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THE USE OF TEMPORARY ALIEN LABOR
ON GUAM

DOCUMENTS

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A SPECIAL STUDY

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PREPARED FOR THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW

OF THE

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(II)

FOREWORD

The admission of immigrants and nonimmigrants to the Territories and Possessions of the United States has been a deep concern of the Subcommittee on Immigration, Citizenship, and International Law for several years.

The Subcommittee has devoted considerable time and attention to the temporary alien labor problem in Guam and the Virgin Islands. In exploring this complex issue the Subcommittee has: held oversight hearings in Guam on two occasions; conducted field investigations; published a report, entitled the "Nonimmigrant Alien Labor Program on the Virgin Islands of the United States" (Committee Print, 94th Congress, 1st Session); and considered various legislative proposals to alleviate the problems created by the use of temporary alien workers in these two Territories.

The political, social and economic impacts caused by the importation of alien labor into Guam and the Virgin Islands are similar in nature. On the other hand the circumstances which led to their dependence on foreign workers were quite different and, as a result, one should be cautious in making quick comparisons between these two situations.

The Judiciary Committee's concern over the immigration-related problems in these Territories is reflected in a recently-enacted law (Public Law 95-412), which created a Select Commission on Immigration and Refugee Policy. One of the duties given to that Commission is to "conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to the . . . the Virgin Islands, Guam, American Samoa, [and], the Northern Mariana Islands."

This special study has been prepared, in close consultation with the Subcommittee staff, by Joyce C. Violet, an immigration specialist with the Education and Public Welfare Division of the Congressional Research Service. The Subcommittee wishes to express its appreciation to Mrs. Violet for her assistance in preparing this document as well as for the invaluable research which she has performed for the Subcommittee over the past three Congresses. The Subcommittee also acknowledges the assistance provided by Catherine McHugh of the Congressional Research Service in preparing this study. Portions of the report relating to the Committee's hearings in Guam were prepared by the Subcommittee staff.

It is hoped that this comprehensive report, which traces the historical development of the alien labor situation in Guam, will assist the Members of Congress and the aforementioned Commission in achieving a thorough understanding of the unique immigration problem in that Territory.

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A HISTORY OF THE USE OF TEMPORARY ALIEN LABOR ON GUAM, 1944-1978

I. BACKGROUND

A. GUAM

Guam, the westernmost territory of the United States, is part of the volcanic chain of Mariana Islands located in the Pacific Ocean. It is the largest island of the chain, with an area of approximately 210 square miles, about 30 miles long and 4 to 8 miles wide.

Guam is approximately 3,000 miles from Hawaii. It is more than 5,000 miles from San Francisco, and approximately 1,350 miles from Tokyo, Japan, and 1,500 miles from the Philippines. The island is located in the typhoon belt.

Guam was discovered by Ferdinand Magellan in 1521. It was a Spanish possession from the 16th century until the end of the 19th century, when it was ceded to the United States in the 1898 treaty following the Spanish-American War. From 1898 until 1950, Guam was administered by the U.S. Department of the Navy. This was interrupted by the period between 1941-1944, during World War II, when the island was occupied by the Japanese. The Organic Act of Guam (48 USC 1421) in 1950 established a territorial civil government, and transferred administrative jurisdiction to the Department of the Interior.

The Organic Act of 1950 also granted U.S. citizenship to Guamanian citizens and provided for a popularly elected legislature. This is a 21-member unicameral body, elected every two years. Pursuant to 1968 legislation, the Governor and Lieutenant Governor are elected by popular vote every four years. Previously, they had been appointed by the President. Since 1972, Guam has been represented in the U.S. House of Representatives by a nonvoting delegate. In 1976, Congress enacted legislation authorizing Guam to adopt its own constitution.

Guam's population and economy are discussed in more detail throughout this report. Briefly, according to U.S. Census data, Guam's population, including military personnel, was 59,000 in 1950, 67,000 in 1960, and 86,929 in 1970; the 1970 census has been criticized for undercounting. Guam's population is currently estimated at approximately 105,000, including the military. Over one-fourth of this number consists of Federal employees, military personnel, and their dependents.

A Guam Department of Labor survey in September 1975 estimated the civilian population, excluding both the military and all nonimmigrant aliens, at 79,800. Of this, 56 percent were Chamorros, the native Guamanians descended from the original inhabitants of the islands who are believed to have come from Southeast Asia. The remaining 44 percent was made up of Filipinos (19 percent), Caucasians (9 percent), Chamorro-Filipinos (4 percent), Chamorro-Caucasians (3 percent), Japanese, Chinese, or Korean (2 percent), and other (7 per-

cent). Of the total civilian population, 9,800, or 12 percent, were immigrants, or permanent resident aliens.

The U.S. military has played a major role in Guam's economy since 1944, and continues to do so today. Air and naval facilities include Andersen Air Force Base and a nuclear submarine base. Tourism, including Japanese honeymooners, is also of major importance to the island's economy. The Government of Guam (GovGuam) is the chief employer of the island's natives. The construction industry, including military construction and typhoon reconstruction, has traditionally been heavily dependent on temporary alien workers—the subject of this report. In March 1975, the Guam Department of Labor reported that nonimmigrant aliens made up 16 percent of the total employed, accounted for largely by construction (82 percent of the labor force) followed at that time by agriculture (47 percent of the labor force), and manufacturing (15 percent of the labor force).

Finally, Guam has had limited success to date in agricultural development, and imports a considerable portion of its foodstuffs. This accounts in part for the high cost of living on the island. In 1975, all but 25 percent of Guam's food was imported. Reportedly, this situation is improving.

B. STATUS OF GUAM UNDER U.S. IMMIGRATION LAW

The Immigration and Nationality Act of 1952, as amended, confers U.S. citizenship as of August 1, 1950 on most natives of Guam born after April 11, 1899, and on most inhabitants who had been present on that date and had resided on the island following it. The provisions in question, section 307 of the 1952 Act, are largely recodified from amendments to the Nationality Act of 1940 contained in the 1950 Organic Act of Guam (64 Stat. 384).

The provisions of the Immigration and Nationality Act regulating the admission of aliens to the United States apply fully to Guam, which is included in the definition of the term "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)) provides that all but the documentary requirements of the grounds for exclusion set forth in the act are applicable to all aliens entering the United States from specified territories, including Guam. These provisions, of course, are not applicable to Guamanians themselves because of their U.S. citizenship.

The Immigration and Nationality Act of 1952 has been enforced on Guam since it went into effect on December 24, 1952. However, this was not the case with the major immigration laws which preceded it. These were the Immigration Act of February 5, 1917, and the Immigration Act of May 26, 1924, which set forth, respectively, the qualitative and quantitative restrictions on U.S. immigration until their repeal by the 1952 act. The 1924 act did not include Guam in its definition of the United States, and thus was not applicable to the island. The 1917 Act applied to all areas within the jurisdiction of the United States. In fact, however, this law was not enforced on Guam until the U.S. Immigration and Naturalization Service (INS) agreed to take over its administration there on June 16, 1952. The status of aliens admitted to Guam prior to the effective date of the Immigration and Nationality Act is set forth in current INS regulations at 8 CFR 101.1(i).

II. THE 1940's

Guam's history during the 1940's is essentially military history. At the beginning of the decade, the U.S. military presence on Guam consisted of "4 Marine planes, . . . 1 small naval ship, and a small naval establishment, and a few marines on the ground."¹ During the course of World War II, Guam was captured and occupied by enemy troops for more than two and a half years. By the end of the 1940's, Guam had become a major U.S. military installation and island life was dominated by the military presence.

On February 4, 1941, President Franklin Roosevelt signed Executive Order 8683, establishing naval defensive sea areas around and naval air space reservations over Guam. As a result of this order, which was not lifted until 1962, Navy security clearances were required of everyone entering and leaving Guam.

On December 10, 1941, Guam was captured by Japanese forces, and remained under Japanese occupation until it was retaken by U.S. forces in July 1944 in a battle which devastated the island. Scarcely a house was left standing in Agana, the capital and the home of approximately 14,000 of the island's estimated prewar population of 24,000.

The devastation following the recapture of Guam in mid-1944 was such that the Naval Military Government was required to provide food, medical care and shelter for most of the native population. Additionally, a substantial portion of the population sought employment with the Government because adequate private employment was not available. The employment situation in 1947 was described as follows in the annual U.S. Navy report to the United Nations: "The greater part of available Guamanian labor is now employed by the United States, either in connection with the Island Government of Guam or at the various military installations on the island."² Quoting further, "In contrast to its pre-war agricultural economy Guam can now be likened to a city of 50,000 people, as dependent upon off-island sources for food and for other necessities as a comparable American city would be dependent upon sources beyond its corporate limits."³

The history of the importation of temporary alien labor in Guam properly begins with this postwar period, which was characterized by a serious labor shortage. The available Guamanian labor supply was described in 1948 as being "entirely insufficient to meet the personnel requirements of local business enterprises, the Island Government in its usual governmental functions and in connection with the numerous projects for rehabilitation and of the Federal installations on the

¹ U.S. House of Representatives, Committee on Interior and Insular Affairs, "Guam, Mariana Islands." Reports of a Special Subcommittee on Territorial and Insular Affairs. Nov. 27-Dec. 4, 1954, 83d Cong., 2d sess., Committee Print No. 3, 1955, p. 22. (Cited as House Interior and Insular Affairs report (1955).)

² U.S. Navy Dept., Guam: Information on Guam Transmitted by the United States to the Secretary-General of the United Nations Pursuant to Article 73(e) of the Charter, Washington, 1947, p. 13.

³ Ibid., p. 15.

island.”⁴ Specific reference was made in the 1947 report to the critical shortage of construction labor. Construction workers were needed in large numbers to repair the extensive wartime destruction, to participate in the new construction which began after Guam’s recapture to convert it into a major U.S. military base, and to repair the effects of a particularly destructive typhoon in September 1964. Military construction and typhoon damage have continued since the 1940’s to account for the large number of construction workers employed on Guam.

The solution to the island-wide labor shortage in the mid-1940’s was the recruitment of workers from elsewhere, including the mainland United States, Hawaii, and to a lesser extent, Philippines, and other Pacific islands. The terms of this employment, applicable to both U.S. citizens and aliens, were described as follows in a 1948 report:

All recruitment is on a strictly voluntary basis and the contracts of employment are reviewed by the labor authorities of the territories from which the workmen are drawn. Workers going to Guam are employed on a short-term basis, usually under contracts of one year in duration. They are required to leave Guam and to return to their respective places of origin at the termination of their employment. Such employees are not prohibited, however, from leaving Guam and returning to their places of origin at any time. They are transported from the place of recruitment to Guam by the usual naval or commercial air or surface transport services and are furnished equivalent transportation in returning at the end of their employment. Wages for such employment, which vary according to the wage scale in the territory from which the respective groups of workers are drawn, are generally considered to be attractive. Provision has been made for supplying living accommodations and recreation facilities for these employees during their sojourn on Guam. Their hours of work are regulated by contract and usually follow the prevailing pattern of an eight-hour day and forty-hour week.⁵

On May 13 and 16, 1947, an agreement was negotiated by the U.S. Embassy in Manila and the Government of the Philippines relating to the recruitment and employment of Philippine citizens by the U.S. Military Forces and its contractors in the Pacific, including Guam. The agreement took the form of an exchange of notes,⁶ in which the U.S. note of May 13 laid out in very specific terms the wages and conditions involved. Filipinos hired directly by the military were to be paid the equivalent of the current Philippine wage plus a 25 percent overseas differential, and were entitled to free laundry services, free medical and dental care, and other fringe benefits. Contract workers were additionally provided with free room and board. The May 16 reply from the Philippine Department of Foreign Affairs approved the U.S. plan, requiring only that it be supplied with a list of the laborers and their employees.

Following the 1947 agreement, Filipinos were first imported into Guam by two contractors. These were the Brown-Pacific-Maxon Construction Co., which recruited workers in the Philippines and got clearance from the Philippines Government, and the Luzon Stevedoring Corporation. The latter contractor apparently had a closed-shop agreement with the Consolidated Labor Unions of the Philippines which acted as a hiring hall for the contractor, and was subse-

⁴ U.S. Navy Dept., *Guam: Information on Guam Transmitted by the United States to the Secretary-General of the United Nations Pursuant to Article 73(e) of the Charter*, Washington, 1948, p. 13.

⁵ *Ibid.*, p. 13.

⁶ Philippines, *Recruitment of Filipino Laborers and Employees*, 7 UST 2539 (1956); TIAS 3646.

quently accused in the Philippines press of racketeering. It was succeeded in the 1950s as a major labor contractor for Guam by the Vinnell Construction Co., which operated along lines similar to Brown-Pacific-Maxon.⁷

The 1947 exchange of notes was not formally renegotiated until December 1968, at which point it was repealed and replaced with a new agreement. It was frequently cited as the authority under which the military brought temporary Filipino workers into Guam, and no attempt was made to reconcile it with U.S. immigration law until 1952. At that point, it appears that the immigration law was administered in a manner designed to accommodate the terms of the 1947 exchange of notes as fully as possible.

⁷ U.S. House of Representatives, Committee on Education and Labor, "Minimum Wages in Certain Territories, Possessions, and Oversea Areas of the United States," Hearings, 84th Cong., 2d sess., 1956, pp. 272-273. (Cited as House Education and Labor hearings (1956).)

III. THE 1950's

The Organic Act of Guam, enacted in 1950, shifted administrative responsibility for the island from the Department of the Navy to the Department of the Interior and provided for the appointment of a civilian Governor by the President. However, throughout the 1950's, island life continued to be dominated by the military which owned or controlled one-third of the land. A Naval security clearance continued to be required of all persons leaving or entering Guam throughout the decade.

In the words of Mr. Antonio B. Won Pat, now the Guamanian delegate to the U.S. House of Representatives and then a Representative of the Guam Legislature, before a House subcommittee in 1956, "Guam is considered a security area and it is fully controlled by the military, but at the same time, we have a civil government on Guam, so under that condition, it is difficult for us to create some kind of economy other than the military because everything there is controlled largely by the military."¹ The extent of Guam's economic dependence on the military is apparent in Mr. Won Pat's following description of Guam in the mid-1950's:

Guam has a payroll economy. It is based on expenditures, largely military, made necessary by maintaining Guam as a military base. Guam has little valuable mineral resources and therefore no mining industry. Its manufacturing industry is very limited. There is no lumber industry and no exports except a small amount of copra and scrap metal. Only about 700 people make their living in whole or in part from agriculture. With the exception of some poultry raising and egg production enterprises, as well as truck farming, we have no commercial agriculture in Guam. There are no food canneries or food processing plants. The military and residents depend largely on imported food. In addition we import all our clothes, all our home furnishings and appliances, and most of our building material from the mainland.²

The total population of Guam during this period was estimated by Governor Ford Q. Elvidge to be approximately 75,000. The Governor qualified this estimate by noting that the military population was "supposed to be more or less classified", and that, regarding the Guamanian population, "we have not had an accurate census for some time." With these caveats, he estimated the Guamanian population at 35,000, the Filipino contract workers at 10,000 to 12,000, and permanent resident aliens at 1,000 to 2,000. The remainder—a minimum of 26,000, or more than one-third of the island's total population—were military and related "off-islanders".³

Estimates of the Guamanian population and workforce in the 1950's vary as do estimates of the number of Filipino contract workers on the island during this period. However, all estimates indicate that the employed Guamanian workforce was significantly outnumbered by the Filipino workers, at least during the first half of the decade.

¹ House Education and Labor hearings (1956), p. 490.

² *Ibid.*, p. 479.

³ *Ibid.*, p. 507.

Then, as now, the primary occupation of the alien workers was construction. Quoting Governor Elvidge in 1956:

[Guamanians] are not being employed in defense directly. By that I mean the construction work on the island. Those are, I think, almost exclusively aliens or Filipinos, recruited by the two big defense contractors.⁴

Similarly, then as now GovGuam was a major employer of the native Guamanians. In 1956, GovGuam, employed 2,481 people, of whom 2,010 were Guamanians.⁵

A. IMMIGRATION LAW ENFORCEMENT, 1950-1952

Prior to 1950, immigration to Guam was controlled by the Navy, primarily through security clearances and pursuant to the authority of the 1947 U.S.-Philippine exchange of notes discussed above. Following enactment in 1950 of the Organic Act of Guam, according to an Immigration and Naturalization Service history, "the civilian Governor additionally started granting permits to private merchants and others in need of labor to import Filipinos upon executing a contract for one year and posting a bond guaranteeing departure."⁶

In 1951, the Immigration Act of 1917 was found to be applicable to Guam without further amendment by a Commission appointed by the President pursuant to the Organic Act of Guam.⁷ However, actual enforcement of the 1917 Act did not begin until the Immigration and Naturalization Service (INS) opened an office on Guam on June 16, 1952.⁸ The situation on the island prior to that time was described as follows in a May, 1952 U.S. district court decision, which found the 1917 Act to be applicable to Guam and the Governor to have enforcement authority in the absence of INS:

* * * Guam is not a port of entry and the Immigration and Naturalization Service of the United States does not maintain an office or carry out its functions in Guam. Yet due to the needs of the armed services, government contractors and civilian employers, many thousands of aliens have been introduced to Guam for contract employment and it is believed that large numbers of them are in Guam without continuing permission to remain.⁹

The impact of the arrival of INS on Guam in mid-1952 was described as follows in 1953 by Mr. Lyle Turner, a Guam attorney and former acting presiding chief justice of the Guam Court of Appeals, in testimony before a House subcommittee:

Now up until June of 1952, there was no immigration and naturalization service on Guam and we had no problem. All that was required was to get a security clearance and I might add that it is necessary to this day to get a security clearance to get any alien contract laborer into Guam.

