

OVERVIEW: FEDERAL IMMIGRATION POLICY AND PROPOSED REFORMS

By Deborah Macmillan

Federal Immigration Policy

Federal immigration policy applies directly to anyone who has immigrated or who wishes to immigrate to the U.S. It does not apply to persons born in the 50 states, the District of Columbia, and U.S. territories,¹ as these are native-born U.S. citizens.

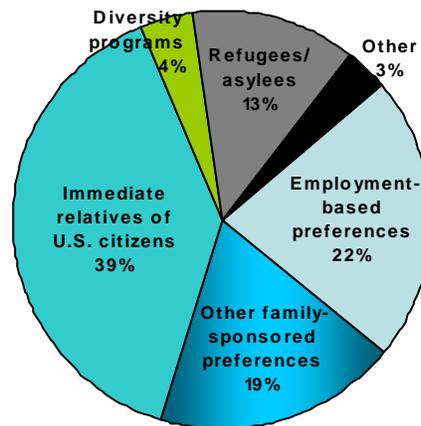
Federal policy determines:

- Who may immigrate to the U.S.,
- How or if they may become citizens, and
- Many aspects of their lives once here.

Legal immigrants and categories under which they may enter the U.S.: Immigrants who enter the U.S. legally today are most likely to do so as a spouse or child of a citizen or permanent resident, or as another family member. The next largest group enters under an employment-based preference or as a refugee/asylee. Diversity immigrants, the last group of any size, come from a variety of countries under a “lottery” system without respect to the number entering from their countries via other visa groups.

In 1965, a major revision of immigration law set quotas for these various groups. These quotas indicate the primary foci for U.S. immigration policy:

- Employer need and employment-based preferences, including high-level professionals and entrepreneurs who provide work for others
- Family reunification
 - For citizens
 - For other permanent residents
 - Reunification with immediate relatives (spouses, children)
- Human rights issues related to needs for refuge, asylum or other protected status
- Diversity of country of origin



Status under which visas were granted for permanent residence in 2005 (USCIS)

The quotas for these different groups are complicated. For example, the total quota for family-based immigration is 480,000, but immediate relatives of U.S. citizens are exempt, and actual totals generally exceed 600,000.

The 1965 legislation eliminated the 1924 country-based quotas heavily weighted to immigration from Germany, Great Britain and Ireland, and opened immigration to all countries. The 1965

diversity requirement set a maximum for each country of 7 percent of the total immigration in a given year (excluding refugees), but eventually led to de facto quotas. Originally, that quota was 20,000 immigrants per country per year; since 1990 it has grown to slightly over 25,000 per year. As a result, legal immigration from Mexico, China, India and the Philippines, the countries that send us the most immigrants, is markedly lower than it would be if entry from a country were proportionate to those who wanted to come.

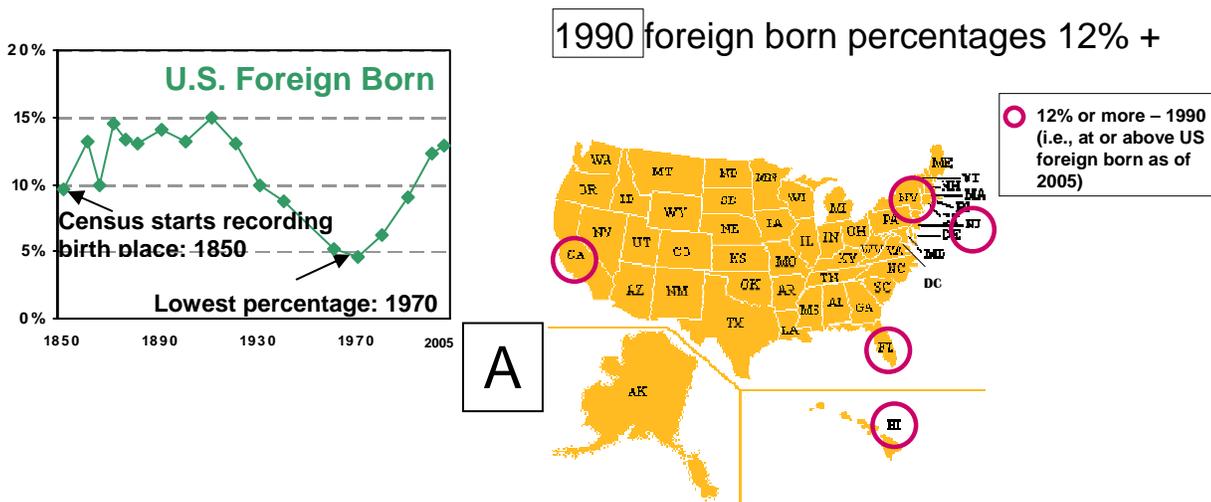
Temporary visitors: Federal policy also determines who may enter the U.S. on a temporary basis, for instance as a tourist, a student or a guest worker.

