Affairs, United States Department of State (1975) (hereinafter referred to as *Visa Bulletin*).

the Labor Department as people our economy needs, must wait two years to immigrate. *Third*, the problem of illegal immigration is dealt with.⁴⁰

To attack these problems, the Rodino Bill proposes several changes in the system. Among the most important is its abolition of the Western Hemisphere method of qualification for quota numbers.⁴¹ In its place a worldwide system of quota qualification is proposed that incorporates the present Eastern Hemisphere qualifications based on preferences as set forth in INA section 203 (a)(1)-(8).⁴² This change would end the unfair discrepancies in qualifications for permanent residence.

The present limitation of quota numbers of 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere would be kept. However, a country by country limitation of 20,000 (now subject only to the Eastern Hemisphere) would be imposed on the Western Hemisphere.⁴³ This change is justified as serving the goal of equal treatment for immigrants of all nations.⁴⁴

The Bill would also allow Western Hemisphere aliens within the United States to obtain lawful permanent resident status by filing an application for adjustment under INA section 245 instead of having to return to the United States consular office nearest their last place of residence. However, this change prohibits the grant of adjustment of status to any alien, except an immediate relative, who "continues in or accepts unauthorized employment prior to filing an application for adjustment of status . . . or is admitted in transit without visa."⁴⁵

The class of aliens which can receive the temporary H-2 working visa would be enlarged under the Bill. Presently, this visa is available only for performance of "temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country."⁴⁶ This class would be enlarged to cover aliens "coming temporarily to the United States for a period not in excess of one year to perform other services or labor if the Secretary of Labor has determined that there are not sufficient workers at the place to which the alien is destined to perform such services or labor who are able, willing, qualified, and available, and the employment of such aliens will not ad-

40. For a brief discussion see note 4 *supra*.

41. *E.g.*, I.N.A. § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1970).

42. See note 24 *supra*.

43. H.R. 981. I.N.A. § 202(a), 8 U.S.C. § 1152(a) (1965), sets the 20,000 per country limitation

44. H.R. REP. NO. 461, 93rd Cong., 1st Sess. (1973), at 10.

45. H.R. 982.

46. I.N.A. § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii) (1970).

versely affect the wages and working conditions of workers similarly employed."⁴⁷ Proponents of this change state that this would permit aliens, and in particular Mexicans, to enter the country to work for a short time where there is a temporary shortage of labor, rather than requiring these aliens to seek permanent residence.⁴⁸

The Bill also amends INA section 274 to make it unlawful for any employer or person who refers for a fee "knowingly to employ, continue to employ, or refer for employment any alien in the United States who has not been lawfully admitted to the United States for permanent residence, unless the employment of such alien is authorized by the Attorney General: *Provided* that an employer, referrer, or agent shall not be deemed to have violated this subsection if he has made a bona fide inquiry whether a person hereafter employed or referred by him is a citizen or alien, and if an alien, whether he is lawfully admitted to the United States for permanent residence or is authorized by the Attorney General to accept employment. . . ."⁴⁹ This provision is the most significant one directed at the illegal immigration problem.⁵⁰

III. THE ADVERSE EFFECT OF THE RODINO BILL UPON IMMIGRATION FROM MEXICO TO THE UNITED STATES

The adverse effect of the Rodino Bill upon immigration from Mexico to the United States is well illustrated by the 1972 Report of the Visa Office.⁵¹

In that year 61,720⁵² immigrant visas were issued to natives of Mexico. Of these, 19,010 were immediate relatives who did not come within the Western Hemisphere quota system. The balance of 42,710 received one of the 120,000 quota numbers allotted to Western Hemisphere aliens upon a showing that they were not excludable under INA section 212(a)(14). Figures for the number of visas issued for the previous three years to natives of Mexico under the same provisions are as follows: 1969: 30,929; 1970: 27,726; 1971: 31,916.⁵³

The Rodino Bill imposes upon Mexico the Eastern Hemisphere system of preference visas⁵⁴ and the Eastern Hemisphere

47. H.R. 981.

48. H.R. REP. No. 461, 93rd Cong., 1st Sess. (1973), at 10.

49. H.R. 982.

50. For a brief discussion on the implications of this provision see note 4 *supra*.

51. 1972 REPORT OF THE VISA OFFICE, Bureau of Security and Consular Affairs, United States Department of State (hereinafter referred to as *Report*).