In 1952, the Immigration and Naturalization Services established an office in Guam and we found ourselves faced with the problem that we had all of the alien contract laborers in Guam illegally. The service recognized this difficulty, and in

⁴ Ibid.

⁵ Ibid.

⁶ Charles G. McCarthy, "The History of Temporary Alien Labor on Guam." U.S. Immigration and Naturalization Service, Travel Control, Central Office, March 23, 1971, p. 1. (Cited as McCarthy, INS paper (1971).) This paper is one of the principal sources used in this history through 1971.

⁷ Report of the Commission on the Application of Federal Laws to Guam, 82d Cong., 1st sess., House Doc. No. 212, 1951, p. 15.

⁸ 17 FR 5400 (June 14, 1952).

⁹ Ex parte Rogers, 104 F. Supp. 393, 394 (D.C. Guam, May 9, 1952). See also Matter of C.Y.L., 8 I & N 371 (1959), for a discussion of law enforcement on Guam prior to June 16, 1952.

connection with authorization to import the alien contract laborer which was issued under the ninth provision of the then existing act, the Immigration Act, of 1917, laborers then in Guam were covered under the authorization granted, so that the number of the illegal aliens in Guam within a year after the office was established here became relatively small.¹⁰

Regularization of status was also accomplished by a finding that some aliens had not been admitted under the proviso relating to temporary alien contract laborers, referred to by Mr. Turner. As of 1955, approximately 1,500 Filipinos who had entered prior to December 24, 1952 were found to be "white collar" workers who were not excludable under section 3 of the 1917 Act and therefore were not admissible under the waiver for temporary admission. Accordingly, they were determined to have been admitted for permanent residence under the 1917 Act, and following medical and immigration inspections, were issued Forms I-151.¹¹

From June 1952 until the Immigration and Nationality Act took effect in December, temporary alien workers were admitted pursuant to the ninth proviso of section 3 of the Act of 1917,¹² referred to above, which provided for a waiver of exclusion of certain inadmissible aliens, including contract laborers, for temporary admission. Certification from the Guam Department of Labor as to the inavailability of similar domestic labor was required; and Philippine passports and U.S. visas were waived with the concurrence of the State Department.

The Immigration and Nationality Act of 1952 went into effect on December 24, 1952, bringing with it more serious problems for Guam. Quoting further from the contemporary account cited above:

When the new Immigration and Nationality Act came in we found ourselves with a much more conflicting problem because it appeared that it would be impossible to import alien contract laborers into Guam under the act since it was necessary that the labor be brought in to fill a temporary position.

I'm sure the Congressmen will be able to appreciate the problem private business faced in 1953. If you had a similar situation in the United States where you suddenly found out about 90 percent of your employees would necessarily be terminated and you couldn't replace them.¹³

The provision in the 1952 Act causing the difficulty was the so-called H-2 provision, discussed below, which provides that temporary alien workers may be admitted only for jobs which are themselves temporary in nature.

B. THE H-2 PROVISION

Under the Immigration and Nationality Act of 1952, the temporary admission of most 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:

¹⁰ House Interior and Insular Affairs report (1955), p. 23.

¹¹ McCarthy, INS paper (1971), p. 4. Also see Matter of C.Y.L., 8 I. & N. 371 (1959).

¹² Act of Feb. 5, 1917; 39 Stat. 874, 878.

¹³ House Interior and Insular Affairs report (1955), p. 23.

(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.

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 1953.¹⁴ The major Labor Department agencies involved have been, successively, the U.S. Employment Service, the Bureau of Employment Security, and the U.S. Employment Service of the Manpower Administration and, currently, of the Employment and Training Administration. At the local level, the State employment service is affiliated with the U.S. Labor Department. The term "State employment service" refers to a series of federally assisted public employment agencies in the States and territories established under the provisions of the Wagner-Peyser Act of 1933.

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.

Beginning with the first regulations promulgated under the Immigration and Nationality Act, the role of the Guam Employment Service has differed from that of the other State agencies. The regulations which went into effect on December 24, 1952 relating to petitions to import H-2 workers included the following proviso: "Provided, that a clearance card issued by the Employment Service of the Territory of Guam shall, in the case of a petition to import laborers for employment in Guam, be accepted in lieu of that issued by the U.S. Employment Service."¹⁵ Similar language was continued either in the regulations or on the I-129B petition form for H-2 workers until June 1977, at which point the generally applicable H-2 petitioning procedures were also extended to Guam.¹⁶

¹⁴ For INS regulations promulgated Dec. 18, 1952, see 8 CFR 214h, 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 655 (43 FR 10312-10318) and 20 CFR 621 (Employment and Training Administration, Department of Labor).

¹⁵ 17 FR 11494 (Dec. 18, 1952).

¹⁶ Prior to its amendment in June 1977, 8 CFR 214.2(h)(3) included the following sentence: "A certification by the Employment Service of the Territory of Guam will be accepted in lieu of that issued by the Secretary of Labor or his designated representative in connection with a petition for employment of laborers in Guam."

C. THE BLANKET H-2 PROGRAM: COVERAGE AND PROCEDURES

The problem immediately facing Guam in 1952 under the Immigration and Nationality Act was the status of the temporary Filipino contract workers employed on the island. Particularly since 1950, these workers were found in a wide variety of occupations, many of which did not appear to satisfy the legal requirement that they be of a temporary nature. For instance, Filipinos were employed as bakers, barbers, auto repairmen, service station attendants, radio repairmen, and soft drink bottlers.

Both the military and the private sector were heavily dependent on the alien work force. Not only were native Guamanians not available, but a specific appeal to unemployed Hawaiians was reported to be unsuccessful. Rear Admiral Joel D. Parks testified before a House subcommittee in 1956:

In 1952 the representatives of the Department of Labor came out there when I was commanding officer of the supply depot to look into this matter, and they had a labor surplus in Hawaii. They looked into the possibility of sending Hawaiians out there to replace these Filipinos. And I was informed at that time by the Department of Labor that the Hawaiians would not move. They will not go out and live in these barracks in which the Filipinos live, without their families.

There is no housing on Guam, no family housing for these vast quantities, or, rather, these 8,000 people which would have to come there.

So, for that reason, the Hawaiians will not come out there. At least I was told that by the Department of Labor in 1952. And I understand that is still the case.¹⁷

The Navy argued in 1953 that the aliens employed in connection with its mission on Guam were temporary in the sense that the mission itself was a temporary one, and that they were vital to the national defense. On July 27, 1953, the Immigration and Naturalization Service officially accepted this argument, indicating that it would approve H-2 petitions filed by military contractors and by private businesses which "substantially serve the Armed Forces or citizen or alien employees of the Armed Forces or contractors thereto within the Territory."¹⁸ This was broadly interpreted to include virtually all businesses, restaurants, etc.

In effect, then, INS allowed temporary alien workers to enter during the greater part of the 1950's more or less as they had prior to the 1952 Act. As the INS Southwest Regional Commissioner subsequently observed:

When this Service started operations in Guam postwar construction was at its peak. In the interest of the Department of Defense and other Government agencies this Service continued a program of alien labor that had been placed in effect years before. This was phased out over a three-year period commencing in 1959.¹⁹

The only major attempt made by INS to regulate the categories of temporary alien workers brought into Guam by the U.S. Armed Forces related to domestic servants, which were the subject of considerable controversy. In early 1954, INS took the position that domestic servants could not be imported by the military as H-2 temporary workers. After protests were received from both the Navy and the Air Force, this position was reversed in March 1955 regarding the importation

¹⁷ House Education and Labor hearings (1956), p. 268.

¹⁸ Quoted by McCarthy, INS paper (1971), p. 2.

¹⁹ [Appeal from District Director's decision], File AGA-N-324, January 27, 1969, p. 2.

of adult male Filipinos "in view of the conditions existing in Guam . . . including the complete inability of residents to secure local domestic help needed for essential operation of the Government."²⁰ However, two years later, in April 1957, the INS Central Office withdrew permission to approve petitions for the importation of Filipino laborers into Guam as domestics.

Information on the INS administrative procedures governing the blanket H-2 program beginning in 1953 is somewhat sketchy, particularly regarding the military contract workers. It is clear that the military continued to play a major role in the operation of the program, which is not surprising considering the beginnings of the program. The scale and procedures of the alien contract worker program on Guam as it had operated under the direction of the Navy were described as follows in a 1953 account:

During the postwar reconstruction and rehabilitation period, the Navy was faced with an acute labor shortage. Not only was labor inadequate for such rehabilitation and reconstruction, but also for proposed military expansion in the area. Many projects of a substantial and permanent nature were planned for Guam including barracks buildings, a hospital, permanent living quarters, reservoirs, dams, power plants, and others. Brown-Pacific-Maxon, a joint adventure, came to Guam under contract with the Navy to construct these military projects and others. There was no local labor in quantity, and the cost of importing labor from the United States is excessively high. Therefore, the contractors desired to turn to foreign labor. There being a surplus of labor in the Philippines, the Navy granted the contractors permission to import alien Filipino laborers. During the construction period alien Filipinos began pouring into the island by the thousands, and continue to do so. Theoretically, they are given a security check in the Philippines and only desirable aliens are brought in. However, many of them later prove undesirable and also, some are discovered to be security risks and must be returned to the Philippines. The Navy exercises absolute control over the Filipinos. They are brought in under Naval supervision and jurisdiction and are housed and paid with approval of the Navy. They are kept within compounds, and within large barracks buildings which are supplied with the necessities of life. In spite of the fact that their wages are low by our standards, they are high by Filipino standards and since their standard of living is low they are able to save a considerable portion of their wages and to spend more than they have been accustomed to spend in the past. Although the Fair Labor Standards Act of the United States is applicable to Guam there is no local enforcement agency and further, only some of the military projects come within the purview of that law.²¹

Under the blanket H-2 program, passports and visas were waived for Filipino nonimmigrants coming to work for the military or under military contracts, but not for those coming for private employment. Whether clearances from the Guam Employment Service were always required for military contract workers throughout the period is less clear, as discussed below.

1. Employment clearances

In testimony in 1956, the Governor of Guam stated that, "An employer in the civilian side may not bring in Filipinos under contract unless he establishes to the satisfaction of the immigration department that he needs them, that he cannot get local labor, either at that price or due to their lack of skill, or whatever it might be."²² Reportedly, a similar requirement existed for the military as well, which hired Filipino contract workers in far greater numbers than the private

²⁰ Quoted by McCarthy, INS paper (1971), p. 4.

²¹ Russell Stevens, "Guam, U.S.A.," Honolulu, Tongg Pub. Co., 1953, pp. 110-111.

²² House Education and Labor hearings (1956), p. 511.

sector. There were approximately 17,000 Filipino alien contract workers in Guam in 1953, of which about 3,000 were in "local business and private labor markets."²³ As noted earlier, by 1956, the number of alien contract workers had fallen somewhat, to an estimated 10,000 to 12,000, of whom approximately 2,000 were privately employed.

In August 1958, Mr. Glenn Brockway, Regional Director of the U.S. Department of Labor's Bureau of Employment Security in San Francisco, wrote to Mr. Robert Goodwin, Director of the Bureau of Employment Security in Washington, D.C., that:

* * * the concern of the United States Employment Service, through its affiliated Guam Employment Service, is to assure that certification of availability or nonavailability of United States citizens for jobs for which it is proposed to import Filipinos or to extend employment of those already employed on Guam is strictly in accordance with Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act . . . and to assure that such conditions exist as will best promote the availability of and retention in employment of qualified United States citizens in jobs for which it is proposed that Filipino nonimmigrants be imported or retained in employment under previously approved petitions . . . Existing coordination and cooperation between the [Guam] Department of Labor and Personnel, the Guam Employment Service and the Immigration and Naturalization Service is exemplary.²⁴

However, Mr. Brockway, who had been sent to Guam to investigate the Filipino alien labor situation, reported a number of problems, including the fact that petitions were being submitted to the Guam Employment Service on such short notice that it was unable to make an adequate determination about the availability of U.S. workers, particularly outside of Guam. He recommended that job orders be filed with the Guam Employment Service 30 days in advance of the filing of the petition, in order to permit U.S. citizen recruitment.

This 30-day requirement, as well as the requirement that a Guam Employment Service certification accompany petitions for all military-related H-2 contract workers, is set forth in a document entitled "Administrative procedures involved in extension of stay and importation of alien contract laborers by Department of Defense agencies on Guam." The ten-page agreement was signed by the Governor of Guam and representatives of the U.S. Air Force, Navy, and Immigration and Naturalization Service in March and April, 1959.

2. Wage scales on Guam

Beginning in the 1940s and continuing at least into the 1960s, there were three different wage scales on Guam. Mr. Brockway reported this fact in 1958, and recommended that a single schedule of wages be established for like work. Quoting from the INS account of Mr. Brockway's findings:

He pointed out also that there were three different schedules of wages in Guam; one for nonlocal hires which was the average wage paid in twenty-four major market centers in continental United States plus 25 percent; one for local U.S. citizen hires which was the prevailing rate on Guam (set by the Government of Guam and was about half the nonlocal rate); and one for Filipino non-immigrant hires which was between two-thirds and three-fourths of the local United States citizens rate.²⁵

A similar point was made during 1956 hearings on legislation relating to the applicability of the minimum wage under the Fair Labor

²³ House Interior and Insular Affairs report (1955), p. 23.

²⁴ Quoted by McCarthy, INS paper (1971), pp. 8-9.

²⁵ Ibid., p. 9.

Standards Act to labor imported by military contractors on Guam. For example, Guam Representative Won Pat testified that under the Navy's classification of laborer, it paid Filipinos 77 cents an hour, Guamanians \$1 (the minimum wage at the time), and statesiders \$2.13.²⁶

The origins of this triple wage scale back date back to the heavy demand for construction labor immediately following World War II. Because of the distance between Guam and Hawaii and the U.S. mainland, Guam's local government offered higher wages to "statesiders" to induce them to come to Guam. At the same time, the lower wages paid the native Guamanians engaged in government work were justified by the fact that the Naval Military Government supplied them with many of the essentials of life. Quoting from the 1948 U.S. Navy report to the United Nations, "wage scales were established which differentiated between resident labor and imported non-resident labor which did not benefit from the free service extended to the resident Guamanians."²⁷ While this gap narrowed over the years, the precedent remained. In something of a turnaround, in 1954 employees of the Federal Government and GovGuam were reportedly paid higher salaries than civilian employees of the Navy engaged in similar occupations.²⁸

The wage scales for most Filipinos employed by military contractors were apparently based on the terms agreed to in the 1947 U.S.-Philippine exchange of notes. As discussed above, the rate of pay was based on the prevailing wage rate in the Philippines plus a 25-percent differential, plus fairly extensive fringe benefits, including room and board for Filipinos hired by military contractors. This included most, if not all, of the construction workers hired by the Navy. The less numerous Air Force temporary alien employees were generally direct hires, including some with Civil Service status.

During the 1956 hearings on the applicability of the minimum wage to U.S. territories, Admiral Joel Parks testified that "the minimum wage which we pay [Filipinos] in Guam is about 25 percent in cash above the minimum wage prescribed by the minimum wage labor law," in addition to "room, board, medical attention, recreation facilities." He estimated the Filipino pay, including the fringe benefits, at about 56 or 57 cents an hour, compared to the 22 cents they would earn in the Philippines.²⁹ The minimum U.S. hourly wage at that time was \$1.

Admiral Parks indicated that the Navy's sole purpose in opposing higher wages was "to give the taxpayer the maximum value for his defense dollar."³⁰ Quoting further:

We are prepared to give some modest increase to the Filipinos in Guam, but we cannot give a drastic increase without these effects: either a curtailment of the building up of Guam as a bastion of defense in the Pacific and wholesale deportation of these people who are employed there, or, else, to cut back some other vitally needed defense project.³¹

Without question, the lower wages paid the Filipinos, who were so prevalent in construction work, was a major factor in their domination of the construction industry during the 1950s, and in the failure of the

²⁶ House Education and Labor hearings (1956), p. 488.

²⁷ U.S. Navy, Guam, Report to U.N., p. 11.

²⁸ House Interior and Insular Affairs report (1955), p. 46.

²⁹ House Education and Labor hearings (1956), p. 172.

³⁰ Ibid., p. 173.

³¹ Ibid., p. 172.

native population to develop the necessary skills to compete effectively. According to information received by the House Education and Labor Committee in 1956, Filipino workers contracted by the Brown-Pacific-Maxon Construction Co., handled 90% of the military construction jobs on the island.³² Governor Elvidge testified at that time that there were two reasons for the military's preference for the foreign workers:

The first reason, they are cheaper. I think that is the No. 1 reason. They got them in large quantities and they can train them together.

