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NONIMMIGRANT ALIEN LABOR PROGRAM
ON THE VIRGIN ISLANDS OF THE
UNITED STATES

A SPECIAL STUDY

OF THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
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FOREWORD-VI REPORT

The Virgin Islands of the United States (USVI) is experiencing the most complex immigration problems facing the United States. Most of the problems are peculiar to the Virgin Islands and have stemmed from a U.S. immigration policy that has failed to recognize that the Virgin Islands are unique from the rest of the United States in terms of its history, geography, economy, and social structure.

During the 93rd Congress, the Delegate from the U.S. Virgin Islands, the Honorable Ron de Lugo, focused the attention of the Subcommittee on Immigration, Citizenship, and International Law on the multifaceted problems confronting the USVI. The Chairman of the Subcommittee, the Honorable Joshua Eilberg discussed the scope and severity of the problems with the Delegate from the USVI and recognized the need for remedial legislation.

In order to obtain a better understanding of the situation, Chairman Eilberg and Subcommittee staff traveled to the USVI to investigate the alien labor program in that Territory. During his visit, Chairman Eilberg interviewed legislators, businessmen, and community leaders, and interested organizations in an effort to ascertain their respective positions on the problem and to solicit their comments and recommendations.

At the present time there are approximately 11,500 nonimmigrant aliens residing and working in the USVI. These aliens have been temporarily admitted to the USVI under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act in order to perform temporary labor in that Territory. At the same time, it is estimated that there may be another 20,000 to 30,000 nonimmigrant aliens (H-4's) who are the spouses and dependents of the principal H-2 aliens.

Of the approximately 40,000 individuals in the Virgin Islands labor force, 10,000 are currently employed by the Virgin Islands government. Assuming these figures are accurate, nonimmigrant aliens comprise approximately 40 percent of the nongovernment labor force in the Virgin Islands and constitute almost half of the population of the U.S. Virgin Islands. Many of these aliens have resided for long periods of time in the Virgin Islands and have become a permanent part of the social and economic structure there.

The purpose of this report is to trace the development of this situation, to discuss and analyze the various problems which have arisen, and to make recommendations concerning the future immigration status of these nonimmigrant aliens.

The Subcommittee wishes to acknowledge the invaluable research assistance provided by Joyce Vialet, Education and Public Welfare Division, Congressional Research Service, Library of Congress, in the preparation of this report.

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PART I—A HISTORY OF THE NONIMMIGRANT ALIEN LABOR PROGRAM ON THE VIRGIN ISLANDS OF THE UNITED STATES

I. BACKGROUND

A. THE VIRGIN ISLANDS OF THE UNITED STATES

The principal U.S. Virgin Islands are St. Thomas, St. Croix, and St. John, which have a combined land area of about 130 square miles. St. Thomas is the seat of the capital city, Charlotte Amalie, the commercial and shipping center of the islands. The two other population centers are Christiansted and Fredriksted, both located on St. Croix, the largest of the three islands. St. John is the smallest and least developed, with approximately 65 percent of its area designated the Virgin Islands National Park.

The Virgin Islands of the United States in their entirety comprise more than 50 islands and keys, located between the Atlantic Ocean and the Caribbean Sea approximately 40 miles east of Puerto Rico and 1,000 miles southeast of Miami, Fla. Geographically and, traditionally in the past, ethnically and economically, they are a part of approximately 100 small islands, islets, keys, and rocks which include the British Virgin Islands, of which the largest is Tortola. The British islands are smaller than the U.S. islands in both land mass and population. The Virgin Islands are the easternmost extension of the Greater Antilles chain, which includes Cuba, Jamaica, and Puerto Rico.

The Virgin Islands were discovered in 1493 by Christopher Columbus, who named them after Saint Ursula and her 11,000 virgins (Santa Ursula y las Once Mil Virgenes). They were originally inhabited by Carib Indians who were virtually annihilated by the Spanish during the 17th century. A favorite resort of buccaneers during the 17th century, the islands were gradually colonized during the 17th and 18th centuries, primarily by the British and the Danish. The slaves brought from Africa during this period are the ancestors of roughly 75 percent of the population of the U.S. Virgin Islands today. Slavery was abolished in 1848 in the U.S. Virgin Islands, which were then under Danish rule.

The United States bought St. Thomas, St. Croix, and St. John from Denmark during World War I, primarily in order to guarantee access to the Panama Canal. The purchase of the Danish West Indies for \$25 million was completed in 1917. Previously, in 1870, the U.S. Senate had refused to approve the purchase of St. Thomas and St. John for \$7.5 million.

The U.S. Virgin Islands are an unincorporated territory of the United States. Most of its natives are U.S. citizens, but they are not permitted to vote in U.S. presidential elections. For administrative purposes, the islands have been under the general jurisdiction of the U.S. Department of the Interior since 1931. Prior to that time they

were administered by the U.S. Navy Department, and all governors were U.S. Navy officers.

The government of the U.S. Virgin Islands operates under the Revised Organic Act of 1954, an act of the U.S. Congress which created a central government with separate executive, legislative, and judicial branches, and provided for considerable self-government. Executive power is vested in the Governor, who until 1970 was appointed by the President. A 1968 Act of Congress provided for the popular election of the Governor and Lieutenant Governor every 4 years. The present Governor is Cyril King, elected in November 1974 as the candidate of the Independent Citizens Movement party.

The unicameral assembly consists of 11 senators elected every 2 years by popular vote. It enacts legislation applicable to the three islands, and subject to the approval of the Governor. Judicial power is vested in the local courts, and in a Federal district court designated the District Court of the Virgin Islands which has jurisdiction arising under Federal law as well as certain local jurisdiction.

Population and employment on the U.S. Virgin Islands will be discussed in more detail throughout this report. Briefly, the 1970 census reported the population of the islands as 62,468, an increase of 95 percent over the 1960 census figure of 32,000. It should be noted that virtually all discussions of the Virgin Islands comment on the unusual difficulty in obtaining satisfactory statistical data. As a relevant case in point, former Governor Melvin Evans told a New York Times reporter in 1971 that he believed the population of the Islands to be closer to 80,000 than to the census figure of roughly 63,000, and others have put it still higher.¹

Based on the 1970 census data, the approximate population distribution by island was St. Croix, 32,000; St. Thomas, 29,000, of which more than 12,000 lived in Charlotte Amalie; and St. John, less than 2,000. More than 75 percent of the population lives in rural areas, and more than 70 percent of the population is black. The official 1970 statistics on citizenship status indicated that 21,328, or approximately 35 percent of the total population are foreign born, with the majority of these coming from the British West Indies (14,424). Temporary aliens—the subject of this report—accounted for more than half of the foreign born (11,309). The number is considerably higher now because of a 1970 amendment to the immigration law permitting the entry of the spouses and children of the temporary aliens.

Turning briefly to the Islands' economy, tourism remains its major industry, although it has declined since the late 1960's. Expenditures by tourists increased from \$26 million in 1960 to \$112 million in 1969, and at that time accounted for more than 25 percent of the Islands' income. Government and construction work are also major sources of employment, the former primarily of natives of the U.S. Virgin Islands, and the latter of alien workers. Also significant are the major aluminum plant and oil refinery built recently by Harvey Aluminum and Hess Oil on St. Croix.

The Virgin Islands are the peaks of submerged mountains and, as a result, are unusually lacking in natural resources. According to one source, the only resources they have in abundance are "soil, rock, sand,

¹J. Anthony Lukas, "The Plaint of the Virgin Islands: 'We Have Been Encroached On, Invaded, Engulfed,'" *The New York Times Magazine*, Apr. 18, 1971, p. 102.

and gravel." This, of course, overlooks their remarkable climate and surroundings, the basis of the tourist industry. However, much of the fresh water and food consumed on the Islands must be imported.

B. STATUS OF THE VIRGIN ISLANDS OF THE UNITED STATES UNDER U.S. IMMIGRATION LAW

The Immigration and Nationality Act of 1952, as amended, incorporates in section 306 (8 U.S.C. 1406) a considerable portion of the Act of February 25, 1927, which conferred citizenship upon certain natives of the Virgin Islands of the United States, and extended the naturalization laws to the U.S. Islands. Both laws define the categories of persons living in and born in the Virgin Islands of the United States who are declared to be U.S. citizens. This includes all aliens born in the islands on or after February 25, 1927, and subject to the jurisdiction of the United States.

The provisions for entry into the United States apply fully to the Virgin Islands of the United States, which are included in the general definition of United States contained in section 101(a) (38) of the act (8 U.S.C. 1101(a) (38)). In addition, section 212(d) (7) (8 U.S.C. 1182(d) (7)) of the immigration law currently in effect provides that aliens entering from specified territories, including the U.S. Virgin Islands, must meet all but the documentary requirements of the grounds for exclusion set forth in the act.

U.S. immigration law has not always had full force in the Virgin Islands of the United States. This is a relatively recent development, dating back to 1938 under law, and 1941 in fact. The development of immigration law and administrative procedure in the U.S. Virgin Islands is traced briefly below.

Because the Immigration Act of February 5, 1917 preceded the March 3, 1917 Act providing for a temporary government for the Virgin Islands, it was held that the 1917 Immigration Act was not applicable to the newly acquired U.S. possession. As a result, the free travel among the islands which had been the rule during their joint ownership by the British and the Danes continued during the first years of U.S. control. Many families on the U.S. and British islands were and remain closely related, and there is a long-standing tradition of travel among the islands in search of employment opportunities. The following statement regarding the Virgin Islands contained in a 1950 Senate report remains valid today.

Both the British and Danish authorities permitted free movement among the islands. This has created a pattern of interisland travel which is no small source of trouble for United States immigration authorities.²

On June 1, 1925, the Naval Governor of the U.S. Virgin Islands proclaimed that the Immigration Act of 1924 applied to the Islands, after the Secretary of the Navy had been so advised by the Secretary of Labor. However, it was administered laxly there by the local police under the authority of the Governor until 1938, when the Solicitor of the Department of Labor ruled that both the 1917 and 1924 acts applied to the Virgin Islands. The Immigration and Naturalization Service,

² Senate Special Subcommittee to Investigate Immigration and Naturalization, The Immigration and Naturalization Systems of the United States, H.R. Rep. No. 1515, 81st Cong., 2d Sess. 661 (1950).

then a part of the Labor Department, was charged with their administration on the Islands.

INS assumed only nominal jurisdiction³ over the administration of the immigration law, leaving it largely in the hands of the local police and other local officials who were appointed acting immigrant inspectors by the Governor, who had been appointed acting district director. This was largely unsuccessful, and on March 1, 1941, INS "assumed complete jurisdiction in the immigration matters in the Islands, with the wholehearted concurrence of the local government."⁴ Complete and accurate records for the Islands do not exist prior to this date. However, for administrative purposes, the active enforcement of the 1917 and 1924 laws is considered to have begun on the U.S. Virgin Islands on July 1, 1938.

A number of administrative problems faced the Virgin Islands immigration authorities in 1941, not the least of which was the clearly illegal status of many of the Islands' residents. All aliens who had entered the Islands prior to July 1, 1938, were deemed to have been lawfully admitted for permanent residence under an order issued by the Attorney General in December 1943.⁵ This administrative action, in its turn, raised the problem of the absence of records of entry for naturalization purposes. This was eventually solved by an INS regulation permitting a record of entry to be established at reentry.⁶

A third and major problem facing the immigration authorities in 1941 was the legal and administrative chaos resulting from the entry of much-needed defense workers for the construction of military bases on St. Thomas. The labor situation was not unlike the pressing need for alien workers brought about by the tourist boom in the 1960's. Quoting from a description by the INS officer in charge at Charlotte Amalie at the time:

At the time this Service assumed these responsibilities, the demand for labor was the greatest in the history of the Islands. Bases in the Virgin Islands were needed quickly by the Armed Forces of the United States and unskilled laborers were in demand by the thousands. Obviously, the Islands themselves could not supply these laborers and, at the start, the pay was not adequate to induce workers to come from the States. The word drifted down through the West Indies that "The Government" needed workers in St. Thomas, Virgin Islands, and people from the nearby British and French possessions began to converge upon the Virgin Islands in the early months of 1941. They came in schooners, motor boats, sloops and rowboats. * * *

Needless to say, these aliens could not enter legally. They could not understand how the Government could deny them entry on the one hand, and on the other, beckon them to enter to work at wages which, to them, were unbelievable.⁷

The INS force at the time was far too small to cope with the entering aliens who, in turn, did not comprehend U.S. immigration law and procedures. Many entered illegally, dropping anchor in one of St. Thomas' numerous bays and coves and thus bypassing the INS inspection process in the main harbors. The number of illegal workers was so great that their deportation would, it was felt, have disrupted the war effort. In March 1941, INS, the Board of Immigration Appeals, and the Department of State made the necessary administrative arrange-

³ Matter of M., 1 I&N 414, 415 (1943). This decision contains a summary of the early history.

⁴ John M. Bonds, "History of Service Activities in the Virgin Islands," *Immigration and Naturalization Service Monthly Review*, December 1946, vol. IV, p. 77.

⁵ General Order C-43, Dec. 16, 1943.

⁶ 8 CFR 363.7, since repealed. Bonds, *supra* note 4.

⁷ Bonds, *supra* note 4.

ments for laborers to work in the Island for national defense purposes under waivers of certain requirements of the immigration law. These waivers were rescinded during mid-1944.⁸

It was estimated that approximately 1,000 alien workers remained on the Islands after the completion of the war work. Quoting again from a contemporary description of the situation:

Undoubtedly, the Virgin Islands of the United States are on a much higher economic plane than the neighboring islands. Wages and opportunities are so much better that comparison is impossible. Consequently, the aliens who accepted private employment worked much harder than the natives—in many instances for less money—thinking it would enhance their opportunity of staying in the Islands permanently.⁹

In the fall of 1945, the remaining alien defense workers were notified that unless they left voluntarily, deportation proceedings would be instituted. Mass voluntary departure of the aliens began only after several were prosecuted, convicted, and imprisoned. However, the results were only temporary. By 1947, the illegal entry of aliens was increasing in what appeared to be a chronic problem. As the result of INS efforts at the end of 1949, an estimated 1,000 illegally resident aliens had again left the Islands.

The postwar situation prior to the enactment of the Immigration and Nationality Act of 1952 is described briefly in a 1971 INS paper on temporary alien labor in the Virgin Islands, reprinted here as appendix 1.¹⁰

II. THE 1950's

In late 1954, as part of a general review of the operation of the newly enacted Immigration and Nationality Act, a special subcommittee of the House Committee on the Judiciary conducted an examination of the administration and effects of certain of the act's provisions in the Caribbean area. The review included hearings held in the U.S. Virgin Islands, the main topic being "needs for temporary non-immigrant labor, which might be imported in the '(H) (ii)' category of section 101(a) (15) of the Immigration and Nationality Act."¹ The H-2 temporary worker provision, which remains a part of the current law, is discussed briefly below.

The special subcommittee's findings and recommendations were made in a report entitled "Administration of the Immigration and Nationality Act," dated February 28, 1955, and published as an appendix to a report of the Committee on the Judiciary of July 29, 1955.² The key recommendation made by the special subcommittee follows:

1. The special subcommittee is of the opinion that the economic development of the Virgin Islands of the United States could be further enhanced by a more realistic and expeditious application of subdivision (H) (ii) of section 101(a) (15) of the Immigration and Nationality Act, which would permit the temporary employment of natives of the British island of Tortola at jobs which become available at specified seasons, either in agriculture or in the tourist (hotel)

⁸ Ibid., p. 78: appendix 1, pp. 57-58.

⁹ Bonds, *supra* note 4, at 79.

¹⁰ U.S. Immigration and Naturalization Service, "The History of Temporary Alien Labor in the Virgin Islands of the United States," Mar. 23, 1971. See p. 59. (Henceforth cited as 1971 INS paper.)

¹ H.R. Rep. No. 1570, 84th Cong., 1st sess., app. 117 (1955). Henceforth cited as 1955 report.

² House Committee on the Judiciary, Intergovernmental Committee for European Migration and Immigration to the United States, H.R. Rep. No. 1570, 84th Cong., 1st sess. (1955).

industry. The language of this section has been construed by the immigration officials in such manner that these hotel and agricultural workers are considered permanent workers. It is the sense of the subcommittee that this interpretation is too restrictive, and that Congress intended that workers employed in seasonally available jobs should be considered as temporary workers. However, it is believed that a truly effective solution of the whole problem might be achieved through a locally applicable British-American agreement, patterned upon the Mexican-American agreement presently in effect. Specific interests of an area which, political separation notwithstanding, represents an economic, social, ethnic, and geographical entity, should also be borne in mind.³

This recommendation is commonly cited as the basis for the non-immigrant alien labor program in the U.S. Virgin Islands. For example, the program was briefly described as follows by INS in a paper published as an appendix to a 1963 Judiciary Committee print:

Temporary alien laborers in the American Virgin Islands.—This program was begun in 1956 as a result of recommendations by a special subcommittee of the House Committee on the Judiciary, which appears on page 131 of the Report on the Administration of the Immigration and Nationality Act, dated February 28, 1955. The program was intended originally only for aliens from the British West Indies but it has been extended to include aliens from the French and Dutch islands in the West Indies.

A special agreement must be signed between the employer of the alien worker and the U.S. Government, listing the conditions with which the employer agrees to comply.⁴

A. THE H-2 PROVISION

The Immigration and Nationality Act went into effect on December 24, 1952. Under this act, the temporary admission of foreign workers is governed by section 101(a)(15)(H) and section 214(c).

Section 101(a)(15)(H) is one of the categories of nonimmigrants, now numbering 12, defined by the Immigration and Nationality Act. It provides for the entry of three subcategories of temporary workers, as follows: (i) persons of distinguished merit and ability, (ii) other temporary workers, and (iii) trainees. The second subcategory, the so-called H-2 provision, is the most frequently used, and the one of interest here. It has not been amended since its enactment in 1952, and reads as follows:

(H) An alien having a residence in a foreign country which he has no intention of abandoning * * * (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country * * *

Section 214(c) authorizes the Attorney General to make determinations regarding the importation of aliens under section 101(a)(15)(H), upon petition from the importing employers. "Consultation with appropriate agencies of the Government" is also required. The statutory language, unamended since 1952, follows:

(c) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

³ 1955 report, p. 131.

⁴ House Committee on the Judiciary, Study of Population and Immigration Problems, special series No. 11, at 189 (Committee Print 1963). This description was repeated verbatim in an INS paper published as chapter XVI of the report of the Select Commission on Western Hemisphere Immigration (January 1968), p. 97.

In the case of the H-2 worker, a reasonably formalized procedure for Justice Department consultation with the Department of Labor has been set forth with varying degrees of detail in the regulations intermittently since 1953.⁵ The major Labor Department agencies involved have been, successively, the U.S. Employment Service, the Bureau of Employment Security, and currently the U.S. Employment Agency of the Manpower Administration. At the local level, the State employment service is affiliated with the Labor Department. The State employment service is a series of federally funded State public employment agencies established by law in 1933. On the Virgin Islands this is the Virgin Islands Employment Service, created in 1951.⁶

According to the usual procedures now and in the past, the initial action on the H-2 employer's application is made by the local office of the State employment service. This includes a recommendation regarding the unavailability of domestic workers. This action must be approved by the U.S. Labor Department, and may be overruled by the Department of Justice, since the Attorney General has final authority regarding the admission of H-2 workers.

As it evolved over the years, the Virgin Islands nonimmigrant alien labor program represented a departure from the usual procedures in a number of respects, including the role of both the V.I. Employment Service and the U.S. Labor Department. However, prior to the institution of the program, H-2 nonimmigrants were admitted to the Islands under the standard procedures, and were being so admitted—or denied—when the special subcommittee enquired into the operation of the H-2 provision on the Islands in late 1954.

B. BACKGROUND OF THE SUBCOMMITTEE'S RECOMMENDATION : 1952-54

As a preface to the following consideration of the 1952-54 period, it should be emphasized that the pressures leading to the Judiciary subcommittee's 1955 recommendation and eventually to the Virgin Islands labor program did not originate in the 2 years after the enactment of the Immigration and Nationality Act of 1952. The need for temporary alien labor was felt in the U.S. Virgin Islands long before the 1952 act. Similarly, dissatisfaction with the provisions of the immigration law governing the entry of temporary workers on the Islands may properly be said to have begun in March, 1941, when the Immigration and Naturalization Service first began the systematic enforcement of the law.

As noted above, the provision governing the entry of temporary (H-2) alien workers is limited to workers entering to perform services or labor which are themselves temporary in nature. During the first two years after the Immigration and Nationality Act went into effect, the Immigration and Naturalization Service would not permit entry of many of the H-2 temporary workers petitioned for on the Islands, on the grounds that the employment for which they were being sought was not of a temporary nature. This apparently included

⁵ For INS regulations promulgated Dec. 18, 1952, see 8 CFR 214h, 2 U.S. Code Cong. & Admin. News, 1953, pp. 2505-2507. For current regulations, see 8 CFR 214.2(h)(3) (INS, Department of Justice); and 20 CFR 602.10, 621 (Manpower Administration, Department of Labor).

⁶ For a discussion of the legislative history of the State employment service and specifically the Virgin Islands Employment Service, and of their usual role in the H-2 certification process, see *Gannett Corporation v. Stevens*, 282 F. Supp. 437 (V.I., 1968).

much seasonal hotel and agricultural work which the employers claimed to be seasonal.

The St. Thomas and St. Croix Chambers of Commerce appealed to the Commissioner of INS in October 1953, describing what they saw to be an acute labor shortage, and requesting that a plan be devised for the entry of workers from the nearby British, Dutch, and French islands. The Commissioner replied in the negative, indicating that it was the view of INS that aliens entering to perform work of an "indefinite or permanent duration" were certifiable only as immigrants and not on a temporary basis. The Commissioner stated:

Accepting this basic premise, various plans and devices to guarantee the speedy importation, departure, and periodic turnover of this alien labor force are of no avail.⁸

Appeals were also made to both the Senate and House Committees on Interior and Insular Affairs, which at the time were considering legislation for the revision of the Organic Act of the Virgin Islands. The Senate Committee Chairman, Senator Hugh Butler of Nebraska, held hearings on the Virgin Islands in November 1953. The report published pursuant to those hearings included the following description of the need for alien laborers by a prominent St. Thomas businessman, Mr. Isadore Paiewonsky:

What seems to have happened recently is that a strict and sudden enforcement of Federal immigration laws to the Virgin Islands has created an artificial Iron Curtain between the American and British Virgin Islands, disrupting an interdependence of interisland connection that has existed for more than a century and a half. This drying up of efficiency, especially in such categories as farm labor, domestics, and hotel help, . . . [came] at the precise moment that the Army draft dug deeply into the young manpower of the islands . . .

All this has occurred just about the time that tourist facilities expanded tenfold. Hotels have had to dig deeply into the shrunken labor pool and take what they could get. As a result and because of lack of training and other qualifications, service has been poor and tourists have been registering many complaints. Coupled with a degree of mismanagement in some hotel operations, our tourist potential, which shows much promise, has been handicapped.

Because of our shrunken labor pool, small industry has not taken advantage of tax-exemption laws and so far has not come to the Virgin Islands in any sense.⁹

Mr. Paiewonsky's proposed solution to the problem as he described it follows:

The answer to this acute labor problem seems to indicate a strong need for some form of constructive relaxation of the artificial barrier that has been erected between the British and American Virgin Islands.

Possibly the local government, immigration, and labor union could set up some form of screening process whereby needed labor may be let in under some form of controlled permit to answer immediate and essential needs. This permit would be strictly for this area and would not permit the British Virgin Islander to travel to Puerto Rico or the United States. To bring the British Virgin Islander here under the standard visa system is no answer to our problem. Within a short

⁸ 1971 INS paper, Appendix 1, p. 59. The Virgin Islands Labor Program as it developed appears preeminently to be the kind of plan or device initially ruled out by the Commissioner as being in violation of the "basic premise" that workers entering to perform labor of an indefinite or permanent nature are not eligible to enter on a temporary basis.

⁹ Chairman of the Senate Committee on Interior and Insular Affairs, 83rd Cong., 2d Sess., Virgin Islands Report 65 (Committee Print 1954). Mr. Paiewonsky's statement is almost identical to his testimony Jan. 14, 1952 before the House Committee on Interior and Insular Affairs' Subcommittee on Territories and Insular Possessions, Hearings on H.R. 2644, 82d Cong., 2d Sess., ser. 9, at 35-36.

time he heads for the United States mainland using the island entry strictly as a funnel for exodus to the United States.¹⁰

The Senate report also included a letter from INS Commissioner Argyle R. Mackey, dated March 24, 1954, in response to Senator Butler's request for commentary on legislative proposals before his committee for facilitating the entry and exit of certain residents of the British Virgin Islands, and for information on the need for the importation of alien labor to the U.S. Islands. The Commissioner declined to answer either question, the first on the grounds of Justice Department policy, and the second because of lack of "definite information."¹¹

According to the INS 1971 paper, a Subcommittee of the House Committee on Interior and Insular Affairs held hearings on immigration and labor problems in the Virgin Islands in February 1954. Reportedly, the subcommittee received written petitions regarding the alien labor problem from hundreds of U.S. Virgin Islands employers. However, in response to an inquiry of the House Committee Chairman, the Commissioner of INS replied that INS "has no authority under the present immigration laws to authorize the importation of the labor desired by the petitioners."¹²

C. THE REPORT OF THE SPECIAL SUBCOMMITTEE

As noted above, hearings were conducted on the need for alien labor on the Virgin Islands by the special subcommittee of the House Committee on the Judiciary, on December 9 and 10, 1954. The witnesses heard represented "a good cross section of local interests and civic groups." The views of the various groups heard by the subcommittee are summarized and excerpted in the report, and are noted briefly here.

(1) *The Legislative Assembly of the Virgin Islands*.—While a majority of the legislature "apparently" favored the importation of labor, it was not the two-thirds majority necessary to pass a resolution to that effect. According to the subcommittee's findings, proponents pointed to the shortage of farm and resort workers; both shortages were noted by the subcommittee to be "seasonal in nature." The subcommittee reported that, "The opposition emphasize the fear that there may be an oversupply of labor in the future and the presence of alien workers will complicate such a situation."¹³

(2) *The chambers of commerce and the Hotel Association of the Virgin Islands*.—The proponents of "the most liberal recommendations for the admission of alien workers," the members of this group stressed the need for "seasonal labor . . . in connection with the tourist trade." They objected to the existing procedures for importing temporary alien labor on the grounds that the petitioning procedure under sections 101(a)(15)(H) and 214(c) involved too much red tape

¹⁰ *Ibid.* The Senate report included statements on immigration problems by the Governor of the Leeward Islands and by the St. Thomas Labor Union, CIO, which are similar to their statements included in the 1955 report of the House Judiciary Committee's special subcommittee.

¹¹ Letter from INS Commissioner Argyle R. Mackey, Mar. 24, 1954. *Ibid.*, p. 97.

¹² 1971 INS paper, Appendix 1, p. 60. This is the sole source of information on the hearings. Apparently they were not printed.

¹³ 1955 report, p. 118.

and delay. At that point, this procedure required investigation and certification by the Virgin Islands Employment Service and the U.S. Employment Service, and approval by the Immigration and Naturalization Service.