Temporary work quotas are also complicated. For example, in 2005 the quota for skilled professional workers was 65,000, but the actual number of these temporary workers was roughly 124,000. This number includes 20,000 workers with advanced degrees, not counted against the quota, who worked for the government, nonprofit organizations and educational institutions.

Temporary visitors should, as the name implies, have little relevance for permanent immigration, but 25 to 40 percent of unauthorized immigrants are individuals who have overstayed temporary visas. Adjustment from temporary to permanent status is frequent.

Employment visas and trade agreements: Employment is a major goal for both immigration and visitor policy, but trade agreements and immigration laws and policies can be spectacularly out of sync. For example, since 1994 the North American Free Trade Agreement (NAFTA) contributed to the substantial increase in trade between the U.S. and Mexico, while immigration from Mexico to the U.S. grew more restricted and more problematic.

Quotas as policy: Numeric quotas are indicative of the importance of family unification, employment (mostly skilled) and diversity. These quotas also indicate a desire to limit immigration in order to minimize the disruption of large-scale or uncontrolled immigration. Much of the current focus on control stems in part from the very visible increase in immigration over the last several decades. This is true even though the percentage of immigrants today in terms of current population figures is no larger than it was in the late 1800s and early 1900s.



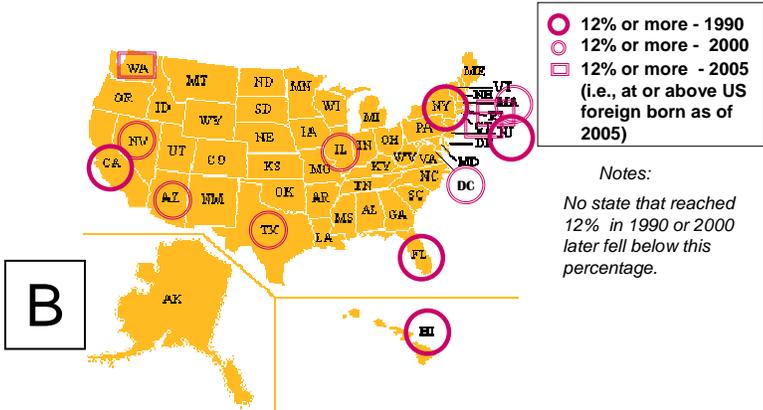
Nationally our increased--

- o From less than 10% in 1990 to 12% in 2005
- o To 9 percent in 1990
- o To 12 percent in 2005
- o To between 10% and 12% in 2005.

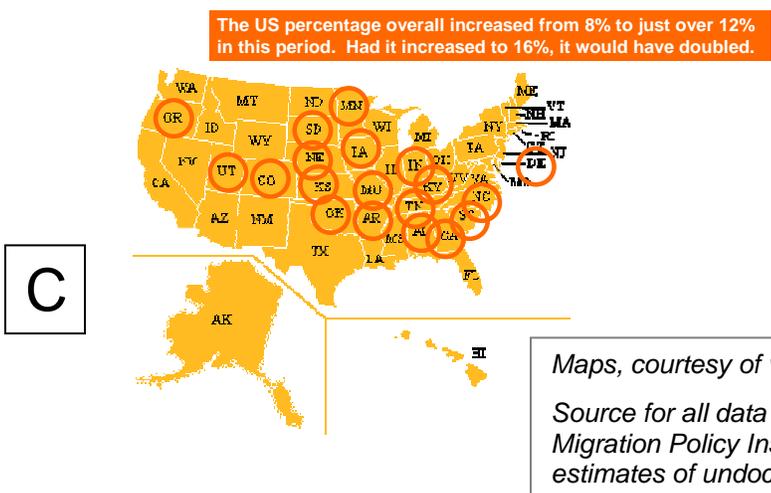
A: In 1990, our foreign born population was concentrated in coastal states such as California, Florida, and Hawaii, where percentages were higher.