Then I think the other reason is that there is not the available labor on the market in Guam to supply them with any substantial number, as compared with the ten or twelve thousand Filipinos.³³

The length of stay of the temporary alien workers on Guam was also a matter of concern to both INS and the military during the 1950s. The Immigration and Naturalization Service held in July, 1953 that temporary workers on Guam could not remain for periods in excess of three years without returning to the Philippines. However, in a modification limited to aliens connected with the Defense Department, in March 1954, INS retracted the three-year limitation because of complaints that most of the alien workers had already been on Guam for more than three years, and that a mass repatriation would cripple operations.³⁴

The ensuing developments were described as follows in an INS account:

On June 11, 1956, the Office of Naval Intelligence on Guam expressed concern over the large number of Filipino contract laborers who were on Guam continuously for more than three years; and it recommended that the waiver of the three-year rule which INS had granted to the Defense Department be rescinded and that no repatriated Filipino be permitted to return to Guam until after an absence of two years. The Navy was becoming concerned over the buildup in Guam of resident aliens of Filipino birth, particularly those granted residence by INS by reason of their having been originally admitted to Guam prior to December 24, 1952, and thereafter readmitted to Guam as returning residents under documentary waivers. The Office of Naval Intelligence was counting on the United States Navy's denial of security clearances to these returning residents for the period of two years in order to delay their return long enough to make them ineligible for documentary waivers.

On June 20, 1956, the [INS] Central Office informed the Navy and Air Force on Guam that it had decided to withdraw the exception to the three-year rule for the Department of Defense. The instruction was therefore issued that any worker then on Guam for more than three continuous years would be required to depart within six months from July 1, 1956, except that the Officer in Charge might authorize a brief additional period in individual cases to permit orderly replacements in sensitive areas of Defense operations.³⁵

The scheduled July 1, 1956 repatriation date was subsequently advanced first to July 25, 1956, and then to March 1, 1957.

On October 26, 1956, INS published revised regulations excluding from the presumption of lawful admission an otherwise eligible alien who had been "admitted or readmitted into Guam as a nonimmigrant" after December 24, 1952.³⁶ While a similar provision remains in the regulations today, in an unpublished decision in 1960 the Board of Immigration Appeals upheld the permanent resident status of aliens who

³² Ibid., p. 523.

³³ Ibid., pp. 508-509.

³⁴ McCarthy INS paper (1971), p. 3.

³⁵ Ibid., pp. 5-6.

³⁶ 21 FR 8213 (Oct. 26, 1956).

had been presumed to have been admitted for permanent residence and who had subsequently been readmitted as H-2 temporary workers.

In November 1956, the INS Central Office reiterated the necessity of requesting applicants for reentry permits to Guam to also obtain Navy security clearances. INS said that the failure to secure Navy clearance was not grounds for refusal of an INS reentry permit, but that applicants for admission not in possession of a Naval security clearance were to be brought to the attention of the Naval authorities.³⁷

In effect, entry into Guam during the 1950's proceeded under the dual jurisdiction of the Navy and INS. It is relevant to emphasize here that the entry of the Filipino contract workers also proceeded under the dual authority of the Immigration and Nationality Act of 1952, and the 1947 exchange of notes between the two governments. Thus, INS Chief Inspector Irvin Shrode was informed in November 1956 by an official of the Department of State that Filipino workers were recruited for work in Guam and other overseas areas pursuant to an agreement between the United States and the Philippines made by an exchange of notes in 1947.³⁸

By the end of the 1950's, H-2 petitions for aliens coming for appropriated fund jobs were being approved for periods of six months, with six month extensions possible. The period of stay of all alien labor of Navy contractors expired June 30 of every year, again with the possibility of extension.³⁹ The maximum period of authorized stay was three years, and clearance orders issued by the Guam Employment Service were required.⁴⁰

D. CRITICISM AND PHASEOUT OF THE BLANKET H-2 PROGRAM

The blanket H-2 program in Guam during the 1950s was the subject of criticism on numerous grounds from a variety of different sources. As early as July 1954, the Philippines Embassy complained to Secretary of Labor John P. Mitchell that its citizens on Guam were being paid slave wages and that racketeering was prevalent among the labor recruiters. Then and again in 1956 the Embassy urged that the Fair Labor Standards Act, including the minimum wage, be applied to Guam and the Filipino workers.

In September 1954, an INS investigation indicated widespread violation of immigration laws, including "employers inflating their needs and bringing into Guam more laborers than they needed so as to benefit their friends; employers holding back on wages; employers discharging laborers without repatriating them and making them available to other employers; employers executing dual contracts with employees—one contract to satisfy the Philippine Government and the [Immigration] Service, and the other setting out the terms and conditions under which the laborers were to be actually paid."⁴¹

³⁷ McCarthy, INS paper (1971), p. 7. For a discussion of military control of entry, see Arnold H. Leibowitz, "The Applicability of Federal Law to Guam," *Virginia Journal of International Law*, v. 16, 1975, pp. 60-62.

³⁸ Ibid.

³⁹ "Administrative procedure involved in extension of stay and importation of alien contract laborers by Department of Defense agencies in Guam," 1959, p. 12, p. 8.

⁴⁰ INS internal memo, Assistant INS Commissioner, Examinations, to District Director, Manila, re Guam Contract Labor Program, Nov. 5, 1959.

⁴¹ McCarthy, INS paper (1971), pp. 3-4.

Complaints were received by the U.S. Navy in 1953 that, although the Navy was required by law to give preference to U.S. citizens, in fact it was reducing the number hired while continuing to import aliens. In June 1956, the American Federation of Government Employees (AFGE) protested to Congressional and Defense Department officials that the U.S. Navy on Guam had imposed a ceiling on its employment of U.S. citizens and hired Filipinos when that ceiling was reached.

Also in 1956, the Third Guam Legislature passed Resolution No. 192 requesting that the number of alien contract workers on Guam be reduced annually by 400 to 500, since that was the annual number of U.S. citizens either graduating from high school in Guam or returning to homes in Guam from military service.

In September 1957, the AFGE complained to both the Secretary of the Navy and INS that, in violation of the H-2 provision, preference in hiring was being given to aliens over U.S. citizens on Guam, and that importation of alien contract workers was continuing while U.S. citizens were being laid off from their jobs. INS responded that it had been its "unvarying practice . . . to require in support of each H-2 petition a certification from the Director of Labor and Personnel, Government of Guam, that qualified domestic labor was not available; and that alien workers were thereafter admitted temporarily under Section 101(a) (15) (H) (ii) of the Act and could be granted extensions of stay up to the maximum of three years' unbroken stay under the same conditions."⁴²

In August 1958, representatives of the AFGE, the U.S. Department of Labor, and the Guam Department of Labor and Personnel met on Guam to discuss the alien contract labor program. In this same month, the INS Central Office issued instructions to the Honolulu and Guam offices to begin a phaseout of the use of H-2 temporary workers by private businesses in Guam. It was initially announced that no new non-defense petitions would be approved, although H-2 non-defense contract workers presently in Guam could be extended up to the limit of the time specified in their contracts, not to exceed three years. Contractors and subcontractors performing work "for or on behalf of Defense agencies" were not affected at this point.⁴³ The number of contract workers employed by private businesses was estimated in October 1958 at 791, including physicians, nurses, dentists, clergymen, accountants, various kinds of technicians, cooks, bakers, tailors, photographers, and mechanics.⁴⁴

The phaseout program was strongly objected to by among others, Governor Richard B. Lowe of Guam and the U.S. Department of the Interior. The reaction on Guam was described as follows:

[Governor] Lowe objected to the ruling because he felt it would undermine the economic development of the territory. Both the legislature and the business community joined Lowe in his efforts to get the ruling rescinded or at least modified. In a meeting with representatives of the Chamber of Commerce, other businessmen, and the Guam Legislature, Governor Lowe proposed a seven-year "phase-out" program. This, he felt, would allow the government of Guam and business firms enough time to train replacements for Filipinos in skilled areas for which there were no Guamanians or permanent residents qualified.⁴⁵

⁴² Ibid., p. 8.

⁴³ Ibid., p. 9.

⁴⁴ Ibid., p. 10.

⁴⁵ Paul Carano and Pedro Sanchez, *A Complete History of Guam*, Rutland, Vt., Charles E. Tuttle Co., 1964, pp. 374-375.

INS did not accept the seven-year plan. However, in February 1959, it issued modified instructions for a three-year phaseout plan for non-defense workers, beginning March 1, 1959, described by the Board of Immigration Appeals as "the solution of the Immigration Service to the problem of 'withdrawing' from Guam its alien, non-defense contract workers."⁴⁶ Quoting from an INS description of the modified phaseout program:

This required all nondefense employers to repatriate one-third of their temporary alien employees on or before March 1, 1960; the second one-third on or before March 1, 1961; and the final one-third on or before March 1, 1962. The employers were permitted to designate the employees to be repatriated without regard to job classification.⁴⁷

Both the Governor and the Chamber of Commerce objected to the three-year plan, as did the U.S. Department of the Interior. However, a resolution was passed by the Guam Legislature commending it.

During this same period, the Guam Government announced that courses of study in the electrical and auto mechanics fields were being planned, and that school buildings were being provided and equipment requisitioned. The school was to open in January 1960 and was planned to be expanded as the need arose.

In August 1959, the Department of Defense indicated its opposition to a similar phaseout of the program for the importation of defense-related alien employees on Guam. In fact, such a plan was already under study by INS and was announced in early 1960. The reasons for the decision to terminate the blanket H-2 program in all its phases on Guam was summed up some years later by an INS official as follows:

Ten years ago there was a program in Guam for the importation of H-2 nonimmigrants to perform a wide range of work including work in the construction industry. It was troublesome and brought complaints from several quarters including the AFGE and the U.S. Department of Labor that it was illegal, that it held down wages, and that it resulted in discrimination being practiced against United States citizen and resident alien workers. It was for these reasons that the H-2 program then was phased out over a three-year period—1959-1962.⁴⁸

⁴⁶ Matter of A., 9 I&N 85, 86 (1960).

⁴⁷ McCarthy, INS paper (1971), pp. 10-11.

⁴⁸ INS internal memo, Supervisory Immigrant Inspector to Assistant Commissioner, Adjudications, March 3, 1970, p. 2.

IV. THE 1960's

Guam underwent tremendous changes during the 1960's, particularly during the latter half of the decade. The population increased from approximately 67,000 in 1960 to 85,000 in 1970. However, the most striking changes were economic. In 1962, the U.S. Navy's security clearance requirements were lifted, signalling the entry of Guam into, in the words of a 1977 Department of Labor report, "the normal commercial world." According to this report, "These requirements [had] effectively prevented the development of a private economy."¹

Nineteen sixty-two was also the year of *Typhoon Karen*, among the most destructive typhoons the island had known, followed in April 1963 by another severe typhoon, *Olive*. Much of the post World War II construction was destroyed, and widescale reconstruction began anew, again with the assistance of temporary Filipino workers.

Guam's economy in the mid-1960's was not significantly different from the preceding decade. A February 1966 report entitled "Economic Development of the Territory of Guam," prepared by an economic consulting firm, Planning Research Corporation (PRC), stated that,

Both directly and indirectly (through federally financed construction projects), the Federal Government dominates the economy of Guam. It is virtually the only basic industry.²

Guam's economy in the mid-1960's was described by PRC at somewhat more length as follows:

Government employment and construction (largely government financed) are virtually the only elements of the economic base. The exceptions to this at present are of trivial importance: mainly transportation and wholesaling services embodied in good transshipped or reexported to the trust territory; some portion of the commercial airline and overseas communications employment to the extent that Guam is a necessary link in the systems rather than merely a consumer of their services; and the value added locally in goods and services sold to the military by local vendors.³

In discussing employment patterns on the island, the PRC report indicated there was—

a definite employment hierarchy—partly in terms of status and partly in terms of pay, security and other benefits. Local workers tend to regard Federal civil service employment as the most desirable, government of Guam as next best, and private employment as least attractive.⁴

¹ U.S. Department of Labor, Employment and Training Administration, Region IX, "Guam Alien Labor Situation," May 16, 1977, p. 6 (Cited as 1977 DOL report.)

² Planning Research Corporation, "Economic Development of the Territory of Guam," Committee Print No. 16, Printed for the Use of the Committee on Interior and Insular Affairs, 89th Cong., 2d sess., U.S. Government Printing Office, February 1966, p. 129. (Cited as PRC report (1966).) This report was prepared under contract to the Federal-Territorial Commission for the Guam Long-Range Economic Development Plan. This Commission was created pursuant to the Guam Rehabilitation Act which, in addition to providing grants and loans for the rehabilitation of Guam following the 1962 and 1963 typhoons, also required the Secretary of the Interior and the Governor of Guam to prepare long-range plans for the island.

³ *Ibid.*, p. 5.

⁴ *Ibid.*, p. 8.

This hierarchy reflects the pattern which began in the 1940's and continues to the present day. In the 1960's, as in the preceding and subsequent decades, construction was dominated by Filipinos, estimated at 69 percent of the construction workforce in 1965, and government employment was dominated by the native Chamorros. Quoting again from the PRC report, "the proportion of total employment represented by government payrolls in 1965 probably approaches 55 percent, and for the Chamorro labor force it may be as high as two-thirds."⁵

After surveying possible areas for long-range economic development, the PRC report stated, "Our conclusion is that tourism presents probably the best long-term development opportunity available to the island."⁶ They were proved correct before the end of the decade. In 1962, there were no hotel rooms on the island; visitors were put up in the local hospital. In 1965, according to PRC, there were "approximately 60 units, but all are usually occupied by business and Government travelers."⁷ In 1967, Pan American Airlines started direct flights to Japan. By 1968, the number of hotel rooms had risen to 500, and by the early 1970's it was over 2,000. The number of tourists and other visitors increased from fewer than 2,000 in 1964 to approximately 4,000 in 1967, 18,000 in 1968, 25,000 in 1969, continuing into the next decade with 119,000 visitors in 1971, of whom approximately 85,000 were tourists.⁸ The majority of the tourists were from Japan, and many were honeymooners.

Throughout the 1960's, temporary alien workers were admitted for employment by the military and military contractors and, beginning in late 1962, for typhoon reconstruction and rehabilitation. For the most part, the alien workers were Filipinos and were admitted under the parole provision of the Immigration and Nationality Act, explained below.

Toward the end of the decade, largely as a result of the tourist boom, there was increasing pressure for the resumption of a blanket H-2 program similar to the one in the 1950s. The Immigration and Naturalization Service explained repeatedly that H-2 temporary workers could be admitted only for work which was itself temporary in nature. Eventually INS agreed to consider certain private construction work as meeting this requirement, but not the service occupations. During the second half of the 1960s, an increasing number of foreign investors and companies were attracted to Guam by various economic advantages, including their ability to bring in foreign temporary workers more easily than could companies owned by U.S. citizens.

Issues relating to temporary alien workers during the 1960's are discussed below in more detail.

A. COMPLETION OF THE PHASEOUT OF THE NONDEFENSE H-2 PROGRAM

A 3-year phaseout of the blanket H-2 program as it applied to non-defense workers on Guam went into effect on March 1, 1959, as discussed in the preceding section. Recapitulating briefly, the Immigra-

⁵ Ibid., p. 126.

⁶ Ibid., p. 29.

⁷ Ibid., p. 107.

⁸ U.S. House of Representatives, Committee on the Judiciary, "Alien Labor Program in Guam," 93d Cong., 1st sess., 1973, pp. 12-13. (Cited as House Judiciary hearings (1973).)

tion and Naturalization Service (INS) required all nondefense employers to repatriate one-third of their temporary alien employees by March 1, 1960; the second one-third by March 1, 1961; and the final one-third by March 1, 1962. Approximately 800 workers were estimated to be involved.

After an inspection trip to Guam in October 1960, an INS official reported that the program "was necessary and was working well, but that it should be prolonged a year or two to afford more time for training the local population in the required occupations."⁹ The INS phaseout was apparently the immediate impetus for the initiation of a vocational education program on Guam. Officials from both the U.S. and the Guam Department of Labor indicated their satisfaction with this development to INS officials in a meeting also in October 1960.

In fact, the phaseout of the nondefense alien worker program ended on schedule, with the final one-third repatriated by March 1, 1962. According to an INS account, this was due in part to the results of a Board of Immigration appeals decision, summarized briefly as follows:

On September 22, 1960, the Board of Immigration Appeals in the case of *Gervasio U. Aquino*, held that an alien who was admitted to Guam prior to December 24, 1952 to do work of a supervisory nature requiring prior training and experience was not excludable as a contract laborer under the 1917 Act. He, therefore was presumed to have been admitted for permanent residence, of which he was not divested by his subsequent absences in 1956 and 1958 and ensuing admissions as an H-2 temporary worker. His right to residence had been "substantially vested" and he did not lose that right by his absences despite his failure to claim returning resident status. As of February, 1962, approximately 1,700 Filipinos previously admitted to Guam as nonimmigrants successfully claimed residence under the *Aquino rule*.¹⁰

The 1,700 Filipinos were described in a subsequent INS account as "a substantial and unexpected bonus for the defense agencies, by which most were employed," and also as an aid to private business and thus to the success of the phaseout.¹¹

It should be noted that GovGuam was not included in the non-defense H-2 phaseout. As explained a number of years later, "When the old H-2 program was phased out in 1959, an exception was made for GovGuam on the theory that any GovGuam project had to be closely allied with national defense."¹² By the same token, during the 1960s GovGuam continued to be able to import temporary alien workers as parolees, as did the military and contractors who met the requirements of the Reconstruction and Rehabilitation Program. The remainder of the private sector had no legal access to temporary foreign labor until 1969 when INS began approving H-2 workers for private construction work.