In place of the petitioning procedures then in effect, the chambers of commerce group recommended "free ingress and egress of workers when a certification of the lack of labor was made by an individual or firm." Quoting further from the subcommittee's summary of this group's position:

Their proposal was that the certifying individual sponsor the workers being brought in and deposit a bond with the Governor to guarantee payment of their return passage. . . . They also suggested that the United States enter into an executive agreement with Great Britain dealing with the problems arising from the close contacts between the British and American Virgin Islands.¹⁴

(3) *Organized labor*.—The subcommittee reported that the organized labor groups were generally hostile to the idea of the admission of nonimmigrant labor, that the "free ingress and egress" proposal of the chambers of commerce was definitely unacceptable, and that the certification system then required under the petitioning procedure was satisfactory to them. In particular, the labor groups denied there was a shortage of construction workers. They also indicated concern about a future oversupply of labor, and requested some procedure for the return of alien labor in the event of an oversupply. Finally—and the subcommittee emphasized the following finding with italics—

*Objections voiced by labor interests were not primarily directed to the seasonal workers needed in connection with the tourist trade. It is probable that in this field there is the least conflict of interest. Similarly there was no great objection to the importation of harvest workers for St. Croix.*¹⁵

The organized labor groups included the St. Thomas Labor Union (CIO), the St. Croix Labor Union (independent), and A.F.L. affiliates. In a statement submitted by the St. Thomas Labor Union, it indicated that it had no objection to the admission of legal residents of the British Virgin Islands, provided they came within the interpretation of the McCarran-Walter Act and any rulings which emanate from the U.S. Attorney General. In addition, it proposed the creation of a control board consisting of members from the U.S. Employment Service, INS, the St. Thomas Labor Union, and business representatives, to determine whether there was a labor shortage, pass on individual cases, and monitor the conditions of their employment. Finally, it emphasized that before any foreign labor is imported, every resident Virgin Islander should be employed, and that this should be followed by the tapping of other American channels for the requested labor.¹⁶

(4) *British Virgin Islands*.—Statements were also received from the Governor of the Leeward Islands and the British Commissioner, both in strong support of expanded opportunities for British Virgin Islanders to travel to and from work in the U.S. islands. In words which have proved prophetic, the British Commissioner noted that of the possible solutions to the present problem, "a more elastic interpretation of the McCarran Act," for instance to allow H-2 entry for per-

¹⁴ *Ibid.*, pp. 118-119.

¹⁵ *Ibid.*, p. 119.

¹⁶ *Ibid.*, pp. 122-123.

manent work, "is the least satisfactory solution from the British Virgin Islands point of view since it guarantees no permanent improvement in the present situation".¹⁷

The recommendation of the special subcommittee is quoted in its entirety on pages 9-11 above. Particularly in view of the magnitude of the Virgin Islands labor program as it has evolved, allegedly on the basis of this recommendation, its very limited nature should be emphasized. The subcommittee recommended a more realistic and expeditious application of the H-2 provision for the natives of the British island of Tortola only, for seasonal employment in agriculture or the tourist industry. It was the sense of the subcommittee that INS's present classification of these hotel and agricultural workers as permanent workers was too restrictive.¹⁸

This specific and very limited recommendation was based on a more general interpretation of congressional intent, to the effect that Congress intended that workers employed in seasonally available jobs should be considered as temporary workers. This interpretation by the subcommittee would appear to be fully in line with the following statement from the House report on the 1952 legislation regarding the provisions governing the entry of temporary alien workers:

These provisions [section 101(a)(15)(H) and 214(c)] of the bill grant the Attorney General sufficient authority to admit temporarily certain alien workers, industrial, agricultural, or otherwise, for the purpose of alleviating labor shortages as they exist or may develop in certain areas or certain branches of American productive enterprises, particularly in periods of intensified production.¹⁹

The subcommittee emphasized what it saw to be the limited effectiveness of its recommendation regarding agricultural and hotel employment in solving the labor problems of the U.S. Virgin Islands, as well as the problems arising from the fact that the Virgin Islands as a whole represented an economic, social, ethnic, and geographical entity. Specifically, the recommendation continues:

However, it is believed that a truly effective solution of the whole problem might be achieved through a locally applicable British-American agreement, patterned upon the Mexican-American agreement presently in effect. Specific interests of an area which, political separation notwithstanding, represents an economic, social, ethnic, and geographical entity, should also be borne in mind.²⁰

The Mexican-American agreement referred to above was the basis for the so-called bracero program, the Mexican temporary agricultural labor program, which was authorized first by international treaty and subsequently by legislation.²¹

D. ADMINISTRATIVE ACTION, 1954-60

The immediate administrative response to the findings and recommendations of the special subcommittee was a less restrictive interpretation by the Immigration and Naturalization Service of what

¹⁷ *Ibid.*, p. 130.

¹⁸ *Ibid.*, p. 131.

¹⁹ H.R. Rept. No. 1365, 82d Cong., 2d sess. 44-45 (1952).

²⁰ 1955 report, p. 131.

²¹ The bracero program was first authorized by an agreement between the Governments of the United States and Mexico, signed in 1942. On July 12, 1951, Congress enacted Public Law 78 (65 Stat. 119) authorizing the importation of temporary Mexican agricultural workers under the Agricultural Act of 1949, as amended. This authorization originally had an expiration date of Dec. 31, 1951. It was extended by successive amendments until Dec. 31, 1964, when it was allowed to expire.

constituted temporary services or labor within the meaning of section 101(a)(15)(H)(ii), particularly for British Virgin Islanders.²² According to one source, INS reversed its former position and found seasonal employment in resort hotels in the Virgin Islands to be temporary within the meaning of the law on December 14, 1954.²³

On March 19, 1956, special procedures were adopted for the temporary entry of workers from the British Virgin Islands. In addition to this geographical restriction, the program was restricted to the following occupational categories: agricultural laborers, hotel workers, domestics, unskilled laborers, and project workers.²⁴ These geographical and occupational restrictions were increasingly relaxed as the program evolved over the years.

The March 1956 program was preceded by a meeting March 1, 1956, on the Virgin Islands of the Governor, British officials, Immigration Commissioner Joseph Swing, and a representative from the Caribbean Desk of the Department of State. This meeting was the basis for the "revised program to authorize the temporary entry of workers . . . from the British Virgin Islands."²⁵ The document outlining the procedures to be followed began:

Recognizing the local factors which cause the need of the U.S. Virgin Islands to import workers for temporary services or labor and the desirability to obtain such workers from the British Virgin Islands, a special procedure designed to meet these local conditions has been adopted by the Immigration and Naturalization Service. This procedure is expected to control, with appropriate promptness and flexibility, the importation of workers into the U.S. Virgin Islands for temporary employment. The need for special attention to the community of interests which prevails in the Virgin Islands has been demonstrated by consultation with appropriate agencies of the Government, and such consultation will be on a continuing basis.²⁶

The March 1, 1956, meeting and the program which evolved from it mark the true beginning of the Virgin Islands temporary alien labor program said to be authorized by the special subcommittee's 1955 recommendations. It should be noted that the 1956 agreement went well beyond the subcommittee's recommendation in its inclusion of domestics, unskilled laborers, and particularly project workers. In addition, the 1956 agreement between British and U.S. officials lacked the legal authority of the Mexican-American agreement mentioned by the subcommittee in its recommendation regarding the advisability of a locally applicable British-American agreement patterned after it.²⁷ As noted above, the Mexican-American program was authorized first by treaty, and subsequently by legislation.

Under the new procedures which went into effect on March 19, 1956, British subjects who resided in the British Virgin Islands and who qualified as nonimmigrant temporary workers under section 101(a)

²² 1971 INS paper, Appendix 1, p. 60. There is no official public record of this reported change in INS policy.

²³ This would have been immediately following the special subcommittee's Dec. 9 and 10 hearings on the islands, but 7 months prior to the official publication of its report.

²⁴ According to the 1971 INS paper, project workers were added at the suggestion of Governor Gordon of the American Virgin Islands to provide for labor needs on special projects (Appendix 1, p. 60). The importation of temporary construction workers had been particularly objectionable to the organized labor groups heard by the special subcommittee, and had been so noted in the subcommittee's findings (1955 report, p. 119).

²⁵ 1971 INS paper, Appendix 1, p. 60.

²⁶ Memo from P. A. Esperdy, Acting Regional Commissioner, Southeast Regional Office, Richmond, Va., to Officer in Charge, INS, Charlotte Amalie, St. Thomas, Virgin Islands, Mar. 19, 1956, copy on file in subcommittee office. (Henceforth cited as 1956 memo.) This is the primary source for the discussion of the 1956 procedures.

²⁷ 1955 report, p. 131.

(15) (H) (ii) could be brought in to perform certain types of temporary labor, which were essentially defined as being temporary under the terms of the program. The prospective employer was required to file a separate petition for each worker with the INS officer in charge, Charlotte Amalie, St. Thomas, pursuant to section 214(c) of the act. A certification from the U.S. Department of Labor supporting the petition was not required. Instead, "the consultation required by section 214(c) before a petition could be approved was to be had with the Governor of the United States Virgin Islands who would attest to the need for labor."²⁸ The 1956 memo makes no reference to such consultation with the Governor, although it does mention consultation "with appropriate agencies of the Government . . . on a continuing basis."²⁹

The approval of the petition was conditioned upon the petitioner's posting a bond guaranteeing that the worker would not become a public charge, and that he would maintain his status and depart at the expiration of his authorized stay. This initial requirement of a bond is the source of the term "bonded aliens" still commonly applied to the temporary alien workers on the Virgin Islands.³⁰

Workers entering under the March 1956 program could be admitted for a period of up to 1 year, with provision for additional extensions of up to 1 year.³¹ At the end of each year's employment, workers were required to depart from the U.S. Virgin Islands for at least 1 day before resuming employment. The procedures also provided that the "period of admission or any authorized extension thereof, may, without notice to the worker, be canceled or shortened for any reason that is deemed appropriate" by INS. Finally, the program was retroactive, covering H-2 workers on the U.S. Virgin Islands on the effective date.

Concern was expressed by the U.S. Department of Labor in April 1956 that the procedures outlined above did not provide for a determination of the availability of U.S. workers, and generally did not allow for an observation of U.S. Employment Service policies in the importation of the alien workers. The INS Commissioner defended the program on the grounds that it was limited solely to British Virgin Islanders, regarding whom:

Personal consultations have been had with the Governor of the American Virgin Islands who is committed to such consultations on a continuing basis. He consults with the U.S. Employment Service representatives, and in addition legislative leaders, union officials, businessmen, and other sources available to him alone as Governor from which he may obtain necessary information to continue advising this Service.³²

²⁸ 1971 INS paper, Appendix 1, p. 60.

²⁹ Quoted above; see p. 12.

³⁰ Under standard H-2 procedures at the time, the officer in charge had the discretionary authority to require an alien applying for admission as an H-2 nonimmigrant to post a bond in an amount determined by the officer, to insure that he would depart at the end of his authorized stay, and maintain the status under which he was admitted. A bond was obligatory in the event of an extension authorizing the alien to remain in the United States for an additional period of time which would bring his total stay here to a period of more than 1 year. 8 CFR 214.3, 214.4, 214h.2, 2 United States Code, Cong. & Admin. News, 1955, pp. 3153-3154, p. 3159.

³¹ INS regulations in effect at the time generally permitted the entry of H-2 workers for periods not to exceed 1 year, with an opportunity for extensions, 8 CFR 214.4, 214h.1, 2 United States Code Cong. & Admin. News, 1955, pp. 3153-3154, pp. 3158-3159. There was no yearly departure requirement.

³² INS Commissioner Joseph Swing, quoted by 1971 INS paper, Appendix 1, p. 60. According to a footnote, the Associate Manpower Administrator later said that he believed the consultation was with the Virgin Islands Employment Service, rather than with the U.S. Employment Service as the Commissioner had stated.

On August 20, 1956, the Immigration Service adopted the requirement that future petitions for temporary workers from the British Virgin Islands must be "endorsed with a certification of the unavailability of qualified local labor, issued by the Virgin Islands Employment Service."³³ The local Virgin Islands Employment Service continued to function more or less autonomously in the Virgin Islands labor program until 1967, when the U.S. Labor Department began reasserting control.

In 1959, the British Virgin Islands program was officially expanded to include workers from the British, French, and Netherlands West Indies. According to the INS account of the events leading to this development, it originated with an administrative error:

The officer in charge at St. Thomas through a misunderstanding had started a practice of extending the special British Virgin Islands program to the British West Indies generally and had been approving nonimmigrant petitions for workers from those other islands for positions in the American Virgin Islands of a permanent or continuing nature.

Upon discovering this, the INS central office in June 1959 "directed that the unauthorized practice be discontinued immediately." This was followed in July 1959 by a protest by the Governor against "the drastic restriction imposed by the Service on the importation of workers from the British and French West Indies." On August 19, 1959, the INS central office issued a memorandum authorizing the admission of certain workers from the British, French, and Netherlands West Indies under the British Virgin Islands program.³⁴

In November 1959, the practice of requiring bonds covering the admission of temporary workers admitted under the Virgin Islands labor program was discontinued. In its place, a signed agreement—Form I-320B, included as appendix B—between the U.S. Government and the employer was required, including a provision for the payment of liquidated damages by the employers for violation of the agreement.

The central role played by the Governor in employer certification was peculiar to the Virgin Islands labor program. Quoting from a November 1959 memo outlining the change in bonding procedure:

You should normally rely entirely upon Governor Merwin's office for certifications of eligible employers. In that connection, it is suggested that the Governor be requested to withhold certification where the employer has not complied with the spirit of the program, and especially where he has failed to respond to our demand for liquidated damages for any violation of an agreement with this Service. . . . The requirement for obtaining the concurrence of the local government will, we believe, contribute importantly to the success of the program.³⁵

As noted above, beginning in 1956 the responsibility for determining the unavailability of U.S. worker prior to issuing H-2 certifications rested with the local Virgin Islands Employment Service. This agency's procedures in this regard were surveyed in September 1960 by the U.S. Department of Labor's Bureau of Employment Security, and found deficient in the protection they afforded domestic workers. A revised plan for certification proposed by the U.S. Labor Department

³³ Quoted by 1971 INS paper, Appendix 1, p. 61.

³⁴ 1971 INS paper, Appendix 1, p. 61. According to another source, Netherlands West Indians had been included in the program by oral instructions in August 1956.

³⁵ Memo from R. E. Schoenenberger, Associate Deputy Regional Commissioner, Operations, Richmond, Va., to District Director, San Juan, Puerto Rico, Nov. 9, 1959; copy on file in subcommittee office.

met with objections from the Immigration and Naturalization Service, apparently on the grounds that it seemed to require on-Island rather than off-Island recruitment.³⁶ No significant changes were made in response to the Labor Department's criticism or suggested revision of the certification procedures.³⁷

Reportedly, INS attempted to limit petition approvals to workers in the five occupational categories agreed upon in March 1956. However, according to the 1971 INS paper, "as of May 1963 any petition supported by a clearance order from the Virgin Islands Employment Service would be approved as a general rule—and the Employment Service was issuing clearance orders for any jobs for which there was a labor need."³⁸ Thus, by the early 1960's, the program's original geographical and occupational restrictions had been abandoned. Even these restrictions had gone well beyond the subcommittee's recommendation, which had referred specifically to the admission under the H-2 provision of natives of the British island of Tortola for seasonal jobs in agriculture and the tourist industry.³⁹

III. THE 1960's

During the 1960's, the temporary alien labor program expanded to the point where, by the end of the decade, alien laborers constituted roughly half of the Virgin Islands labor force. This expansion is reflected in the dramatic increase of aliens in the overall population figures. In 1960, a total of 3,826 aliens in the Virgin Islands registered under the alien address program. Assuming this figure to be an accurate reflection of the number of aliens, it represents 12 percent of the 1960 Virgin Islands population of 32,099. By 1970, the population of the Islands as reported in the U.S. census had almost doubled, totaling 62,468. Of this number, 18,928, or 30 percent, were foreign born who had not attained citizenship.

According to unpublished Department of Labor statistics, the number of nonimmigrant workers in the Virgin Islands more than doubled in the 4-year period 1964 through 1968, increasing from 5,741 to 13,288. By 1968, an estimated 45 percent of the total labor force of 27,000 workers were nonimmigrants, with much higher percentages in some occupations. Nonimmigrant aliens were estimated to hold 90 percent of the construction jobs and 60 percent of the service jobs in 1968.

The increasing reliance of the Virgin Islands on temporary alien workers is generally traced to, among other factors, the growth of the tourist industry during the 1960's, combined with an apparent unwillingness on the part of much of the native population to take many of the jobs commonly associated with it. According to one observer:

The "alien problem," as it is called here, has deep historical roots. The Danes established a rigid hierarchical system in which Government officials ranked at the top of the social scale and cane choppers and laborers at the bottom. Thus, most native Virgin Islanders have regarded manual labor—agricultural or commercial—as degrading. Above all, they want a Government job.¹

³⁶ 1971 INS paper, Appendix 1, p. 61.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ 1955 report, p. 131.

¹ Lewis, *supra* note I-1.

This explanation would seem to be borne out by the large number of native Virgin Islanders in either Federal or local government employment. Quoting from another commentary:

Government employment increased 310 percent between 1962 and 1970, and in 1969, two-thirds of the government revenue was spent on salaries and wages.

The combination of this politically motivated welfare-by-payroll approach and the tremendous demand for labor brought about the importation of bonded alien labor.²

Another factor commonly cited as contributing to the increasing dependence of the Virgin Islands on alien workers was the adverse effect they had on prevailing wages in occupations where they were present in large numbers. Particularly in view of the high cost of living on the Islands—higher than in Washington, D.C.—the wage rate remained too low to attract native workers, let alone workers from Puerto Rico or the mainland, in what developed over the years into an economic vicious circle. The situation was assessed as follows by a U.S. Labor Department official in 1969:

If the labor supply is as tight as the employers contend, wages should have risen rapidly as employers were forced to compete for a limited supply of labor. The clear reason that this has not happened is that large numbers of alien workers have been admitted to work for wages that have prevailed in the islands. Their numbers have been so great relative to the total labor force that the prevailing wages have remained low compared to mainland U.S. wages.³

The principal Federal agencies involved in the 1960's were again the Justice Department's Immigration and Naturalization Service and the U.S. Department of Labor. At least until 1967, they pursued what can only be described as a policy of drift. A U.S. Labor Department official described the development of the situation following the special subcommittee's 1955 recommendations as follows:

These recommendations are the bases for the Immigration Service's policy of permitting temporary workers to hold permanent jobs in the Virgin Islands. As tourism became less seasonal in the Virgin Islands the distinction between seasonal and permanent jobs became obliterated. The situation simply grew over a 10-year period, and then exploded during the past 5 years.

The Department of Labor is not without sin in permitting the situation to get out of hand. Supposedly we were safeguarding the U.S. labor force all this time. We issued, or the Virgin Islands Employment Service issued as our agent, thousands of certifications declaring that no U.S. workers were available and that the admission of the alien worker would not have an adverse effect.⁴

Whatever the causes—and administrative neglect clearly ranks high on the list—by the end of the 1960's the temporary alien worker was economically essential to the Virgin Islands in a way that he had not been at the start of the decade. In one of the earliest expressions of public concern, a U.S. Interior Department official in 1967 described what he saw to be the results of the alien labor program, as follows:

The alien problem, identified as such, consists of approximately 13,000 citizens of chiefly the British West Indies, to some extent the Dutch and French, who are in the islands, not admitted for permanent entry, but simply there on a 6-month work permit. . . . These 13,000 aliens make up more than 50 percent of the

² Edward A. O'Neill, "Virgin Isles Alienate Aliens," *Washington Post*, Mar. 14, 1971, p. D-3. See also O'Neill, *Rape of the American Virgins* (Praeger, 1972), pp. 72-73. He estimated that by the late 1960's possibly 75 percent of the native-born adults worked for the government.

³ Intradepartmental memo from Assistant Secretary for Manpower to the Secretary of Labor, Jan. 13, 1969, p. 2.

⁴ Intradepartmental memo from Executive Assistant to Assistant Secretary for Manpower to Assistant Secretary for Manpower, Nov. 26, 1969, p. 8.

entire work force. If you forget the entrepreneurs and self-employed, they make up about two-thirds of the entire work force in the Virgin Islands. They do not vote. They are not eligible for public housing. They do not have the means to buy adequate rental housing on the private market. They are the biggest single problem the government of the Virgin Islands has.⁵

Because of their temporary status, the alien workers have been generally consigned to submarginal housing, educational, and social accommodations and conditions. In a 1969 memo to the Secretary of Labor, a U.S. Department official stated:

The housing, educational, and social conditions of the nonimmigrant aliens are terrible. According to observers from BES, the Interior Department, research organizations, and the public, these conditions are as bad as anything we have found in the agricultural sector.⁶

The 1970 Virgin Islands comprehensive manpower plan reported that, "The bonded alien is the single largest minority group in the Virgin Islands * * * [and] is in dire need of manpower and related services."⁷ Quoting further:

No agency has the responsibility for seeing that the bonded alien has adequate housing, that he receives public health and welfare services or that his children are admitted in our public education system.⁸

It was these social implications of the "alien problem" which first attracted public attention, beginning in the latter half of the 1960's.

Finally, the political implications of the alien labor problem as it developed during the 1960's are as disturbing as the social and economic ones. At the present time, a significant percentage of the adult population is unable to vote because of their alien status. On the other hand, some feel that a change in this status (i.e., granting them permanent resident alien status, which will later entitle them to become naturalized U.S. citizens) would in all probability cost those who are now citizens, including the native-born population, political control of the islands.

Various aspects of the temporary alien labor program as it developed during the 1960's are discussed briefly below, including the roles of local and Federal agencies, legislation, and growing public criticism during the latter half of the decade.

A. LOCAL ADMINISTRATION AND LEGISLATION

Based on decisions made in the late 1950's, agencies of the local Virgin Islands Government were given a major role in the alien labor program. The two agencies principally involved were the Virgin Islands Employment Service, subsequently renamed the Virgin Islands Employment Security Agency (VIESA); and the Virgin Islands Department of Labor, headed by the commissioner of labor.⁹

VIESA is currently a subordinate part of the Virgin Islands Department of Labor, and the latter plays only a support role for the

⁵ John Kirwan, Office of Territories. Hearings on H.R. 7330 and related bills and matters relating to election procedure and economic affairs in the Virgin Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 90th Cong., 1st sess., serial 90-15, pt. 2, p. 694 (1967). (Henceforth cited as 1967 House Interior Committee hearings.)

⁶ Internal memo from Assistant Secretary for Manpower to the Secretary of Labor, Jan. 13, 1969, p. 2.

⁷ "Virgin Islands of the United States, Cooperative Area Manpower Planning System (CAMPS) Committee, Virgin Islands Comprehensive Manpower Plan, Fiscal Year: 1970," pt. A, p. 69 (August 1969).

⁸ Ibid.

⁹ The Virgin Islands Department of Agriculture and Labor was separated into two departments in 1965.

U.S. Department of Labor in administering the alien worker program. These are both recent developments. During the 1960's, the Virgin Islands Employment Security Agency and the Virgin Islands Department of Labor were independent agencies.

The steps generally required of an employer seeking a work permit for a temporary alien during the greater part of the 1960's were summarized as follows in the 1970 CAMPS report:

The Employment Service, the local Department of Labor and the Immigration and Naturalization Service are all involved in the alien certification process. The Employment Service attests to the nonavailability of qualified citizens or permanent residents to fill the jobs in question; Labor reviews the application to determine employer needs and compliance with prevailing and minimum wage rates; the Immigration and Naturalization Service passes on whether or not the workers in question are to be allowed into the country to work.¹⁰

Until mid-1969, the local Employment Service, or VIESA, acted as an agent for the U.S. Department of Labor in issuing most of the certifications for H-2 workers.¹¹

The Virgin Islands employer wishing to import a temporary alien worker was required by local law to clear his application with the Virgin Islands Labor Department prior to submitting it to VIESA. At least in theory, the role of the local Labor Department was to enforce the local laws under its jurisdiction pertaining to the importation of temporary alien workers including, as noted above, compliance with prevailing and minimum wage rates. In practice, according to a U.S. Labor Department official in 1969, many employers disregarded the requirement that the application be cleared with the Virgin Islands Labor Department, and submitted it directly to VIESA.¹²

There are a number of local Virgin Islands enactments relating to the regulation of the importation of temporary alien workers. Laws enacted in 1961 and 1964 set forth in detail the requirements that resident workers be given preference in employment and that the employment of nonresident workers not cause injurious or adverse effects upon the wages and working conditions of resident workers.¹³ Virgin Islands law pertaining to nonimmigrant workers also includes the requirement that nonresident aliens be replaced when qualified resident workers become available.¹⁴

The procedures to be followed by the Commissioner of Labor and the Virgin Islands Employment Service were also spelled out in Virgin Islands legislation enacted in the early 1960's. Enforcement of the provision that preference be given to residents was vested in the Commissioner, as was the responsibility for setting the prevailing wage.

¹⁰ Supra note 7.

¹¹ Responsibility for H-2 advisory certification was specifically vested in the U.S. Labor Department by regulation from 1953 until December 1954 (19 F.R. 9172), and from August 1964 (29 F.R. 11956) until the present time (8 CFR 214.2(h)(3)). During the intervening 10-year period, INS regulations required that H-2 petitions be filed on form I-129B, and instructions accompanying this form stated that it must be accompanied by a copy of "a clearance order from the U.S. Employment Service concerning the availability of like labor in the United States, and stating that Employment Service policies have been observed." The statutory basis for the Labor Department's involvement is the requirement for consultation by the Attorney General with appropriate agencies set forth in section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)).

¹² Nov. 26, 1969, memo, supra note 4, p. 7.

¹³ 24 V.I.C. 125 et seq. For a discussion of Virgin Islands law in this area, see *Gannet Corporation v. Steven*, 282 F. Supp. 437 (Virgin Islands, 1968).

¹⁴ 24 V.I.C. 129. SERD reported in 1968 that it had found no evidence that such replacement had ever occurred (p. 29). A U.S. Labor Department official said the provision has been used, although with limited effect.

VIESA was empowered under the local law to issue a clearance for the employment of nonresident workers for duly advertised vacancies for which no qualified workers were available. Payments at the prevailing wage rate were required. Employers were also required to enter into legally enforceable written agreements with the Commissioner and, on request with VIESA, regarding wages and benefits.¹⁵

In a 1968 district court case, it was argued that the Virgin Islands Act of 1964 and its amendments were invalid, in part on the grounds that "Congress has fully legislated with respect to importing alien nonresident workers to the exclusion of territorial legislation such as this."¹⁶ The court ruled otherwise, concluding that the Virgin Islands Act 1964, as amended, "does not conflict with the Immigration and Nationality Act or the rules and regulations promulgated thereunder." Quoting further from the decision:

It will thus be seen that the Virgin Islands Act of 1961 and the Act of 1964 and its amendments, which supplemented the 1961 law, were designed to provide the procedure for the performance of the duty delegated to the U.S. Employment Service, and through it to its affiliate, the Virgin Islands Employment Service, to certify, with respect to nonimmigrants sought to be admitted pursuant to section 214 of the Immigration and Nationality Act of 1952, that unemployed persons capable of performing such services or labor cannot be found in the Virgin Islands and that such employment will not adversely affect the wages and working conditions of workers in the Virgin Islands similarly employed. Immigration Regulations sec. 214.2(h) (2) (ii), 8 CFR (Revised Jan. 1, 1967) p. 43. The concurrent cooperation required of the Commissioner of Labor of the Virgin Islands is in furtherance of the carrying out of these policies and not in conflict with the Federal law. For the congressional policy is that American labor be protected and that temporary workers be admitted only when it tends to serve the national economy, the cultural interests, and the welfare of the United States, by facilitating the entry for temporary residence of aliens whose specialized experience or exceptional ability would best serve the American needs. Besterman, Commentary on the Immigration and Nationality Act. 8 U.S.C.A. pp. 42-43; H. Rept. 1365, 82d Cong. 2d Sess., 2 U.S. Code Cong. & Admin. News, 1952, p. 1705. Therefore, the requirement that the Virgin Islands Commissioner of Labor make a favorable recommendation on the importing employer's application is an additional safeguard that admission of such a nonimmigrant worker is in the public interest and that requirement is not in conflict or inconsistent with the controlling Federal law.¹⁷

Another provision of local law which appears to have been honored more in the breach than the observance is the requirement in the tax exemption law that, "Not less than 75 percent of all persons employed in an industry or business with respect to which tax exemption or subsidy benefits are granted shall be legal residents of the Virgin Islands."¹⁸ Provision is made for temporary waivers, which are apparently generally requested and granted. According to an internal U.S. Labor Department document:

... Tax concessions have attracted two major employers to St. Croix—aluminum and oil refining. The quid pro quo, or one of them, was that something like 80 percent of the employees were to have been native Virgin Islanders. For whatever reason the reverse comes closer to the present employment patterns.¹⁹

¹⁵ 24 V.I.C. 127, 161. See *Gannet Corporation v. Stevens*, supra note 14 at 443-444.