B: Today 14 states have 12 percent or more foreign born, including Illinois, New York, and several coastal states like Virginia and Columbia.

Foreign born percentages 12% +
1990, 2000, and 2005



States that doubled (or tripled) the percentage of foreign born, 1990-2005



Covert border crossings: A large group of immigrants enter this country illegally – many by covertly crossing the U.S. border with Mexico. Originally this group was predominantly male and highly transient – with workers making frequent trips to and from Mexico. Illegal border crossing has become more publicized and difficult, return trips have decreased and migrating groups often include entire families. As a result, more children of unauthorized immigrants have been born in the U.S., and permanent residence has become a more likely prospect for their families.

Naturalization and rights of naturalized citizens: Immigrants who wish to become citizens may do so through the naturalization process. The process requires five years of residence (three for spouses of U.S. citizens or members of the military); the ability to read, write and speak simple words and phrases in English; and a basic knowledge and understanding of the fundamentals of American history and principles of U.S. government. An immigrant seeking naturalization must have maintained good moral character for the requisite five years.²

A naturalized citizen has all of the rights of a native-born citizen with the exception that a naturalized citizen cannot become president of the United States. However, naturalized citizens may serve in positions that could lead to the presidency. Henry Kissinger and Madeleine Albright did so as Secretaries of State, and currently Carlos Gutierrez and Elaine Chao are Secretaries of Commerce and Labor, respectively. Because of a ruling in a recent lawsuit, naturalized citizens may remain subject to deportation/removal in certain instances.³

Rights of other immigrants: Immigrants who have not gone through the naturalization process, as well as unauthorized immigrants and immigrants legalized in the 1986 amnesty program, have many of the same rights as native-born citizens, including constitutional rights guaranteed in the Bill of Rights.

Only citizens, native-born and naturalized, may vote in federal elections. In the past, non-citizens have been able to vote in many state and local elections, but currently, few jurisdictions allow non-citizens to vote.

Like native-born and naturalized citizens, permanent (legal) immigrants may sponsor immediate relatives (spouses and children under 21) and other family members, but at a lower priority than citizens.

Since 1996 permanent residents other than refugees have faced increasing restrictions with respect to access to the courts and use of social services such as Temporary Aid For Needy Families (TANF), Medicaid, Social Security and other welfare services.

Rights of U.S. citizens by virtue of birth: Children born in this country are U.S. citizens, with all the rights of other U.S. citizens. This includes U.S.-born children of unauthorized immigrants.⁴ Legal challenges to their citizen status have been unsuccessful, but procedural challenges may have more impact. For example, because proof of citizenship is now required for a child to receive treatment under Medicaid, treatment could be denied to a new born infant until proof of citizenship is verified; this could take several weeks.

Changes and proposals since 2001: In 2002, the PATRIOT Act extended the criteria for foreign-born entrance (or for denial of entrance) to include security and terrorist concerns, health

grounds, criminal history, indigence and previous removal. People judged to be “anarchists and political extremists” have been excluded since the assassination of President McKinley by a Polish anarchist in 1901.

The 2005 Sensenbrenner bill proposed extending deportable offenses to include drunken driving, as well as provisions for building 700 miles of security fencing along the Mexican border.⁵ Only the fencing provision, largely unfunded, remained when the bill was passed by wide margins in the House and the Senate in 2006, and signed into law.

National language: The U.S. has never had an official language. The issue has been raised off and on since we first became a nation. Each time it has been rejected as impractical, generally because of the burden it would impose on major groups of citizens, residents and visitors. We do, however, require most immigrants to speak and understand simple English in order to become citizens.⁶ Several states, territories and communities have passed or attempted to pass legislation requiring English as the language of government or as one of two or three such languages. Most recently, Arizona passed a referendum in the November 2006 election to this effect, a second attempt following 1988 legislation which was overturned by both the state and the federal supreme courts. Similarly, Hazleton, PA, has revised its English-only law to try to ensure it will withstand court review. In addition, had the Senate’s McCain-Kennedy bill passed the House as well, and had it retained the Inhofe amendment, English would now be our national language.