B. THE PAROLE PROGRAMS: COVERAGE AND PROCEDURES

Filipino alien workers were brought into Guam during the 1960's in considerable numbers under two parole programs. The Defense Parole Program began March 1, 1960, as an alternative to the blanket H-2 program for defense-related workers. The second parole program was

⁹ McCarthy, INS paper (1971), p. 13.

¹⁰ Ibid., pp. 13-14.

¹¹ Ibid., p. 14.

¹² INS internal memo, District Director, Honolulu, Hawaii, to Deputy Regional Commissioner, Southwest Region, March 30, 1971.

the Reconstruction and Rehabilitation Program initiated in response to the typhoons of November 1962 and April 1963. The Defense Parole Program continued until the summer of 1975. The Reconstruction Program ended earlier, on May 15, 1970.

The development, coverage, and procedures of the two programs are summarized below, followed by a brief discussion of several issues relevant to both programs.

1. The defense parole program

In early 1960, the Immigration and Naturalization Service announced its intention to terminate the admission of defense workers to Guam as H-2 temporary workers. Quoting from an INS account, "The Service had become concerned . . . that the H-2 'temporary program' was becoming a permanent feature of the Guam economy with little effort being made to train a native labor force; and that it was contrary to the intent of the law to continue H-2 admissions."¹³

Henceforth, the alien workers were to be paroled into Guam under Section 212(d)(5) of the Immigration and Nationality Act, which reads as follows:

The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

The rationale behind the use of the parole provision for the admission of the defense workers on Guam was that it was based on a connection with the defense effort in Vietnam, for which Guam was a major staging area. In 1966, an INS official noted that "Guam's strategic location and involvement in the present conflict makes it imperative that we continue our present policies with regard to the whole program."¹⁴ Similarly, in 1968 the defense parole program was characterized as "the Service policy whereby cooperation is rendered to the Department of Defense in order to assist with their various military missions that in general affect the welfare and well being of the inhabitants of the USA."¹⁵ The program, in short, was viewed by INS as meeting the legal requirement that the admission of aliens under the parole provision be in the "public interest."

An INS internal memo of January 27, 1960, subsequently described as the "basic document" connected with the defense program, set forth procedures to be followed in the Defense Parole Program. Briefly, beginning February 1, 1960, "applications to import Filipino nationals for temporary services in *defense activities* on Guam" were to be in the form of a memorandum request to the INS Officer in Charge, Agana, stating the need, purpose, number of workers, and period of the proposed contract. Each request was to be "supported by the appro-

¹³ McCarthy, INS paper (1971), pp. 12-13.

¹⁴ INS internal memo, Deputy Regional Commissioner, Southwest Region, to Deputy Associate Commissioner, Travel Control, September 19, 1966.

¹⁵ INS internal memo, Officer in Charge, Agana, Guam, to District Director, Honolulu, Hawaii, Nov. 22, 1968, p. 2.

priate USES [U.S. Employment Service] clearance order, unless the temporary positions to be filled are in the appropriated fund category and covered by a blanket order on file.”¹⁶

The memoranda requests were processed by the INS Officer in Charge at Agana and, if approved, the prospective employer was so informed and a copy was sent to the INS District Director in Manila. The prospective workers were usually presented to the INS Office in Manila by the recruiting organization, which during this period was generally the Marianas Stevedoring and Development Company (Masdelco). Blood tests, X-rays, and fingerprint checks were required of each applicant, as well as an FBI check and a Navy clearance.

Once processed and approved, the worker was issued an INS Form I-94, stamped “Paroled into Guam under Section 212(d) (5) I&N Act until purpose of parole has been served not exceeding —.” The workers were admitted for periods of up to a year, with extensions not to exceed 3 years.

The importation of Filipino workers also continued under the authority of the 1947 U.S.-Philippine exchange of notes, renegotiated in December 1968. Among other things, these agreements were the basis for the wages paid the Filipino defense parolees, discussed below.

Little information is available on the occupational breakdown of the defense parolees. Apparently, like the H-2 defense workers before them, they worked in a wide range of occupations, with the majority concentrated in construction. Some indication of this is given by a 1964 U.S. Navy document protesting a plan proposed by the U.S. Department of Labor to reduce the number of alien workers on Guam. Quoting, “4,000 Guamanian journeymen would be required to replace all alien journeymen now employed on Guam. 2,600 of these would be in the construction trades.”¹⁷ Whether this 2,600 includes Reconstruction and Rehabilitation workers, many of whom were employed by military contractors, is not clear; this program is discussed below.

Occupations of the alien defense workers in the mid-1960s were also alluded to briefly as follows in the PRC report:

[I]t is clear that alien workers would offer an immediate unemployment cushion should one be required, since many of them hold jobs requiring minimal or easily acquired skills. In addition, there is a hard core of jobs which will continue to be held by aliens even when construction is at normal levels. This core consists of aliens holding jobs that military or military-connected civilian employers say (and presumably prove) cannot be found on Guam. Some of these are esoteric (masseur, piano tuner, goldsmith, etc.) and do not represent particularly good replacement opportunities. There are others, however, at all skill levels that do. These include helpers, bartenders, bakers, mechanics and nearly all of the journeyman trades. The number of these jobs is estimated to be in the 500 to 700 range.¹⁸

2. Reconstruction and Rehabilitation Parole Program

The origin of the Reconstruction and Rehabilitation Parole Program was *Typhoon Karen*, which hit Guam on November 10, 1962 and destroyed much of the construction work which had been underway since World War II. Another severe typhoon, *Olive*, followed on April

¹⁶ INS internal memo, Guam Labor Program, from Assistant Commissioner, Examinations, to Regional Commissioner, San Pedro, California, Jan. 27, 1960.

¹⁷ Staff Study of Effects of 1964 Alien Labor Policy, U.S. Navy, Officer in Charge of Construction, Marianas, July 15, 1964, p. 3. (Cited as U.S. Navy Staff Study (1964).)

¹⁸ PRC report (1966), p. 33.

29, 1963. In November 1962, with the endorsement of the U.S. Department of the Interior, Governor Manuel Guerrero cabled the Commissioner of INS for permission to permit the parole of up to 1500 Filipino contract workers for typhoon reconstruction for an initial period of six months.

The Department of Interior endorsed the request and also recommended the hiring of Trust Territory citizens to the extent that they were qualified and available. A clearance order was issued by the Department of Labor's U.S. Employment Service for the parole of up to 1500 construction workers from the Philippines and the Trust Territory for six months. INS notified the Governor of this decision on November 15, 1962. The Governor limited eligibility to petition for the contract workers to contractors who had been licensed on Guam prior to *Typhoon Karen*, a restriction which remained in effect until 1967.

Throughout the life of the parole program, the pattern of interaction among the various Departments and agencies involved was similar to that described above. The INS authorized the parole of the number of workers agreed upon by the Government of Guam, the Department of the Interior and, until 1965, the U.S. Department of Labor. Fluctuations in the number of workers authorized were generally at the Governor's request.

The role of INS in the program was explained in 1967 briefly as follows, "the Government of Guam and the Department of the Interior have set the quotas and our only involvement has been to implement the procedures necessary to import and control the workers involved."¹⁹ Until 1967, it was also the responsibility of INS to allocate the number of workers available under the quota among the contractors eligible to petition for them, limited to those contractors licensed on Guam prior to November 1962.

The Reconstruction and Rehabilitation Parole Program was extended until May 15, 1970, usually at six month intervals. While many of these extensions were routine, others involved controversy and sometimes modifications.

Typhoon Olive, which hit Guam April 29, 1963, destroyed much of the construction underway following the typhoon of November 1962. The situation was described as follows in an INS account of a meeting of the Governor and several members of the Guam Legislature with INS officials:

Governor Guerrero stated that the recent typhoons had destroyed practically all civilian facilities in Guam, including housing, roads, public power and work projects, which had been constructed during the post World War II period. This has necessitated what amounts to almost a complete rebuilding of these facilities. He pointed out, however, that one of the difficulties was that all of their building programs following the war had been on a rush basis resulting in the construction of merely temporary expedients. This applied not only to private and public buildings, but also to water supply, sanitary and storm sewage facilities, streets and highways, power lines, etc. He stated that whereas efforts in the past had been on an emergency basis, the Administration, with the approval of the Department of the Interior and the legislature in Guam, now desired to embark upon a permanent rebuilding project.²⁰

¹⁹ INS internal memo, Filipino Labor Program on Guam, Deputy Regional Commissioner, Southwest Region, to Deputy Associate Commissioner, Travel Control, June 30, 1967.

²⁰ INS internal memo, Meeting with Governor of Guam, Aug. 7, 1963, Deputy Assistant Commissioner, Travel Control, to Assistant Commissioner, Travel Control, Aug. 12, 1963.

Authority to extend the 1500 disaster workers until November 1963 was requested by the Governor, cleared by the U.S. Employment Service (USES), and granted by INS. The number was reduced to 1,000 in the extension requested until May 15, 1964, which was cleared by USES and approved by INS, as it was again for the six month period ending November 15, 1964.

However, when the Governor applied for extension of a reduced number of 800 parolees until May 15, 1965, again on the grounds that the reconstruction work had not been completed, he was notified by the U.S. Labor Department that Labor Department approval was not required under the parole provision. Secretary of Labor Willard Wirtz wrote INS Commissioner Raymond Farrell to inform him that the Governor of Guam had submitted "a clearance order initiating an extension of stay of 800 skilled workers," and had requested that the Labor Department certify the order and request approval from INS. Secretary Wirtz continued:

Since these admissions are under the parole provision of the Immigration and Nationality Act, the Department of Labor is not involved in any decision with respect to importation. Accordingly, the Governor's request is being referred to you for appropriate action.²¹

He recommended that nonimmigrant aliens be admitted to Guam under the H-2 provision, and indicated his willingness to "continue collaborating" with INS in processing H-2 requests.

This was the end of the U.S. Labor Department's direct role in the Reconstruction and Rehabilitation Program. As the Governor subsequently pointed out in a letter to the Labor Department's Bureau of Employment Security Regional Administrator in San Francisco, the Secretary's decision not to issue clearances for parolees affected all temporary alien workers on Guam since at that point all had parole status whether they were brought in for parole or disaster work.²² The role previously played by the U.S. Department of Labor was assumed by the Guam Department of Labor and/or the Guam Employment Service.

When informed of the Labor Department's decision by the Governor of Guam, the INS Officer in Charge on Agana granted an extension of the 800 workers until November 15, 1965 on the basis of the Governor's assertion that no local labor was available, with two conditions: (1) that each request be accompanied by a clearance from the Guam Department of Labor, and (2) that the program would not be extended again. In fact, INS again extended the 800 workers until May 15, 1966, although the Governor's additional requests for 200 more workers and for an extension of a year rather than two months were refused. As before, the bases for the request were that the reconstruction was not completed and local labor was not available to complete it.

Authorization was further extended by INS for the 800 workers to November 15, 1966 and May 15, 1967, although there was growing concern in INS that the temporary program was becoming permanent and that the construction projects involved had little to do with the typhoons of 1962 and 1963. This concern was heightened when the next request for extension was received, for an increase of 1,000 workers

²¹ Letter, May 12, 1965.

²² McCarthy, INS paper (1971), p. 19.

until November 15, 1967. The INS District Director and Deputy Regional Director recommended that the program be phased out. However, the Department of the Interior endorsed the Governor's request, including the increase, and it was granted.²³

In June 1967, the Ninth Guam Legislature passed Resolution No. 230 protesting the practice of restricting alien workers to contractors with pre-Karen (November 1962) licenses. The Acting Governor agreed and in his October 4, 1967 request for an extension of 1,000 workers until May 15, 1968, explained that henceforth, to be eligible, a contractor "must show that the construction project for which he is requesting alien labor essentially falls under the reconstruction and rehabilitation program," which was defined to include "any public or private building construction project, including housing projects of all types considered essential to our critical housing shortage."²⁴ This policy was subsequently enacted into law as Section 44011 of the Government Code of Guam.

INS had no difficulty with this change, viewing the matter as entirely up to the Government of Guam. The difference it made in INS operations were explained in an INS communication, along with a brief summary of procedures, as follows:

In the interest of clarification, I will try to set out the procedures. All requests for workers are in letter form. Requests for defense workers are endorsed by the Guam Employment Service certifying need and effect upon local workers and conditions. Requests for reconstruction and rehabilitation workers are endorsed in the Governor's office by his designee . . . certifying lack of local labor and that the project is within the reconstruction and rehabilitation program. Heretofore these latter endorsements were made without regard to the total ceiling (now 1,000). Responsibility for allocation to the various contractors rested with this Service. When the ceiling was reached, no further requests were approved. Occasionally it was found that an employer was not utilizing the slots allocated to him. In such cases we would discuss the matter with the employer and retrieve those slots for allocation to another employer. Under the new system the Governor's office will control the allocation of workers by their certification and will also observe the upper limit. We will take no part in the allocation other than regular approval and control. We will, of course, continue to require advance notification of transfers of workers and will continue to see that the upper limit is not exceeded.²⁵

On October 30, 1969, Governor Carlos Camacho wrote to request an increase of 915 of the number approved until May 15, 1970, totalling 1,915. INS refused this request, apparently concurring with the Deputy Regional Commissioner of the Southwest Region, who wrote, "It is our opinion that the interested officials on Guam have had ample opportunity to phase out this program as originally intended, rather than constantly attempting to increase it."²⁶

In January 1970, the Government of Guam indicated that it would terminate the Reconstruction and Rehabilitation Program when its authorization expired on May 15, 1970. By this time, a consensus had been reached among the majority of the interested parties that, for one reason or another, the H-2 provision was more appropriate than the parole provision for the admission of the construction workers.

²³ Ibid., p. 21.

²⁴ Letter from Acting Governor Denver Dickerson to INS Officer in Charge, Agana, Oct. 4, 1967.

²⁵ INS internal memo, Rehabilitation Program—Guam, Deputy Regional Commissioner, Southwest Region, to Deputy Associate Commissioner, Travel Control, March 6, 1968, pp. 1-2.

²⁶ INS internal memo to Deputy Associate Commissioner, Travel Control, Nov. 7, 1969.

C. CONTRACT WORKERS : NUMBERS, COUNTRIES OF ORIGIN, AND WAGE SCALES

1. Numbers

The Planning Research Corporation (PRC) report indicated that, according to 1960 census reports, there were approximately 6,000 contract workers on Guam in 1960, a figure which fell dramatically in the next couple years. According to PRC, "Their lowest ebb in Guam occurred just prior to Typhoon Karen (November 1962) when they numbered less than 1,000."²⁷

Statistics on the number of alien workers admitted, departed, and in Guam at the end of the year, beginning in 1963 are shown in Table 1. This table, reproduced from the May 1977 Department of Labor study, includes both defense and disaster parolees as well as H-2 workers, which began to be admitted for private construction work in 1969, and continued to be admitted in greater number after that date. It does not include treaty traders ("E" nonimmigrants) or intracompany transferees ("L" nonimmigrants), a new category added by 1970 amendments to the Immigration and Nationality Act.

TABLE 1.—ALIEN CONTRACT WORKERS ADMITTED, DEPARTED, AND IN GUAM AT END OF FISCAL YEAR, 1963-76

Fiscal year	Total admitted	Total departed	In Guam at end of fiscal year
1963.....	2,468	445	3,707
1964.....	2,773	2,060	4,442
1965.....	1,373	2,414	3,401
1966.....	2,429	2,077	3,753
1967.....	2,539	1,869	4,423
1968.....	3,139	2,927	4,635
1969.....	3,727	2,818	5,544
1970.....	4,272	3,714	5,502
1971.....	5,115	4,658	6,559
1972.....	5,412	4,012	7,959
1973.....	4,851	3,415	9,395
1974.....	5,125	4,770	9,750
1975.....	2,051	5,477	6,324
1976.....	1,136	3,028	4,293

Source: I-40 Reports, U.S. Immigration and Naturalization Service. (Reproduced from 1977 DOL report, p. 19)

More detailed statistics are available on only a very limited basis. According to another U.S. Department of Labor source :

* * * as of September 1964 there was slightly under 4,000 Filipino aliens employed in Guam. Thirty-two hundred had been brought to Guam for employment either directly by DOD or by private contractors engaged in Defense construction. The rest had been imported under a disaster category and were employed almost exclusively by contractors of DOD engaged in rehabilitation work because of the destruction caused by Typhoon Karen in 1962.²⁸

PRC estimated the number of contract workers on Guam at about 4,300 in mid-1964, and 3,700 in mid-1965. They indicated the total number in September was 3,400, broken down into 2,900 in the defense program, and 500 in the rehabilitation program.²⁹ INS figures as of June 30, 1969 were 4,341 defense workers and 873 construction workers.