¹⁶ *Gannet Corporation v. Stevens*, 282 F. Supp. 437 (1968).

¹⁷ *Id.* at 445.

¹⁸ 33 V.I.C. 4051.

¹⁹ U.S. Employment Service, Division of Immigration and Rehabilitation Certification, "Position Paper: Virgin Islands," Oct. 31, 1973, p. 3.

The VIESA and Virgin Islands Department of Labor have been severely criticized for their methods of administering the alien labor program during the 1960's and for their inadequate enforcement of the relevant local and Federal laws. Certainly they ignored the statutory requirement that the alien workers be admitted for temporary employment only, but no less so than did the U.S. Immigration and Naturalization Service, which had final authority.

In defense of the local agencies, it should be noted that unemployment in the U.S. Virgin Islands during this period was generally less than 1 percent. Second, it can be argued that in admitting alien workers in such large numbers that they almost inevitably depressed the competitive wage scale, the agencies were implementing the highly expansionist Virgin Islands government policies of the time, typified by the tax incentive program. Quoting a U.S. Labor Department official's comments in late 1969:

The policies of the Virgin Islands government and businesses have exacerbated the problem by stressing extremely rapid economic growth which constantly demands more workers, and by failing to provide adequately for the social and housing needs of the workers and their dependents.²⁰

However, reports on the administrative efficiency of the two local agencies have been uniformly unfavorable. In general, their certification procedures were described as a duplicate rubberstamp operation which took too long. According to a U.S. Labor Department official, VIESA was permissive in issuing certifications, lax in determining wages which would prevent adverse effect, and neglectful of its placement duties. The Virgin Islands Labor Department has been criticized for its failure to enforce compliance, as evidenced by reported widespread evasion, underpayment, and employment of illegal alien workers.²¹ In short, while the local agencies were not singlehandedly responsible for the alien problem as it developed during the 1960's, their administration certainly contributed to it. The question inevitably arises as to why the U.S. Labor Department did not intervene before it did.

B. FEDERAL LEGISLATION AND ADMINISTRATION

(1) *The Immigration and Nationality Act Amendments of 1965*

Congress in 1965 enacted the far-reaching Immigration and Nationality Act Amendments of 1965²² which, among other things, abolished the national origins quota system, and increased the degree of mandatory participation by the U.S. Labor Department in authorizing the entry of certain immigrants. Regrettably, there was no direct consideration of the Virgin Islands situation during the comprehensive hearings preceding enactment of this legislation.

The 1965 amendments increased the number of immigrant visas available to the colonies and dependencies of Eastern Hemisphere countries from 100 to 200, the latter being 1 percent of the mother country's annual allotment. However, the 1965 act provided for a

²⁰ Nov. 26, 1969, memo, supra note 4, p. 24.

²¹ Ibid., pp. 15-16.

²² Act of Oct. 3, 1965, Public Law 89-236, 79 Stat. 911.

transition period, lasting from enactment through June 30, 1968, during which the colonies were entitled to 1 percent of the mother country's quota under the national origins quota system. In the case of the colonies of Great Britain, which had a high annual quota of 65,361, this amounted to 653 visas per colony. On July 1, 1968, the provisions of the 1965 act abolishing the national origins quota system went into full effect. At this point, each dependent area of an Eastern Hemisphere country was entitled to 200 immigrant visas, or 1 percent of the across-the-board per-country limit of 20,000 immigrant visas for Eastern Hemisphere countries.

The feature of the 1965 amendments described above was apparently the impetus for a major change in direction in the temporary alien program in May 1967. In an effort to convert as many temporary workers as possible to immigrant status, a procedure was developed for differentiating between temporary workers who worked at permanent jobs and were in fact additions to the permanent labor force, and temporary workers whose jobs were truly temporary in nature. This policy was supported by both the local Virgin Islands government and the U.S. Labor and State Departments. According to Governor Paiewonsky,

Recognizing that many of the temporary positions thus filled are actually permanent in nature, the Federal Government, at the urging of the Virgin Islands government, rather recently instituted a requirement that employers of bonded aliens must submit their names as applicants for permanent resident status. As a result of this program, during the past year several thousand aliens in the Virgin Islands achieve permanent status. Unfortunately, the overall Federal quota has now been filled, and only a trickle of aliens can now expect this change in status.²³

A 1969 Labor Department document states:

The procedure for issuing both immigrant and nonimmigrant worker certifications when permanent jobs are involved was initiated in May of 1967 to help implement the Department of Labor's policy that as many as possible of the temporary alien workers in the Virgin Islands should be converted to immigrant status.²⁴

According to this unpublished Labor Department report, 10,555 immigrant worker certifications had been issued by the end of June 1968. Occupations and other characteristics of these aliens are shown in table I.

The procedure for dual certification of temporary workers for permanent employment was continued beyond July 1, 1968, the date when the annual number of immigrant visas available to the British possessions was reduced to 200. During fiscal year 1969, immigrant worker certifications were issued to almost 3,000 additional applicants. According to the U.S. Labor Department, "Of the 13,466 such certifications issued between May 1, 1967, and June 30, 1969, probably less than 2,000 of the workers involved have obtained immigrant visas."²⁵ This was as of December 1969.

²³ Letter to Mrs. Ruth Van Cleve, Director, Office of Territories, U.S. Department of Interior, Oct. 9, 1968. Reprinted in SERD 1968 study, pp. 67-68.

²⁴ Nov. 26, 1969 memo, *supra* note 4, p. 6.

²⁵ *Ibid.*

TABLE I.—*Summary of occupations and characteristics of aliens given immigrant certifications through June 30, 1968*

Sex:		Top 5 countries of origin:	
Male	7,091	St. Christopher, Nevis	
Female	3,464	Anguilla	3,518
		Antigua	2,059
		Aruba, Curacao	853
		Trinidad, Tobago	844
		St. Lucia	777
Age:		Occupation:	
Under 19	119	Professional, technical	
19 to 21	966	managerial	189
22 to 24	1,820	Clerical and sales	329
25 to 34	4,205	Service	5,188
35 to 44	2,114	Farming, fishing	285
45 to 65	1,308	Processing	211
Over 65	23	Machine trades	389
		Bench work	107
		Structural work	3,118
		Miscellaneous	739

SOURCE.—U.S. Labor Department, unpublished data (Nov. 26, 1969, memo, *supra* note 4, pp. 6-7).

(2) *U.S. Labor Department Procedures*

Under the new procedures adopted by the U.S. Labor Department in May 1967, employers applying for temporary workers for positions which were permanent in nature received both an immigrant and a nonimmigrant certification. The immigrant certification was intended to be used in support of a petition filed with INS by the employer for sixth preference immigrant status for the worker. The applications for immigrant certification were cleared first with the Virgin Islands Department of Labor and the Virgin Islands Employment Security Agency. If VIESA certified the nonavailability of resident workers, the application was forwarded to the U.S. Department of Labor regional office in New York for final certification that U.S. workers were not available, and that the alien's entry would not adversely affect the wages and working conditions of U.S. workers who were similarly employed.

U.S. Labor Department certification of prospective immigrants seeking to enter under the sixth preference was required under section 212(a)(14) of the Immigration and Nationality Act, as amended in 1965.²⁶ The sixth preference category applies to:

... Qualified immigrants who are capable of performing specified skilled or unskilled labor, *not of a temporary or seasonal nature*, for which a shortage of employable and willing persons exists in the United States (sec. 203(a)(6); emphasis added).

The restriction on this occupational category to labor "not of a temporary or seasonal nature" was also a result of the 1965 amendments.²⁷

Under the procedures adopted in 1967, the alien workers entering the Virgin Islands were also required to obtain temporary certifications from VIESA, in support of their petitions to INS for temporary H-2 status. VIESA was acting in this regard under authority

²⁶ 8 U.S.C. 1182(a)(14); amended by the Act of Oct. 3, 1965, sec. 10 (79 Stat. 917).

²⁷ 8 U.S.C. 1153(a)(6); amended by the Act of Oct. 3, 1965, sec. 3 (79 Stat. 913). The House report on the 1965 legislation states: "The bill makes specific provision that skilled or unskilled labor of a temporary or seasonal nature is not entitled to any preference under the selective system" (H.R. Rept. No. 745, 89th Cong., 1st Sess. 15 (1965)).

delegated to it by the U.S. Department of Labor. These certifications for temporary employment were issued by VIESA alone until July 1, 1969, at which point the U.S. Department of Labor required all certifications to be issued by its New York regional office. It was also at this point that the period for which the temporary certification were issued was extended from 6 months to 1 year.

The H-2 provision applies only to workers entering to perform employment which is temporary in nature. The law further requires that an alien entering under this category have "a residence in a foreign country which he has no intention of abandoning." The U.S. Department of Labor apparently justified the issuance of certifications for the mutually exclusive H-2 nonimmigrant and sixth preference immigrant categories on the grounds "there is a tremendous wait" for permanent resident visas in the Virgin Islands for residents "from the adjacent offshore islands." Quoting further from this undated, unsigned U.S. Labor Department statement obtained by Social, Educational Research and Development, Inc. (SERD):

Recognizing this . . . the Department of Labor issues temporary certifications on behalf of those aliens who have been permanently certified so as to permit these aliens to remain in their Virgin Islands employment while awaiting the availability of a visa number. Through June 30, 1969, temporary certifications . . . were issued on a 6-month basis.

Effective July 1, 1969 . . . temporary certifications are issued on a 12-month basis.²⁸

There was, however, little chance of most of the residents of the "adjacent offshore islands" obtaining immigrant visa numbers after July 1, 1968. A Labor Department official explained the situation as follows in a 1969 memo to the Secretary:

It is necessary to distinguish two groups of nonimmigrant aliens in the Virgin Islands. The first group, numbering 10,500 as of July 1, 1968, are nonimmigrants for whom the Labor Department has issued permanent labor certifications. If immigrant visas were available, these aliens could become immigrants. Since visas are not available, they must renew their permanent certification every year and in addition must obtain semiannual certifications which are issued by the Virgin Islands Employment Service in order to satisfy the Immigration Service requirements for temporary visas. These 10,500 workers in effect are now a permanent part of the Virgin Islands labor force, and we are committed to having them work there.²⁹

The second of the two groups of nonimmigrant aliens referred to in the statement quoted above were those admitted for work which was of a truly temporary nature. They were issued temporary certifications good for 6 months only, and not considered to be a part of the permanent labor force. They were, in other words, true H-2 entries. Applications from this group were processed solely by VIESA until July 1969, when they were also required to be cleared by the New York regional office. Certifications in this category were few in number. As of late 1969, the New York regional office estimated that certifications for fewer than 30 temporary jobs were then outstanding.³⁰

Generally speaking, the U.S. Labor Department followed different procedures regarding labor certification in the Virgin Islands for the United States than they did elsewhere. A Labor Department official

²⁸ "Processing of Applications for Alien Employment Certifications From Employers in the Virgin Islands," (mimeographed), 2 pp. Cited and quoted from in SERD, 1969, p. 24.

²⁹ Jan. 13, 1969, memo, supra note 6, pp. 2-3.

³⁰ Nov. 26, 1969, memo, supra note 4, p. 7.

stated at the end of 1969 that the Department's "enforcement activities have been limited to the Fair Labor Standards Act." He noted further that "the quasi-enforcement-type regulations embodied in the Department's alien certification regulations (29 CFR 60.6) have not been implemented in the Virgin Islands."³¹ These regulations, among other things, barred future certification to employers who either failed to abide by the terms of existing certifications, or hired aliens who had entered as visitors.

On December 24, 1968, a notice of proposed rulemaking was published by the Labor Department in the Federal Register providing that no certification for a permanent immigrant worker would be issued unless he was paid the minimum wage—mainland—or the prevailing wage, whichever was higher.³² While not aimed specifically at the Virgin Islands, the proposed rule brought a strong reaction from the area. At the time, this would have entailed a mandatory minimum wage of \$1.60. An internal Labor Department recommendation was made that the regulation be adopted, with a deferment for the Virgin Islands. The recommendation to the Secretary read in part as follows:

The reason for this deferment for the Virgin Islands is that if the regulation were applied to the 10,500 aliens who have already received permanent certifications when they apply for annual recertification, \$1.60 would become the minimum wage for all Virgin Islands workers. This is due to a Virgin Islands law that says that citizens may not be paid less than aliens similarly employed. Even in the mainland, an across-the-board \$1.60 wage is not required. Further, a Wage-Hour Industry Committee panel held hearings in the Virgin Islands in early December and decided that the \$1.15 rate should continue to apply to Virgin Islands hotel workers covered by the 1966 amendments, rather than increasing the rate to \$1.30 on February 1, 1969.³³

The proposed regulation was not adopted.³⁴

In October 1969, in testimony before House Judiciary Subcommittee No. 1, the U.S. Department of Labor's Assistant Secretary for Manpower, Arnold R. Weber, stated, "I am told the Virgin Islands situation is handled by Immigration. We never get to it."³⁵ This comment would appear to indicate that the Assistant Secretary was as ill informed about the proceedings on the U.S. Virgin Islands during the 1960's as apparently were the rest of the responsible parties, including INS and this committee. However, by the end of 1969, a major review of the Virgin Islands situation was underway by high U.S. Labor Department officials. This was to result in the Labor Department policies and procedures officially adopted in May 1970, and discussed in the next section. These policies and procedures are to some extent the logical conclusion of those adopted unofficially by Labor Department officials in May 1967, relating to the dual certification of the alien workers.

(3) *Immigration and Naturalization Service (INS) procedures*

The role of INS in the dual certification proceedings adopted by the U.S. Labor Department in 1967 is unclear. Particularly during the latter part of the decade, INS was apparently most concerned with

³¹ Ibid., p. 17.

³² 33 F.R. 19200.

³³ Jan. 13, 1969, memo, supra note 6, p. 3.

³⁴ See 34 F.R. 7653 (May 14, 1969).

³⁵ Hearings on Nonimmigrant Visas Before Subcommittee No. 1 of the House Committee in the Judiciary, 91st Cong., 1st Sess., September–November 1969, ser. 91-9, p. 141 (1970). (Henceforth cited as 1969 hearings.)

the serious problem of illegal aliens on the Islands. These were primarily B-2 visitors who violated their status by seeking and accepting employment.

One of the major problems plaguing the Virgin Islands alien labor program has been the large-scale entry of aliens seeking employment on the Islands. The nonimmigrant visa requirement has been, and to date still is, waived by the State Department for residents of the nearby British, French, and Netherlands possessions.³⁶ Under this waiver, aliens seeking temporary entry are required only to present themselves to an INS inspector and satisfy him that they are bona fide visitors, at which point they are given an I-94 entry card, good for a specified number of days and indefinitely renewable. This is known as being "on time."

SERD estimated that in the spring of 1969 there were on the Islands 12,800 "bonded aliens," 2,500 illegal aliens, and 16,000 visitors "on time."³⁷ Of the latter category, some were looking for jobs and some were the wives and children of H-2 aliens. Some visitors who found jobs converted to H-2 status; others became illegals.

Generally speaking, from 40,000 to 50,000 visitors, many with close family ties, entered annually. The large numbers involved, combined with the considerable bureaucratic delays in renewing nonimmigrant alien certifications, compounded INS's problems in controlling illegal aliens on the islands. Quoting from the 1969 SERD study:

* * * Aliens come to the Virgin Islands "on time" and look for a job. If they find one, they initiate the process described above. This may promote hardships because the Virgin Islands Employment Service does not assist people "on time," because it is illegal for people to work or seek work while on visitors' visas. This tends to encourage many aliens to accept substandard jobs and eventually go underground or "overstay." The process of moving from "on time" to "on bond" may as we noted, take as long as 6 months.³⁸

By the end of 1969, INS had two principal recommendations regarding the temporary alien program. The first of these was "that the Department of Labor arrange its procedures in the Virgin Islands so that certifications for those alien laborers would issue more promptly."³⁹ The delay in the issuance and particularly the renewal of temporary certifications was a major cause of the considerable illegal alien problem. According to INS, in the mid-1960's, "the number of 'technical overstays' in the Virgin Islands exceeded 2,000 as the Employment Service held back on the issuance of certifications necessary to grant these H-2 workers extensions of stay to work legally."⁴⁰ No reason for the delay is indicated. A Labor Department official recently described operations during the period after the 1965 amendments and prior to May 1970, as follows:

Issuance of labor certifications after 1965 immigration law, first by the Virgin Islands Employment Service, then by the New York regional office, was a slow process (up to 5 to 6 months) and a rubberstamp operation.⁴¹

Second, INS backed the efforts of the Virgin Islands Government "to arrange a system of off-Island alien labor recruiting * * * because

³⁶ 22 CFR 41.6(b). This regulation has since been amended.

³⁷ SERD 1969, p. 27.

³⁸ Ibid., p. 26.

³⁹ 1971 INS paper, Appendix 1, p. 62.

⁴⁰ Ibid., pp. 61-62.

⁴¹ Internal memo from Deputy Assistant Secretary for Manpower to the Under Secretary of Labor, May 10, 1974, p. 3.

it is believed that such a system would solve many of the social ills now caused by current procedures." The "current procedures" referred to involved the illegal practice of aliens entering the Islands as visitors, seeking employment, and remaining there while the certifications were being processed. According to an internal Labor Department report, these procedures were tacitly condoned by INS:

INS openly admits that it is now making virtually no effort to prevent alien visitors and illegal entrants from working in the Virgin Islands. Its position is that the long delays in the issuance of new alien employment certifications and in the renewal of certifications of aliens already in the Virgin Islands means that all employers have workers who are technically illegal at one time or another, and that it is unreasonable to require an employer to wait 6 months for a Labor Department certification for a new worker. Thus INS lets the employer employ the visitor pending the issuance of the certification.⁴²

As an alternative approach, the Virgin Islands Government proposed, and INS backed, a program of prescreening alien workers by their home governments, similar to the program in existence for recruiting British West Indies workers for sugarcane harvesting in Florida. This was suggested by Gov. Melvin Evans and INS in a meeting on October 16, 1969, with the U.S. Labor Department's New York regional administrator. The proposal was not supported by the U.S. Labor Department, which by the end of 1969 was moving in the direction of banning the recruitment and certification of new workers.⁴³

In short, by the end of the 1960's, the Labor Department and INS were moving more or less in opposite directions in their pursuit of solutions to what each perceived as the most serious aspect of the "alien problem." For INS, this was the problem of alien control, which it proposed to solve by organized off-island recruiting. The Labor Department, on the other hand, was clearly concerned by the continued use of temporary workers for permanent jobs, and wished to curtail the future admission of such workers regardless of where they were recruited. As will be seen, the Department of Labor prevailed.

C. PUBLIC AWARENESS OF THE ALIEN WORKER PROGRAM

The conditions in which the alien workers lived on the Virgin Islands was the subject of mounting criticism beginning in the mid-1960's. This increasing public awareness is a significant factor in the history of the temporary alien labor program, which developed as it did in large part because of ignorance and neglect. One of the program's earliest critics, Acting Director John J. Kirwan, of the U.S. Department of Interior's Office of the Territories, singled out part of the reason for this neglect in a 1965 letter to Gov. Ralph Paiewonsky:

I know that on the face of it, the problem would seem to be a technical problem for either the Bureau of Employment Security, or the Immigration and Naturalization Service, or both, and all we can do, you in the islands and we in the Office of Territories, is to sit back and abide by the rules and the decisions of other agencies.⁴⁴

Mr. Kirwan was strongly critical of what he saw as the increasing dependence of the U.S. Virgin Islands' economy on underpaid alien labor:

⁴² Internal memo from Executive Assistant to Secretary for Manpower to Assistant Secretary of Labor, appendix, Dec. 12, 1969, pp. 34-35.

⁴³ Nov. 26, 1969, memo, *supra* note 4, p. 29.

⁴⁴ 1967 House Interior Committee hearings, *supra* note 5, p. 702. Mr. Kirwan's letter, reprinted herein, is dated Aug. 12, 1965.

There may be some enterprises in the Virgin Islands that can only exist by paying the modern version of slave labor—the alien laborer—much less than a living wage. I don't know for sure if there are such, but I know that the ones that aren't in this category are getting a free ride at the same wage level. But could not one say also that if a firm in New Jersey could import West Indians without end and pay them one-third of a living wage, they would in time not be able to do without such help. I don't think you want a Virgin Islands economy built upon cheap alien labor, and I think your own efforts on behalf of Virgin Islands employers in the past years have brought them and your economy to the point where they don't have to depend upon such cheap labor, whether or not they once did.⁴⁵

He was also critical of the conditions in which the alien workers lived, as follows:

Six, eight, ten, alien workers sleeping in a room in a chicken house, away from their families, or when they manage to bring them under circumstances of questionable legality having them be an impossible burden on the social services of the community, while they are paid sweatshop wages by enterprises that never had it so good—this does something to the quality of life in the islands that is not compatible with the "Great Society" I know you envision for your people and have been working for consistently for 4 years. I just think it is going to have to be attacked directly, since it not only won't go away, it has gotten worse in the years it has been left to itself.⁴⁶

Mr. Kirwan's letter had been prompted by two events at the national level. The first was the congressional processing of a minimum wage bill "which still treats the Virgin Islands (along with Puerto Rico) as an area where the labor force is either thought to be less needy of the full benefits of the Act, or else the employers are thought to be less able to pay." He observed further, "I have never heard a convincing reason why employers in the Virgin Islands in interstate commerce should not be required to pay the full and usual national minimum wage. I have heard many statements as to why they don't want to pay such, but that is a different thing." The second event was the apparent decision by the Labor Department's Bureau of Employment Security not to review the Virgin Islands alien problem, after initial plans to conduct such a review.⁴⁷

In October 1965, Mr. Kirwan wrote to the Commissioner of INS "decrying the alien worker program in the Virgin Islands which he said was approaching the point of supplying half of the island's labor force to the detriment of the native U.S. citizen worker."⁴⁸ The Commissioner reportedly replied that the program was based on the House Judiciary subcommittee's recommendation to the effect that workers in the Virgin Islands should be considered temporary, and that the admission of these workers was authorized only after clearance by VIESA.⁴⁹

The House Subcommittee on Territorial and Insular Affairs expressed considerable interest in the alien labor program and its problems in hearings held in 1967 on legislation authorizing the election of the V.I. Governor. Congressman Rogers C. B. Morton, who subsequently became Secretary of the Department of the Interior, was particularly critical of the program:

Mr. MORTON. As a matter of responsibility, Mr. Kirwan, do you believe that we morally should tolerate the importation of cheap labor to accelerate economic

⁴⁵ Ibid., pp. 702-703.

⁴⁶ Ibid., p. 703.

⁴⁷ Ibid., p. 702.

⁴⁸ 1971 INS paper, Appendix 1, p. 61.

⁴⁹ Ibid.

development when we know those laborers and those individuals and those human beings under any concept of civilization will have to live under very substandard conditions? This is the point. I think we should have the courage to pull the curtain down on further expansion until we provide for those people who are willing to work at a lower level, who are willing to do the job of cheap labor in order to support another group of people at a higher level.⁵⁰

Mr. Kirwan, of the Office of Territories, replied that he did not think "the premise has to be accepted that it is inevitable that substandard living conditions must be their only lot," and, in effect, pursued the comments he had made to the Governor 2 years previously to their logical conclusion:

I honestly believe that the economic development of the Virgin Islands has been so tremendous in the past 5 years that the Virgin Islands themselves have the resources—I am frankly thinking largely in terms of unused taxing authority—I think the Virgin Islands themselves have the resources locally, without coming to the Federal Government, to provide adequately for this labor force that is badly needed. I am not trying to take the labor force away from them. I would like some way to be worked out whereby they had to face up to their full responsibility and eliminate substandard conditions in the life of these people.⁵¹

The subcommittee chairman at the time, Congressman Hugh Carey, expressed dissatisfaction with the U.S. Labor Department's role in the Virgin Islands:

Because we have discussed this matter, the Chair on his own made certain inquiries of the Department of Labor, which has jurisdiction here along with the Department of the Interior, and found, to his total dissatisfaction, that the Department of Labor has temporized with this matter and has not faced up to the implications of it. As the gentleman observes, it is no different from the import of migrant labor into various farming communities in the country, except in this case they are importing both farming and unskilled basic labor, all kinds of labor, on an ad hoc basis, depending upon what industry needs are and what the hotel and tourist needs are, with very few basic guarantees of any kind of decent living standards.

I have called this to the attention of the Office of the Assistant Secretary for Manpower and, hopefully, they are studying the question and trying to do something about it.⁵²

The present chairman of the subcommittee, Congressman Phillip Burton, commented on the political implications of the problem in words which are relevant to the situation today:

If I were opposed to an elective Governor bill, which, as the chairman knows, I am not, I would develop the theme Mr. Morton has touched on this afternoon: Is not a Governor who has \$52 million in his budget more apt to spend it for people who elect him, and is he not a political animal as I am a political animal, going to do the best he can to serve the people who can vote for him rather than give a lot of concern to 13,000 aliens who literally make, in the words of the famous American, the Virgin Islands "the poorhouse of the Caribbean"? It is not the native islanders that we saw in shacks and hovels and places where I would not want to quarter my dog. Some of it is terrible.⁵³

In the late 1960's, two government-financed studies by a private research organization, Social, Educational Research and Development, Inc. (SERD), focused attention on the alien labor problem in the Virgin Islands. Reportedly, these studies were a major factor in the U.S. Labor Department's increasing attention to the problem.

The first of the SERD studies, entitled "Aliens in the United States Virgin Islands: Temporary Workers in a Permanent Economy," was

⁵⁰ 1967 House Interior Committee hearings, p. 695.

⁵¹ Ibid.

⁵² Ibid., p. 698.

⁵³ Ibid., p. 699.

published in January 1968. It was prepared under the sponsorship of the College of the Virgin Islands with funding under Title I of the Higher Education Act of 1965.

The 1968 study reported that the Virgin Islands, with an average annual increase in population of 7 percent, was one of the fastest growing segments of the United States. A significant share of this growth was "bonded aliens," who at that time were estimated by SERD at 14,500, or about 25 percent to 30 percent of the total population, and about 45 percent of the work force. The study found that "the social, political and economic significance of aliens in the Virgin Islands is potentially a most serious problem." Furthermore, given the booming economy at that time they saw no end in sight: "the native population cannot supply the need."⁵⁴

Generally speaking, the study found the temporary aliens to be an integral part of the Virgin Islands' economy. "However, the legal definition of aliens, the rules and regulations governing their status and the informal structure and attitudes in the Virgin Islands still operate on the assumption that these people are 'temporary' workers."⁵⁵ The results of this situation were found to be detrimental both to the aliens themselves and to the economy of the islands.

The employment, education, housing, and social services available to the alien workers were reviewed, and found to be seriously wanting.