52. *Id.* Table V, at 25.

53. *Id.* Table XI, at 48.

54. I.N.A. § 203(a)(1)-(8), 8 U.S.C. § 1153(a)(1)-(8) (1970).

limitation of 20,000⁵⁵ visas per year. Thus, based upon the above figures, if the provisions of the Rodino Bill had been in effect from 1969 to 1972, immigration from Mexico to the United States would have been substantially reduced, with some 30,571 being unable to immigrate legally during that period. Adding these numbers to an already swollen waiting list would have increased the current waiting period for immigration from the Western Hemisphere far in excess of the current two year period.⁵⁶ Such a reduction would have also contravened a long standing United States immigration law policy of unification of families. These family members, while not in the class of relatives exempted⁵⁷ from the yearly 120,000 limitation⁵⁸ are overwhelmingly close family members.⁵⁹

What is not readily apparent is that the Eastern Hemisphere preference system has not worked in the case of a country where demand for immigration to the United States greatly exceeds the 20,000 per year limitation. It cannot work because of the complicated system of allocation of visa numbers on a priority basis contained in INA section 203(a) whereby the first and second preferences are allocated to all of the available quota numbers first if the demand exists.⁶⁰

The Philippines, a country where demand always exceeds the 20,000 per country limitation, presents a case in point. There, the quota system has been current only⁶¹ for the first and second preference category visa applicants for the past four years. Every other preference has been closed,⁶² except for third preference—the classification for professionals, artists, and scientists. Visas for this group however, are available only to those applicants who have a priority date of Dec. 22, 1969 or earlier.⁶³

Thus if the 20,000 yearly limitation for immigration, and Eastern Hemisphere preference system is imposed on Mexico, only immediate relatives of United States citizens and the first and second preference classifications⁶⁴ would be eligible for immigration.

The preference system was intended to favor immediate family members of United States citizens and permanent residents;

55. I.N.A. § 202(a), 8 U.S.C. § 1152(a).

56. See text accompanying note 39 *supra*.

57. As codified in I.N.A. § 201(a) & (b), 8 U.S.C. § 1151(a) & (b) (1970); and I.N.A. § 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A) (1970).

58. I.N.A. § 101(a)(27)(A), 8 U.S.C. § 1101(a)(27)(A) (1970).

59. See Report, *supra* note 51, at 12.

60. I.N.A. § 203(a)(1)-(9), 8 U.S.C. § 1153(a)(1)-(9) (1970).

61. "Current only" means all qualified applicants can obtain quota numbers to immigrate to the United States without wait at the time of application.

62. See *Visa Bulletin*, *supra* note 39.

63. *Id.*

64. I.N.A. § 203(a)(1) & (2), 8 U.S.C. § 1153(a)(1) & (2) (1970).

but it also recognized the desirability of permitting immigration of people with skills and abilities who are a benefit to the economy.⁶⁵ If a country emigrates less than 20,000 people a year, then all qualified individuals who desire to enter may do so. However, if a country has many more qualified applications as does Mexico, then no worker native to that country could ever immigrate, as shown by the Philippines experience.

The most unfair aspect of this proposed allocation of visas is that immigration to the United States from Mexico is significantly greater than from any other part of the hemisphere. In the fiscal year of 1972, 119,452 visas were issued. Of these, only Mexico exceeded 20,000. Every other country was below it. In fact, the total of all of South America was a mere 14,445.⁶⁶ Canada is the only other country besides Mexico that provided a large number of Western Hemisphere native immigrants to the United States, and is the only other country that is likely to do so again.⁶⁷

Why is Mexico singled out for such prejudicial treatment? The majority of the Judiciary Committee, when presented with an earlier draft of this Bill which provided for numerically unlimited immigration from Mexico and Canada and an alternative Administration proposal for a 35,000 per year limit⁶⁸ for both these countries, argued instead for a consistent application of a 20,000 a year limit "to mark the final end of an immigration quota system based on nationality, whether the rationale behind it be the alleged national origins of our citizenry, as it was in the past, or geographical proximity—the argument for preferential treatment of Canada and Mexico."⁶⁹