²⁷ PRC report (1966), p. 33.
²⁸ Alan M. Raznick, Guam Report—March 1972 thru August 1973, U.S. Department of Labor. Memorandum to the files, May 15, 1974, pp. 6-7. (Cited as Raznick, DOL memo (1974).)
²⁹ PRC report (1966), p. 33.

In its February 1966 report PRC observed that, "Since the end of World War II, the number of alien workers in Guam has been a good indicator of general economic activity."³⁰ Thus, the low ebb in alien workers in pre-Karen 1962 coincided with the only "serious signs of softness . . . in the economy, and that situation was radically changed by Typhoon Karen."³¹ PRC predicted that the number of alien workers would decline "as rehabilitation and military construction tends to completion."³² In fact, neither economic activity nor the number of aliens on Guam showed any signs of decline until the mid-1970's.

2. *Source countries of the contract workers*

As PRC noted in February 1966, since World War II most of the contract workers on Guam were Filipinos, "but the trust territory has from time to time contributed substantially to the total."³³ Thus, of the 1,462 requests for reconstruction and rehabilitation workers approved on December 1, 1962, at the beginning of that program, 429 were from the Trust Territory. However, by December 1969, the reconstruction parolees consisted of 770 Filipinos and 13 from the Trust Territory.

The strict geographic restriction of the parole program in the 1960s was a matter of increasing concern to the Governor of Guam and to a lesser extent, the Department of Defense. In June 1967, the Governor wrote to the INS official on Guam "concerning sources of outside labor other than the Philippines whenever importation of such labor becomes necessary for defense agencies and contractors."³⁴ Among other things, the Governor indicated his awareness of the 1947 U.S.-Philippine agreement, but failed to see why it precluded the entry of aliens from other countries.

In a communication to the INS District Director in Honolulu, the INS officer on Guam provided the following background on the Governor's request:

It is believed that the Service is well aware of the Governor's concern over the fact that less than one half of one percent of the total permanent immigration to Guam in the past and at the present time involves aliens of nationalities other than the Philippines. This influx of permanent resident aliens from one country only into this small island has resulted in, what the Governor feels, an imbalance in the ethnic population.

The Governor has stated on numerous occasions that because of the remote location of Guam coupled with twenty years of importation of Filipino workers, that a major effort should be directed toward introducing new nationality groups into the island of Guam.

After studying the local political scene for approximately three years and looking to the future of the next eight or ten years, there appears to be no question but that within that period of time the Filipino community on Guam will be in a position to take over politically unless other "outsiders" are introduced into the local community. The strategic location of Guam and its major importance to the military defense of the United States brings this problem much more to the attention of all federal agencies in this area than would be normal in an immigration office in the mainland of the U.S.³⁵

He noted also that the Governor was not interested in the admission of the aliens as permanent residents, but as parolees.

³⁰ Ibid.

³¹ Ibid., p. 7.

³² Ibid., p. 33.

³³ Ibid.

³⁴ Letter from Governor Manuel Guerrero to INS Officer in Charge, Agana, June 13, 1967.

³⁵ INS internal memo, June 19, 1967.

The Governor's request was refused on the grounds, first, that the present limitation of source countries was pursuant to an agreement reached with the Department of the Interior in August 1963 at which time it was agreed that any requests to extend group recruitment beyond the Philippines and Trust Territory should be submitted through that Department, and then would be limited to H-2 entries. Another reason appeared as a marginal note on an unsent letter from the INS Commissioner to the Governor of Guam:

NOTE: The parole programs for improtation of temporary workers into Guam is authorized only for activities related to defense, and to the rehabilitation of the Island following wide-spread destruction caused by typhoons. The program is limited solely to Filipinos and persons from the Trust Territory of the Pacific. This limitation as to Filipinos, stems from the special agreement made in behalf of the Defense Department between the U.S. Government and the Philippine Government for recruiting workers for temporary employment in Guam at wage rates prevailing in the Philippines plus 25%. The Defense Department also has obtained other agreements of a special character between the U.S. and Philippine Governments providing for recruitment of Filipinos as U.S. Naval enlistees and for the maintenance of a U.S. Naval Base at Cavite, P.I.³⁶

The subject came up again in 1968, at which point the Governor was informed

* * * that the practice of obtaining and using Filipino and Trust Territory labor had been one of long standing which had not varied much over the years despite the passage of new laws affecting labor. It was suggested to him that it might be well not to press for the extension of recruitment to other countries lest by so doing the current practice of paroling alien labor be materially changed.³⁷

The question of geographical coverage also arose regarding the defense parole program. While the January 27, 1960 instructions referred only to "Filipino nationals", according to a subsequent INS communication, "the defense program was not limited by INS instructions, memoranda, and directions * * * to any specific country."³⁸ Natives of the Trust Territory had in fact participated in the program beginning in 1952. However, in 1969 INS informed DOD that the parole program for their workers could not be extended beyond the Philippines, although H-2 petitions would be accepted for other countries. This was prompted by an inquiry by Defense Department representatives into their options regarding other countries because of "some dissatisfaction with demands being made on behalf of their Filipino workers on Guam for additional employment benefits."³⁹

3. Wage scales

Information on wages paid in Guam in the mid-1960s is available in table 2 below.⁴⁰ The minimum wage at that time was \$1.25. While this was paid by private contractors hiring aliens, according to the PRC information, it was not generally paid by the Navy, which was not legally required to pay the minimum wage to direct hires at that time.

³⁶ Letter undated [July 1967].

³⁷ McCarthy, INS paper (1977), p. 22.

³⁸ INS internal memo, Officer in Charge, Agana, to District Director, Honolulu, Oct. 4, 1968.

³⁹ McCarthy, INS paper (1971), p. 27.

⁴⁰ PRC report (1966), p. 128.

TABLE 2.—HOURLY WAGE RATES, AUGUST 1964

	Auto mechanic	Car- penter	Elec- trician	Plumber	Welder	Truck- driver	Laborer	Cook
Stateside hire: Navy (appropriated).....	\$3.63	\$3.63	\$3.75	\$3.75	\$3.75	\$1.91	\$1.68	\$2.06
Local hire:								
Navy (appropriated).....	2.90	2.90	3.00	3.00	3.00	1.53	1.34	1.65
Navy (nonappropriated).....	(1)	(1)	1.32	1.25	1.25	1.25	(1)	1.20
Government of Guam.....	2.25	2.25	2.25	2.25	2.25	2.05	1.40	2.25
Private contractors.....	1.40	1.40	1.40	1.50	1.40	1.40	1.25	1.35
Aliens:								
Navy (both funds).....	1.02	1.02	1.03	1.03	1.03	.98	(1)	.97
Private contractors.....	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.15

¹ Not available.

Source: Government of Guam, Department of Commerce.

Quoting from a 1964 U.S. Navy staff study, "The Filipino aliens are hired under a United States of America-Republic of Philippine agreement. The wage rates are established by this agreement."⁴¹ According to that staff study, the average wage on Guam was \$1.44 an hour for alien labor, and \$2.50 for Guamanians; the average wage in the United States was \$4.50.⁴²

The 1947 agreement between the United States and the Philippines was renegotiated in December 1968, with the following provision made for wages:

6. *Minimum basic wage:* The currently established practice in determining minimum basic wages for employees in offshore employment by U.S. Military Forces shall be maintained for present employees and for those employed after the entry into force of this Agreement.⁴³

The renegotiated agreement continued to provide for an overseas differential of at least 25 percent of base pay, plus other additional benefits.

By the end of the 1960s, after INS had begun approving H-2 petition for private construction workers on Guam, there was concern that pay rates were lower for disaster parole workers than for H-2s. This was cited in an INS document as one of the reasons why "pressure continues to be exerted on the Government of Guam for additional parole workers for the Reconstruction and Rehabilitation Program." H-2 construction workers had the additional disadvantage of being admitted for single projects, after which they had to be repatriated. Quoting:

Chances are that more H-2 workers should be imported, if their pay rate wasn't higher than that of Reconstruction and Rehabilitation workers and if they could be retained by the contractors on yearly extension basis and if it would be permissible for contractors to transfer them from one company to another when there was no further need for their services (meaning at completion of the project for which imported) as this would result in great savings financially.⁴⁴

⁴¹ U.S. Navy Staff Study (1964), p. 2.

⁴² Ibid., p. 4.

⁴³ Philippines, Offshore Labor, 19 UST 7562 (1968) ; TIAS 6597.

⁴⁴ INS internal memo, Officer in Charge, Agana, to District Director, Honolulu, Oct. 31, 1969.

D. GOVERNMENT REACTION TO THE PAROLE PROGRAM

During the 1960's, five different Cabinet level Federal agencies, plus the Government of Guam, were involved in the parole of alien workers on the island. These were the Departments of Justice, Labor, Defense, the Interior, and State, which had different interests in the program stemming from their different missions.

Specifically, and somewhat simplistically, the Department of State's interest related primarily to the United States-Philippines agreements and, reportedly, to not substantially reducing the number of Filipinos "because of international agreement with the Philippines and long practice."⁴⁵ The Department of Defense was concerned with having an adequate labor supply at a wage level which would not adversely affect the wages paid on other bases and under other international agreements. The Department of the Interior was generally concerned with protecting the interests of GovGuam, which was under its administrative jurisdiction. Also, by past understanding, certain proposals such as the quotas and countries of origin of disaster workers were required to be presented by GovGuam through that Department.

The Government of Guam was increasingly concerned that there not be a buildup of permanent resident aliens on the island who, when they attained citizenship and the right to vote, would be of sufficient numbers to affect the political control of the native Guamanians. This was particularly true after amendments to the Immigration and Nationality Act enacted in 1965 considerably facilitated the admission of Filipinos as immigrants under the professional and skilled occupational preferences.

The Immigration and Naturalization Service (INS), within the Department of Justice, was concerned that the wholesale importation of temporary workers, particularly by the military, be done with some semblance of legality under the provisions of the Immigration and Nationality Act which that agency was charged with enforcing. Finally, the Department of Labor was increasingly concerned with protecting American labor against adverse competition from the alien contract workers on Guam, as well as with related alleged violations of several labor laws.

At least during the early part of the 1960's, INS was more comfortable with the mass admission of temporary alien workers for defense and disaster work as parolees, rather than as H-2 workers, because of the requirement in the immigration law that H-2 workers be admitted only for work which was itself temporary in nature. After almost ten years of the "temporary" military H-2 program, INS preferred admitting the Filipino workers under the parole provision, on the basis of their importance to the public welfare.

However, if INS was more comfortable with the parole provision, the Labor Department was not. During the 1960's, Labor became increasingly concerned with the temporary alien labor situation in Guam, and its proposed modifications throughout the decade foreshadowed the action taken by that Department in 1977. The Department of Labor's failure to implement its proposed reforms during the 1960's was, in the words of a DOL report:

⁴⁵ INS internal memo, Supervisory Immigrant Inspector to Assistant Commissioner, Adjudications, March 3, 1970, p. 3.

Partly due to abuses of power on the part of the Department of Defense in efforts to obtain a steady supply of cheap workers, and partly to the U.S. Department of Labor's inability to follow up on its recommendations, caused by lack of interest by the Guam Department of Labor and the distance involved between San Francisco and Guam.⁴⁶

The Labor Department's proposals are reviewed briefly below.

In June 1964, the San Francisco Regional Administrator of the U.S. DOL's Bureau of Employment Security, Glenn Brockway, and Governor Manuel Guerrero of Guam jointly agreed to a written "Statement of Policy" regarding the use of temporary labor on Guam which, quoting from a subsequent DOL summary :

... provided for a wage rate no less than the rate paid by the Government of Guam for similar occupations, that the employer would assure at least 20 percent of his total workers would be trainees; that any foreign labor imported would meet the skill requirements of such occupations and that the foreign nationals would be employed only in the specific occupations designated in the job order, and finally, that the determination whether a certified clearance order was justified would be made by the Regional Administrator located in San Francisco.⁴⁷

This proposed change in policy was strongly opposed by defense employers. The U.S. Navy Officer in Charge of Construction, Marianas, analyzed the potential adverse effects of the 1964 alien labor policy at some length in a staff paper. The paper charged: that none of the interested parties was consulted or advised prior to the announcement of the program, including the Guam Legislature and the Department of the Interior; that the plan would have serious international implications in that "a decision to pay alien labor at the U.S. citizen wage rate would affect other international agreements;"⁴⁸ and that the wage increase proposed in the plan would result in a 73-percent increase in the cost of labor, and that the cost of uncompleted and proposed construction would increase by at least 40 percent, in addition to the fact that there would be significant delays and an adverse impact on quality.

The Navy staff paper also questioned the legality of the proposed training requirement, noting that, "If construction funds have not been appropriated for extraordinary training"—and they had not been—"funds cannot be expended for these purposes."⁴⁹ The proposed requirements were described as unnecessary and unrealistic. Quoting:

The composition of the work force on Guam will not change significantly in the foreseeable future. There is complete employment on Guam. There will be no unemployment for qualified Guamanians in the future.⁵⁰

Additionally, it was stated that "Guam is not a source of employment for 'statesiders.'" ⁵¹

The Navy staff paper recommended that "DOD oppose any arbitrary increase in the alien wage rate;" that the Department "oppose any change in the current Alien Labor Recruitment procedures"; and that it "oppose any move to establish a dual labor policy on Guam," ⁵² i.e., separate labor policies for DOD and private industry.

Governor Guerrero denied the validity of the objections to the 1964 policy statement, pointing out that the importation of alien labor from the time of its inception in 1947 was meant to be only a temporary ex-

⁴⁶ 1977 DOL report, p. 2.

⁴⁷ Ibid., p. 4.

⁴⁸ U.S. Navy staff study (1964), p. 2.

⁴⁹ Ibid., p. 6.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., p. 7.

pedient until domestic labor could be made available through training. He said the attraction of cheap foreign labor had tended to perpetuate its use and Government plans for local apprenticeship training were discontinued because of the lack of cooperation from the contractors in Guam.⁵³

Secretary of the Interior Stewart Udall also wrote to Secretary of Labor Willard Wirtz indicating his Department's support for the proposed policy, and emphasizing its importance to Guam's economic development.⁵⁴

The policy was scheduled to be implemented on January 1, 1965, but it never went into effect. According to the 1977 DOL report, this was primarily the result of "opposition from the U.S. Navy and its construction contractor allies."⁵⁵ An earlier DOL report indicated the 1964 proposal had been shelved largely because of an internal determination that it was "extra-legal,"⁵⁶ without further explanation.

As indicated previously, in May 1965 the Labor Department formally withdrew from the clearance procedure connected with the parole of aliens on Guam for the disaster program and, apparently by implication, from the defense program as well. However, the Guam Employment Service was certifying the need for workers for both the defense and disaster programs. In February 1967, in response to a challenge by Operating Engineers Local Union No. 3, the Acting Governor of Guam wrote to INS "that the Guam Employment Service is affiliated with the United States Employment Service which is under the United States Department of Labor and uniformly follows the procedures laid down by the parent Agency."⁵⁷ Further, in March 1967, the Administrator of DOL's Bureau of Employment Security indicated in a meeting with INS officials "that the Department was reexamining its position with respect to permitting the Guam Employment Service to continue to issue labor certifications" for the temporary alien workers paroled into Guam. As the INS account of the meeting notes, this was at odds with the statement by the Secretary of Labor in 1965 that "the Department of Labor is not involved in any decision with respect to importation" under the parole provision.⁵⁸

In November 1968, the Department of Labor again pressed strongly for an end to the use of the parole procedure on Guam. A meeting was called on November 18, 1968 by DOL including representatives from INS, Labor, Interior, Defense, GovGuam, and the Civil Service Commission. The Department of Labor representative indicated DOL's desire, quoting from an INS account:

To see all temporary alien labor imported under the H-2 provisions; to have each petition supported by a certification issued on the basis of prior recruitment efforts not only in Guam but also in Hawaii and eventually on the U.S. West Coast; and to have the certification extend not only to the unavailability of domestic labor but also to the adverse effect alien labor would have on wages and working conditions of like labor in the United States.⁵⁹

The representative from the Navy indicated that the Defense wage rates "were coordinated with those of the Government of Guam," and

⁵³ McCarthy, INS paper (1971), p. 17.

⁵⁴ Letter, Oct. 19, 1964.

⁵⁵ DOL report (1977), p. 5.

⁵⁶ Raznick, DOL memo (1974), p. 6.

⁵⁷ Quoted in McCarthy, INS paper (1971), p. 21.

⁵⁸ McCarthy, INS paper (1971), p. 21.

⁵⁹ Ibid., p. 24.

also that to raise them on Guam would cause the Philippine Government to press for wage increases on other U.S. bases. The INS official indicated that the Service was neutral regarding the use of the parole provision, but pointed out that H-2 workers could only be admitted for work that was temporary in nature.