For all practical purposes bonded aliens are cut off from the social service system in the Virgin Islands. Their health, education, welfare, and housing needs get little attention. And there is not one single agency or group in the Virgin Islands that represents the needs and problems of aliens.⁵⁶

Further, the study suggests "that there is good reason to believe that the Virgin Islands has benefited considerably from the alien labor force and if social problems are linked with aliens, this stems from the fact that they are cut off from social services."⁵⁷

The 18 recommendations focused on the need for greater public awareness of the complex problems posed by the aliens, particularly on the part of the various government agencies supposedly concerned with them. The study also recommended a crash program to convert as many "bonded aliens" as possible to permanent resident status before July 1, 1968, and a review by Congress of the Immigration and Nationality Act as it related to aliens in the Virgin Islands.⁵⁸

A second study by SERD, entitled "A Profile and Plans for the Temporary Alien Worker Problem in the U.S. Virgin Islands," was published in August 1969. It was conducted pursuant to a contract with the U.S. Office of Economic Opportunity. This second study includes detailed statistical data derived from interviews with more than 400 temporary alien workers, and in general focuses more on the aliens themselves than did the previous study.

Based on the interviews, the authors classified the alien population in terms of six major social types: the strivers (10 percent-15 percent); the floaters (10 percent-15 percent); the alienated (20 percent-25 percent); the economically, but not socially arrived (10 percent-15 percent); the good workers (20 percent); and the baffled (20 percent-

⁵⁴ SERD, 1968, p. iii.

⁵⁵ Ibid., p. 3.

⁵⁶ Ibid., p. iii.

⁵⁷ Ibid., p. 52.

⁵⁸ Ibid., pp. 4-10.

25 percent).⁵⁹ Among the study's other major general findings were that there were between 2,500 and 4,000 illegal aliens on the U.S. Virgin Islands, that "contrary to generally held opinions, about 9 percent of the alien population is unemployed," and that there were about 2,000 alien children of school age.⁶⁰

Virtually all of the aliens' problems identified in the earlier study were found to have worsened and the housing situation had reached crisis proportions. Additionally, the need to improve the social services available on the Virgin Islands was identified as a necessary part of any long-range solution to the Islands' economic problems:

It will be absolutely necessary to improve social services to solve some of the problems noted here. Many aliens, when they become permanent residents, leave for the Continent because the quality of social services is higher. This, in turn, creates a demand for more aliens. Thus, the Virgin Islands becomes a sieve of sorts for people to enter the United States. It will be necessary to improve the schools and roads, eliminate open sewers, improve the telephone service, reduce prices, and in general, substantially raise the quality of living in the Virgin Islands to hold aliens in the islands when they become permanent residents and also to attract Puerto Ricans and Continentals to the Islands.⁶¹

The findings also included the following observation on the role—or nonrole—of the various Government agencies involved:

Federal agencies almost totally ignore the problem. The Department of Interior which has Federal responsibility claims its role in the Virgin Islands is "advisory" and "that we take initiative only when requested to do so." Other agencies such as the Department of Health, Education and Welfare and the Department of Labor also eschew any responsibility. Virgin Islands agencies generally conclude that most problems are "Federal."⁶²

The 1969 report endorsed the recommendations of the earlier report, noting that only one had been implemented, that being for the establishment of a local Non-Citizens Commission. A number of additional recommendations were put forth, many of which were specifically addressed to the following basic problem identified by the study:

The most basic problem that must have attention from Federal and Virgin Islands agencies and the people of the Virgin Islands is that it is completely inimical to the democratic process to cut off so completely from participation in society a group such as the aliens. The separation is the basic ingredient of which violent social conflict is made.⁶³

As noted earlier, by the end of 1969, an extensive review of the alien labor program in the Virgin Islands of the United States was underway within the U.S. Department of Labor. Motivated at least in part by the public reaction⁶³ to the highly critical SERD reports, this review led to a major administrative response to what had by now come to be known as the alien labor problem rather than program.

IV. THE 1970's

The Virgin Islands have been experiencing an economic downturn in the 1970's. A serious crisis in the tourist industry, due in part to the

⁵⁹ SERD, 1969, pp. 89-92.

⁶⁰ SERD, 1969, p. 9.

⁶¹ Ibid., p. 6.

⁶² SERD, 1969, p. 7.

⁶³ For example, Senator Gordon Allott, "Alien Labor Situation in Virgin Islands," Congressional Record [daily ed.], Sept. 9, 1969, pp. S10269-S10271; "Aliens' Life Bleak on Virgin Islands," New York Times, Aug. 29, 1969, p. C13.

adverse publicity resulting from the sensational murders in St. Croix in 1972, has brought about the closing of a number of hotels, including the Virgin Islands Hilton Hotel in early 1974.¹ This plus a slowdown in construction due to tightened credit availability, has resulted in serious unemployment on the Islands for the first time since the beginning of the alien labor program. Based on a review of unemployment in the Virgin Islands conducted in September 1973, the U.S. Labor Department concluded, "After a long period of very low unemployment in the Islands, it was estimated that the Virgin Islands unemployment amounts to about 5½ percent of the Islands' labor force." At that time, this was about one percentage point above the national average, although half the rate of Puerto Rico.²

Against this economic background, although not always because of it, more official action has taken place regarding the alien labor program during the 1970's to date, than during the entire preceding 15 years. A review of the major events follows.

A. ALIEN WORKERS' FAMILIES: PUBLIC LAW 91-225 AND *HOSIER V. EVANS*

(1) *Public Law 91-225*

On April 7, 1970, Congress enacted Public Law 91-225 (84 Stat. 116), legislation to facilitate the entry of certain nonimmigrants. The 1970 act included several amendments to the "H" nonimmigrant provision, including extension of "H" nonimmigrant status to "the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him." A new H-4 visa classification was established pursuant to this language for the dependents of aliens entering under the three "H" classifications.

The H-4 language appeared first in H.R. 9554, a bill introduced on Mar. 26, 1969 by Congressman Clark MacGregor. It was incorporated in S. 2953 as it was reported by the House Judiciary Committee, with an amendment in the nature of a substitute, on Feb. 24, 1970.³ The only comment on the merits of the provision contained in the report is the following, from the Deputy Attorney General's statement on the views of the Justice Department:

The bill would also amend section 101(a)(15)(H) by including within its terms the alien spouses and children who are accompanying or following to join the principal alien nonimmigrant. There is no comparable provision in existing law. This proposal appears meritorious because it permits the reunification of families.⁴

Probably the most significant impact of the H-4 provision was on the Virgin Islands, where its effect was to promote family reunification on a massive scale. Present estimates of the number of H-4 aliens on the U.S. Virgin Islands range from 20,000 to 30,000. Family reunification on the scale that it occurred on the Virgin Islands was an unfore-

¹ As an interesting aside, it has been suggested by former Governor Melvin Evans, among others, that mainland gambling interests have been encouraging the bad publicity in an effort to discourage tourism, with the hope that economic distress will bring about the legalization of gambling. Quoting from a recent Washington Post article, "Publicity has created a viciously erroneous picture of the islands," the Governor said, noting that "if we are knocked off our tourist pedestal, we might then welcome gambling," a move he is firmly against" (Mar. 24, 1974, p. F3).

² Manpower Administration, U.S. Employment Service, Office of Technical Support, "Summary of Results of Recent Department of Labor Review of Unemployment and Immigration Labor Certification Program in the Virgin Islands," Nov. 21, 1973, p. 1 (unpublished).

³ H.R. Rep. No. 91-851, 91st Cong., 2d sess. (1970).

⁴ Ibid., p. 12.

seen effect of the 1970 Act. Certainly, there is much to be said in favor of it; such a move was specifically recommended by the 1969 SERD study, as follows:

Aliens with families in their home islands should be permitted to bring their wives and children with them—as many do anyway. As we note in the report, social disorganization in the alien community is a serious problem. One way to alleviate this problem is to make it possible for people to have their families with them.⁵

However, it is questionable whether this, in fact, is the course the Judiciary Committee would have recommended had it been fully informed by the Department of Justice as to the probable impact of the H-4 provision on the Virgin Islands. This is particularly true in view of the timing of the legislation, which was enacted on the eve of the major policy announcement by the U.S. Department of Labor, in May 1970.

While there was no consideration of the impact of the H-4 provision on the Virgin Islands of the United States during the hearings on the legislation subsequently enacted as Public Law 91-225, there were several references to the Virgin Islands situation. These were in the context of the proposed amendment to the H-2 provision which would have eliminated the requirement that the services or labor for which temporary aliens were admitted be of a temporary nature. This amendment, which was not included in the bill as reported or passed, was opposed at the time by the Department of Labor's Assistant Secretary Arnold Weber. He used the Virgin Islands situation as an example of what he saw to be its potentially detrimental effects, as follows:

Of course, what you would end up with is essentially two systems of immigration, two types of resident aliens, so to speak, or a segment of the work force where one enjoys full rights of resident status and others don't.

A good example is the situation of the Virgin Islands. In the Virgin Islands, approximately 45 percent of the labor force are in on H(ii) visas. A very large segment of the labor force is to be maintained essentially in a temporary status where they are still dependent on an employer, but don't have full rights of citizenship.⁶

Mr. Weber at this time expressed the opinion that, "the whole Virgin Islands situation needs examination."⁷ Stating that it was one of the few situations "where they permit people to come in for permanent jobs on a temporary visa," he justified the program on the basis of the special subcommittee's report, in response to questioning by subcommittee member Thomas Meskill. A portion of their dialogue on the subject follows:

Mr. WEBER. It was responsive, I am told, to a report that was issued, I suppose, by this subcommittee 1 or 2 years ago. In 1960.

Mr. MESKILL. In other words, they just close their eyes to the law because of some report.

Mr. WEBER. It was in 1956 apparently. We could give you the passage from the hearing and the report of the committee. It is my understanding that the committee, as it often does in the legislative process, indicated that this case was to be handled differently. In fact, we have tried to be responsive to the will of Congress in that regard.

Mr. MESKILL. Why is there a need to pass any legislation if things can be handled on an individual basis and the basis of recommendations in a report?

Mr. WEBER. I am told the Virgin Islands situation is handled by Immigration. We never get to it.

⁵ SERD, 1969, p. 8.

⁶ 1969 hearings, supra note III-36, p. 128.

⁷ Ibid., p. 138.

Mr. MESKILL. So it is a matter of administration of the law which has created this unique situation.

Mr. WEBER. Apparently, sir.⁸

The subject of the Virgin Islands temporary labor program also came up briefly in these hearings during testimony by Mr. James L. Hennessy, Executive Assistant to the INS Commissioner. Mr. Hennessy explained the program as follows:

Mr. HENNESSY. The Virgin Islands has a somewhat checkered history. Initially I believe a staff force of this subcommittee conducted a survey in the Virgin Islands and indicated that the interpretation of 101(a) (15) (H) by the Naturalization and Immigration Service was unrealistic.

The committee report was quite critical of our interpretation that these were jobs permanent in nature and suggested that we should modify our practices.

Since that time, upon a finding by the Department of Labor of the Virgin Islands that there is a shortage of qualified workers in the American Virgin Islands, we have authorized the admission of temporary workers, largely from the British Virgin Islands and other British possessions in the area.

There have been reports recently relating to the social and economic conditions of some of those temporary workers. I would wager that none of the reports has suggested that there is not a shortage of domestic labor in the United States Virgin Islands qualified to do this work.⁹

The following exchange took place between Mr. Hennessy and the present Subcommittee Chairman Joshua Eilberg regarding the determination of the temporary nature of H-2 work on the Islands:

Mr. EILBERG. How can this be with regard to waiters and waitresses? How can you reasonably arrive at a termination date there?

Mr. HENNESSY. And on the Virgin Islands. Based on the determinations of the task force we hold that jobs in the resort industry in the Virgin Islands are temporary in nature.

Mr. EILBERG. You mean during the vacation season?

Mr. HENNESSY. I don't know. This was the determination of this committee.¹⁰

(2) *Hosier v. Evans* ¹¹

At the time that Public Law 91-225 was enacted in April 1970, a large number of alien children in the Virgin Islands were not allowed to attend public school under the following regulation promulgated by the Virgin Islands Department of Education:

17 V.I.C. Sec. 103-1: Noncitizens of school age may be enrolled in public elementary and secondary classes, provided that the enrollees:

- (1) Are in good health;
- (2) Present necessary school records or take a placement test;
- (3) Do not cause the number of pupils in any class to exceed prescribed standards;
- (4) Shall be given preference if their parents have worked legally in the Virgin Islands for at least 2 consecutive years and expect to remain in employment; and
- (5) Present satisfactory evidence of the inability of the off-island guardians to supervise them.

It is further provided that the above conditions shall not apply to special education and multigraded classes.¹²

The regulation was declared null and void by a U.S. district court on June 26, 1970, as being in basic conflict with the local law it was intended to implement. The court stated further of the regulation, "Not only is it in conflict with 17 V.I.C. Sec. 82, but it also imposes unreasonable and invidious discrimination on these plaintiffs and all

⁸ Ibid., p. 141.

⁹ Ibid., pp. 149-150.

¹⁰ Ibid., p. 156.

¹¹ *Hosier v. Evans*, 314 F. Supp. 316 (Virgin Islands 1970).

¹² Ibid., at 321-322, n. 8.

members of their class and thus offends the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.”¹³ Also in the opinion of the court:

Defendants make much of the influx of aliens into the territory over the last few years and suggest that the cost of admitting these plaintiffs and all others in the class to the public schools would create an undue burden on the Government of the Virgin Islands. They would cover themselves with the cloak of already severely inadequate facilities which, by the granting of the relief here prayed for, would be rendered “* * * so chaotic as to totally destroy public education for all so entitled.” The short answer to that argument is that fundamental rights guaranteed by the Constitution may be neither denied nor abridged solely because their implementation requires the expenditure of public funds. For such purposes, the Government must raise the funds * * *. What defendants advance as an inescapable conclusion—that relief must be denied—“* * * until such time as the educational facilities are adequate * * *” I reject out of hand as constitutionally impermissible, once the plaintiff’s right be established. These litigants may not be relegated to such a state of neglect, benign or otherwise.¹⁴

This decision, which was not appealed, cleared the way for the H-4 children of temporary workers to attend the public schools of the Virgin Islands. Apparently the April 1970 legislation permitting their entry had no direct relationship to the decision. The defendants in the class action were “all lawfully in the Virgin Islands as ‘non-immigrant’ visitors.”¹⁵

The *Hosier* decision in combination with the 1970 amendment admitting the dependents of the temporary alien workers has had a considerable impact on the Virgin Islands public schools. It was reported that 80 percent of the new enrollees in the fall of 1972 were alien children. The question was raised as to whether this indicated that the H-2 aliens were perhaps bringing in children other than their own, such as nieces and nephews. In the opinion of a Labor Department official at this time, the 1970 act “together with the fact that until a couple of years ago alien children were not admitted to the public schools, probably accounts for the surge in alien enrollment.”¹⁶

As shown in table II, the Virgin Islands public school noncitizen enrollment as of December 4, 1974 was 7,587, or 32.5 percent of the total enrollment of 23,343. This figure includes permanent resident aliens and other nonimmigrants beside those in the H-4 classification.

¹³ Ibid., at 322.

¹⁴ Ibid., at 320-321.

¹⁵ Ibid. at 317.

¹⁶ Internal Labor Department memo from Deputy Assistant Secretary for Manpower to Assistant Secretary for Manpower, Nov. 2, 1972, p. 1.

TABLE II.—VIRGIN ISLANDS PUBLIC SCHOOLS NONCITIZENS ENROLLMENT AS OF DEC. 4, 1974, ST. THOMAS, ST. JOHN, AND ST. CROIX

Islands and schools	Permanent residence	H-4	H-2	F-1	B-2	Other	Unclassified	Total noncitizen	Total enrollment	Percent
St. Thomas:										
Charlotte Amalie	305	292	1	12	1			611	1,778	34.4
Commandant Gade	34	3	3	6	31			77	120	64.2
Dober		24		2				26	344	7.6
Gramboke		129		13		38		180	265	67.9
Jefferson		10		1				16	148	10.8
Jefferson Annex	5	11		1				14	101	13.9
Kirwan	47	90		16	5			158	723	21.9
Lincoln	51	172		6				229	631	36.3
Lockhart	92	74	5	16		1		188	1,016	18.5
Madison	54	13		3	1			71	419	16.9
Marcelli	30	66	1	4	1			102	433	23.6
Nazareth	246	145		35				426	1,282	33.2
Nisky	55	66		7				128	618	20.7
Peace Corps	65	27	2	4	2	3		103	352	29.3
Sibilly	14	3						17	222	7.7
Tuitt	56	111		10			1	178	512	34.8
Tutu	81	90		4				175	1,094	16.0
West Aspinall	85	120		2	2		187	396	1,043	38.0
Total, St. Thomas	1,222	1,446	12	142	43	42	188	3,095	11,101	27.9
St. John:										
B. Franklin								0	68	
J. Sprauve	34	69		11				114	475	24.0
Total, St. John	34	69		11				114	543	21.0
Total, St. John and St. Thomas	1,256	1,515	12	153	43	42	188	3,209	11,644	27.6
St. Croix:										
A. Andrews	40	145	6			9	106	306	1,158	26.4
A. Henderson	105	276			8			389	1,227	31.7
Central	410	106	231	96	42	15		900	2,032	44.3
C. Emanuel	132	142	5	10	1			291	762	38.2
C. O. Markoe	307	393		3				703	1,475	47.7
E. C. Junior High	159	177	2	22				360	1,098	32.8
J. Gardine Elementary							447	447	1,142	39.1
La Princessee	5	10	1	1				17	76	22.4
Lew Muckle	95	131		6	10	1		243	856	28.4
P. Larsen	59	76	6	5	4	1	6	156	924	16.9
Insular								0	3	
E. Rivera							566	566	946	59.8
Total, St. Croix	1,312	1,456	251	143	65	27	1,125	4,378	11,699	37.4
Total: 3 Islands	2,568	2,971	263	296	108	69	1,313	7,587	23,343	32.5

B. MAY 1970 U.S. DEPARTMENT OF LABOR POLICIES AND PROCEDURES

(1) *The May 1970 directive*

An internal review of U.S. Labor Department policy and procedures in the U.S. Virgin Islands was underway by late 1969, and included an onsite inspection in early 1970 by the Assistant Secretary for Manpower, Mr. Arnold R. Weber. This review culminated in the new policies and procedures for the certification of temporary alien workers on the Islands announced by Assistant Secretary Weber on May 5, 1970.¹⁷ In general, the procedures announced at that time are still in effect today.

The May 1970 directive reflected the concern of the Labor Department about the legality of the continued certification and admission of temporary aliens for permanent jobs on the Virgin Islands, as well as with the implications of the two-track labor force situation which had developed as a result of this practice. As Mr. Weber noted, more than 40 percent of the Virgin Islands labor force was barred from full participation in the political and social life of the Islands because of their nonimmigrant status (appendix C, finding No. 4). At the same time, as a result of their being present in such large numbers, the nonimmigrant aliens virtually determined the prevailing wage in many occupations (finding No. 7).¹⁸

A 1974 internal Labor Department commentary on the "May 1970 Manpower Policy" for the Islands itemized the policy's aims as follows:

- (a) Stabilize the work force.
- (b) Provide for controlled increases in wages and improvement in working conditions through the normal labor supply-demand process.
- (c) Change the illegal status of many of the aliens in the permanent force.
- (d) Provide employers with workers quickly and legally.
- (e) Afford the nonimmigrant aliens an opportunity to qualify for immigrant status. Because of immigration quotas, visas are still not available to many after a 10-15 year wait.¹⁹

The purpose of the May 1970 procedures was primarily to establish a free labor market in the Virgin Islands. Toward this end, the procedures were aimed, first, at integrating the nonimmigrant workers then present on the Islands into the permanent labor force; and, second, at curtailing the entry of new workers.

The new procedures provided, in effect, that all aliens working in the Virgin Islands as of December 31, 1969 would henceforth be considered a part of the permanent work force, provided they had been issued immigrant labor certifications and/or were being paid at the prevailing wage. They were issued indefinite certifications for employment in the Virgin Islands as nonimmigrants, and were free to change employers provided the new jobs were approved by the U.S. Department of Labor, and that no more than 60 days elapsed between approved jobs. Previously, nonimmigrant workers had been required to leave the Islands within 5 days after termination of their employment.

¹⁷ "Final Policies and Procedures To Be Followed in Certifying Alien Workers in the Virgin Islands," reprinted as appendix 3. (Henceforth cited as "May 1970 directive".) This was the only major policy statement made by any of the parties involved since the 1955 special subcommittee report.

¹⁸ May 1970 directive, Appendix 3, p. 66.

¹⁹ May 10, 1974 memo, *supra* note III—41, p. 4.

Eligibility for indefinite certification was generally restricted to nonimmigrant workers with labor certifications who had been employed on the Islands between July 1969 and December 30, 1969; or to nonimmigrant aliens without such labor certification who were documented as having been employed at at least the prevailing wage prior to January 1, 1970. Domestic workers without labor certifications were initially barred from indefinite certification, but this restriction was subsequently relaxed under certain conditions.²⁰ Identification and certification of the original group of eligible nonimmigrants was completed in July, 1971. At that point, it totaled about 12,500.²¹

The May 1970 directive stressed that the indefinitely certified workers would be "able to change employers almost as freely as a citizen worker," subject only to the requirements that the new job be approved by the local U.S. Labor Department office, and the new employer have a nonimmigrant worker petition approved by INS. U.S. Labor Department approval of new jobs for the indefinitely certified workers was limited to a determination of whether the salary offered was at the prevailing wage. No test of the labor market was made as a condition of their reemployment. Quoting from an internal Labor Department interpretation of the May 1970 policy statement:

... The whole thrust of Mr. Weber's directive is to make certified nonimmigrants completely free to take any job they want in the Virgin Islands, including even household jobs, as long as the wages in the new job are at the prevailing level. In other words, we will make no check of the availability of U.S. workers and we will make no judgment as to the qualifications of a certified nonimmigrant for a new job.²²

The U.S. Department of Labor opened a Manpower Administration Office in St. Thomas in May 1970 to administer the new procedures for alien certification. This office has come into conflict with the Virgin Islands Employment Service and the Virgin Islands Department of Labor on several points, including this decision at the Federal level that the indefinitely certified workers would be able to change jobs without a test of the labor market. As noted above, a Virgin Islands law requires employers seeking aliens to first obtain the approval of the Commissioner of the local Department of Labor. Generally speaking, the labor certification function was more or less removed from the control of the local agencies which administered it in the 1960's.

Procedures for the certification of new alien workers were intended to reduce the number of new aliens certified to a minimum. Mr. Weber stated in the May 1970 directive that: "It is expected that there will be very few additional alien workers certified for employment in the Virgin Islands."²³ There have been between 200 and 300 new certifications issued since the 1970 policy was announced, exclusive of H-4's who converted to H-2 status.

Employers applying for the certification of new alien workers are required to take positive steps to recruit citizen, immigrant, or indefinitely certified nonimmigrant workers first in the Virgin Islands, and

²⁰ 1971 INS paper, Appendix 1, p. 62. Unless otherwise noted, the source of the information on the May 1970 directive is the directive itself, contained in Appendix 3.

²¹ U.S. Department of Labor, Manpower Administration, Alien Certification Office, U.S. Virgin Islands, Annual Report, fiscal year 1973, p. 1. (Henceforth cited as 1973 MA Annual Report).

²² Internal memo from Executive Assistant to Assistant Secretary for Manpower, May 26, 1970, p. 4.

²³ May 1970 directive, Appendix 3, p. 67.

then from Puerto Rico or the mainland. Further, the employers must meet specified housing, travel, and vacation requirements for any new workers certified.

These restrictions and requirements were not generally applicable in the case of H-4 aliens who wished to convert to H-2 status. Quoting from the May 1970 directive:

Sympathetic consideration will be given to the issuance of a 212(a)(14) certification for the spouse of a nonimmigrant alien who has a conditional indefinite certification, in order to allow the spouse to work in the Virgin Islands also. Proof of marriage will be mandatory. This exception does not apply to a spouse who is seeking a certification for a job in a private household.²⁴

According to a November 1972 internal Labor Department memo:

We do extend labor certification to the H-4 dependents of the H-2 aliens when they have a valid job offer. This was done to keep families together, get the school dropouts and grown children off the streets, and we do not believe they are in competition with the legal residents.²⁵

The 1970 directive also made provision for 30-day temporary certifications "for unique jobs that are clearly of a short duration such as entertainers, professional athletes, and highly specialized technicians who are coming to install or repair a single piece of machinery." Quoting further—and this is of particular significance: "Jobs in the construction, hotel, and other industries where the normal course of business involves the completion of projects or seasonal fluctuations are not to be considered temporary for this purpose."²⁶

In short, by 1970 the temporary alien labor program had come full circle, with the U.S. Department of Labor adopting the position that resort work on the Virgin Islands was not of a temporary nature. This was the position of INS prior to the special subcommittee's recommendation to the contrary in 1955. The Labor Department's decision in 1970 appears primarily to reflect the fact that the expansion of tourism during the intervening 15-year period had converted the resort industry on the Virgin Islands from a part-time to a full-time endeavor.

(2) *Immigration and Naturalization Service (INS) Procedures*

INS procedures implementing the May 1970 DOL directive went into effect on July 15, 1970, and are summarized in the 1971 INS paper reprinted as appendix 1 (p. 63). In essence, INS agreed to the indefinite certification status, as well as to the 60-day grace period during which an indefinitely certified alien may seek other employment without being required to leave the Islands. In the event that an alien changes employers, the new employer must file a petition (form I-129B) and, upon approval, execute a form I-320B agreement with INS. The employer is required to obtain renewed INS approval each year. INS also apparently enforces the regulation relating to the admission and extensions of stay for H-2 workers with regard to the indefinitely certified aliens. The maximum period of admission or extension is 1 year, and no extension may be granted which will result in an unbroken stay in the United States of more than 3 years.²⁷

As noted previously, the requirement that employers of temporary aliens under the Virgin Islands labor program post bonds was re-

²⁴ May 1970 directive, Appendix 3, p. 69.

²⁵ Nov. 2, 1972 memo, *supra* note 16, p. 2.

²⁶ May 1970 directive, Appendix 3, p. 71.

²⁷ CFR 214.2(h)(11) (1975). See 1971 INS paper, Appendix 1, p. 63.

placed in 1959 by the practice of assessing liquidated damages in the event that the terms of the I-320B contract are violated. Under the terms of the contract, the damages are assessed at the rate of \$10 or \$75, depending on the clause violated (see appendix B, clause 9). Presumably, the proposed change in INS regulations²⁸ increasing the liquidated damages assessed in the event of breach of bond would also be applicable to alien workers imported from the British Virgin Islands under the Virgin Islands labor program. The reason for the proposed increase was explained as follows in the notice of the proposed amendment:

The \$75 liability provision, which has remained unchanged for many years, no longer represents a realistic amount. . . . [T]he estimated actual damages which the Government will suffer if an employer fails to prevent a laborer from absconding more nearly approximate \$350.²⁹

The 60-day grace period during which the indefinitely certified non-immigrant aliens are permitted to seek new employment is jointly enforced by the Virgin Islands offices of INS and the U.S. Manpower Administration; according to the latter, "Both this office and the Immigration Service adhere strictly to the 60-day rule."³⁰ The 1973 Annual Report of the U.S. Manpower Administration's Virgin Islands' Office states with reference to INS: "We believe their use of the liquidating damage charge has been one factor in a better return of the 'Notice of Termination'."³¹ The Notice of Termination of Employment of Non-Immigrant Alien (form MAVI-2) is required by the U.S. Department of Labor when the employment of a certified alien is terminated, and is necessary in the enforcement of the alien's 60-day grace period. In fiscal year 1973, the local Manpower Administration received 4,862 notifications of termination, which they estimated to be 63 percent of the total number of terminations. INS now also requires that new employers present a letter from the previous employer indicating when the alien was terminated.