It is clear from the majority report that the decision was based on more than just a desire for justice; a feeling in the Committee that Mexican natives are undesirable immigrants was also evident. Joshua Eilberg, the Congressman who wrote the majority report for H.R. 981 stated the following:

It should be noted, however, that Mexico has one of the lowest naturalization rates of all the countries. This bears out the theory, based in large part on experience during extensive illegal alien hearings held by Subcommittee No. 1 during the 92nd Congress, that a considerable number of Mexicans enter this country solely for the purpose of employment, frequently for a limited period of time, and that a large number have no intention of moving here permanently.⁷⁰

65. I.N.A. § 203(a)(3) & (6), 8 U.S.C. § 1153(a)(3) & (6) (1970).

66. See Report, *supra* note 51, at 44.

67. H.R. REP. NO. 461, 93rd Cong., 1st Sess. (1973), at 48.

68. H.R. 9409, 93rd Cong., 1st Sess. (1973).

69. H.R. REP. NO. 461, 93rd Cong., 1st Sess. (1973), at 9-10.

70. *Id.* at 10.

The committee majority thus accepted the notion that it is not worthwhile to view differently legal and illegal immigrants of Mexican birth. At best the majority's conclusion of the desirability of the 20,000 limit is a serious mistake. As Committee Chairman Peter W. Rodino's dissent from the Committee report states, "(i)t seems to me that this drastic reduction in lawful immigration from Mexico is unsound and undesirable. In a bill designed to deal fairly with Western Hemisphere countries, it operates restrictively against our friendly neighbor, without any apparent justification."⁷¹

One consequence of such a restrictive policy towards a friendly neighbor is the possible deterioration in foreign relations with that nation. Chairman Rodino is supported by the State Department⁷² in stating that, "(i)t is necessary for us to take into account also the effect on our foreign relations, particularly with Mexico. Since the actual effect of the 20,000 limitation would be marked reduction in immigration from Mexico, the government of that country might well regard this legislation as an affront to its people."⁷³

A second consequence of the new restrictiveness is the added impetus it would create for illegal immigration. One of the primary reasons for the existing illegal immigration problem is the difficulty encountered by qualified aliens in immigrating legally to the United States. By making legal immigration even more difficult, the illegal alien problem will be correspondingly exacerbated. On this point Chairman Rodino stated that, "(i)n seeking to control that problem [illegal immigration] it seems essential to retain opportunities for legal immigration. Indeed, in its Final Report of January 15, 1973, the Special Study Group on Illegal Immigration from Mexico, appointed by the President after discussions with the President of Mexico, urged that there be no reduction in the present level of lawful immigration from Mexico. Yet H.R. 981 would accomplish an immediate reduction of over 50% in the number who could immigrate lawfully."⁷⁴

The new restrictions in adjustment of status can be criticized on the same grounds. An alien who must refrain from unauthorized employment before making an application for adjustment of status may instead decide to refrain from making such an application and find employment on the notion that certain employment is worth more than the uncertain issuance of a visa.

71. *Id.* at 48-49.

72. *Id.* at 21.

73. *Id.* at 49.

74. *Id.*

CONCLUSION

The Rodino Bill has certain sound provisions. The Eastern Hemisphere method of numerical limitation as set out in INA section 203 is superior to that of the Western Hemisphere found in section 212(a)(14) because of the preference given to the uniting of families. Giving the right to Western Hemisphere aliens to adjust their status in the United States also remedies unfair and unequal treatment found in the present Act.

A simple amendment to the Act can prevent the deleterious results discussed in this article. In the past four years, immigration from Mexico to the United States has averaged 33,320 per year. Chairman Rodino has proposed, and is seconded by the Department of State, that this Bill include a provision for limitation on immigration from Canada and Mexico of 35,000 instead of 20,000. This change is justified by the need to maintain a good neighbor policy with the two immediate neighbors of the United States. If these changes are made, the problems of this immediate legislation would be solved.⁷⁵

The Rodino Bill is presently being considered by the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee. It is hoped that by the time an amended version of this Bill is passed by Congress, the result of prejudice towards Mexico will have been eliminated.

75. This comment is made notwithstanding the constitutional issues raised by H.R. 981 and H.R. 982 commented on in note 4 *supra*.