The Labor Department's position was repeated in December 1968 in a letter from Secretary Wirtz to the Attorney General, requesting the Justice Department to make preparations for requiring temporary alien workers on Guam to obtain labor certifications from the U.S. Department of Labor rather than from the Guam Employment Service. However, the Labor Department plan was not implemented by the new Secretary of Labor George P. Schultz, who took office in early 1969. In a letter in February, 1969, the Administrator of DOL's Bureau of Employment Security told the Director of the Guam Department of Labor that the regulations provided that a certification from the Guam Employment Service would be acceptable in support of a petition to import temporary workers on Guam, and that "at present, the responsibility for deciding whether to issue certifications for temporary alien workers (other than from the Philippines) for employment in Guam rests with the Guam Employment Service."⁶⁰ Presumably the exception for Filipinos was because they were admitted under the parole provision; however, according to other accounts, the Guam Employment Service had been issuing certifications for them as well.

E. PRIVATE SECTOR PRESSURE FOR ADMISSION OF H-2 WORKERS

The disadvantageous position of the private sector in obtaining labor was described as follows in the Planning Research Corporation report of February 1966:

The private sector, however, is largely a residual employer of labor, for there is a definite employment hierarchy—partly in terms of status and partly in terms of pay security and other benefits. Local workers tend to regard Federal civil service employment as the most desirable, government of Guam as next best and private employment as least attractive. Since Guam has been chronically short of labor, it is understandable that private firms, as residual employers, have experienced higher rates of turnover, absenteeism, lack of needed skills and other labor problems.⁶¹

This situation was aggravated in the five years that followed by competition from foreign investors who could and did import their own labor under the "treaty trader" nonimmigrant provision of the immigration law, with no requirement that it be limited to work that was temporary in nature. The tourist boom of the second half of the 1960s also resulted in an increased need for labor. Domestic labor was not available to fill the need, according to a letter from the Guam Chamber of Commerce to Secretary of the Interior Walter J. Hickel:

Historically and currently, Guam's economy suffers from a chronic labor shortage. Guam's civilian population is about 70,000 of which some 30,000 are of school age or under, another 20,000 are housewives with no skills, and 10,000 are registered aliens, mostly from the Philippines. Only 1,000 of the above 10,000 are available to work in the civilian business community and they can only work on reconstruction. The Government of Guam, the Navy and the Air Force employ the other 9,000, plus the bulk of the local workers.⁶²

⁶⁰ Letter, Feb. 27, 1969, p. 2.

⁶¹ PRC report (1966), p. 8.

⁶² Letter, April 15, 1969.

Permanent immigrant labor was not the desired solution for a variety of reasons including, according to some, Guamanian fear of loss of political control. Other reasons were explained as follows in a statement by Congressman Won Pat in 1969:

If the alien workers are not made available—then these projects will have to be manned by preference-type immigrants who will, if they so wish and most seem to so wish, work on Guam for a few months and then use such entry as a stepping stone and go on to Hawaii or the continental U.S. and thus force Guam's civilian employers to request and import more and more preference-type workers. Additionally, those who do remain on Guam would hold on to jobs intended for our youth when they are able to take their place in the economy.⁶³

INS received repeated appeals from the Guam Chamber of Commerce and an employers' group, the Guam Service Program, that they be allowed to bring in H-2 workers as they had in the 1950's. INS reiterated that the H-2 provision was limited to work that was temporary in nature; and that it was not intended by Congress to alleviate local labor shortages or to provide staffing for U.S. firms.⁶⁴ In answer to the charge of discrimination, on the grounds that Government agencies were allowed to hire temporary parolees, INS responded:

Workers on Guam are paroled under the authority granted in Section 212(d) (5) of the Immigration and Nationality Act as being in the public interest. This is based on the needs of the military and cannot be extended to private enterprise.⁶⁵

In early 1969, INS began approving H-2 petitions for construction workers "if they were to come to perform services on a short-term project, would work only on the one project, and would return home when that project was completed."⁶⁶ In an internal communication in October 1969, an INS official commented as follows on both the need for construction workers, and the greater advantages to the employer of the parole as compared to the H-2 status:

In general there is an acute need for services of foreign workers in the construction field and as the contractors state, there appear to be less restrictions on use of the Reconstruction and Rehabilitation workers than that of H-2 workers, as they may remain on Guam up to three years with benefit of extensions on a yearly basis, while H-2 workers must be repatriated on completion of the single project for which imported.⁶⁷

However, INS continued to refuse approval for H-2 entry of service industry workers or any other employees of ongoing businesses, on the grounds that they did not meet the statutory definition.

Several bills introduced in the 91st Congress included a provision amending the Immigration and Nationality Act by deleting the requirement that the jobs for which H-2 workers may be admitted must be temporary in nature. This provision was strongly backed by Congressman Won Pat, who also submitted testimony from the Guam Chamber of Commerce and three related resolutions passed by the Guam Legislature.⁶⁸ However, this amendment was not included in the legislation enacted as Public Law 91-225 (Act of April 7, 1970, 84 Stat. 116).

⁶³ U.S. House of Representatives, Committee on the Judiciary, Subcommittee No. 1, *Immigration*, Hearings, 91st Cong., 1st sess., on nonimmigrant visas, Serial No. 91-9, 1970, pp. 310-311. (Cited as House Judiciary hearings (1970); the hearings were held in the fall of 1969).

⁶⁴ [Appeal from District Director's decision] File AGA-N-312, Jan. 27, 1969, p. 2.

⁶⁵ *Ibid.*

⁶⁶ INS internal memo. Supervisory Immigrant Inspector to Assistant Commissioner, Adjudications, March 3, 1970, p. 2.

⁶⁷ INS internal memo, Officer in Charge, Agana, to District Director, Honolulu, Oct. 31, 1969.

⁶⁸ House Judiciary hearings (1970), pp. 309-315.

V. THE 1970's

Many of the patterns in the Guam economy identified earlier in this report continued into the 1970's. The Vietnam War in the early part of the decade, and *Typhoon Pamela* in May 1976, guaranteed a continued high level of construction work. In particular, *Typhoon Pamela* destroyed approximately 80 percent of the island's buildings and facilities, and necessitated massive reconstruction.

According to a 1975 survey by the Guam Department of Labor, construction accounted for the third largest number of workers (4,200) in the total workforce of 33,800. Government (15,400), and trade (6,100) were the two largest employers. As in the past, the construction industry was dominated by alien workers, who accounted for 90 percent of the construction workforce; 82 percent were temporary workers and 8 percent were immigrants. Government, on the other hand, continued to be heavily dominated by Guamanians.

This occupational distribution by nationality is apparent due largely to the multi-level wage structure, which dates back to the post World War II period. Quoting from the 1977 Department of Labor report:

Overall, it can be said in Guam that there can be four wage levels set for essentially the same work. At the top are the Federal employees, followed by local government workers and by resident workers in private industry. At the bottom are the alien indentured laborers imported with government approval and assistance.¹

The rapid growth in the tourist industry which began on Guam in the mid-1960's continued into the mid-1970's. In 1970, approximately 120,000 visitors arrived on the island; by 1974 this number had increased to slightly under one-half million. Other factors identified by the Department of Labor study as contributing to Guam's "remarkable economic growth since 1962" were "heavy military expenditure, foreign investment, * * * and the large scale importation of alien contract workers who now constitute 16 percent of all workers on the island."²

However, according to the 1977 DOL report, "it appears that the era of rapid and unrestrained growth on Guam is over."³ The implications of this conclusion are spelled out in the DOL report as follows:

It is evident that the explosive growth which characterized the 1963-1975 period, cannot be expected to go on. For example, much of the infrastructure for the travel business is built: the job now is essentially one of improving its quality rather than its quantity. The labor force on Guam must be stabilized to support what has been created. The continued free and easy importation of contract workers must end as an integral part of Guam's labor market policy.⁴

Extensive reforms were put into effect by the Department of Labor in 1977, with the cooperation of the Immigration and Naturalization

¹ U.S. Department of Labor, Employment and Training Administration, Region IX, "The Guam Alien Contract Worker System," May 1977, p. 33. (Cited as 1977 DOL report.)

² 1977 DOL report, p. 1.

³ Ibid., p. 11.

⁴ Ibid., p. 40.

Service, based in part on the findings of the 1977 DOL report cited above. These reform efforts continue to be carefully monitored in the hope that they will spell an end to the 35-year-old reliance of Guam on alien labor, particularly in the critically important construction industry. Attempts to control the importation of alien laborers were made earlier in the decade by INS in its termination of the parole programs, and in 1972 by DOL and Gov Guam in what proved to be an unsuccessful prelude to the action taken in 1977 by DOL.

The House Judiciary Committee has been aware of the difficulties Guam has been experiencing with alien labor, and has held hearings on the subject twice during the 1970s—in 1973 and 1978. As an indication of the complexity of the issues as they have evolved over the decade, the major problem outlined during the 1973 hearings was the need for additional temporary alien labor in industries other than construction, and the unfairness of INS's allegedly rigid interpretation of the H-2 provision. In contrast, there was almost complete agreement in the 1978 hearings that the H-2 program on Guam should be brought under stricter controls, although there was less agreement as to the means and the timing.

The major events of the 1970's relating to the use of temporary alien on Guam are discussed in more detail below.

A. TERMINATION OF THE PAROLE PROGRAMS

The Reconstruction and Rehabilitation Parole Program ended by mutual consent of INS and Gov Guam in 1970. During that same year, an agreement was reached between INS and the Department of Defense to terminate the Defense Parole Program by December 31, 1974; termination was completed by the summer of 1975. The number of alien contract workers present on Guam decreased from a high of 9,750 at the end of fiscal year 1974 to 6,324 in fiscal year 1975, and 4,293 in fiscal year 1976 (see Table 1). Following the termination of the parole programs, the vast majority of the alien contract workers were H-2 construction workers, many of whom had converted from parole status by means of a visa waiver granted by the State Department.

The considerations and procedures involved in the termination of the parole programs are reviewed briefly below.

1. Reconstruction and Rehabilitation/GovGuam

On January 16, 1970, the Government of Guam indicated its desire to terminate the Reconstruction and Rehabilitation Parole Program when its current authorization expired on May 15, 1970. As discussed in the preceding section, this followed INS's refusal of a request from the Governor that the 1,000 allocation be increased by an additional 915 parolees.

However, other factors were clearly involved. In a meeting on Guam on Jan. 16, 1970, GovGuam's Director of Labor told the INS Officer in Charge that a single H-2 alien construction program was desirable for purposes of wage control and because the workers were not limited numerically.⁵ In a follow-up letter to INS, the GovGuam Director of

⁵ INS internal memo, Reconstruction and Rehabilitation Program—Guam, Officer in Charge, Agana, to District Director, Honolulu, Jan. 16, 1970.

Labor explained further GovGuam's reasons for wishing to discontinue the disaster parole program: "By eliminating the Reconstruction and Rehabilitation Program, we are attempting to stop the importation of a large number of alien workers at substandard wages and to require that all temporary workers be paid the prevailing wage rates,"⁶ presumably those required for H-2 workers.

The reasoning behind this decision, as well as the arguments for bringing in H-2 workers for other types of work besides construction, and for not bringing in permanent resident aliens, were explained in detail in a letter dated March 4, 1970 from Governor Carlos Camacho to a U.S. Department of Labor official:

Bringing in all alien workers under the H-2 provisions would resolve the two major objections to alien importation (1) that alien workers depress local wage scales, and (2) that they eventually become permanent residents and bring in their families, and, at the same time, would make available the labor supply needed for the economic development of Guam. Under the H-2 procedures, employers must pay wage rates established by the Department of Labor as appropriate for the occupation involved. After the relaxation of INS procedures to allow H-2 temporary workers to enter Guam to work on private civilian construction projects, a schedule of "H-2" wage rates for various construction occupations was developed by the Department of Labor, for use of the Guam Employment Service in processing requests for alien employment certification. This schedule is reviewed periodically and adjusted as prevailing wages change. . . . If authority were granted to allow the importation of nonimmigrant aliens for other types of work, similar schedules would be worked out for these occupations to insure against any adverse affect to the local labor force. Moreover, it is our intention to use the "H-2" schedule as a tool to gradually raise the overall wage structure in Guam, which is generally quite low. Requiring employers to pay substantial wages for alien workers will be the best incentive to them to hire local workers and as wages increase more of our young people will desire to stay on Guam. Since H-2 workers possess temporary visas, they cannot hold positions on a permanent basis, and consequently, can be replaced by local people should they become available in the future.⁷

In the January 16, 1970 meeting and follow-up letter to the INS Officer in Charge, the GovGuam Director of Labor emphasized the need for procedural changes in the administration of the H-2 provision. Under the then current procedures, H-2 construction workers could be imported only for a specific project, following which they were required to be repatriated. The following modifications were requested:

1. That a contractor be allowed upon completion of one project to file a new visa petition to transfer his alien workers to another project without repatriating his alien workers to point of hire. As you know, sending alien workers to their points of hire and then requesting importation for the same group of workers to work in another project is very expensive and can impose undue hardship on smaller contractors.

2. That a contractor be allowed to transfer his alien workers upon completion of his project to another construction contractor who has obtained the appropriate labor certification.⁸

The conversion, without leaving Guam, of alien workers currently present as parolees under the Reconstruction and Rehabilitation Program to H-2 status, as construction workers, was also requested. This request was approved by the INS District Director and, following an agreement by the State Department to waive visa requirements for the Filipinos, by the INS Central Office, as follows:

⁶ Letter from GovGuam Director of Labor to INS Officer in Charge, Agana, Jan. 16, 1970, p. 2.

⁷ Letter from Gov. Camacho to Mr. Bradley Reardon, Assistant to Associate Manpower Administrator, U.S. Department of Labor, p. 3.

⁸ Letter, Jan. 16, 1970, pp. 1-2.

Each "Reconstruction" parolee now in Guam may now be admitted H-2 if the employer intends to employ him solely on a specific construction project. The approval of an H-2 petition supported by the labor determination set out in 8 CFR 214.2(h) is required. For the Trust Territory native and resident, visas and passport are waived under 8 CFR 212.1(d). For the Filipino worker now there in parole status, the State Department on April 17, 1970, joined with the Service in a waiver of the nonimmigrant visa and passport requirements pursuant to section 212(d)(4) of the Act.⁹

The procedural changes requested in the handling of the H-2 workers were also accepted, although with misgivings on the part of some. Quoting from a March 1970 commentary by an INS official:

The employers who would benefit from these proposals are in the construction business, a continuing operation for which they have a continuing and permanent need for employees. To authorize these employers to bring H-2 alien workers to provide this necessary labor and then to permit the transfer of these workers from one project to another and from one employer to another is to revert to the conditions of ten years ago and the countenancing of the use of temporary workers to perform permanent service.¹⁰

The procedures followed regarding the employment of temporary workers in the private sector as of March 1971 were summarized as follows in an INS account:

The employment of temporary alien workers in the private sector is permitted but only in the construction industry. The prospective employer may file a petition supported by a certification from the Guam Employment Service, to have aliens classified as H-2 workers for employment on a specific short-term project. Upon completion of that project they may be used on the same employer's subsequent projects or transferred to another construction employer for a similar short-term project. For each project, however, a separate petition and a separate certification must first be approved. No H-2 worker may remain in the United States continuously for more than three years.¹¹

These procedures applied equally to aliens working on construction formerly included in the Rehabilitation and Reconstruction Program, which ended on May 15, 1970.

Following the termination of the Reconstruction and Rehabilitation Program, it came to the attention of the INS Central Office that contractors working directly for the Government of Guam were continuing to be permitted to use parolee aliens, presumably under the Defense Parole Program. The District Director and the Officer in Charge stated that "work for the Government of Guam has always been considered the same as doing work by the military,"¹² because there was assumed to be a defense connection. This procedure was officially ended according to instructions from the INS Central Office issued in March 1971. The 20 parolee contract workers in medical and other professions in the employ of GovGuam under the Defense Parole Program were also phased out as their period of authorized stay expired, or granted third preference entry as permanent resident aliens.¹³

⁹ INS internal memo, Deputy Associate Commissioner, Travel Control, to Regional Commissioner, San Pedro, April 22, 1970, p. 1.

¹⁰ INS internal memo, Supervisory Immigrant Inspector to Assistant Commissioner, Adjudications, March 3, 1970, p. 2.

¹¹ McCarthy, INS paper (1971), p. 31.

¹² INS internal memo, Deputy Associate Commissioner, Domestic Control, to Associate Commissioner, Operations, Jan. 6, 1971, p. 6.

¹³ INS internal memos, Associate Commissioner, Operations, to Regional Commissioner, San Pedro, March 3, 1977, p. 2; Associate Deputy Regional Commissioner, Operations, Southwest Region, to District Director, Honolulu, April 7, 1971.