(3) *Effects of the May 1970 Policies and Procedures*

As noted above, the identification and indefinite certification of the nonimmigrant alien labor force pursuant to the May 1970 directive was completed in July 1971. The peak number of 12,500 aliens certified at that time had decreased to 11,200 by the end of fiscal year 1973. According to the 1973 Annual Report of the U.S.V.I. Manpower Administration, this decrease was the result of nonresidents attaining permanent resident status, as well as death, deportation, and the expiration of the 60-day grace period. The report noted further that the number of aliens with indefinite certifications "has held at about 11,500 because the number of spouses and children of nonresidents being certified appears to be balancing the losses."³²

It does not seem probable that the indefinitely certified workers will be gradually absorbed into the population as permanent residents. According to the Manpower Administration, in the absence of congressional action, nearly 10,000 of the 11,200 aliens certified as of July 1, 1973 will be unable to obtain permanent resident status for many years because of the low annual quotas of the dependencies (see table

²⁸ 8 CFR 103.6(d)(2) (1975).

²⁹ 39 F.R. 43228, Dec. 11, 1974.

³⁰ 1973 MA Annual Report, Supplemental Report, p. 11.

³¹ *Ibid.*, p. 9.

³² 1973 MA Annual Report, pp. 1-2.

III).³³ Furthermore, under present procedures the program may be expected to continue beyond the lifetime of the current workers because of the relative ease with which the H-4 dependents are allowed to convert to H-2 status.

TABLE III.—ESTIMATED DISTRIBUTION OF ALIENS ELIGIBLE FOR CERTIFICATION BY PLACE OF BIRTH, JULY 1, 1973

Island or country	Number certified	As percent of total	Annual visas available	Current availability
Anguilla, Nevis, St. Kitts	4,320	38.6	200	(1)
Antigua	2,575	23.0	200	(1)
St. Lucia	1,575	14.1	200	(1)
Dominica	1,070	9.5	200	(1)
Trinidad-Tobago	380	3.4	(2)	3 9-8-71
Grenada	325	2.9	200	(1)
St. Vincent	240	2.1	200	(1)
Montserrat	210	1.9	200	(1)
British Virgin Islands	180	1.6	200	(1)
Netherland West Indies	125	1.1	200	3 5-1-71
Guadeloupe	110	1.0	200	(4)
Barbados	25	.2	(2)	3 9-8-71
Jamaica	25	.2	(2)	3 9-8-71
All other	40	.4	(5)	(5)
Total	11,200			

Note: Visa availability is not limited to the Virgin Islands but is the total available for the United States.

¹ No 6th preference visas available.

² Independent countries of the Western Hemisphere subject to an annual overall quota of 120,000.

³ A date in this column indicates 6th preference visas with an earlier priority date are being processed during July 1973.

⁴ Indicates 6th preference visas currently available.

⁵ Various, depending on birthplace.

Source: U.S. Department of Labor, Manpower Administration, Alien Certification Office, St. Thomas, U.S. Virgin Islands, fiscal 1973 annual report.

In fiscal year 1973, the U.S. Department of Labor office in the Virgin Islands received 9,822 applications for indefinite certification and approved 8,670. Of the applications approved, 644 were for H-4 spouses and children and 8,026 represented job changes of workers who were already certified. The turnover rate for the entire group of workers was approximately 72 percent.³⁴ Apparently this high turnover rate reflects the short-term nature of many of the jobs held by the nonimmigrant workers. For example, 36.3 percent of those certified at the end of fiscal year 1973 were classified as working in the construction industry (table IV; additional data on the occupational distribution of the certified aliens and their distribution by sex and by island of employment are shown in tables V and VI, respectively).

TABLE IV.—ESTIMATED INDUSTRIAL DISTRIBUTION OF ALIENS CERTIFIED JULY 1, 1973

Industry	Number	Percent
Agriculture	140	1.3
Fishing	35	.3
Construction	4,065	36.3
Manufacturing	480	4.3
Transportation, communication, utilities	415	3.7
Wholesale trade	115	1.0
Restaurants	805	7.2
Other retail trade	915	8.2
Finance insurance and real estate	240	2.1
Hotels	1,105	9.9
Private households	1,690	15.1
Other service	945	8.4
Government	250	2.2
Total	11,200	100.0

Source: U.S. Department of Labor, Manpower Administration, Alien Certification Office, St. Thomas, U.S. Virgin Islands, fiscal 1973 annual report.

³³ Ibid., p. 2.

³⁴ Ibid.

TABLE V.—ESTIMATED OCCUPATIONAL DISTRIBUTION OF ALIENS CERTIFIED JULY 1, 1973

Occupation	Number	Percent of total ¹
Professional occupations.....	115	1.0
Managerial occupations.....	40	.3
Clerical occupations.....	305	2.7
Sales occupations.....	370	4.1
Private household occupations.....	1,670	14.9
Food and beverage service occupations.....	1,210	10.8
Protective service occupations.....	250	2.2
Other service occupations.....	895	8.0
Agricultural occupations.....	355	3.1
Fishermen.....	35	.3
Processing occupations.....	140	1.2
Machine trades.....	305	2.7
Bench workers.....	95	.8
Construction occupations.....	3,105	27.7
Other structural occupations.....	1,155	10.3
Motor freight occupations.....	380	3.4
Other transportation occupations.....	395	3.5
Packaging and material handling occupations.....	325	2.9
Miscellaneous unskilled occupations.....	55	.5
Total.....	11,200	(1)

¹ Does not add due to rounding.

Note: Based on certifications of record, June 30, 1972.

Source: U.S. Department of Labor, Manpower Administration, Alien Certification Office, St. Thomas, U.S. Virgin Islands, fiscal 1973 annual report.

TABLE VI.—ESTIMATED DISTRIBUTION OF ALIENS CERTIFIED BY SEX AND BY ISLAND OF EMPLOYMENT JULY 1, 1973

	Total	Percent	St. Croix	St. Thomas	St. John
Male.....	8,185	73.1	4,495	3,465	225
Female.....	3,015	26.9	1,430	1,535	50
Total.....	11,200		5,925	5,000	275
Percent.....		100.0	52.9	44.6	2.5

Source: U.S. Department of Labor, Manpower Administration, Alien Certification Office, St. Thomas, U.S. Virgin Islands Fiscal 1973 Annual Report.

Generally speaking, the May 1970 program has been viewed as a qualified success by the U.S. Department of Labor, INS, representatives of major business interests on the islands, and some representatives of the Virgin Islands Government.³⁵ According to available reports, the May 1970 program appears to have had the desired effect of integrating the nonimmigrant aliens into the permanent work force, particularly considering the unfavorable economic conditions on the Islands. However, again according to somewhat dated reports, the program has been having little noticeable effect on the overall economy. For example, with only minor exceptions, the prevailing wages in effect in the spring of 1972 were the same as those in effect 2 years earlier, when the program was initiated. According to a U.S. Labor Department analysis, possible reasons for this phenomenon include the self-perpetuating effect of the labor certification process.

... The labor certification process tends to "lock in" a wage in an occupation. Once it becomes known that that is the wage that it takes for approval, it becomes self-perpetuating.³⁶

³⁵ Internal U.S. Department of Labor report, "Report on Immigration Policies and Operations in the U.S. Virgin Islands," April 1972, pp. 3-5. This is one source of the following discussion.

³⁶ Ibid., p. 3.

Another reason given was the slowdown in the Virgin Islands economy, particularly in tourism and construction; wages were not forced up by the need for employers to bid for a limited labor supply, as had been hoped.

To the extent that there has been dissatisfaction with the May 1970 program, it has focused primarily on the continued presence of the nonimmigrant aliens in the face of the recent comparatively high unemployment rate on the Islands. The U.S. Department of Labor in the fall of 1973 conducted a review of unemployment and the immigrant labor certification program in the Virgin Islands.³⁷ As noted previously, they found that, after a long period of very low unemployment, Virgin Islands unemployment was running approximately 5.5 percent of the labor force. In mid-September 1973, there were 1,277 unemployment insurance claimants out of a covered work force of approximately 32,800, although more were believed to be actually unemployed.³⁸ Approximately one-quarter of the 1,277 claiming unemployment insurance benefits at the local public employment offices surveyed were certified nonimmigrant aliens; nonimmigrant workers are entitled to collect unemployment insurance during the 60-day grace period. The indefinitely certified nonimmigrant aliens made up more than one-third of the labor force at that time—approximately 11,200 of a total of 32,000; their unemployment rate was thus significantly lower than that of the noncitizens.

Two-thirds of the unemployed in September 1972 fell within three occupational categories: service industries, structural trades, and clerical and sales personnel. According to the 1970 census, these same categories accounted for the employment of two-thirds of all workers on the Islands. In 1972, approximately 80 percent of the certified aliens listed their occupations in these three categories. While this would appear to indicate adverse competition from the nonimmigrant workers, on the other hand the September 1973 DOL survey found that "over 40 percent of the U.S. citizens and permanent residents registered for employment with the Islands' Employment Service, were classified in occupations for which there were no competing alien job-seekers."³⁹ In a 1974 memo to the Under Secretary of Labor, the Deputy Assistant Secretary for Manpower concluded that the fall 1973 DOL survey of the composition of the Islands' unemployed did not support the assumption that "aliens were being certified in jobs Virgin Islanders wanted." He qualified this conclusion with the frequently repeated observation that "hard data on anything is difficult to come by in the Virgin Islands."⁴⁰

In the fall of 1973, the Virgin Islands commissioner of labor was attempting to require employers seeking aliens, including those with indefinite labor certifications, to first obtain his approval, as required by local law. The U.S. Labor Department was ignoring this law, "because the Virgin Islands agency is not yet competent to handle the volume, and it is inconsistent with MA policy."⁴¹ As noted above, under the May 1970 directive, the U.S. Labor Department specifically did not require a determination from the local public employment

³⁷ *Supra* note 2.

³⁸ *Ibid.*, p. 1.

³⁹ *Ibid.*, p. 2.

⁴⁰ May 10, 1974, memo, *supra* note III-41, p. 1.

⁴¹ *Ibid.*, p. 2.

service regarding the availability of citizen and permanent resident alien workers, as a condition for the placement of the indefinitely certified nonimmigrant aliens in new jobs.

By mid-1974 the U.S. Labor Department had apparently taken the position that it would not consider requiring that the labor market be tested prior to the reemployment of indefinitely certified aliens until the large number of illegal aliens on the Islands were forced to leave, and until VIESA had proved its ability to operate more effectively. Problems facing the U.S. Labor Department in the spring of 1974, as well as informal policy decisions relating to them, are summed up in the following excerpt from a memo to the Under Secretary of Labor from the Deputy Assistant Secretary for Manpower:

National and regional staff met a number of times recently to consider various approaches. It was decided that:

(a) The DOL "May 1970" policy is not illegal as Commissioner Schneider charges, but in view of the current unemployment level, it might be suspect. The Department has no statutory authority over nonimmigrant aliens and operates under INS policies and regulations.

(b) The Virgin Islands problems are complex, sensitive, and highlighted by geography and socioeconomic problems. An effort should be made to assure that permanent residents were not being displaced without needlessly penalizing the legal nonimmigrant aliens. Nearly all of the latter have been there at least 4½ years and many as long as 15 years.

(c) The May 1970 policy in fact provides the right to nonimmigrant aliens with certification to remain indefinitely in the Virgin Islands. A legal issue may arise if the Department were to change it.

(d) It is difficult and undesirable to cause the legal nonimmigrants to leave the Islands unless and until the large numbers of illegals are ejected.

(e) Any program to test the labor market for available and qualified permanent residents before approving an alien must hinge on the ability of VIESA to operate effectively.⁴²

The Deputy Assistant Secretary also observed, "The aliens are partially organized and represented by at least one group. They could react violently to efforts to remove them in larger numbers."⁴³

C. ILLEGAL ALIENS

As noted in the preceding section, INS had long been concerned about the illegal alien problem on the Virgin Islands. At the point that the U.S. Department of Labor was developing its May 1970 policy, INS was in the process of implementing its program for the offshore recruitment of alien workers, with the support of Gov. Melvin Evans. The primary purpose of this program was to reduce the number of aliens seeking employment in the Islands in violation of their B-2 visitor's status. Since the virtual elimination of all new recruitment was a major aim of the DOL May 1970 policy, INS's plan for offshore recruitment became moot. The illegal alien problem, however, did not.

In early 1971, Governor Evans appealed to the Deputy Attorney General regarding the need for additional personnel. An increase in the INS force was followed in February 1971 by the roundup and departure of more than 7,000 illegal aliens. Favorable results of this action were described by INS a month later: "The volume of patients to the free medical clinic has dropped from 90 a day to 17-20 a day,

⁴² Ibid.

⁴³ Ibid., p. 6.

and police calls have dropped off 75 percent.”⁴⁴ The area control operation itself was described as follows by one commentator:

The gross nature of the alien problem was startlingly demonstrated in the late winter and spring of 1971 when Governor Evans, shortly after taking office, got the Department of Justice to send him a special crew of Immigration agents to attack the illegal alien situation. Apparently he and others in Government had decided the situation had gotten out of hand. Teamed with the local police, the Immigration men, in the middle of the night of February 28, began a carefully planned sweep of the islands. In the first 2 weeks, 1,400 illegals were picked up—so many as to indicate that the police and Immigration had known who they were and where they were all the time. The procedure followed was about the same as that used in previous but much smaller operations: everyone found without proper documentation was taken to jail and then told to get off the islands as quickly as possible. . . .

This roundup did not stop after 2 weeks. Other thousands were found and expelled, some of them people who had been on the islands for years. . . . By the end of June 1971, when the roundup ceased, some 8,000 had been sent packing—nearly 10 percent of the estimated population on the islands and 13 percent of the number of people counted in the census of 1970. Despite the harshness of the sweep, there was but one instance of violence. . . . But even though there was only one overt incident, deep and widespread bitterness was left in the roundup's wake among those aliens who remained.⁴⁵

As a direct result of the INS action, the Premier of Antigua contacted the U.S. State Department on April 2, 1971, requesting a meeting with U.S. Government officials to negotiate the terms and conditions under which the employment of nationals of the Associated States in the U.S. Virgin Islands was to be continued. A delegation of the West Indies Associated States (WIAS), headed by Premier George Walter of Antigua, met with officials from the Departments of State, Justice, Labor, and the Interior on July 8, 1971. A four-part memorandum of understanding was agreed upon as a result of this meeting, in essence outlining and explaining the existing procedures relating to (1) bonding practices, (2) labor certification, (3) discriminatory practices, and (4) manpower. Regarding manpower, the memorandum stated:

There was agreement that West Indians could share in the labor force growth rate, on the basis of the “Weber Memorandum,” to the extent that qualified U.S. citizens, alien permanent residents and duly admitted temporary workers are not available. There was also agreement that manpower requirements would be under continual review.⁴⁶

Because of the adverse publicity and criticism of the 1971 roundup of illegal aliens, it has been suggested that another area control operation on the Islands be preceded by enough advance notice to permit the aliens to leave voluntarily after getting their affairs in order.⁴⁷ It is evident that INS manpower on the Islands appears to be insufficient to control the problem of illegal aliens on a day-to-day basis. The problem, of course, is aggravated by the ease and tradition of travel among the Caribbean islands.

It is generally believed that a considerable number of illegal aliens are again present on the U.S. Virgin Islands, particularly since the May 1970 policy has curtailed the entry of alien workers through legal channels. Without question, the illegals contribute to unemployment and other labor problems generally blamed on the temporary alien

⁴⁴ 1971 INS paper, Appendix 1, p. 64.

⁴⁵ O'Neill, *Rape of the American Virgins*, *supra* note III-2, pp. 182-184.

⁴⁶ Department of State memorandum, July 8, 1971, meeting.

⁴⁷ Nov. 2, 1972, memo, *supra* note 16, p. 1.

workers. Additionally, much of the violence which has occurred recently has been attributed to the illegal aliens.⁴⁸

(1) *Proposed repeal of the nonimmigrant visa waiver*

In a move aimed at least in part at the illegal alien problem, the Departments of State and Justice on August 13, 1974, proposed regulations eliminating the waiver of nonimmigrant visa requirements for certain aliens seeking to enter the Virgin Islands and Puerto Rico. The aliens affected under the proposed change would be natives of Jamaica, Trinidad and Tobago, Grenada, Barbados, and the Bahamas, as well as the British, French, and Netherlands dependencies located in the Caribbean area.⁴⁹

The proposed change in the regulations is predicated on the fact that numerous aliens enter the Virgin Islands and Puerto Rico under the automatic waiver, and either remain illegally in the territories or attempt to enter the continental United States. A restoration of the visa requirement would permit closer screening of the aliens on their home islands, as opposed to the INS inspection which now takes place at the ports of entry.

Substantial opposition to the regulations has been voiced by the British Embassy since most of the British dependencies are involved. Generally speaking, there are no consular facilities in their areas, or on the French and Netherlands dependencies. No final action has been taken to date. However, the present plan appears to be to continue the nonimmigrant visa waiver for entry to the Virgin Islands and Puerto Rico for natives of the British Virgin Islands, and for indefinitely certified H-2 workers in the Virgin Islands Labor Program as well as their H-4 dependents. With the exception of these two groups, it is expected that the other aliens covered under the proposed rule will be required to obtain nonimmigrant visas. However, final regulations are not expected to be published until a plan is developed to provide the affected areas with access to visa services.

D. H.R. 981

During the 93d Congress, this committee processed and the U.S. House of Representatives passed legislation which contained a provision aimed directly at the Virgin Islands Labor Program. H.R. 981, the Immigration and Nationality Act Amendments of 1973, was introduced by House Judiciary Committee Chairman Peter W. Rodino, Jr., and referred to the Subcommittee on Immigration, Citizenship, and International Law. It was reported by the full committee on September 11, 1973, and passed by the House on September 26, 1973 by a vote of 336 to 30. No action was taken on it by the Senate. Chairman Rodino has introduced similar legislation in the 94th Congress, also with the number H.R. 981, which at this date is pending before the Subcommittee on Immigration, Citizenship and International Law.

The provision of both versions of H.R. 981 which pertains directly to the Virgin Islands situation is not an amendment to the permanent Immigration and Nationality Act. Section 7 of the bill establishes a program under which certain nonimmigrant aliens now in the Virgin

⁴⁸ DOL Position Paper: Virgin Islands, Oct. 31, 1973, *supra* note III-19, p. 3.

⁴⁹ 39 F.R. 28995-28996, Aug. 13, 1974. The regulations at issue are 22 CFR 41.6(b) and 8 CFR 212.1(b). Since completion of this report the regulations have been amended along the general lines described in the final paragraph of this subsection (40 Fed. Reg. 33444, Aug. 8, 1975).

Islands of the United States may adjust their status to that of permanent resident aliens. Eligibility is limited to H-2 workers in possession of indefinite labor certifications valid for employment in the U.S. Virgin Islands, and their spouses and unmarried minor children. Beneficiaries must have resided in the U.S. Virgin Islands for at least 5 years.

Applications for adjustment of status may be filed for a period of 3 years. The number of visas issued and adjustments made is restricted to 3,000 during any one fiscal year. Visas are to be issued and adjustments made without regard to any numerical limitations contained in the Immigration and Nationality Act, and irrespective of section 245(c) of that act, which prohibits aliens who are natives of countries in the Western Hemisphere and the adjacent islands from adjusting their status.

The House report on H.R. 981 (93d Congress) contains the following comment on this provision:

The committee views this provision as essentially a housekeeping measure, intended to regularize the status of certain temporary alien laborers in the American Virgin Islands. This special foreign labor program was begun in 1956 as a result of recommendations made in 1955 by a special subcommittee of the House Committee on the Judiciary. It is anticipated that the Immigration and Naturalization Service and the Department of Labor will work closely with the Government of the Virgin Islands in implementing this section of the bill.⁵⁰

In view of the unemployment problem and economic conditions in the Islands, some have seriously questioned the adequacy and desirability of the adjustment of status program set forth in H.R. 981. Others have emphasized that the "Virgin Island situation" should not be addressed in general immigration reform legislation but should be considered separately.

Both versions of H.R. 981 also contain amendments to the Immigration and Nationality Act which would make more immigrant visa numbers available to certain categories of nonimmigrant alien workers on the Virgin Islands. Specifically, section 4 amends section 202(c) of the Immigration and Nationality Act, to increase the numerical limitation on immigration from dependent areas of foreign states to 600 a year. As discussed previously, the dependencies are limited under present law to 1 percent of the maximum annual foreign state allotment of 20,000, or 200 visas. This amendment would thus triple the number of immigration visas annually available to the British, French, and Netherlands dependencies in the Caribbean.

Section 5 of H.R. 981 amends section 203(a) of the Immigration and Nationality Act to apply the preference system for the Eastern Hemisphere to natives of the Western Hemisphere. This amendment would give preference in obtaining immigrant visas to those nonimmigrant workers from independent countries in the Western Hemisphere who have certain close family ties to U.S. citizens and permanent resident aliens.

⁵⁰ H.R. Rep. No. 93-461, 93d Cong., 1st sess. 15 (1973).

PART II—STAFF INVESTIGATION

I. NATURE OF STAFF INVESTIGATION

The staff members traveled to each of the Islands—St. Thomas, St. John, and St. Croix—during their investigative trip and had extensive discussions with the following officials from the executive and legislative branches of the U.S. Virgin Islands government: Governor Cyril King; Senate President Elmo Roebuck; and Senator Alexander Moorhead.

In addition, the subcommittee staff conferred with the following Federal officials: Dominick Longo, district director, INS, San Juan, Puerto Rico; Dante Rossi, officer-in-charge, INS, USVI; James St. John, alien certification officer, Department of Labor, USVI; and Julio A. Brady, U.S. attorney, USVI.

The staff also met with former Governor, Ralph Paiewonsky, various businessmen, several community organizations, and had numerous informal discussions and interviews with taxicab drivers, waiters, restaurant owners, hotel managers, and other interested individuals. Those interviewed consisted of native-born U.S. citizens, naturalized U.S. citizens, permanent resident aliens, and nonimmigrant (H-2 and H-4) aliens.

On each of these occasions, the following subjects were discussed in detail: the development of the nonimmigrant labor program; recommendations relating to the future immigration status of the nonimmigrant alien labor force and their spouses and dependents; the current manpower situation; the social and economic impact of nonimmigrant aliens; the current procedures for admitting nonimmigrant aliens (including visitors and temporary workers); and the living conditions of those nonimmigrants currently working and residing in the U.S. Virgin Islands. During these meetings a broad range of views and opinions were expressed, some of which will be summarized below.

The subcommittee staff also extensively reviewed files located in the Manpower Administration, Department of Labor and in the Immigration and Naturalization Service, Department of Justice. This review was conducted in order to examine the development of the nonimmigrant labor program and to determine the respective roles of the Departments of Labor and Justice as well as to ascertain their current responsibilities under this program.

II. ORGANIZATIONAL POSITIONS

During its investigation, the staff met with two organizations which are deeply concerned with the problem. These organizations presented

contrasting viewpoints on the nature of, and proposed solutions to, the problem; and these positions are set forth below:

A. ORGANIZATION OF CONCERNED VIRGIN ISLANDERS FOR ACTION, INC.
(OCA)

The staff met with several representatives of this organization in the office of the Honorable Ron de Lugo, delegate from the Virgin Islands of the United States and the following views of the organization were expressed to the staff.

It was the basic position of this organization that all H-2 workers should be immediately returned to their native countries. OCA felt that the large number of nonimmigrant aliens were threatening the political and economic structure of the U.S. Virgin Islands (USVI) and that all efforts must be made to "preserve the American identity" of these Islands. They expressed the belief that H-2 aliens have: Substantially contributed to the crime problem, failed to meet their tax burdens, and seriously overburdened public services and facilities.

The staff was presented with a variety of statistics concerning the social and economic impact of the H-2 workers and their spouses and dependents. For example, it was estimated that 85 percent of all children born in the USVI in 1973 were fathered by aliens and that of this number 55 percent were illegitimate children.

OCA also stated that these H-2 workers were not a vital part of the Virgin Islands work force, and they cited in support of their position the high unemployment rate—particularly youth unemployment—in the Islands. They also maintain that H-2 aliens depress wage rates and working conditions for native Virgin Islanders.

The organization was extremely distressed by the failure of the Federal Government and the Virgin Islands government to address this problem, and they urged immediate and decisive action to remove the illegal alien population from the Virgin Islands as well as the H-2 aliens and their dependents. In this regard, they estimated that approximately 75 percent of all H-2 workers are illegal for a variety of reasons, primarily technical in nature (for example, those in the process of finding new employment within the allowable 60-day period). OCA noted as an example of the substantial impact of these aliens the number of H-4's currently enrolled in educational institutions in the USVI—their estimate that one-third of the students were H-4 aliens was substantiated by several individuals contacted by the subcommittee staff.

One of the major recommendations made by OCA was to allow the Virgin Islands government to have a greater voice in controlling immigration into the USVI. It was the general feeling of the organization that the Virgin Islanders were "isolated from Washington" and as a result of their remoteness from the Federal Government their problems, particularly from an immigration standpoint, have not been adequately considered by the U.S. Congress. This organization predicted that in all likelihood a substantial number of H-2 workers would depart for the mainland if their status were adjusted to that of permanent resident aliens as contemplated in H.R. 981.

They also complained that the officials of the U.S. Department of Labor have consistently failed to consult with the Virgin Islands De-

partment of Labor in administering the Virgin Islands nonimmigrant labor program. As a result, it was their firm position that the problem has been created entirely by the Federal Government; but they expressed their desire to be included in any solution to the problem.

OCA particularly expressed its frustration with the 1970 district court decision, *Hosier v. Evans*, relating to the eligibility of nonimmigrant aliens to attend public schools in the USVI. In addition, they indicated that aliens are exploiting Federal programs to a great extent since they are the prime recipients of social services and the largest participants in Federal programs. They particularly stressed their dismay that no additional Federal funds were provided in response to the district court decision.

They supplied the following estimates as to the number of "H" aliens and the illegal aliens currently residing in the USVI: (1) H-2's: 11,600; (2) H-4's: 11,600; (3) illegal aliens: 10,000 to 12,000. As noted above, it was their position that all of these aliens should be immediately removed from the USVI. Furthermore, OCA expressed their dissatisfaction with the application of Public Law 91-225 to the U.S. Virgin Islands (this legislation created a nonimmigrant visa category, H-4, for the spouses and dependents of the principal H-2 alien). The impact of this legislation in the USVI was to permit the admission of several thousand additional nonimmigrants to the USVI, and OCA supports "the declaration of a moratorium on the application of Public Law 91-225 (The Alien Reunification Act) here in the Virgin Islands."

Likewise, OCA expressed its support for the immediate removal of all H-2 and H-4 aliens as well as the termination of the transfer of labor certifications for H-2's who become unemployed.

B. ALIEN INTEREST MOVEMENT (AIM)

The subcommittee staff also met in Mr. de Lugo's office with George Goodwin, president, Alien Interest Movement, and Marion Frederik, director, alien emphasis program, Virgin Islands Community Action Agency, as well as other members of the Alien Interest Movement, including one native-born U.S. citizen and a naturalized citizen who had previously been an H-2 worker in the U.S. Virgin Islands for 13 years.

It was the basic position of this organization that those H-2 workers who had resided in the USVI for 5 years or more should be granted permanent resident alien status.¹ They maintain that H-2 aliens have substantially contributed to the economy of the USVI and they should not be summarily removed because of the current economic problems confronting the Islands.

At the same time, they do not believe that all H-2 aliens should necessarily be adjusted to permanent resident aliens and that any adjustment program should be handled on an individual basis which would take into consideration: the extent of the alien's contribution, his employment record, and whether or not the alien has been of good moral character, etc.

It was their position that the H-2 aliens and their spouses and dependents have built up substantial "equities" while residing and working in the USVI and that only a small minority of individuals

¹ For the most recent position of AIM, as expressed in a letter dated March 10 to the Hon. Joshua Eilberg from George Goodwin, see Appendix 5, p. 76.

support their immediate removal because of the current economic crisis.

At the same time, AIM suggested greater funding for the USVI in order to better assimilate these aliens and to alleviate any additional impact they may have on public services in the USVI.