Additional Changes and Proposed Reforms

It is likely that there will be some new legislation and regulations over the next few years, not just concerning the language and security issues noted above, but in other areas as well.

Pathway to citizenship: As in 1986, Congress will likely create some path to citizenship for the large number of unauthorized immigrants currently in the United States. This legislation will probably be coupled with policies and regulations intended to limit the number of unauthorized immigrants in the future. In 2005, the McCain-Kennedy bill proposed that unauthorized immigrants in the country for five years or more could remain if they so chose. But, they would have to continue working, paying taxes and any back taxes, and learning English. Only after paying at least \$3,250 in fines and fees, could they become legal permanent residents.

Amnesty for children: Overall amnesty similar to that in the 1986 law seems unlikely. Amnesty for individuals educated in our schools whose parents brought them to this country when the children were too young to play any part in the decision to enter without documents or to overstay their visas is a more likely outcome.

Increased quotas: Increased quotas where the pressure is the highest could substantially cut the number of new unauthorized immigrants, especially if visa applications were processed promptly. Geographically this could benefit Mexico and possibly the rest of Latin America and the Caribbean, as well as China, India and the Philippines.

Increased quotas for temporary workers and low-skilled workers (both temporary and permanent) seem possible. The Senate’s McCain-Kennedy bill in 2005 included an increase of 1.5 million guest farm workers with provision for earning permanent status. Increases in

employment visas could result in further experimentation in enforcement by employers and in some collaboration between employers and government.

Changed status for children of unauthorized immigrants: Several proposed amendments to the 14th Amendment's citizenship clause have specified that a U.S.-born child would have automatic citizenship only if at least one parent were a U.S. citizen or permanent resident. Thus far, no such proposals have succeeded to the point of a general vote by either house of Congress.

State and local legislation and enforcement: Some reforms have been attempted at the local level by communities like Hazleton, PA; Riverside, NJ; and Escondido, CA. At the state level, Arizona passed a number of referenda in 2006 in addition to the language referendum referred to above. Most of these reforms appear to be attempts to exercise local control when federal control is perceived as weak or absent. Some seem aimed at limiting local expenses or at seeking redistribution of incomes to cover local expenses. To complement efforts of local and state governments, some in the federal government are seeking to push back responsibilities to the local level.

These local efforts run counter to the norm established in the late 1800s. At that time, the creation of the Immigration and Naturalization Service (INS) and construction of the administration buildings and hospitals on Ellis Island spurred the federal government's action to concentrate responsibility and action at the federal level and to make immigration policy uniform across the country. That uniformity will be at issue today if there is, in fact, a move away from federal to local/state immigration laws and policies.

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¹ Individuals born in the following U.S. territories are citizens of the U.S.:

- Puerto Rico, if born on/after Jan 13, 1941
- Guam, if born on or after April 10, 1899
- The US Virgin Islands if born on or after January 17, 1917
- American Samoa
- Swain's Island, administered from American Samoa
- The Northern Mariana Islands, if born on or after November 4, 1986

Children of diplomats to the U.S., however, are NOT automatically granted U.S. citizenship when born in the U.S.

(www.cms.hhs.gov/MedicaidEligibility/downloads/MedicaidCitizenshipFinalRule.pdf)

² The good moral character clause will generally prevent naturalization by those "who have been arrested or convicted of a crime in the 5 years before application; who have purposefully withheld child-support payments; who have failed to file their tax returns; who are "habitual drunkards"; who have lied to receive government benefits; etc."

(www.legal-aid.org/Uploads/ImmNaturalization.pdf)

³ Although naturalized citizens have generally been free of the threat of deportation, a Haitian native was deprived of his citizenship in January 2005 following conviction and serving time in prison on a drug charge. As of November, 2006, he remained in detention as the government tried to deport him.

⁴ The first sentence of the 14th Amendment to the Constitution, often called the "citizenship clause," reads as follows: All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside.

⁵ <http://www.washingtonpost.com/wp-dyn/content/custom/2006/05/26/CU2006052600148.html>

⁶ Immigrants who suffer certain disabilities that prevent their learning English are not required to do so if they meet other criteria for becoming a naturalized citizen