2. *The defense parole program*

In the spring of 1970, in anticipation that a Korean firm might be the successful bidder for the Labor Services Contract which previously had gone to a Philippine-affiliated firm, the Defense Department inquired into the possibility of admitting the alien workers under the H-2 provision. Quoting from an INS account:

A meeting on the proposal was held at the Central Office on May 19, 1970 at which representatives from the Department of Defense, Interior, State, and Labor were in attendance. A full discussion was had including the fact that not all of the Defense workers were in construction projects, some were service workers whose jobs were admittedly permanent. Service representatives reaffirmed the Service position that H-2 admissions should not be extended to workers coming to fill jobs which are permanent or continuing.¹⁴

An INS position paper prepared and approved on the subject recommended "that the matter be resolved by modifying the pertinent Service policy so that parole of nationals of any country may be authorized for temporary employment in Defense activities in Guam."¹⁵ Quoting further:

The advantage of this modification is that it would not make any drastic change in existing practice and would not open the door to H-2 admission of non-defense workers. Instead, the revised policy would provide that only Defense workers may be paroled into Guam, and that all other temporary workers would have to qualify as nonimmigrants pursuant to section 101(a)(15).¹⁶

INS further recommended that the Labor Department assure that the Guam Employment Service issue the same type of certification for paroled workers that was issued for H-2 workers, testing for both the "availability" of U.S. workers and the "adverse effect" on U.S. workers similarly employed. A final recommendation in the INS position paper was that the Defense Department should phase out the employment of temporary alien workers in nonappropriated fund activities within 120 days, and in appropriate fund activities by December 31, 1974. The Department of Defense was formally notified of this decision in a letter from INS on June 8, 1970. Quoting in part:

The desirability of eventually establishing a stable work force on Guam composed of either citizens or lawful permanent resident aliens, is mutually recognized. Therefore, it is requested that the Department of Defense take steps to build up such a work force with the objective of terminating by December 31, 1974, the practice of employing nonresident alien workers.¹⁷

The Defense Department replied that December 1974 had been set as a target date for the termination of the use of nonresident alien labor on Guam, and that they expected to meet it. Regarding the earlier termination of the 800 nonappropriated fund workers, Defense proposed, and INS agreed, that all but 190 with trade skills, be phased out by December 1971, and that the remainder be phased out by December 1974.

The subject of the Department of Defense phaseout was addressed as follows in a letter from INS to the Department of Labor in the summer of 1972:

¹⁴ McCarthy, INS paper (1971), p. 29.

¹⁵ INS position paper, Assistant Commissioner, Adjudications, "Defense Department's request to authorize H-2 admission into Guam of temporary workers employed by the Defense contractor who is awarded the FY 1971 Labor Service Contract," May 20, 1970, p. 1.

¹⁶ Ibid.

¹⁷ Letter from INS Associate Commissioner, Operations, to Acting Assistant Secretary of Defense, June 8, 1970, p. 2.

* * * the Department of Defense commitment to the Department of Justice to phase out the use of foreign workers . . . is contained in my letter of June 8, 1970 to the Acting Assistant Secretary of Defense and in the Defense reply of September 4, 1970, copies of both of which I furnished you. The arrangement agreed to then was that the use of all nonresident alien labor in Defense activities would be phased out by December 31, 1974, and that meanwhile memorandum requests for parole would be supported by the full certification of the Guam Employment Service. I have not since been in touch with the Department of Defense on this matter nor have I received any indication from that Department that it would not comply with the certification requirement, which this Service has found to be of material assistance in adjudicating parole requests and would like to see continued.¹⁸

On July 10, 1973, INS wrote to the Defense Department referring to the letter of June 8, 1970 and indicating its desire to accelerate the timetable for ending the Defense Parole Program.

Conditions in the Guam economy have now become such that the use of the parole procedure to make nonresident alien labor available there cannot be continued. I intend therefore to terminate as of December 31, 1973, the paroling of aliens into Guam for employment in the Territory. I would appreciate your cooperation in commencing to phase out the number of those aliens in parole status so that all will have departed from the Territory by December 31, 1974.¹⁹

It is likely that this was prompted in part by the upcoming visit of members of the House Judiciary Committee to Guam in August 1973.²⁰ The Special Subcommittee commented as follows in its subsequent report:

There has been a concerted effort by the Department of Defense for many years to phase out the use of alien labor in Guam. This objective is in the process of being achieved and hopefully the employment of alien labor will be completely phased out at the end of calendar year 1974.²¹

The 1972 reform efforts of the U.S. Department of Labor in combination with GovGuam were also clearly a factor. The Department of Labor had indicated its desire in 1972 to stop Guam Employment Service certification of Defense Department parolees.²²

In mid-1973, the number of alien contract workers on the island totalled 9,395, of whom 2,818 were parolees working for the Defense Department or its contractors, and 6,577 were H-2's. An INS chart of monthly entries of temporary alien workers in Guam for the period January 1972 through June 1973 shows a steady increase in the total number, accounted for by the increase in the number of H-2 admissions, from 3,504 in January 1972 to 6,577 in June 1973. The explanation given for this increase was that "these workers are all beneficiaries of visa petitions approved for them as construction workers, and more of them have been coming in each month than depart."²³ The number of parolees, on the other hand, was gradually decreasing during this period, from a high of 3,554 in January 1972 to 2,818 in June 1973.

¹⁸ Letter from INS Associate Commissioner, Operations, to Assistant Secretary of Labor for Manpower, July 18, 1972, p. 2.

¹⁹ Letter from INS Acting Commissioner to Assistant Secretary of Defense, July 10, 1973. Reprinted in House Judiciary hearings (1973), pp. 15-16.

²⁰ Leibowitz (1975), p. 52, fn. 170.

²¹ U.S. House Committee on the Judiciary. "Report of Special Subcommittee of the Committee on the Judiciary to review immigration, refuge, and nationality problems," House Committee Print, 93d Cong., 1st Sess., 1973, p. 3. (Henceforth cited as Special Subcommittee report (1973).)

²² Letter from Assistant Secretary for Manpower to INS Commissioner, June 23, 1972.

²³ INS internal memo, Temporary alien workers in Guam under special program, Immigration Examiner to Deputy Associate Commissioner, Travel Control, July 11, 1973.

According to a report of the INS Officer in Charge, Agana, dated Feb. 7, 1975, the total number of remaining alien workers under the Defense Parole Program was 253, most of whom had authorized six-month extensions from the December 1974 deadline. While a few of these received short additional extensions, the Defense Parole Program came to an end in the summer of 1975, after a period of 15 years.

The question was raised at least as early as 1970 as to whether it would be possible to transfer Defense parolees to H-2 construction work without the necessity of their first returning to their home countries and having a contractor file a petition for their reentry as H-2's. In October 1974, Governor Camacho wrote to INS that "more than 1,700 parolees remain on Guam and * * * costs to return these individuals to their land of origin and return them in an H-2 capacity would be in excess of \$850,000."²⁴

In late 1974, INS wrote to the Department of State's Visa Office as follows:

The Service, by letter of July 10, 1973 (a copy of which was then furnished to your office), notified the Department of Defense that the program under which alien workers were paroled into Guam would be terminated, and that as of December 31, 1974 all of those Defense workers in parole status should have departed. The Governor now alleges that these aliens are needed in Guam and may qualify for H-2 status; and he asks that they be permitted to make that change without the considerable expense involved in their return abroad to secure nonimmigrant visas. In the light of his persuasive argument, I would recommend that, pursuant to section 212(d)(4) of the Act, your Department join with the Service in a waiver of the nonimmigrant visa requirements and, where necessary, of the passport requirements for those parolees now on Guam who are found eligible for H-2 status. If you concur and nonimmigrant visa petitions are approved for them, they would then have their paroles terminated, would be inspected, and if qualified, admitted as H-2 nonimmigrants.²⁵

According to a marginal note on the INS copy of this letter, the State Department agreed to grant the necessary visa waiver, and this procedural question was apparently answered in the affirmative.

Following the end of the Defense Parole Program in the summer of 1975, the distinction between alien contract workers employed by the military, GovGuam, and the private sector came to an end. All lien contract workers were thereafter admitted as H-2 workers under similar procedures. Further, the employment of H-2 alien workers on Guam by the military has generally been of an indirect nature, through military contractors, and has been limited to construction work.

B. 1972 U.S. DEPARTMENT OF LABOR—GOVGUAM REFORMS

In 1972, the U.S. Department of Labor, together with the Governor of Guam, undertook a number of changes intended to reform the alien labor program. The alien labor situation at that point was described as follows by Governor Camacho, in terms reminiscent of those frequently used to describe the effects of the Bracero program in the early 1960s, and of illegal aliens in the 1970s:

Business must have workers and trained and reliable workers. I am not unmindful of their needs. However, an unhealthy situation has arisen over the past few years in which the shortage of workers on Guam has been exploited

²⁴ Letter from Governor Carlos Camacho to INS Commissioner, Oct. 7, 1974.

²⁵ Letter from INS Deputy Commissioner to Director, Visa Office, Department of State, Nov. 11, 1974.

as an excuse to bring in alien labor originating from low income countries. Men from such areas have been and are now willing to work under conditions and for wages which are substantially lower than is typical in other American communities. This situation adversely affects those workers who are exploited in these terms, and further adversely affects local laborers who are discouraged from employment in certain sectors by the absence of economic incentives.²⁶

Specific reforms were undertaken in the Guam Department of Labor, which reportedly had been rejecting "very few if any certification requests for temporary aliens."²⁷ Regulations were promulgated by the Governor, intended "to assure maximum recruitment and utilization of U.S. resident workers who are available for employment."²⁸ They required that all employers requesting temporary alien workers show that at least 10 percent of their work force were U.S. resident workers, and also set forth a schedule of prevailing wages based on a Bureau of Labor Statistics survey on Guam in December 1971-January 1972. Quoting from a U.S. Department of Labor description of the 1972 efforts:

Wage rates for the construction industry, the industry in which the great bulk of temporary alien workers were employed, were determined by excluding the low wage rates paid the alien workers and averaging the wage rates paid the U.S. resident maintenance and construction workers. The averaging was justified on the basis that the job descriptions for maintenance and construction workers were substantially the same, both were year-round activities, and there were relatively few U.S. resident construction workers.²⁹

The 1972 Guam Department of Labor regulations anticipated that the wage rates paid alien construction workers would increase in four stages at six month intervals. However, according to the 1977 DOL report, the Governor froze the construction wage on July 1, 1973, "as a result of opposition from the Guam Contractors Association and the Hawaii Employers Council"; apparently in response to the claim "that the price of private residential housing would skyrocket," and the freeze was not opposed by the U.S. Department of Labor.³⁰ The wage rates remained the same in 1977.

The 1977 DOL report noted that in 1972 the Guam alien labor problems "were high on the priority list of the Western Federal Regional Council," which in fact visited the island early that year as a prelude to the reform efforts. However, quoting further from the report:

* * * apart from some work on wage rates, almost nothing came of the Council's work in this area. The chairman of the Council fell victim to the Nixon Administration's call for the resignation of all appointees. With his resignation, there was no follow-up.³¹

C. 1973 HOUSE JUDICIARY COMMITTEE HEARINGS ON GUAM

On August 9, 1973, a Special Subcommittee of the House Committee on the Judiciary travelled to Guam to conduct oversight and legislative hearings on the alien labor program. The hearings were part of a

²⁶ "The State of the Economy of Guam." Remarks of Governor Carlos G. Camacho on the occasion of the Third Annual Guam Economic Conference, May 18, 1972, p. 3.

²⁷ Raznick, DOL memo, Guam Report—March 1972 thru August 1973, May 15, 1974, p. 10.

²⁸ Guam Department of Labor, "Administrative policy for alien employment certification for temporary alien workers and Department of Defense direct hires and Defense contractors," Revised 1/15/73, p. 1.

²⁹ Raznick, DOL memo (1974), p. 12.

³⁰ 1977 DOL report, p. 31.

³¹ Ibid., p. 5.

series on H.R. 981 (93d Cong.), an omnibus immigration reform bill introduced by Judiciary Committee Chairman Peter Rodino. The bill contained a provision deleting the requirement that temporary workers be admitted only for work which is itself temporary in nature.

As noted earlier, a similar amendment to the Immigration and Nationality Act had failed of enactment in the 91st Congress. Legislation had been enacted removing a similar limitation from the H-1 provision, relating to aliens of distinguished merit and ability, and this was of some help to Guam regarding doctors and other professionals. However, the Governor and the local business groups continued to argue the need for temporary alien workers, particularly in the service industry and in agriculture and fishing.

INS continued to oppose this idea on the grounds that these occupations were "permanent" and thus did not meet the statutory definition for H-2 admissions. The situation had been aggravated by the remarkable tourist boom and, more ominously, by the increasing threat of competition from foreign investors and contractors. These were among the issues presented to the special House Judiciary subcommittee during its 1973 visit to Guam.

Some of the issues discussed in detail during the 1973 hearings are now moot, e.g., the 1972-1973 reform measures discussed above, and the Defense Parole Program, which ended in 1975. However, the manpower shortage anticipated with the end of the parole program was a major underlying theme of the hearings. Quoting Michael D. McClure, Chairman of the Guam Industrial Relations Council:

In the area of food production [one must consider] . . . the island's poultry and egg producers, dairies and bakeries, all of which have been partially manned by alien workers under defense parolee classification. It has been announced by the INS that over the next 12 to 18 months the current parolee programs will be phased out. Under this program, companies with contracts to supply the military have been allowed to import alien workers. With the discontinuation of the defense parolee classification the above mentioned food producers will no longer be capable of producing their goods and services due to the inability to obtain manpower. The reevaluation of the current H-2 restrictions to allow agricultural workers nonimmigrant entrance would eliminate this danger.³²

The shortage of workers in certain industries, most notably the service trades and agriculture, was the major topic discussed. Lieutenant Governor Kurt S. Moylan told the subcommittee:

It is estimated that at least 200 agricultural nonimmigrant workers will be needed to increase the output of our agricultural products. Guam's dependence on imports and its precarious position during labor strikes on the west coast of the United States further magnifies the necessity of encouraging large scale farming in order that Guam begins to approach the point of self-sufficiency. A formal application for their entry was made to the U.S. Immigration and Naturalization Service, only to be turned down some time ago on the grounds that agriculture is not a "temporary occupation."³³

Ironically, the conditions which apparently make it necessary for Guam to import alien workers—relating to its being an isolated island economy—are the same conditions which cause INS to classify occupations such as agricultural labor as permanent, rather than temporary, as some kinds of seasonal agricultural labor are classified on the mainland.

³² U.S. House of Representatives, Committee on the Judiciary, "Alien Labor Program in Guam," 93d Cong., 1st sess., 1973, pp. 57-58. (Cited as House Judiciary hearings (1973).)

³³ Ibid., p. 3.

Another immigration issue addressed by the hearings was the competitive advantage given to certain foreign investors because of their ability to bring in foreign workers more easily than could U.S. citizens, under section 101(a)(15)(E), the nonimmigrant category relating to treaty traders, which reads as follows:

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital.

Guam Senator Paul Bordallo told the subcommittee:

In the economic sphere, it is clear that to do business in Guam, one is much better off to be an alien treaty trader or treaty investor than to be an American citizen and resident of Guam. Wages in Guam are considerably lower than wages in the mainland of the United States, and it is also half way around the world. To pay the wages high enough to attract mainland Americans with the job skills necessary and still operate a profitable business is impossible. Sources of these trained and skilled technicians needed to run a modern economy are readily available at reasonable wages from the surrounding nations in the Pacific. However, as an American, a local businessman is not eligible to bring in these skilled alien workmen except through the arduous, expensive and time-consuming six and third preference procedures which create green card immigrants who within a week after they arrive on Guam can take off for greener pastures elsewhere. However, if I am a national of Japan, the Philippines, the Republic of China, or one of the other Pacific nations having an appropriate treaty with the United States, I can establish a small business in the territory and bring in not as immigrants but strictly as contract workers, E-1's, E-2's and L-1's to operate my business.

* * * What we object to is that we can not compete with the alien companies because they can bring in qualified but cheap technicians and we can't. The Federal immigration laws thus create the anomalous situation where alien companies are given material advantages in competing against U.S. citizens.³⁴

This was a matter of considerable concern to the Subcommittee, which investigated the allegations further and commented as follows in its subsequent report:

A large number of nonimmigrant treaty traders and investors (E-type visa) are entering Guam from Japan each year. In fiscal year 1973, 1,558 Japanese E's entered Guam. (In fact, statistics indicate that of the 27,000 E visas issued in fiscal year 1972, 11,000 were issued to Japanese nationals.) There were some allegations during the Guam hearing that many E-nonimmigrants from Japan are engaged in unskilled service occupations in violation of the intent of section 101(a)(15)(E) of the Immigration and Nationality Act.

It is recommended that the Subcommittee on Immigration, Citizenship, and International Law in the conduct of its oversight hearings with the Immigration and Naturalization Service study this matter in greater detail. Furthermore, the Department of State should reverse the policy and regulations relating to the issuance of E-type visas.³⁵

Another, and related issue, considered was that of local autonomy regarding immigration. Guam Senator Paul Bordallo was strongly in favor of Guamanian control of immigration to the island, arguing that the political and cultural impact of U.S. immigration laws—designed for a nation of 200 million people—were even more devastating than the economic impact. He told the Subcommittee that, "I feel that the

³⁴ Ibid., pp. 22-23.