They emphasize that H-2 aliens have become an instrumental part of the labor force and noted that "the 1971 round-up of illegal aliens" (which resulted in the deportation of 9,000 aliens in a few months) had a staggering impact on the economy and particularly retail business establishments in the USVI.

They also cited the vast improvement in the living and working conditions of the alien in recent years, and they stated that aliens no longer depress wages nor are they exploited to any great extent by employers. They further stated that notwithstanding the unemployment figures, the indigenous labor supply was not adequate to meet the needs of the USVI. Moreover, they indicated that the native Virgin Islanders were either unqualified or unwilling to take those jobs which are currently being filled by the H-2 workers. They noted that native workers are extremely reluctant to take menial or service-related jobs, and they aspire only to employment with the United States or Virgin Islands government.

AIM indicated that in the event permanent resident status was granted to H-2 aliens, only the young, active, and aggressive individuals would depart for the mainland, but that those with long periods of residence in, and substantial community ties with, the U.S. Virgin Islands would remain; and it was noted that the latter group constitutes the vast majority of those currently residing in the U.S. Virgin Islands.

In short, AIM recommended a moratorium on future entries into the U.S. Virgin Islands as well as a moratorium on the deportation of H-2's and H-4's from the U.S. Virgin Islands until legislation is enacted in order to remedy this problem. In the event Congress does not enact an across-the-board adjustment of status provision, they also recommended that those who are not entitled to adjust their status be permitted a lengthy period—6 months—in order to prepare themselves for their departure from the islands.

They strongly recommended that the Virgin Islands problem be addressed in a separate fashion and should not be included in any major immigration bill such as H.R. 981. In this regard, they objected to a staggered adjustment of status program and noted the administrative difficulties inherent in such an approach. For example, they questioned whether priority in processing should be based on the date of initial admission to the U.S. Virgin Islands or on the date of filing of the adjustment application.

AIM also criticized INS for being unrealistic and inhumane in the administration of the Immigration and Nationality Act in the U.S. Virgin Islands. For example, they do not believe that H-2 aliens should be considered in violation of their immigration status if they are: Working less than 40 hours per week; accepting substandard wages; or seeking new employment within the allowable 60-day period. They maintain that only surreptitious entrants and overstay visitors should be considered as "illegal aliens" and that technical violations of the Immigration and Nationality Act by H-2 aliens should not

place them in this category. It was also AIM's position that INS officers should be more familiar with the particular problems of the U.S. Virgin Islands and that the administration of the Immigration and Nationality Act should reflect a recognition of these localized problems.

III. FINDINGS AND CONCLUSIONS

A. IMPACT ON THE VIRGIN ISLANDS AND OTHER LOCAL CONSIDERATIONS

1. The problems attendant to the alien labor program are perhaps the most significant social and economic problems confronting the U.S. Virgin Islands.

2. In general, the H-2 aliens are a vital and integral part of the U.S. Virgin Islands labor force and as a result there is a need for the services and labor of a significant percent of these aliens.

At the same time, there is a high turnover rate among H-2 workers as evidenced by over 8,000 requests of last year for recertification in different jobs, and this fact raises questions as to what percentage of these aliens are a permanent part of the labor force of the U.S. Virgin Islands.

3. The availability of government employment serves to perpetuate the labor shortage in service-related occupations.

4. The wages of workers have been held down as the direct result of the large number of H-2 workers on the islands, and the wages of such workers are generally determinative of the prevailing wage rate for the Islands.

5. While the Virgin Islands Code provides a tax incentive for those businesses which employ 75 percent or more of legal residents of the U.S. Virgin Islands (U.S. citizens and permanent resident aliens), the vast majority of businesses obtain a waiver of this requirement.

6. It is generally agreed that there is a "moral obligation" to those H-2 workers and their families who have established substantial equities while working and residing in the U.S. Virgin Islands over the years. At the same time, there is no legal obligation to adjust the status of these nonimmigrant aliens to that of permanent resident aliens.

7. For a variety of reasons the living conditions of nonimmigrant aliens have improved in recent years. These reasons include: (1) 1970 U.S. Department of Labor policy statement on the alien labor program; (2) the District Court decision in *Hosier v. Evans*; and (3) the formation of government agencies and civic organizations responsible for improving the social and economic conditions of nonimmigrant aliens.

8. There is serious concern among native Virgin Islanders and elected officials that regularizing the status of H aliens will eventually lead to the loss of political control of the islands.

B. VIOLATIONS OF THE IMMIGRATION AND NATIONALITY ACT

1. The policies for admitting H workers to the U.S. Virgin Islands have developed sporadically and primarily in response to pressures from governmental officials and members of the business community in the U.S. Virgin Islands. Likewise, there has been no systematic or uniform enforcement of the INA in the U.S. Virgin Islands.

2. The Department of Labor has violated in the past and is continuing to violate provisions of section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. For example, labor market conditions are not being currently tested by the Department of Labor in approving labor certifications for H-4 aliens. Likewise, labor certifications have been issued over the years without regard to the provisions of the Immigration and Nationality Act.

3. Dual certification (that is, labor certification issued for intending immigrants and for admission of H-2 worker) is improper and is a violation of the INA.

4. H-2 aliens were admitted to the U.S. Virgin Islands under the provisions of section 101(a)(15)(H)(ii), and the Department of Labor and the Immigration Service have consistently failed to recognize that such an admission was only for a temporary period. Consequently, it was a violation of the purpose and intent of that provision to allow such workers to remain indefinitely in the U.S. Virgin Islands and thereby establish substantial social, economic, and community ties in that territory. Further, the 1970 alien labor program expressly recognizes H-2 workers to be a permanent part of the U.S. Virgin Islands labor force.

5. The 1970 Department of Labor policy statement which authorized nonimmigrant aliens to remain indefinitely in the U.S. Virgin Islands was a circumvention of the INA. Legislation should have been requested to implement the 1970 policy statement.

6. There is a large illegal alien population presently residing and working in the U.S. Virgin Islands.

C. PROBLEMS IN PROGRAM ADMINISTRATION

1. The nonimmigrant alien labor problems currently confronting the U.S. Virgin Islands are the direct result of the inaction or misdirected actions of the Department of Labor and the Department of Justice.

2. Other than the review of the program undertaken by the U.S. Department of Labor in 1969 and 1970 there has been a total administrative neglect of the alien labor program since its inception. The INS of the Department of Justice which has been given the statutory authority for the admission of temporary workers has totally ignored the alien labor program in the U.S. Virgin Islands and has failed to take appropriate administrative steps to review and correct this serious problem.

3. Although the Department of Labor has no statutory authority over the policies and procedures for admitting H aliens, it has become the primary agency for establishing such policies and procedures. Under section 214(c) of the INA the Attorney General is given statutory authority for admitting nonimmigrants, and he has improperly delegated to a great degree his discretionary authority to the Department of Labor.

4. The U.S. Department of Labor improperly delegated to the Governor of the U.S. Virgin Islands the authority to determine "availability of American workers."

5. There has been little cooperation between the U.S. Department of Labor and the Virgin Islands Department of Labor with respect to delineating their respective roles in implementing the alien labor

program. Likewise, the role of the Virgin Islands Employment Service and its successor the Virgin Islands Employment Security Agency (VIESA) has never been clearly defined and there appear to be several conflicts between the two Virgin Islands agencies and the U.S. Department of Labor.

6. The U.S. Department of Labor has failed to properly review and monitor the activities of the VIESA which contributed to some extent to the current problem in the U.S. Virgin Islands.

D. FAILURE TO CONSULT WITH THE CONGRESS

1. The justification and authority for the alien labor program has been a recommendation made by a special subcommittee of the Committee on the Judiciary in 1955. In fact, the program since its inception has borne little relation to that recommendation which was limited to the tourist industry and agriculture and referred only to the admission of natives of the islands of Tortola, British Virgin Islands.

2. The Immigration and Naturalization Service failed to keep the House and Senate Committees on Judiciary, particularly the Subcommittee on Immigration, Citizenship, and International Law, properly advised as to the various immigration problems which existed in the U.S. Virgin Islands during the 1950's and 1960's. Likewise, the Service did not adequately inform the committee as to the immigration impact of Public Law 91-225 on the U.S. Virgin Islands although it was fully aware of the problems which would result from its enactment.

The Department of Labor should have consulted with the Congress and particularly with the House and Senate Committees on the Judiciary during the development of its 1970 nonimmigrant labor program for the U.S. Virgin Islands. In fact, legislation should have been submitted to the Congress for its consideration prior to the implementation of this program.

IV. RECOMMENDATIONS

The recommendations relate primarily to the alien labor program on the Virgin Islands, although more general recommendations prompted by this report are also included. In the case of the key initial recommendation regarding procedures for ending the Virgin Islands program, two alternatives (or perhaps some combination of the two approaches) are proposed for consideration. In the case of the remaining recommendations, those requiring coordinated action by the government of the Virgin Islands of the United States, the U.S. Congress, and/or various Federal agencies are listed first, followed by recommendations for action by the Congress and by specific Federal agencies.

A. ALTERNATIVE PROPOSALS FOR ENDING THE ALIEN LABOR PROGRAM ON THE VIRGIN ISLANDS

1. A statutory program, similar to the one for illegal aliens contained in H.R. 8713 as reported, might be adopted. Under such a program, certain nonimmigrant aliens with indefinite labor certifications who entered the U.S. Virgin Islands prior to a specified date would be allowed to adjust their status to that of permanent resident

aliens. Eligibility would be predicated on the alien's relationship to a U.S. citizen or permanent resident alien, or to a showing of unusual hardship in the event of his forced departure from the United States. As with the first proposal, such a program would be authorized for a limited period of time, and those seeking to enter under it would be subject to the qualitative but not to the numerical restrictions set forth in the Immigration and Nationality Act.

2. A U.S.-Virgin Islands Commission, consisting of appointees of the President and the Congress as well as the Governor and Legislature of the U.S. Virgin Islands, might be established to address the problem. The joint commission should include within its membership Federal officials, including representatives of the Immigration and Naturalization Service and the Department of Labor's Manpower Administration; elected officials from the Virgin Islands Legislature; and community leaders and businessmen from the USVI.

The Commission would be charged with the responsibility for establishing an adjustment of status program for H-2 and H-4 aliens in the USVI. This program would be administered on a case-by-case basis. The following criteria should be considered with respect to each applicant for adjustment of status: (a) length of residence in the USVI; (b) employment record in the USVI; (c) character and conduct of the applicant while residing in the USVI, including police and agency checks; (d) family situation (that is, close relation to U.S. citizens and permanent resident aliens, family members residing with applicant in USVI, family members residing abroad); (e) age, work experience, and marital status of applicant.

B. GENERAL RECOMMENDATIONS

1. The President and the Congress should give high priority to the various problems confronting the USVI, particularly to the problem of the legal status of the nonimmigrant alien work force in the Islands.

2. The government and citizenry of the USVI should have a greater voice in the establishment of immigration policy for the islands. At the same time, since immigration policy is a specific constitutional responsibility of the Federal Government, there should be no drastic change in immigration policymaking until the Subcommittee on Immigration, Citizenship, and International Law and the Congress have had an opportunity to closely analyze any delegation or transfer of the decisionmaking authority from the Congress to the legislatures of the various U.S. territories and possessions (that is, Virgin Islands, Puerto Rico, Guam).

3. A select commission should be established consisting of Members of the House of Representatives and Senate from the Committees on Judiciary (Subcommittees on Immigration) and the Committees on Interior and Insular Affairs (Subcommittees on Territories). This Commission would consider the issue of immigration policy for U.S. territories—U.S. Virgin Islands, Guam, and the Commonwealth of Puerto Rico. The select commission would consider whether the legislatures of the territories should have a greater role in establishing immigration policy, in view of their particular problems of population density, limited land use, et cetera. This commission would consider

these matters in great detail and report back to the Congress within a 1-year period its findings, conclusions, and recommendations respecting a territorial immigration policy.

4. Congress and the appropriate Committees must be fully informed by the government of the USVI and the Departments of Labor and Justice concerning the future admission of temporary alien labor under section 101(a)(15)(H)(ii) to the United States whenever a large number of workers are involved and/or such workers are concentrated in a particular labor market.

C. RECOMMENDATIONS FOR THE CONGRESS

1. The alien labor program in the USVI should be the subject of separate legislation and should not be included in omnibus immigration legislation, as it has been in H.R. 981 in the 93d and 94th Congresses.

2. Careful consideration must be given to the direct impact of general immigration legislation on the USVI. There should be close consultation with the Governor and the legislature of the USVI prior to enacting any legislation that may have an effect on that territory.

3. The U.S. Department of Labor should be given a statutory role with respect to the certification of H aliens.

D. RECOMMENDATIONS FOR THE U.S. DEPARTMENT OF LABOR

1. The U.S. Department of Labor should consult with the commissioner of labor and VIESA of the USVI for the purpose of developing coordinated procedures for certifying H-2 workers.

2. The Department of Labor should discontinue its current policy of automatically granting labor certifications to H-4 applicants in the USVI without testing the local labor market conditions.² While there should be a sympathetic consideration of H-4 aliens who are in the process of graduating from high school or college and seeking employment, the Department of Labor must adhere to section 212(a)(14) of the Immigration and Nationality Act by testing the local labor market before issuing labor certifications.

3. The U.S. Department of Labor should closely monitor the wages and working conditions of H-2 workers, and sufficient personnel should be provided to accomplish this objective.

4. The U.S. Department of Labor should reevaluate its method of determining the prevailing rate for those occupations which are composed primarily of alien workers, and review the interrelation between the establishment of this wage rate and the labor certification process.

5. The Department of Labor should immediately reevaluate the entire labor certification program as it applies to both immigrant and nonimmigrant temporary workers. In the event it is determined that revision of section 212(a)(14) of the Immigration and Nationality Act is necessary, the Department should submit draft legislation to the Congress containing its recommendations.

² Subsequent to the preparation of this report the U.S. Department of Labor revised its procedures and no longer issues blanket certifications to H-4 aliens.

E. RECOMMENDATIONS FOR THE U.S. DEPARTMENT OF JUSTICE

1. The Department of Justice—which has the statutory responsibility for admitting immigrants and nonimmigrants—should conduct a comprehensive review of the alien labor situation in the USVI.

2. Illegal aliens currently residing and working in the USVI should be immediately removed.³ In order to accomplish this objective, INS should transfer additional investigators to the USVI.

3. The U.S. Departments of Labor and Justice should provide their USVI offices with funds for accumulating better information and data on the labor force in the USVI, as well as on those H aliens who are currently residing and working in the Islands.

F. RECOMMENDATION FOR THE DEPARTMENT OF STATE

1. In view of the close relationship between the USVI and the British Virgin Islands (BVI), the Department of State's proposed regulation regarding the waiving of nonimmigrant requirements should be amended in order to continue that waiver for the BVI. At the same time, controls must be established to prevent natives of the BVI from overstaying or otherwise violating their nonimmigrant status.⁴ Likewise, an urgent need exists for additional consular facilities in the Caribbean to service natives of the various dependencies. At the present time there is only one consulate in Barbados. Consideration should be given to establishing additional consular facilities in Antigua or Anguilla, or perhaps a "roving" consular officer who would receive immigrant and nonimmigrant visa applications and issue those visas meeting the general requirements.

³ See Appendix 4, "Aliens Are Illegally Entering the U.S. Mainland Through Puerto Rico and the U.S. Virgin Islands," GAO, September 8, 1975.

⁴ Following the completion of this report, the Department of State revised its proposed regulations along the lines of this recommendation (40 Fed. Reg. 33444, August 8, 1975).

Appendixes

APPENDIX 1

U.S. IMMIGRATION AND NATURALIZATION SERVICE—TRAVEL CONTROL CENTRAL OFFICE

HISTORY OF TEMPORARY ALIEN LABOR IN THE VIRGIN ISLANDS OF THE UNITED STATES

The Virgin Islands are an unincorporated territory of the United States which lie to the east of Puerto Rico, about 1,600 miles southeast of New York. Of the approximately 100 islands in the Virgins group about half belong to the United States; the remainder are the British Virgin Islands. The three largest and most populous of the U.S. islands are St. Croix, St. Thomas, and St. John. Formerly the Danish West Indies, the Virgin Islands of the United States became American territory by purchase from Denmark under a convention ratified January 17, 1917. Formal transfer was effected March 31, 1917.

The islands were purchased by the United States for defense purposes and the immigration laws there were administered by the U.S. Navy Department under a Governor from the date they were acquired until February 27, 1931. On that date, the Department of the Interior undertook administration, with a Governor having immediate supervision until July 1, 1938. From the latter date until March 1, 1941, the Department of Labor had jurisdiction, and immigration enforcement continued as the responsibility of the Governor of the islands. Since March 1, 1941, the immigration and nationality laws have been administered in the Virgin Islands by officers of the U.S. Immigration and Naturalization Service.

Prior to July 1, 1938, aliens were admitted to the Virgin Islands of the United States without full compliance with U.S. immigration laws. Now, any alien who can establish that he entered the islands prior to that date is presumed to have been lawfully admitted to the United States for permanent residence even though no record of his permanent residence exists and even though a record of his admission as a nonimmigrant is found (8 CFR 101.1(c)).

When the Service assumed jurisdiction in March 1941, the Virgin Islands already had serious labor problems. On February 28 of that year the Secretary of the Interior, whose Department now has responsibilities for the economic, social, and political development of the islands, wrote to the Attorney General that the contractor constructing the naval and submarine bases on the island of St. Thomas would have need over the ensuing few months for 500 more unskilled laborers. The contractor was already employing about 1,500 men, of whom about 250 were aliens who had been smuggled in from the neighboring British islands. The Secretary asked that, in order to avoid serious disruption of the national defense work, the aliens then illegally in the islands be permitted to stay for a period of 1 or 2 years or until the national need for them had been satisfied. He asked also that arrangements be made for the admission of as many additional temporary alien laborers as might be required for defense needs.

On March 12, 1941, the Board of Immigration Appeals entered an order that the Service immediately inspect any alien employee of any defense contractor in the Virgin Islands represented by the contractor as qualified to fulfill the labor requirements of the employer, to determine the alien's status under the immigration laws. Thereafter the examining officer was to release the alien on his own recognizance to work for the employer in fulfilling national defense contracts until final determination was made in his case by the Service. Additionally, the importation of up to 500 alien laborers from neighboring British islands as temporary visitors for business was authorized for a period of 1 year, provided that such aliens were found to be otherwise admissible than as contract workers and as unable to read, and provided further that visa and passport requirements were waived by the Secretary of State. (The Secretary of State issued the waiver on March 27, 1941.)

The Service Inspector in Charge at St. Thomas estimated that as of April 1941, there were 900 aliens illegally in the Virgin Islands. He also expressed the opinion that there would be considerable turnover among the alien defense workers as many departed to their foreign homes and others entered.

Apparently as soon as word got back to the British islands that there was work to be had on St. Thomas, many other aliens entered illegally at various points in St. Thomas (500 in 10 days). This influx, added to what proved to be a surplus of those lawfully employed and soon to be discharged, posed a problem of how to return the group to their home islands and guard against the surreptitious entry of others. Most were from St. Kitts and Anguilla; and the nearby British island of Tortola would take none of them.

During the years of World War II temporary alien laborers entered and departed from the Virgin Islands under the authority of the BIA order of Mar. 12, 1941. As the war in the Atlantic drew to a close, unemployment among residents became widespread and the Governor of the Virgin Islands and the Commandant of the Naval Operating Base at St. Thomas informed the Service that there was no further need for alien labor. Consequently, on June 17, 1944, the BIA directed that its earlier order be rescinded to the extent that no further importation of alien labor was authorized.

Labor conditions became worse in the islands and many complaints were received by the Service that employers were encouraging illegal entry so as to obtain cheap labor to the detriment of native U.S. citizens who had to leave the islands and go to the mainland in order to get adequate employment. The St. Thomas "Photo News" on Aug. 2, 1945 editorialized.

The record of the Immigration Service in apprehending and repatriating illegal aliens has been heartbreaking. The agency has been slow to act, despite numerous complaints published in newspapers and reported directly to its office . . . Aliens have taken official reticence and inactivity as a license to flow into the island in an uninterrupted stream, and alarmed natives who have long felt the ill effects of unrestricted immigration, have thrown up their arms in despair . . . We realize that conditions in the neighboring British islands are miserable, to say the least. We sympathize with our alien brothers, and wish they will be lifted soon from their misery. But we are too poor ourselves to offer them succor.

The Service in the latter part of 1945 intensified efforts to rid the islands of illegal aliens. These efforts included the detailing of Border Patrol officers there in December of that year. By the middle of March 1946, 500 apprehensions had been made, 708 aliens had departed voluntarily, 30 had been deported, and there had been 21 criminal convictions. For a time after the end of the 3-month patrol detail, conditions continued good. However, in 1947, and thereafter the illegal influx of aliens increased despite routine Service efforts to control the problem. Complaints again reached a peak, and in September 1949 two Service investigators and two Border Patrol officers were dispatched to the islands for a 30-day period.

Within a day and a half of the start of the patrol-investigations operation, 20 illegally employed visitors and one previous deportee had been apprehended. There was immediate protest from the hotel owners but generally favorable comment from the newspaper and the St. Thomas Labor Union. The employers claimed that this alien labor was irreplaceable; that native labor, while probably available, was not willing to work in these jobs. Mr. Earl Ottley, chairman of the Executive Committee of the St. Thomas Labor Union, countered with the claim that there was native labor available which would be willing if employers would pay anything more than the minimum wage rate (30¢ an hour).

By the time the extended detail of officers ended in December 1949, it was estimated that as many as 1,000 illegally resident aliens had left the islands. This result did not completely satisfy the union, which claimed the drive did not go far enough; and it redoubled the complaints of the employers and brought representations from new quarters. The Department of Interior suggested that the residents of Tortola, B.V.I., should be permitted to enter the American Virgin Islands to accept jobs and that the \$8 head tax should be waived in their cases, because the British island's already severe economic plight had been aggravated by the Service's more aggressive enforcement policy. Governor Morris F. deCastro of the American Virgin Islands on Apr. 28, 1950, complained to the Service about the small Service staff in Charlotte Amalie, about the regulations which permitted without documents 29-day visits by West Indian aliens who promptly went to work, and about the lack of vigorous and consistent enforcement of the immigration laws. In April 1950, the Service added to the authorized force at

Charlotte Amalie by two positions, doubling the number of investigators there.

The High Commissioner for the British Virgin Islands during 1950 had been making representations which the Department of State had been considering. He emphasized the geographic, economic, and ethnic identity existing among the natives and residents of the islands, British and American, regardless of nationality; and suggested that any American or British regulations designed to control the movement of people and goods within the archipelago should take cognizance of these facts, to the end that the utmost freedom of movement be permitted.

The demands of the defense effort in the 1940's for labor resulted in a heavy drain of workers from farms and dairies in the American islands. As military and naval cutbacks occurred at the end of and following World War II, workers were laid off but were unwilling to return to the lower paid agricultural jobs.

It was said that work in the tourist industry, which was becoming a most prominent part of the islands' economy, was only a little more attractive and so did not absorb much of the native population, which reportedly preferred casual work stevedoring and taxicab driving. There was therefore a great demand for agricultural and hotel labor. The unions continued to complain that this demand was being at least partially satisfied by unscrupulous employers hiring smuggled aliens and overstayed visitors. The British official pressure was very evident, too, throughout the period 1950-52 in repeated allegations that increased American immigration enforcement had dealt a heavy blow to the British Virgin Islands, its economy, and the lives of its people. Among the suggested solutions of the British Embassy were: Facilitate the grant of immigrant visas to British Virgin Islanders; arrange for the admission of labor to St. Thomas on a seasonal basis along lines similar to those adopted for the admission of British West Indian agricultural workers to continental United States; expand to 3 months the 29-day limitation on visits by British Virgin Islanders; and remove the \$8 head tax.

At a meeting in Washington on September 16, 1952, attended by representatives of State, Interior, Labor, and the Service, Governor Kenneth Blackburn of the British Leeward Islands was told that the then recently passed Immigration and Nationality Act was to become effective the following December and would solve at least one of the problems he presented: the head tax requirement was abolished. It was suggested to him also that his further discussions with the Department of Labor might be helpful in arranging a plan for importation of temporary labor to the American Virgin Islands.

By March 1952, the Charlotte Amalie office has been processing a mounting number of visa petitions for the importation of temporary alien labor—agricultural workers, hotel employees, and domestics from the British Virgin Islands. The Selective Service Act had cut severely into the available labor supply in St. Thomas. The Service had been uneasy about the propriety of permitting temporary alien labor to fill jobs that could be considered permanent; the Governor and the Virgin Islands Employment Service, equally concerned, broached the necessity of reviewing such employment every 6 months. Efforts to secure satisfactory Puerto Rican labor had resulted in utter failure. So alien labor continued to enter under waiver of visas.

On December 24, 1952, the Immigration and Nationality Act became effective, with section 101(a) (15) (H) continuing the provision for the nonimmigration coming temporarily to the United States to perform temporary services or labor. The Service early took the position under this act that many of the jobs in the Virgin Islands were not temporary and therefore could not be filled by temporary alien workers. During all of this period the tourist industry had grown tremendously and many new hotels had been built. In October 1953, the chambers of commerce on both St. Thomas and St. Croix wrote to the Commissioner about the acute shortage of labor in the American Virgin Islands and asked that some way was devised to allow the entry of workers from the neighboring British, Dutch and French islands. The Service in its reply stated among other things:

"It is the view of the Immigration and Naturalization Service in administering the statute with respect to the temporary importation of alien labor that any alien coming to the United States to occupy a position which is itself, as distinguished from the alien's incumbency, of indefinite or permanent duration is classifiable as an immigrant only. Accepting this basic premise, various plans and devices to guarantee the speedy importation, departure, and periodic turnover of this alien labor force are of no avail."

This of course did not satisfy the business community and hundreds of these employers presented written petitions to the subcommittee of the House Committee on Interior and Insular Affairs which held hearings in St. Thomas in February 1954 on immigration and labor problems. The Service replied to an inquiry of the chairman of the committee that the Service "has no authority under the present immigration laws to authorize the importation of the labor desired by the petitioners."

The Committee on the Judiciary, U.S. House of Representatives, had been conducting a study of titles I and II of the Immigration and Nationality Act after it had been in operation for over a year. A special subcommittee of this committee inquired into the administration of several provisions of the act as they affected the Caribbean area where it made a special field study in 1954. The results of this study, entitled Report on the Administration of the Immigration and Nationality Act, was published on February 28, 1955. Referring to section 101(a) (15) (H) (ii) of the act and its application to the employment of alien labor in the American Virgin Islands, the subcommittee stated that it was its opinion that the language of the section had been:

Construed by the immigration officials in such manner that these hotel and agricultural workers are considered permanent workers. It is the sense of the subcommittee that this interpretation is too restrictive, and that Congress intended that workers employed in seasonally available jobs should be considered as temporary workers. However, it is believed that a truly effective solution of the whole problem might be achieved through a locally applicable British-American agreement patterned upon the Mexican-American agreement presently in effect. Specific interest of an area which, political separation notwithstanding, represents an economic, social, ethnic and geographical entity, should also be borne in mind.

Based on this expression of congressional intent, the Service thereafter applied less rigid standards with respect to the temporary employment of nonimmigrants in the Virgin Islands. British Virgin Islanders were thereafter admitted as H-2 nonimmigrants to take jobs for which only a short time before they were felt to be ineligible.

In February 1956, several large employers of labor were urging that aliens be brought in from other islands of the Caribbean, Jamaica, Antigua, and St. Kitts among them. In that same month Commissioner Joseph Swing went to the Virgin Islands, and on March 1, 1956 met with the Governor, British officials, and a representative from the Caribbean Desk of the Department of State, on the subject of temporary labor from the British Virgin Islands. Out of that meeting came a revised program to authorize the temporary entry of workers but only from the British Virgin Islands. It was to apply only to the following categories: (a) agricultural laborers, (b) hotel workers, (c) domestics, (d) unskilled laborers, and (e) project workers. This last class was added at the suggestion of Governor Gordon of the American Virgin Islands to provide for labor needs on special projects. The program was effective as of March 19, 1956.

Under the March 1956 program the workers were to come only from among British residents of the British Virgin Islands upon approval by the Service of the prospective employer's petition filed under section 214(c) of the act. Petition approval was conditioned upon the posting of a bond in sufficient amount guaranteeing that the worker would not become a public charge, would maintain nonimmigrant status, and would depart within the period allowed him. Admission could be for up to 1 year and a worker was not to remain for a continuous period of longer than a year. His employment for longer than a year could be authorized but he had to leave at least once during the year and remain physically absent for at least 1 day, when he could return and resume his employment. If he remained absent from the U.S. Virgin Islands continuously for 1 year or more, he could not return until another petition for him was filed and approved. The consultation required by section 214(c) before a petition could be approved was to be had with the Governor of the U.S. Virgin Islands who would attest to the need for labor.

Responding to a request of the Governor, the Commissioner on March 13, 1956 authorized the assignment of a border patrol boat and a border patrol plane to patrol the Islands. Four border patrol officers were to man the equipment.

On April 11, 1956, the Department of Labor expressed the concern that the new service instructions did not provide for a determination as to whether or not an American worker was available and that employment service policies had been observed before an alien worker was imported. The Commissioner replied that the new procedures applied exclusively to the importation of British Virgin

Islanders, and that no change had been made in the manner of importing other temporary workers; and that for the British Virgin Islanders under the program, "personal consultations have been had with the Governor of the American Virgin Islands who is committed to such consultations on a continuing basis. He consults with the U.S. Employment Service representatives¹ and in addition legislative leaders, union officials, businessmen, and other sources available to him alone as Governor from which he may obtain necessary information to continue advising this Service."

Effective August 20, 1956, however, the Service did adopt the requirement that no petition for British Virgin Island labor would be approved "unless such petition is endorsed with a certification of the unavailability of qualified local labor, issued by the Virgin Islands Employment Service." Such requirement would not be applicable to a worker already admitted or one applying for admission on the basis of a petition approved earlier.

This program continued to operate well and without seriously substantial complaint from any quarter until July 1959 when the Governor protested the drastic restriction imposed by the Service on the importation of workers from the British and French West Indies. What had happened was the discovery by the central office that the officer in charge at St. Thomas through a misunderstanding had started a practice of extending the special British Virgin Islands program to the British West Indies generally and had been approving nonimmigrant petitions for workers from those other islands for positions in the American Virgin Islands of a permanent or continuing nature. In June 1959 the central office directed that the unauthorized practice be discontinued immediately; it was this that had concerned the Governor. On August 19, 1959, however, an instruction was issued whereby the British Virgin Islands program was to include British, French, and Netherlands West Indies workers. Additionally, the use of a modified form I-320B agreement for payment of liquidated damages was adopted in lieu of the practice of requiring bonds.

In September 1960 the U.S. Department of Labor Bureau of Employment Security made a survey of the practices of the Virgin Islands Employment Service and found them wanting in the protection they offered the domestic labor market. In October 1960 BES proposed a revised plan of certification processing and asked for Service comment. The Service pointed out that the proposed procedures would seem to require the prospective alien worker to enter the Virgin Islands before he had assurance of employment, which ran counter to the Service expectation that employers would recruit outside the U.S. Virgin Islands on the basis of a certification already issued by the Employment Service.

While the Service continued its endeavor to confine petition approvals to occupations set out in the March 19, 1956 instruction (agricultural laborers, hotel workers, domestics, unskilled laborers, and project workers) as of May 1963 any petition supported by a clearance order from the Virgin Islands Employment Service would be approved as a general rule—and the Employment Service was issuing clearance orders for any jobs for which there was a labor need.

There were no significant changes in the program following the overtures made by the Department of Labor in September 1960 in the matter of revising certification procedures. This failure was commented upon by Acting Director John J. Kirwan of the Office of Territories, Department of the Interior, in letters he sent to the Commissioner in October 1965 decrying the alien worker program in the Virgin Islands which he said was approaching the point of supplying half of the Island's labor force to the detriment of the native U.S. citizen worker. The Commissioner replied to him and cited the recommendations of February 28, 1955 by the subcommittee of the House Committee on the Judiciary in which it was asserted the workers in the Virgin Islands should be considered temporary workers, and the fact that the admission of these workers is not authorized unless the Virgin Islands Employment Service issues appropriate clearance orders.

There was another meeting held in December 1965 in St. Thomas at the instance of the Administrator of the U.S. Bureau of Employment Security to discuss foreign worker certifications. Associate Commissioner Moto reported that decision was made to train more Puerto Ricans for Virgin Islands work and to do more recruiting in Puerto Rico to fill jobs in the Virgin Islands. Meanwhile, the number of "technical overstays" in the Virgin Islands exceeded 2,000

¹ The Associate Manpower Administrator has since stated that he believes this consultation was had with representatives of the Virgin Islands Employment Service.

as the Employment Service held back on the issuance of certifications necessary to grant these H-2 workers extensions of stay to work legally.

In January 1968 and again in August 1969 the Social, Educational Research and Development, Inc. published reports of its survey of temporary alien workers in the Virgin Islands and the conditions under which they live and work there. The publicity which was given them stimulated some discussion in Congress and was instrumental in the creation of organizations in the Virgin Islands to represent the alien worker.

On December 3-5, 1969 in St. Thomas, Service officials attended the Federal/Local Conference of the Special Commission on the Status and Problems of Noncitizens in the Virgin Islands. The conference covered a wide range of topics, including alien labor recruitment procedures; processing of labor certifications; school and housing availability for the alien worker; and related social problems. The Service representatives urged only the following points:

1. That the Department of Labor arrange its procedures in the Virgin Islands so that certifications for those alien laborers would issue more promptly; that additionally that Department publish a schedule of occupations certified to be in short supply and not requiring individual certifications.

2. That the efforts of the Virgin Islands administration to arrange a system of off-Island alien labor recruiting be given every support, because it is believed that such a system would solve many of the social ills now caused by current recruitment procedures.

Assistant Secretary for Manpower Arnold R. Weber visited the Virgin Islands early in 1970 and reported on February 27, 1970 that he found the alien labor situation there so serious that he had decided to make basic changes in the manner in which the Department of Labor would carry out its labor certification responsibilities. As a first step he said he would establish a U.S. Department of Labor office in St. Thomas to administer the certification program. He stated that the Department of Labor intended to curtail the flow of new alien workers to the Virgin Islands and thereby prevent such workers from continuing to depress wage levels in the Islands. This would be accomplished by his Department's refusing to certify for the admission of any foreign worker until the employer made exhaustive efforts to attract workers already in the Virgin Islands, Puerto Rico, and the U.S. mainland. For new workers to be certified, the prospective employer would have to provide acceptable housing at a set low proportion of the worker's gross wages; would have to provide a week's paid vacation each year; and would have to advance the costs of the workers' transportation to the Virgin Islands. It was expected that there would be very few workers certified additional to those already employed in the islands.

Although the Department of Labor set May 12, 1970 as the effective date of the new instructions, on which date, too, the Manpower Administration office in St. Thomas was to commence operations, the office did not officially open until May 18, 1970. The instructions basically provided that any nonimmigrant worker for whom an immigrant-type certification had previously been issued would be considered as having an indefinite certification for employment as a nonimmigrant provided his employment was in a job approved by the Manpower Administration and provided that no more than 60 days had elapsed following termination of the previously approved employment. Further, if it could be adequately established that an alien who had not previously been certified was in fact employed in the Virgin Islands at some time during the period July-December 1969, an immigrant certification and an indefinite certification could be issued if the employer was then paying at least the prevailing wages; however, this would not be applicable to aliens employed as domestic workers in private households (Labor found the wages of household workers on the Virgin Islands so low and their number so great, that the admission of additional such workers would have an adverse effect on wages). The Manpower Administration later relaxed this restriction on the certification of private household domestic workers to allow issuance of certifications to any:

1. Who had certifications during the period July-December 1969; and
2. Who could establish continuous employment since they got the original certifications and that they had not been absent from the Virgin Islands for longer than 60 days; and
3. Whose employers were currently paying them the prevailing wage; and
4. Whose employers have made social security payments for them at least during the most recent quarter.

The Service has accordingly set up in the Service office in Charlotte Amalie the following procedures for the Virgin Islands labor program:

1. The prospective employer will file a petition on form I-129B for each category of employee to the number he expects to need, e.g. one for cooks, one for waiters, one for taxi drivers, etc.

2. The form I-129B must be supported by an indefinite certification (manpower form MA-VI-1) for each alien he proposes to employ.

3. The petition (form I-129B) when approved will be valid for 1 year and additional approved workers of the same occupation may be added to it during its validity.

4. As a condition to the approval of the petition(s), the employer must execute the agreement with the Service on form I-320B.

5. The form MA-VI-1 will be detached from the approved petition and filed alphabetically by name of employer.

6. Form I-171C, "Notice of Approval of Nonimmigrant Visa Petition" will be issued to the employer in the number of copies required, one for each beneficiary worker, as evidence to be presented by the alien at the time he applies for admission.

7. When the form I-171C is lifted by the officer admitting the alien worker as an H-2 nonimmigrant, it is returned to the Service office where the record will be made that the alien worker has been admitted.

8. Form I-94 prepared for the alien is noted to show the name or file number of the petitioner, the type of work for which the alien is admitted, and the fact that he is under NI control at CHA. The original is stapled to the alien's passport and the control copy is filed in the nonimmigrant index in the Service office. The passport itself is stamped to show the date, class, and period of admission.

9. When an alien in the program is permitted to transfer to a new employer, his copy of the form I-94 and the control copy of that form are endorsed with the file number of the new employer and the date on which his authorized stay will expire. The form MA-VI-1 issued for his employment by the old employer will be destroyed, being replaced by the MA-VI-1 issued for the new employment.

10. The local nonimmigrant control will consist of copies of the forms I-94 arranged alphabetically and by month of expiration of authorized stay. The control will be screened each month to determine those in which more than 60 days have elapsed since expiration of authorized stay. For each such alien, inquiry will be made of the employer to ascertain present whereabouts and status. If indicated, the case will be referred to an investigator. The worker may not be without approved employment for longer than 60 days and remain in the islands.

11. The maximum period for which any worker may be admitted or extended is 1 year, and no extension will be granted which will result in his unbroken stay in the United States for longer than 3 years.

12. When a new petition is approved which in effect extends a previous petition, the employer-petitioner will present the passports of the H-2 workers presently employed under the old petition. The passports will be noted to show an extension to coincide with the validity of the new petition. Form I-94 in each alien's passport as well as the related control copy will be noted to show the extension.

13. An H-2 worker in the program whose employment terminates is automatically continued in H-2 status for 60 days following termination. During this grace period he is expected to secure new approved employment or depart foreign. If he does depart he may be readmitted in H-2 classification during the grace period to obtain new approved employment. His readmission may be only for that part of the 60-day period still remaining; at time of arrival, his inspection may be deferred to the local Service office for verification of employment termination data.

14. After short departures from the Virgin Islands an H-2 worker may be readmitted for the remaining validity of the form I-129B petition. His original form I-94 would be surrendered at time of departure and for readmission he is required to present a letter from his employer showing that he had been granted leave to visit off-island and is returning to his same job with the employer.

15. The alien spouse and children of an H-2 worker will be admitted H-4 for the period to coincide with the authorized stay of the H-2 worker.

The Service placed the new procedures into effect on July 15, 1970. There were some initial difficulties on the part of the Manpower Administration. By December 4, 1970, however, Associate Commissioner James F. Greene, after a visit to the Virgin Islands, could report that "it appears that the Labor Department is making progress toward bringing the Virgin Islands imported labor under their new control procedures."

There still remained the old problem of aliens illegally residing in the Virgin Islands, most intermittently working in unauthorized employment. This concerned the Governor to the extent that he approached the Deputy Attorney General with the recommendation that the Service assign additional officers there. A detail of six officers was directed to proceed to Charlotte Amalie to assist in the detection, apprehension, and expulsion of those illegal aliens. An increase in the permanent complement by the addition of seven immigration aides was also authorized.

The area control operation started on February 24, 1971, and as of midnight, March 21, 1971, 3,506 deportable aliens had been located, more than 3,000 of whom have departed voluntarily. While some orders to show cause have been issued, there have been no deportations thus far. Some favorable results noted to date: The volume of patients to the free medical clinic has dropped from 90 a day to 17-20 a day, and police calls have dropped off 75 percent. The full effect on the labor market, however, has not yet become apparent.

APPENDIX 2

UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE—AGREEMENT BETWEEN EMPLOYER OF ALIEN LABOR UNDER THE PROVISIONS OF SECTION 101(A)(15)(H)(II) OF THE IMMIGRATION AND NATIONALITY ACT (84 STAT. 116) AND THE UNITED STATES OF AMERICA

This agreement made by:

Name -----
Address -----

hereinafter called the "employer," subject to approval and acceptance on behalf of the United States of America by a delegate acting for the Attorney General of the United States, witness as follows:

Whereas the employer desires to obtain the services of a certain alien or aliens, hereinafter called the "worker" or "workers" who is or are coming to or remaining in the Virgin Islands of the United States temporarily to perform labor for which unemployed persons capable of performing such labor cannot be found in the United States.

Whereas a delegate of the Attorney General has granted or will grant the employer permission to import and/or permission to continue employment in the United States of the workers upon the terms and conditions hereinafter agreed to by the employer.

Now therefore, in consideration of the foregoing, the employer does hereby covenant and agree:

(1) That the employer shall not employ any such workers in the Virgin Islands of the United States except in strict compliance with the terms of a visa petition, hereinafter called the "petition," filed by the employer under the provisions of Section 214(c) of the Immigration and Nationality Act and approved by a delegate of the Attorney General;

(2) That the employer shall not employ any such workers in excess of the number or beyond the period of authorized temporary admission or extension thereof pursuant to the petition as approved;

(3) That the employer shall employ such workers following their admission to the Virgin Islands of the United States, such employment to be only in the Virgin Islands and only in the occupations stated in the petition as approved;

(4) That the employer shall employ only such workers as have been duly admitted to the Virgin Islands of the United States as nonimmigrants within Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act or whose status has been changed by proper authority to such nonimmigrant classification;

(5) That the employer shall furnish with the petition a Manpower Administration Form MA-VI-1 properly certified for each worker for whom Form MA-VI-1 has been issued for employment with the employer and the worker's copy of Arrival-Departure Record (Form I-94) if he is in the United States. All petitions and transfers must be accompanied by a letter from former employer showing date of termination. Form MA-VI-1 issued subsequent to approval of such petition for any worker who is to be employed by the employer shall be submitted to the Officer in Charge, Immigration and Naturalization Service, Virgin Islands, prior to the arrival of the worker if he is outside the United States or prior to the commencement of employment if he is in the United States;

(6) That, in the event a worker absconds, the employer shall notify the Officer in Charge, Immigration and Naturalization Service, Virgin Islands, within twenty-four hours of the name of such worker and the known facts concerning the violation;

(7) That within sixty days after termination of employment, the employer shall notify the Officer in Charge, U.S. Immigration and Naturalization Service, Virgin Islands, of such termination, and submit to the Manpower Administration, Virgin Islands, its Form MA-VI-2 with the original MA-VI-1;

(8) That each worker temporarily admitted to the Virgin Islands of the United States or permitted to remain therein temporarily under the terms of this agreement shall depart from the United States without expense thereto within sixty days after the termination of his work for the employer or within five days after notification to the employer by the Immigration and Naturalization Service that the worker has failed to maintain his nonimmigrant status under the immigration laws. Where the Service has notified the employer of the worker's failure to maintain status, the employer shall within thirty days of the worker's departure furnish to the Officer in Charge, Immigration and Naturalization Service, Virgin Islands, evidence satisfactory to that officer of the date and place of such departure. However, it will not be considered a violation of this paragraph if that officer authorizes the worker to remain in the United States beyond the period specified in this paragraph or authorizes a change in the worker's status under the immigration laws;

(9) That for each and every violation with respect to each worker under paragraphs (5), (6), and (7) above the employer shall pay to the United States of America as liquidated damages, and not as a penalty, the sum of ten (\$10) dollars; and that for each and every violation with respect to each such worker under paragraphs (1), (2), (3), (4), and (8) above, the employer shall pay to the United States of America as liquidated damages, and not as a penalty, the sum of seventy-five (\$75) dollars;

(10) That this agreement shall cancel and supersede any prior agreement between the parties hereto with respect to the subject matter hereof (but not as to any rights and liabilities already accrued under any prior agreement), and shall take effect immediately upon its approval by the delegate of the Attorney General;

(11) This agreement shall apply to each petition filed by the employer for temporary workers and shall remain in effect unless and until cancelled by either party upon ten days notice in writing to the other party, but the cancellation shall not terminate any rights or liabilities hereunder already accrued, or which may thereafter accrue with regard to any worker employed by the employer prior to such cancellation.

IN WITNESS WHEREOF, this agreement has been signed and delivered this _____ day of _____, 19____, at _____.

(Employer)

By _____

Title _____

Approved and accepted on behalf of the United States of America this _____ day of _____, 19____, at _____.

Signature and Title of the Delegate of the Attorney General of the United States

APPENDIX 3

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY FOR MANPOWER,
Washington, D.C., May 5, 1970.

Subject: Final policies and procedures to be followed in certifying alien workers in the Virgin Islands.

To: Malcolm R. Lovell, Jr.

On March 10, 1970, I sent you a statement of policies and procedures to be followed in certifying alien workers in the Virgin Islands. I also sent a copy of that statement to the Commissioner of the Immigration and Naturalization Service, requesting his views and suggestions, since the policies and procedures set forth in it involve basic INS responsibilities. The Commissioner responded on March 27, and on April 1 we met to discuss these matters. In light of the understandings which were reached at that meeting and in subsequent meetings between our staffs, I am issuing this revised and final statement of the policies and procedures which are to be carried out by the new Manpower Administration Virgin Islands office in certifying alien workers.

FINDINGS OF FACT

On the basis of a comprehensive review of the foreign worker situation in the U.S. Virgin Islands, including a personal inspection and discussions with Government officials and private individuals, I have made the following findings:

1. Viewed as a whole, the certification and admission of over 10,000 foreign workers into the Virgin Islands has created a serious adverse effect on the wages and working conditions of U.S. workers.

2. The ready availability of foreign workers has impeded full and efficient utilization of U.S. workers.

3. The social, educational and housing situation in the Virgin Islands is critical and the continued importation of foreign workers will only exacerbate this situation.

4. More than forty percent of the labor force cannot participate fully in the political and social life of the society in which they live and work, because they are nonimmigrant aliens who have little prospect of obtaining immigrants visas under the existing provision of the Immigration and Nationality Act.

5. In many occupations the wages are too low to recruit U.S. workers, and no adequate housing is available for such a worker at a reasonable cost; hence no meaningful test of the availability of U.S. workers can be made unless the prospective employers offer wages that will attract U.S. workers and offer adequate housing for the worker and his family at a reasonable cost.

6. In light of the attractiveness of the Virgin Islands and their proximity to Puerto Rico, it is reasonable to require that employers take positive steps to recruit workers from the U.S. mainland and Puerto Rico as well as from the Virgin Islands, before the Department of Labor certifies that no U.S. workers are available for a job.

7. The special legal and labor force conditions which exist in the Virgin Islands—namely, that approximately forty percent or more of the labor force is composed of nonimmigrant aliens who hold permanent jobs within the meaning of the Immigration and Nationality Act—require policies and procedures that are different from those which have been established for certifying foreign workers elsewhere in the United States. In particular, nonimmigrant alien workers constitute such a large proportion of the workers in the private sector of the economy that their wages, that is, the wages at which they are certified, are the prevailing wages in many occupations, and these prevailing wages are the wages at which more alien workers are certified. Thus, instead of wages being determined by supply and demand forces in a relatively free market, wages (and other employment conditions) are depressed by the operation of a circular prevailing wage. The only realistic solution is to take actions which make the Virgin Islands labor market as close to a free labor market as possible within the constraints of the Immigration Act.

In order for the Department of Labor to fulfill its responsibility for preventing foreign workers from having an adverse effect on U.S. workers and from diminishing the job opportunities of U.S. workers, to stop the expansion of the problems which already exist, and to lessen those problems significantly during

the next 2 years, the policies and procedures set forth below are necessary in the Virgin Islands and are to become effective on May 12, 1970.

There are two distinct parts to these policies and procedures. The first part pertains to the nonimmigrant alien workers who have received at some time in the past, or who receive in the future, an alien employment certification to immigrate permanently for employment in the Virgin Islands pursuant to section 212(a)(14) of the Immigration and Nationality Act.

The second part relates to the actions which an employer will have to take starting May 12, 1970, in order to obtain a certification for a nonimmigrant alien for whom an alien employment certification pursuant to section 212(a)(14) of the Immigration Act has not been issued at some time in the past. The Department of Labor will assume that employers can recruit and/or train U.S. workers or nonimmigrant alien workers in the Virgin Islands who already have section 212(a)(14) certifications. Hence, it is expected that there will be very few additional alien workers certified for employment in the Virgin Islands.

POLICIES AND PROCEDURES—NONIMMIGRANT ALIENS WITH (IMMIGRANT TYPE) CERTIFICATIONS UNDER SECTION 212(A)(14) OF THE IMMIGRATION ACT

Prior to May 12, 1970, a nonimmigrant alien who wished to work in the Virgin Islands was issued (1) a certification under section 212(a)(14) for permanent admission (this certification was to be used for getting in line for an immigrant visa), and (2) a certification for temporary admission (this certification was used by the employer in petitioning INS for admission of the worker as a nonimmigrant under section 101(a)(15)(H)(ii) of the Immigration Act). Periodically, another temporary certification has to be obtained by the employer in order to file another petition or an application for extension with INS so that the nonimmigrant worker could continue to stay in the Virgin Islands to work.

Beginning on May 12, 1970, any nonimmigrant alien worker for whom a 212(a)(14) (immigrant type) certification has been issued, regardless of whether he is still employed by the employer for whose job he was certified and regardless of whether there is a valid temporary certification for the employment he is currently performing, will be considered to be certified indefinitely for employment in the Virgin Islands as a nonimmigrant, so long as the employment is in a job approved by the U.S. Department of Labor and so long as no more than 60 days elapse between the termination of employment in one approved job and the initiation of employment in another approved job. These certified workers will thus be able to change employers almost as freely as a citizen worker, except that the new job must first be approved by the Virgin Islands office of the U.S. Department of Labor's Manpower Administration, and the new employer must have a nonimmigrant worker petition approved by the Immigration and Naturalization Service. This shall also apply to any nonimmigrant alien who receives a 212(a)(14) certification after May 12, 1970.

1. Beginning on May 12, and according to a schedule prepared by the Manpower Administration Virgin Islands office, current and prospective employers of nonimmigrant alien workers for whom 212(a)(14) certifications have been issued, will submit a 5-by-8 card (form MA-VI-1) for each such worker. This form will contain information on the name, country of origin, occupation, wages, social security number, sex, age, etc., of the certified worker. The card will be submitted to the MA-VI office.

2. The MA-VI office will complete the card by entering appropriate DOT and SIC codes, etc. It will then check to ascertain whether the wages being paid or offered by the current or prospective employer are at least as high as the prevailing wages for that occupation. If so, the card will be marked "Approved" and the following certification shall be stamped on it:

This is to certify that the employment of _____
in the United States Virgin Islands will not adversely affect the wages and working conditions of workers in the United States similarly employed and that qualified persons in the United States are not available for this employment. This certification is valid for any period for which the named alien is engaged in employment approved by the Secretary of Labor and for sixty days thereafter.

Date: _____

Robert J. Brown, Associate Manpower Administrator for United States Training and Employment Service.

3. The MA-VI office will then make five copies of this card. The card itself will be filed alphabetically by name of alien and by employer in a visible index cabinet. One copy will be used for EDP-statistical purposes, one copy will be filed alphabetically by alien's name, one copy will be sent to the alien, and two copies will be sent to the employer. The employer will retain one copy as a record. The other copy which the employer receives will either be attached by the employer to the petition (I-129B) he files with INS for the admission of the nonimmigrant worker or will be attached to the application (I-539) which the nonimmigrant alien files with INS to extend his stay in the Virgin Islands as a nonimmigrant.

4. If the MA-VI office cannot approve the employment specified on the MA-VI-1 card, because the wages are below the prevailing rate, and so forth, the card will be marked "Disapproved" and a brief explanation of the reason for the disapproval will be made on the card. A copy of the disapproved card will be made and filed chronologically in a file drawer for one year. Statistics on these disapprovals will be compiled manually. The disapproved card (MA-VI-1) will then be returned to the employer. (The employer can still submit a petition, I-129B, to INS for the admission of the nonimmigrant worker. The disapproved MA-VI-1 would be attached to the petition.)

5. The approved MA-VI-1 card serves both as a record that the employment of a nonimmigrant worker in a job is approved and as a conditional indefinite employment certification for the alien while he is a nonimmigrant worker in the Virgin Islands awaiting an immigrant visa. When the alien chooses to change jobs, the indefinite certification will accompany him to the new job, so long as the new job is approved. This will be done by stamping the certification on the MA-VI-1 card submitted by the new employer. Thus, nonimmigrant aliens who receive the new indefinite certification will be considered as virtually free members of the Virgin Islands labor force. They will be able to change jobs easily. Before the nonimmigrant commences the new employment, the new employer need only submit a MA-VI-1 card to the MA-VI office which will immediately approve the new job if the wages are at least at the prevailing level. INS will then act promptly on an I-129B petition by the prospective new employer. The old card will be canceled but left in the old employer's file for one year (for turnover information purposes). When the EDP copy of the new card is sent for key-punching, a copy of the canceled card will be attached as an instruction to make a change.

6. In order to assure that the transition to this new system is completed within a reasonable period of time, the MA-VI office will announce by July 1, 1970, a date by which all employers of nonimmigrant aliens with section 212(a)(14) certifications must have submitted and received approval of a card (form MA-VI-1) for each of them.

7. After the closing date specified for employers to submit a card for their nonimmigrant workers has passed, widespread publicity will be aimed at all nonimmigrant aliens who have received a 212(a)(14)—immigrant type—certification in the past, and for whom their current employer has not submitted and received approval of a MA-VI-1 card. Such persons will be asked to come to the MA-VI office during a 10-day period. The MA-VI office will make a record of the name and address of each such person and will make every effort to help him find a new job within 60 days after the end of the 10-day period. If no new employer has submitted and received approval of a MA-VI-1 card by the end of 60 days, the nonimmigrant will not be able to work in the Virgin Islands as a nonimmigrant after the validity period of the existing temporary certification which the employer has for him expires. The MA-VI office will take no action with respect to the 212(a)(14) certification that was issued (that is, no action will be taken by the Department of Labor to affect the alien's chances of eventually obtaining an immigrant visa).

8. In order to provide time for nonimmigrant workers to find new jobs when they become unemployed and to go to their home countries for visits, the indefinite certification remains in effect for 60 days after the alien leaves his approved employment. If the nonimmigrant stays out of the Virgin Islands for more than 60 days or does not become reemployed in an approved job within 60 days, the conditional indefinite certification is no longer valid. In this case, the alien will not be able to work in the Virgin Islands as a nonimmigrant. However, the Department of Labor will take no action with respect to the certification which was issued for him under section 212(a)(14) of the Immigration Act. Such an alien would remain in line for an immigrant visa. Should such a visa become available to him, the alien must satisfy the consulate that he has a valid certification. The Department of Labor policy will be to issue a recertification for him at

that time, if necessary to permit him to take advantage of the availability of an immigrant visa.

9. Within 24 hours after the employment for a certified nonimmigrant worker terminates, the employer of the alien must notify the MA-VI office by means of a MA-VI-2 form, to which the employer must attach a copy of the MA-VI-1 card which was issued to approve the employment. The MA-VI office will make an appropriate entry on the card in the employer file, and will control the case by pulling the copy from the alien file and inserting it in a dated tickler file. If the alien gets a new approved job within 60 days, the copy will be removed from the tickler file. If the alien doesn't get a new approved job in that time, the card in the employer file will be canceled, and INS will be notified that the alien is no longer certified for employment as a nonimmigrant.

10. It is important that all indefinitely certified nonimmigrant workers be in line for immigrant visas. If the alien came from an independent country of the Western Hemisphere the 212(a) (14) certification was sent to the consulate by the U.S. Department of Labor, and the alien was put in the visa waiting line. Likewise, if the alien came from an Eastern Hemisphere country or a dependent area of such a country, and the employer answered "No" in item 15 of the ES-575B on which the 212(a) (14) certification was stamped, the certification was sent to the consulate by the U.S. Department of Labor, and the alien is in line for a non-preference immigrant visa.

However, if the alien came from an Eastern Hemisphere country or a dependent area of such a country, and the employer answered "Yes" in item 15, the 212(a) (14) certification was sent to the employer. In order for the alien to be eligible for a preference immigrant visa that employer would have had to file and gain approval of a 6th preference petition on behalf of the alien. It is probable that many employers in the Virgin Islands failed to do so, and the alien is not in line for either a 6th preference or a nonpreference immigrant visa. Whenever it can be determined that an employer is still holding the 212(a) (14) certification and has never acted to get the alien in the immigrant visa line, that certification should be recovered and sent to the consulate for nonpreference handling, or if appropriate, the employer should be urged to submit a 6th preference petition. In some cases the MA-VI office may find it necessary to issue duplicate or new 212(a) (14) certifications to assure that an alien who was given a 212(a) (14) certification in the past is in line for an immigrant visa.

POLICIES AND PROCEDURES—ISSUANCE OF CERTIFICATIONS TO NONIMMIGRANT ALIENS WHO HAVE NOT PREVIOUSLY RECEIVED AN IMMIGRANT TYPE CERTIFICATION UNDER SECTION 212(A) (14)

As stated on page 2 of this document, the Department of Labor will assume that employers can recruit and/or train U.S. workers or nonimmigrant alien workers in the Virgin Islands who already have section 212(a) (14) certifications. Hence, it is expected that there will be very few additional alien workers certified for employment in the Virgin Islands.

The existing policy of issuing no certifications for new aliens to work as household domestic service workers will be continued. The wages of household workers in the Virgin Islands are so low, and the number of such workers is so great, that the admission of additional foreign workers would have an adverse effect on wages. Also, in view of the large number of these workers in the Virgin Islands, it is presumed that employers will have little difficulty in hiring U.S. or indefinitely certified nonimmigrant workers simply by making the terms of employment attractive.

If an employer can prove, through payroll records and other documentation, that a nonimmigrant alien who was not certified was employed by him prior to January 1, 1970, a section 212(a) (14) certification and a conditionally indefinite certification may be issued for the alien if the employer is paying at least the prevailing wages. Any such certification will have to be obtained before the closing date referred to in paragraph number 6 on page 5. This exception does not apply to aliens employed in private households.

Sympathetic considerations will be given to the issuance of a 212(a) (14) certification for the spouse of a nonimmigrant alien who has a conditional indefinite certification, in order to allow the spouse to work in the Virgin Islands also. Proof of marriage will be mandatory. This exception does not apply to a spouse who is seeking a certification for a job in a private household.

Applications for 212(a) (14) certifications (other than for household workers) which were received by the Virgin Islands Employment Security Agency on or

before May 1, 1970, may be approved, even though they do not meet the housing, travel, and vacation requirements specified in section 2b on page 9. However, these applications must meet current prevailing wages, and intensive efforts must be made to try to recruit U.S. and nonimmigrants who have 212(a)(14) certifications for these jobs.

1. An employer must first take positive steps to recruit a citizen, immigrant, or indefinitely certified nonimmigrant worker in the Virgin Islands.

(a) He must submit a job order to the Virgin Islands Employment Service and other manpower agencies in the Virgin Islands. The job order must contain realistic job requirements and must, whenever reasonable, specify that trainees and relatively inexperienced workers will be considered. Special recruitment attention will be given to individuals in the Job Corps, NYC, MDTA, WIN, and other manpower programs.

(b) The wage and fringe benefits specified in the job order (or amended job order) must be at least as high as the prevailing wage and fringe benefits in the Virgin Islands. The employer must agree to pay for an advertisement placed in local newspapers for a 5-day period. The advertisement must specify the wages and other terms and benefits of employment. The advertisements will direct interested applicants (U.S. and certified nonimmigrants) to apply at the Virgin Islands Employment Security Agency. The Virgin Islands Employment Security Agency will maintain records on the persons who respond, and the results of referrals.

(c) The employer must have a very good reason for not accepting a citizen, immigrant, or certified nonimmigrant job applicant. No discriminatory preferences based on race, sex, age, language, place of origin, etc., will be considered as a valid reason. Employers will be expected to hire and train citizen, immigrant, and certified nonimmigrant workers.

(d) If a citizen, immigrant, or certified nonimmigrant cannot be recruited in the Virgin Islands, the employer must consider referrals from Puerto Rico. The employer must accept the assistance of a representative of the Puerto Rico Employment Service in finding workers, and cooperate with him fully.

(e) Employers will be required to undertake special efforts to recruit certain categories of workers from the States:

For professional and highly technical occupations, employers must make extensive recruitment efforts on the U.S. mainland through advertising, employment agencies, professional associations, etc., and must be able to document those efforts and the results.

For administrative and skilled workers in the hotel and restaurant industry, employers must engage in organized or individual recruiting in Northern States in late summer, and in Southern States in late winter.

For construction workers, employers must carry out extensive recruiting efforts in Northern States during mid-October to mid-April.

2. An employer who has taken the positive recruitment steps listed above and who seeks a certification for a new foreign worker may submit an alien employment certification application (two copies of form ES-575 A and B) directly to the MA-VI office.

(a) The MA-VI office may refer to the employer any indefinitely certified alien workers it knows to be seeking a new job, and may prescribe such other reasonable recruitment efforts it believes will be productive in securing U.S. or certified nonimmigrant alien workers.

(b) The employer must offer the following benefits to the new alien worker:

The employer must advance transportation costs to the Virgin Islands.

The employer must provide at least 1 week paid vacation every year.

The employer must provide housing to the alien, which has been determined to be in compliance with the Virgin Islands Housing Code, at a cost to the worker of not more than one-fourth of his gross wages or the dwelling unit rate applicable to projects operated by the Virgin Islands Housing Authority, whichever is higher. A married worker whose spouse and children will accompany him must be provided a dwelling unit which has been determined to be adequate for the worker's family under the standards set forth in the Virgin Islands Housing Code.

3. To reiterate, the policy of the U.S. Department of Labor is to maximize the employment of U.S. citizen and permanent resident alien workers and alien nonimmigrants who now have 212(a)(14) certifications. The burden of recruiting citizens, permanent resident aliens (immigrants), and indefinitely certified nonimmigrants is on the employer, who must make his job attractive

enough to attract these workers. Importation of a foreign worker is the last resort in the recruitment process, and the Department of Labor will not certify the admission of any foreign worker until the employer offers wages and working conditions reasonably calculated to attract citizen, immigrant, and indefinitely certified nonimmigrant workers and every possible effort has been made to recruit such workers.

If an employer has taken all of the positive recruitment steps listed above and has offered the housing and other benefits which are required, and is still unsuccessful in recruiting an essential worker from among citizens, immigrants, and indefinitely certified nonimmigrants, the MA-VI office shall take the following actions before issuing a certification:

(a) A determination shall be made that the alien is essential to meet the normal, reasonable operating requirements of the employer. The MA-VI office may consider whether the employer cannot meet his manpower needs by fuller utilization of his existing employees.

(b) A determination shall be made (if possible, in conjunction with the Virgin Islands Department of Housing and Urban Renewal), that the housing being provided complies with the Virgin Islands Housing Code and that the employee will not have to pay more than the amount specified in section 2(b) on page 9.

(c) After the closing date referred to in section 6 of page 5, a determination shall be made that the employer is not currently employing the alien or any other nonimmigrant alien **who** is not certified or approved for employment with him. In other words, 29 CFR 60.6(j) provides that the prospective employment of an alien worker will be deemed to adversely affect American workers unless such employment is not with an employer who has within 3 years prior to the offer hired an alien who (1) entered the United States without inspection, or (2) was in the United States as a nonimmigrant and whose employment violated his nonimmigrant status, unless such employer demonstrates that he did not know, had no reasonable grounds to know, or could not by reasonable inquiry have ascertained knowledge of these circumstances.

(d) A determination shall be made that to the knowledge of the MA-VI office, during the 3 years prior to the application, the employer fulfilled the wage and other representations which he made on applications (form ES-575B) in obtaining certifications for other alien workers (see 29 CFR 60.6(h)).

(e) If the above actions and requirements are fulfilled, the Director of the MA-VI office may issue a 212(a)(14) certification.

(f) The certification should be sent to the appropriate consulate to get the alien in line for a Western Hemisphere or nonpreference immigrant visa. If the alien is from an Eastern Hemisphere country or dependent area where a sixth-preference visa may become available within 2 years, the certification should be sent to the employer for filing with a sixth-preference petition. The employer is expected to do this.

(g) In order for the alien to work as a nonimmigrant, the employer will submit a MA-VI-1 card which will be processed as described in pages 3-4.

(h) An employer whose application for alien employment certification is denied may ask for review by writing to the Manpower Administrator in Washington.

POLICIES AND PROCEDURES—ISSUANCE OF TEMPORARY CERTIFICATIONS FOR TRULY TEMPORARY WORKERS

On occasion, an employer will submit an application for certification of an alien worker for a temporary job only. Applications for temporary certifications will be approved only for unique jobs that are clearly of a short duration such as entertainers, professional athletes, and highly specialized technicians who are coming to install or repair a single piece of machinery. Jobs in the construction, hotel, and other industries where the normal course of business involves the completion of projects or seasonal fluctuations are not to be considered temporary for this purpose. In the Virgin Islands, such certifications are to be valid for no more than 30 days. Only in exceptional circumstances may the temporary certification be extended.

1. To obtain such a certification, the employer shall submit two copies of forms ES-575 A and B for each worker. The certification which is stamped on the 575B will be as follows:

This is to certify that the temporary employment of _____
to perform the work specified in this application will not adversely affect

the wages and working conditions of workers in the United States similarly employed and that qualified persons in the United States are not available for this employment. This certification is valid until

Date: _____

Robert J. Brown, Associate Manpower
Administrator, for United States
Training and Employment Service.

2. The certified copy of the 575 form will be sent to the employer who will attach it to the petition (I-129B) he will submit to the Immigration and Naturalization Service for the admission of the nonimmigrant as a temporary worker.

3. The MA-VI office will retain the other copy of the 575 A and B. They will be filed in a dated tickler file. To avoid statistical mixups, data on them will not be fed into the EDP system. There will be few such certifications and statistics on them are to be prepared manually and kept separately by the MA-VI office.

4. The MA-VI office will prepare a distinctly colored 5-by-8 card (MA-VI-3) for each such worker which will be filed in the employer-visible index file.

5. At the end of 30 days (or less if the certification is for a shorter duration), the 575 A and B in the tickler file will be pulled, and the MA-VI-3 card will be taken from the employer file. The MA-VI-3 will be transmitted to the INS office, with a cover letter noting that the temporary certification has expired. The 575 A and B will be filed for 1 year in a cabinet, according to the month in which the certification was issued.

ENFORCEMENT OF THE NONIMMIGRANT ALIEN EMPLOYMENT PROGRAM

There are two major objectives in the enforcement aspect of this program. The first is to assure that employers do not employ nonimmigrant aliens who are not certified and that they do not employ certified nonimmigrants in jobs which have not been approved. The second objective is to assure that nonimmigrant aliens are in fact employed in the capacity and at the wage specified in the job approval (MA-VI-1).

By July 1, 1970, the MA-VI office shall have established a coordinated enforcement program with the Immigration and Naturalization Service, the Wage-Hour and Public Contracts Divisions, and the Virgin Islands Department of Labor. The MA-VI office should take the following steps:

1. A 5-by-8 employer card (MA-VI-4) will be filed in the visible index for each employer. Behind this card will be filed alphabetically all of the MA-VI-1 cards for the indefinitely certified nonimmigrants who have been approved for employment with the employer. The MA-VI-4 card will contain the name, address, and telephone number of the employer, and space for recording the dates on which a check has been made of the nonimmigrant aliens he employs.

2. Periodic checks will be made with each employer to assure that the card file correctly reflects his current employment of nonimmigrant alien workers. A check should be done of large employers (over 50 nonimmigrants) at least every 3 months, and of employers of 2-50 nonimmigrants at least every 6 months. Employers of one nonimmigrant should be checked at least every 12 months. This check can be done by Xeroxing the trays of MA-VI-1 cards of nonimmigrants employed by him, and mailing the copy to him for confirmation or revision. The check can also be done when employers submit MA-VI-1 cards for an indefinitely certified worker whom they wish to hire. The date on which the check is made should be entered on the employer card (MA-VI-4) and all discrepancies should be ironed out immediately.

3. Coordinated enforcement with INS, WHPC, and the Virgin Islands Department of Labor can best be achieved by sending them Xerox copies of the card trays for employers. For instance, the WHPC and Virgin Islands Department of Labor minimum wage investigators could request copies for those employers whom they plan to investigate in a certain month.

Those agencies would then inform the MA-VI office when their investigations disclose nonimmigrants who are working for an employer who is not on the Xerox list, or when an indefinitely certified nonimmigrant is not being paid at least the wages specified on the card. The MA-VI office would then notify INS. In addition, Xerox copies of card files or EDP printouts will be furnished to INS to assist it in making compliance reviews of employers.

PRIORITIES IN PROCESSING APPLICATIONS

The new MA-VI office will obviously be unable to process all applications at once when it opens. In order to effectuate the policies set forth in this document as quickly as possible, the office will follow these priorities in processing applications:

First, issue indefinite certifications for nonimmigrants who have 212(a)(14) certifications and who wish to change jobs.

Second, issue indefinite certifications for employed nonimmigrants who have 212(a)(14) certifications and whose temporary certifications have expired or are about to expire.

Third, issue 212(a)(14) certifications and indefinite certifications for non-immigrant aliens whose employers can prove that they employed the alien prior to January 1, 1970, except private household workers.

Fourth, consider applications received before May 1 for new foreign workers—that is, those who had not had 212(a)(14) certifications.

Fifth, issue indefinite certifications for employed nonimmigrants who have 212(a)(14) certifications, whose temporary certifications are not about to expire and who are not seeking new jobs. This can best be handled on an employer-by-employer basis, with employers cooperating by completing and submitting MA-VI-1 cards for all of their nonimmigrant workers with 212(a)(14) certifications at one time.

Sixth, consider applications received after May 12 for new foreign workers—that is, those who have not had 212(a)(14) certifications and were not employed prior to January 1, 1970.

OTHER RESPONSIBILITIES OF THE MA-VI OFFICE

1. The MA-VI office will fully publicize these policies and procedures, and shall meet with organizations of alien workers and employers and labor unions to explain them.

2. The MA-VI office will submit regular operations reports to the Associate Manpower Administrator for U.S. Training and Employment Service, who in turn will send copies to appropriate persons in the Manpower Administration.

3. The MA-VI office will prepare periodic statistical reports on the nonimmigrant alien labor force in the Virgin Islands, and will share those data with agencies of the Virgin Islands government as well as the U.S. Departments of Labor and Justice.

4. The MA-VI office will closely follow prevailing wages with the cooperation of the Virgin Islands Employment Security Agency, and will keep track of the changes in those wages.

ARNOLD R. WEBER,

Assistant Secretary for Manpower.

APPENDIX 4

ALIENS ARE ILLEGALLY ENTERING THE U.S. MAINLAND THROUGH PUERTO RICO AND THE U.S. VIRGIN ISLANDS

U.S. GENERAL ACCOUNTING OFFICE,

Washington, D.C., September 8, 1975.

B-125051

The ATTORNEY GENERAL.

DEAR MR. ATTORNEY GENERAL: We have completed a limited review of the Immigration and Naturalization Service's (INS') procedures for controlling the entry of illegal aliens into the United States from Puerto Rico and the U.S. Virgin Islands. Our objectives were to (1) ascertain whether a problem of any magnitude exists in this area and (2) if so, examine the effectiveness of INS' procedures for coping with it.

As part of our review, we interviewed INS officials at the Washington headquarters; Puerto Rico; the U.S. Virgin Islands; the New York City district office; and the southeast regional office in Richmond, Virginia, and Department of State officials. We also had discussions with local government officials of the two terri-

tories. We analyzed available documentation at these locations and did limited work at the Social Security Administration.

We found—and INS is aware—that aliens are using these territories to illegally enter the mainland. However, because INS had not measured the number of aliens so entering the United States, we could not evaluate the effectiveness of the INS' efforts to control this problem. It follows, therefore, that INS must first determine how many aliens are entering illegally from these locations. With this information, the agency will then be in a position to better allot a share of its resources to combat this problem.

We believe that INS could better control illegal entry by improving certain management techniques. INS officials generally agreed but pointed out that their ability to fully implement needed improvements is limited by manpower constraints.

BACKGROUND

Many aliens admitted to Puerto Rico and the U.S. Virgin Islands under the visa waiver or "annotated visa" issued at the Embassy in Santo Domingo, Dominican Republic, proceed illegally to the mainland.

INS has procedures for inspecting passengers boarding aircraft destined for the mainland from those two territories to identify and apprehend aliens attempting unauthorized entry. Flights leaving these territories are not inspected upon arriving in the mainland.

Federal regulations provide that residents of British, French, and Netherlands territories, and nationals of certain adjacent islands of the Caribbean which are independent countries may enter Puerto Rico and the U.S. Virgin Islands without obtaining a visa (visa waiver). Aliens admitted under this provision may not, however, proceed to the mainland. If an alien so admitted attempts to enter the mainland, the authorized period for which he was admitted is automatically terminated.

For political and humanitarian reasons and because of the proximity of Puerto Rico, the Santo Domingo Embassy in July 1964 began annotating the visas issued to certain aliens destined solely to Puerto Rico. The requirements, particularly the financial requirements, necessary for issuing annotated visas are less stringent than those for an alien destined for the mainland. The annotated visa alerts INS that the visa was issued only for travel to Puerto Rico.

INS representatives in Puerto Rico and the U.S. Virgin Islands estimated that there are between 10,000 and 50,000 illegal aliens in Puerto Rico and over 8,000 in the U.S. Virgin Islands. They also estimated that about 50,000 aliens annually enter those territories under the visa waiver provision. According to Department of State officials, about 25 percent of the approximately 20,600 visas issued for business or pleasure by the Santo Domingo Embassy in fiscal year 1974 were annotated visas.

Territorial government officials believe that illegal aliens are a significant problem. They say the illegal aliens have an adverse effect on (1) the economy, especially by increasing unemployment, (2) health conditions, and (3) law enforcement. Aliens primarily violate their status to get employment.

EXTENT OF ILLEGAL ENTRY

INS does not inspect all flights going to the mainland; for more than 8 years it has attributed its inability to do so to manpower shortages. Although INS feels that many aliens may have entered the U.S. mainland illegally because of inadequate inspection coverage, it has made only limited attempts to measure the magnitude of this problem to determine if additional manpower is warranted or if other alternatives can be implemented to adequately combat the problem.

Puerto Rico and the U.S. Virgin Islands have large numbers of aliens in apparent illegal status from visa waiver countries and the Dominican Republic. INS admission-departure records show that, for September 1973 through March 1974, such aliens from the visa waiver islands and the Dominican Republic numbered 1,300 and 3,500, respectively.

Available evidence indicates that illegal entry into the mainland is a problem. For example:

1. In 1974 INS apprehended 574 aliens attempting to enter the mainland illegally from St. Croix in the U.S. Virgin Islands and Puerto Rico.

2. INS' southeast regional commissioner estimated that about 2,000 to 4,000 aliens illegally enter the mainland annually through these territories.

3. Between October 1973 and February 1974, INS' New York district office investigators apprehended 55 aliens who had entered the mainland illegally

through these territories. Of these aliens, 51 were employed when apprehended. 4. Through Social Security records we were able to identify aliens from visa waiver countries and the Dominican Republic who had entered the mainland illegally through these territories, had obtained social security cards, and were working in fiscal year 1974.

The Commissioner of INS said that he was fully aware of the illegal entry problem through these territories. Even though INS has been aware of this illegal entry problem, it has only made limited attempts to rectify the problem. INS believes that many are able to enter because of inadequate departure inspection coverage. We believe INS needs to measure the magnitude of the problem so appropriate action can be taken.

MANAGEMENT OF INSPECTION COVERAGE

Except for a 19-month period, INS has placed a relatively low priority on inspecting aliens departing from these territories for the mainland. From August 1967 through November 1970, it only spot-checked departing flights. In December 1970 the Associate Commissioner, Operations, said that INS was facing severe enforcement problems in the San Juan district and that the most immediate problem was the departure control of aliens admitted under either the visa waiver or annotated visa. He concluded that many aliens used this means to proceed illegally to the mainland, where they obtained employment.

The INS San Juan district director informed us that, for a 19-month period ending June 30, 1972, the district gave special attention to inspecting all departing flights. INS records show that 1,362 aliens were apprehended in travel during a 38-month period when the normal spot-check inspection procedures were in effect, and 1,123 were apprehended during the 19-month period when special attention was given to inspection coverage. The San Juan district director said, however, that because of the lack of funds and personnel the all-out emphasis on departure controls was discontinued.

In 1974 about 67 percent of the scheduled departing flights from Puerto Rico to the mainland were checked and 533 aliens were apprehended; 77 percent from St. Croix were checked and 41 aliens were apprehended. The Commissioner said that, due to a serious lack of resources, he was unable to provide effective departure coverage and that he realized the spot-check method of controlling illegal departures to the mainland left much to be desired.

Lack of resources may adversely affect inspection coverage, but INS' management of its existing inspection coverage operation could be improved. For example:

1. INS did not know the number of daily departing flights; consequently, it could not determine the extent of inspection coverage or which flights would be the best ones to check, assuming that limited manpower prevented 100-percent checking. We believe that a comparison between flights checked and actual departures, detailing such information as the airline, destination, date, and time of departure, would greatly help INS improve the effectiveness of departure control.

2. No uniform inspection practice existed. The degree to which investigators or inspectors conversed with passengers and sought identification varied. Inspection practices were primarily geared only to observation.

3. The limited data available was not analyzed or reviewed to try to detect trends that could help management improve its inspection operation.

We believe that INS should evaluate its existing spot-check practices so that immediate improvements can be made. Establishing effective departure controls and investigations in the territories is more practicable and less costly than apprehending and removing illegal aliens from the mainland. Furthermore, once these aliens enter the mainland, the likelihood is greater that they will acquire equities and eventual grounds for permanent resident status.

AGENCY ACTIONS

Under an amendment to the Federal regulations, effective October 7, 1975, residents of visa waiver islands (except those of the British Virgin Islands and certain temporary workers) destined for Puerto Rico and the U.S. Virgin Islands will have to apply for visas. The amendment was intended to eliminate the abuse of the visa waiver by which many aliens proceeded illegally to the U.S. mainland.

According to a State Department official, aliens will apply for visas at the Embassy in Barbados or by mail. Interviews might sometimes be required for visa-by-mail applications. A visa issued an alien applying for admission only to

Puerto Rico or the U.S. Virgin Islands would be annotated in a manner similar to that now used at the Santo Domingo Embassy. As previously mentioned, the requirements, particularly financial, are less stringent than those for an alien destined to the mainland.

Since we found—and Department of State and INS officials have said—that aliens with annotated visas attempt to enter the U.S. mainland illegally, effective departure inspection coverage is still essential. Also, effective coverage will still be necessary to prevent British Virgin Islanders and temporary workers from illegally entering the mainland.

CONCLUSIONS

INS has not been able to adequately control illegal entry to the mainland from Puerto Rico and the U.S. Virgin Islands. This problem has existed for more than 8 years and INS, except to cite its insufficient manpower, has done little to adequately solve it. INS needs to determine how many aliens are illegally entering the mainland so it can better allot a share of its resources to combat this problem or identify other alternatives to deal with it. Also, INS could better control illegal entry by improving certain management techniques.

We recognize that the amendment of the visa waiver provision and the institution of an annotated visa system, including visa applications by mail, may reduce the number of aliens entering the U.S. mainland illegally through these territories. But effective inspection coverage will still be essential to deter British Virgin Islanders, temporary workers, and aliens with annotated visas from illegally entering the mainland. We believe that INS should establish a close liaison with the Department of State to monitor the effectiveness of this annotated visa system.

RECOMMENDATIONS

We recommend that you direct the Commissioner of INS to:

Develop an approach or method for identifying data which, if accumulated and analyzed, could provide INS with (1) a yardstick to measure the problem of illegal entry through the territories and (2) a basis for taking corrective action.

Improve the management of the existing spot-check inspection procedures in Puerto Rico and the U.S. Virgin Islands. Actions should include identifying the number, time, and date of departing flights not being inspected, so coverage can be determined and improvements identified.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

Copies of this report are being sent to interested House and Senate committees and Members of Congress; the Secretary of State; the Director, Office of Management and Budget; and the Commissioner, INS.

We appreciate the cooperation and assistance provided our representatives by INS.

Sincerely yours,

VICTOR L. LOWE, *Director.*

APPENDIX 5

ALIEN INTEREST MOVEMENT,
St. Thomas, VI., March 10, 1975.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration,
U.S. Congress, Washington, D.C.

DEAR SIR: Down through the ages a constant conflict has always existed between in-groups and out-groups. The intensity of conflict is conditioned by the threat one poses to the other's survival even though the fear may be an imaginary one.

In the U.S. Virgin Islands such a conflict does exist between the native residents and the certified workers from the West Indian Islands. (There are other foreigners who, as entrepreneurs, are not considered a threat and are therefore accepted by the community). This conflict has worsened in recent years with deterioration of the economy and the rise in unemployment. Unfortunately many

local leaders have and continue to capitalize on it in order to gain political support.

Under prevailing conditions, an immediate and equitable resolution of this problem is imperative and cannot be over emphasized. Delay only tends to harden antagonistic attitudes and allows for the development of conflict relationships; an atmosphere that does not augur well for the territory.

As leaders of the alien population and responsible members of the community, we take the following positions:

1. All aliens who entered the Virgin Islands illegally should be sought out and deported forthwith. Employers who hire such aliens should be penalized.

2. Alien workers, who were certified for employment prior to June 30, 1972, still residing in the Virgin Islands, gainfully employed and law-abiding should be enabled by law to have their status adjusted. They have built up considerable equity during their stay.

3. Certified aliens who entered the Virgin Islands after June 30, 1972, should not be re-certified after reasonable notice had been given, suggested time.

4. Enabling legislation should be prepared and introduced separately and apart from the general Immigration Bill HR-981. Our problems are unique and deserve special treatment.

5. The privilege of status adjustment should be extended only to members of the immediate family.

6. In the meantime a moratorium should be placed on new entries as well as on the deportation of certified workers who entered prior to June 30, 1972. This move will permit a certain sense of stabilization.

We are very grateful to you and members of the committee for the interest and understanding you have shared with us. May God continue to bless you all as you continue your deliberations and may he grant you the wisdom to bring about an equitable solution. Once again our sincere thanks and best wishes.

Sincerely,

GEORGE GOODWIN,
President.