³⁵ Special Subcommittee report (1973), pp. 33-34.

impact of Federal immigration, as it now stands, without any special consideration of the territory of Guam is the most serious factor affecting the future of Guam.”³⁶ Quoting further from his statement:

I think that we have to look at the relationship of Guam to the United States, and also the conditions that are unique to Guam. Nowhere else in the world is there an urban society 5,000 miles from its main source of supply. So if we allow the tremendous increase in population in Guam, we fear that one day, with this new relationship of population to resources, it could lead to very depressed conditions here in Guam. We do not know what the future holds; and Guam, we know, has very limited resources and a very fragile economy. Could we allow, for example, the population of Guam to go to 250,000? And if so, could we meet a crisis, if that were to come in the future? Now I do feel that Guam has a special relationship to the United States—and all the territories do that are not incorporated—and that it is not against the American tradition to give special consideration giving the local authority for Guam to control its population, now and in the future.³⁷

The subcommittee commented as follows on this issue in its subsequent report:

There is some merit in the proposition that the Government of U.S. territories should have a greater voice in establishing policies regulating immigration into these territories (Virgin Islands and Guam). It is submitted that this matter will require intensive study by the House Subcommittee on Immigration, Citizenship, and International Law, especially since it would represent a drastic departure from the exclusive jurisdiction of the Congress over immigration and nationality matters.³⁸

This is one of the issues before the Select Commission on Immigration and Refugee Policy, created on October 5, 1978, by the enactment of Public Law 95-412. The Commission is required, among other things, to:

Conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States.

D. GUAM'S NEW INDUSTRY PROGRAM

During the Special Subcommittee's visit to Guam, discussions were held—quoting from the report—“with Gov. Carlos Camacho, Lt. Gov. Kurt Moylan and other government and labor leaders concerning the further use of the H-2 type visa (temporary worker) to assist Guam in developing their agricultural and fishing industries. Guam has been reduced to importing the greater percentage of its foodstuffs and the Guam Government feels that with the admission of temporary laborers from Taiwan, these industries can be developed and will contribute much to the local need and economy.”³⁹ In general, a more relaxed interpretation of the H-2 provision on Guam was recommended.⁴⁰

Guam had been interested for a number of years in an expanded H-2 program for bringing in aliens on a temporary basis to train natives in such vital industries as agriculture and fishing, and negotiations had been underway with INS and other officials both in Guam and Washington. The background and procedures for the “new industry

³⁶ House Judiciary hearings (1973), p. 20.

³⁷ *Ibid.*, pp. 20-21.

³⁸ Special Subcommittee report (1973), p. 33.

³⁹ *Ibid.*, p. 3.

⁴⁰ *Ibid.*, p. 33.

program" which began in 1974 are summarized as follows in an INS description:

After repeated requests by the Government of Guam for a "new industries program" the Deputy Commissioner on July 15, 1974 acceded to the importation of temporary alien labor to start up new industries in Guam. The H-2 petition was to be supported by a labor certification from the Guam Employment Service; the workers were to be admitted initially for up to one year and extended in increments of up to one year to a total of three years; and the program would have a life of not more than three years dating from the arrival of the first group. It is scheduled to terminate in May 1978.⁴¹

The July 15, 1974 INS communication referred to above outlined the procedural steps to be followed by the Officer in Charge, Agana, and stressed the temporary nature of the work for which the aliens were to be admitted, as follows: "Since the short and limited period proposed for the 'start-up' of such new industries would make the nature of the required employment temporary during that period within the meaning of section 101(a)(15)(H)(ii) of the Act, it is the Central Office opinion that 'H-2' petitions could be approved for the alien labor required for such 'start-up' of those new industries."⁴²

The Guam New Industry Program was formally approved in a letter dated July 24, 1974, from Roger Semerad, Staff Assistant to President Nixon to Governor Carlos Camacho, acknowledging the Governor's telegram to President Nixon. Quoting from the letter:

The Commissioner of Immigration and Naturalization has informed me . . . that you have previously requested approval of nonimmigrant "H-2" labor for use in setting up new farming, fishing, and other industries in the Territory. He has agreed that jobs in a "start-up" program of that kind may be considered temporary, since such a program itself would be of temporary duration—up to three years—following which it is anticipated United States citizens or alien residents in Guam would be trained and available to carry it on. Importation of temporary foreign workers would then be unnecessary, and those who had worked in establishing the new industries would depart.

Governor Camacho's return letter indicated a much broader interpretation of the scope of the program, giving some credence to a comment from a Labor Department official that "In essence, it appears that the 'New Industries' Program is nothing more than the old Parolee Program under a new name."⁴³ Quoting from Gov. Camacho's letter to White House official Roger Semerad:

The possible limitations outlined in your letter would only aid a small portion of our economy and defeat the overall intent of treating all our business operations with equality. All major industries on Guam are new within the last 5 years. There are situations where many industries will be greatly hampered without the support services supplied by industries which have been in operation on Guam for some time. As an example, the Foremost Dairies and our two local bakeries have been employing parolees as bakers and food processors. These alien parolees are now to be discontinued and there is no provision to bring them back to Guam except through an expanded H-2. Neither the bakeries nor the food processing plant could be considered a future start-up industry yet, without them, new hotels, new restaurants and the families of new workers will not have the basic requirements available to them that these "old industries" have provided.⁴⁴

⁴¹ INS internal memo. Labor program in Guam, Deputy Assistant Commissioner, Adjudications, to Deputy Commissioner, Oct. 28, 1977.

⁴² INS internal memo, Guam New-Industry Program, Deputy Commissioner to Regional Commissioner, Southwest, July 15, 1974.

⁴³ Letter from William Haltigan, Assistant Regional Director for Manpower, DOL, to Leonard Gilman, INS Regional Commissioner, Southwest Region, Oct. 7, 1974.

⁴⁴ Letter, Sept. 5, 1974, pp. 2-3.

The Governor indicated that applications were being accepted and processed under enclosed guidelines, entitled "Guam Special Labor Program", which defined "New (Developing) Industries" as follows:

New (developing) industries will be considered to be eligible for this program if the industry has been in operation since September 1, 1969, or (a) is about to commence operations or (b) has been unable to secure H-2 workers, or has had H-2 workers for a short period of time (up to thirty days), or (c) although an industry may have begun prior to September 1, 1969, if it has been engaged in supportive operations that are beneficial and necessary to Guam's economy, or (d) all direct hires by the military or the Government of Guam, or (e) are needed by industries having contracts with the Department of Defense or Government of Guam.⁴⁵

After consultation with INS officials, Mr. Semerad replied to the Governor that the Commissioner of INS regretted that the Governor's representative had come away from their meeting "with the mistaken belief that Guam would be permitted to import all the 'H-2' workers, skilled and unskilled, which the Territory may require for its economy," and that the Commissioner emphasized again "that he cannot authorize administratively that which the immigration law does not empower him to do"—that is, admit H-2 workers for jobs which are continuing or permanent in nature. The purpose of the Guam New Industries program, as understood by the INS Commissioner, was reiterated by Mr. Semerad as follows:

The Commissioner recognized Guam's need for labor, and therefore acceded to your request that alien nonimmigrant workers be allowed to enter to perform those services necessary to the launching of new industry in the Territory, particularly in the areas of farming and fishing to which you specifically called his attention. This decision was grounded on the conviction that the "start-up" stage of any new industry is in fact a temporary phase in which temporary alien workers may therefore legally engage. The decision was further justified by the understanding that these alien workers would train Guamanians in their skills so that within three years residents and citizens would be able to carry on in these new industries without assistance from foreign laborers who would then depart.

After this clarification, the New Industry Program was limited primarily to commercial agriculture and fishing. As of November 1975, 148 H-2 visa petitions had been approved under the program for the importation of 782 farm workers and 26 fishermen.

In April 1978, Governor Ricardo Bordallo wrote to both Attorney General Griffin Bell and INS Commissioner Leonel Castillo requesting an extension of the Guam "New (Developing) Industries Program" (NDIP), designed "to assist in developing an agricultural industry," which was scheduled to terminate on May 19, 1978. The Governor noted that at the time of the program's initiation, Guam grew only 4 percent of the fruits and vegetable consumed on the island. With the assistance of trained technicians from Taiwan and South Korea, that percentage had increased to 35 percent and was expected to reach 50 percent in 1978. However, the Governor noted that "Guam's agricultural and aquacultural industries are still developing," and requested an extension of the New Developing Industries Program until the end of 1979. With one exception, noted below, the requested extension was not granted and the program officially terminated on May 19, 1978. INS did not feel that an extension of the program be-

⁴⁵ "Procedural guidelines for the implementation of H-2 alien contract laborers for 'new (developing) industries'," Aug. 29, 1974, p. 1.

yond the original 3-year period was justified under the law and regulations governing H-2 workers. For example, on November 20, 1978 Congressman Won Pat was notified by Commissioner Castillo that the farming portion of the New Industry Program "expired in May 1978, and will not be extended for the further importation of agricultural labor." According to the Commissioner, the "start up" phase of the program had been concluded and that "the jobs the alien farm workers are filling are a permanent part [of the labor force] and therefore not such as may be filled by temporary (H-2) alien labor."

In view of the anticipated economic impact due to the termination of the program, INS agreed to grant the H-2 workers presently in Guam a six month period of voluntary departure. Further, INS suggested that employers, during this time period, file immigrant visa (sixth preference) petitions for those employees who could obtain permanent labor certification.

An exception to the May termination date was made for the aquacultural industry. After an initial refusal and additional correspondence and meetings, the INS Commissioner agreed to the admission of alien technicians involved in aquaculture for an additional two years, until May 31, 1980.⁴⁶

E. 1977 DEPARTMENT OF LABOR REFORM MEASURES

In 1977, reform measures similar to those which had been contemplated by the U.S. Department of Labor since as early as 1964 were implemented. The special provision in the INS regulations allowing the Guam Employment Service to issue labor certifications in lieu of the U.S. Department of Labor was repealed in June 1977. In September 1977 the Labor Department's Employment and Training Administration issued detailed regulations relating to the labor certification process for the temporary employment of aliens on Guam. These regulations included a schedule of adverse effect wage increases for the construction industry designed to bring the industry wage level up to U.S. Navy Wage Board standards for construction craft workers by September 1, 1979.

This was accompanied by plans for a training program to bring local workers into the construction industry. Since the end of World War II, the construction industry has remained highly important on Guam, because of military and disaster construction and the expanding tourist industry. At the same time, construction has remained heavily dominated by alien contract workers to the point that their wage level, by definition, was the prevailing wage in the industry. The 1977 DOL report, which preceded the Labor Department's actions later that year, indicated that 82 percent of the jobs in construction were held by alien contract workers as of 1975.

The factors leading to the 1977 reforms, the reforms themselves, and subsequent reactions and results are reviewed below.

1. Factors leading to the 1977 reform

The factors which precipitated the U.S. Department of Labor's 1977 reform measures are interrelated and it is difficult to identify any par-

⁴⁶ Letter from INS Commissioner Leonel Castillo to Governor Ricardo Bordallo, June 29, 1978.

ticular cause as dominant. They include *Typhoon Pamela*, which in May 1976 destroyed about 80 percent of the island's construction and facilities,⁴⁷ and again necessitated the expenditure of many millions of dollars on disaster repair.

Without question, another precipitating factor was the economic decline in Guam in the mid-1970s. Unemployment was estimated at 15 percent by the Governor in early 1976.⁴⁸ Against this background, there was growing concern about the alleged lack of enforcement of relevant Federal laws, particularly labor laws, as they related to alien workers. As an example, the following is quoted from a 1976 field trip report of a DOL Employment Standards Compliance Officer:

The phrase that best describes Guam for W-H [wage-hour] purposes is "a can of worms." One can literally sense the violations on the island. In my estimation, the H-2 program (alien certification program for the construction industry) is not and never has been under control. That situation leads to wholesale W-H violations. Currently, H-2 employees are believed to number around 5,000 on Guam. That number will quickly grow with the coming expansion of construction and reconstruction activities there Most foreign workers on Guam are very vulnerable to exploitation by employers much as the illegal immigrants from Mexico are on the mainland. They are poor people who are happy to be working in Guam.⁴⁹

The problem of out-of-status alien construction workers—i.e., illegal aliens—whose employers had gone bankrupt and abandoned them on Guam was also a matter of increasing concern.

Concern about these problems was aggravated by the increasing number of foreign-owned construction firms, primarily Korean, which enjoyed very real competitive advantages over American firms. This situation was described as follows in the 1977 DOL report:

Foreign construction firms also found the climate pleasant and appear to have found a wide range of advantages over their American competition. In addition to their ability to import their own labor and, apparently, their own labor standards, they have tax advantages. For example, U.S. companies are subject to the Social Security Act—firms employing Filipino aliens are not and the Korean firms may get this exemption benefit if a new tax treaty is signed with Korea. On defense work, the provisions of the Defense Base Act apply to American workers, and workmen's compensation is required for American labor. Aliens are also covered unless granted a waiver by the U.S. Department of Labor. With respect to this insurance program, the Department of the Navy has asked the Department of Labor to waive the provisions of this act to make American firms more competitive. Under the Navy's proposal, all firms and all workers will be required to furnish the workmen's compensation insurance. The workers' compensation benefits would be substantially larger than Guam benefits but less than Defense Base Act Benefits. The Department of Labor, Office of Workers' Compensation Process (OWCP), national office denied the Navy's request for blanket waivers. The national office would probably grant a Labor request to Guam if it were limited to resident aliens, but has never granted one to American citizens. U.S.-owned companies also claim to pay higher wages.⁵⁰

This adverse foreign competition appears to have been the primary factor for the decisive action which was finally taken. Quoting from a May 25, 1977 Labor Department memorandum:

The problem stems basically from Defense Department preference for low bidding foreign firms using foreign workers at wages below the U.S. standards and laxity of the Guam Department of Labor in enforcing applicable labor laws. The result is a severely depressed labor market on Guam and U.S. contractors, who must meet U.S. laws, being cut out of the competition.

⁴⁷ 42 Fed. Reg. 45898 (Sept. 13, 1977).

⁴⁸ Letter from Ricardo J. Bordallo to U.S. Attorney General Edward Levi, Feb. 6, 1976.

⁴⁹ 1977 DOL report pp. 26-27.

⁵⁰ 1977 DOL report, pp. 7-9.

According to the 1977 DOL report, "the end result of the foreign competition is a substantial undermining of American firms' competitive position," as illustrated by "recent bids for a hobby shop at the Naval Air station," shown below:

Hyundai (a Korean firm) -----	\$369, 000
Black construction -----	398, 000
Santa Fe -----	428, 400
Government estimate -----	⁵¹ 480, 000

Complaints were received by the Department of Labor throughout 1976 and early 1977 about the alien labor situation on Guam from a variety of sources, including Operating Engineers Local Union No. 3, a subsidiary of the AFL-CIO. The union officially requested the help of Secretary of Labor Ray Marshall. Quoting from the letter:

For the last 10 years Operating Engineers Local Union No. 3 of the International Union of Operating Engineers has been active on the Island of Guam, since Guam is an integral part of our Mid-Pacific Island jurisdiction. The thrust of our organizing and wage negotiations has been to improve wages and fringes, along with working conditions and work places for these American citizens. We have had more than a mild success in these areas, at great expense, until recently.

Our present difficulties have become much the same as those of our American employers: unfair foreign competition. The U.S.-based construction companies are squeezed out of contracts by foreign firms which enjoy special benefits which are the home industry equivalent of subsidies in international trade.⁵²

An extensive review of the problem was conducted during early 1977 by the San Francisco (Region IX) office of the Department of Labor's Employment and Training Administration. This resulted in the report entitled, "The Guam Alien Contract Worker System," referred to herein as the 1977 DOL report. As released May 16, 1977, the report was accompanied by a cover memo from the Regional Administrator which characterized the alien labor situation on Guam as follows:

It is abysmal! Foreign workers admitted to Guam depress the wages and working conditions of domestic workers; firms that employ foreign workers (the firms themselves are often foreign-based) have an unfair competitive advantage over U.S. firms.

The regional administrator recommended that:

It be made clear to all would-be employers of aliens that it is the policy of the Federal Government to maximize the employment of U.S. residents and that it is the employer's responsibility to make their jobs attractive to Americans. It should be made clear to all that the recruitment of aliens from outside Guam is considered not to be in the public interest. Policy statements to this effect should be issued as soon as possible by the Department of Labor.

The 1977 DOL report recognized the importance of alien labor in the development of Guam's economy, noting that "it is quite clear that the local economy would not have been able to grow so rapidly" without both the resident and temporary alien workers.⁵³ However, the report strongly criticized the effect the low-wage alien workers had had on wages in Guam, as follows: "It is quite obvious that contract alien wage rates are artificially held down and because they are employed so extensively in the private sector, they depress the entire wage structure."⁵⁴ In particular, the report noted that the wages in the alien-

⁵¹ Ibid., p. 9.

⁵² Letter from Dale Marr, Business Manager, Operating Engineers Local Union No. 3, to Secretary of Labor Ray Marshall, May 12, 1977.

⁵³ 1977 DOL report, p. 18.

⁵⁴ Ibid., p. 33.

dominated construction industry remained at the same level at which they had been frozen in July 1973.⁵⁵

The report concluded that "realistic tests of the availability of American labor cannot be made in many occupations, because the alien workers constitute such a large proportion of the work force that the wages at which they are certified are the prevailing wages."⁵⁶ The wages and working conditions of the alien workers, in turn, were "too low and too unattractive to draw Guam residents," creating a vicious circle which leads to the certification of yet more alien workers.

Blame for the present situation was divided among the different Federal departments involved in one way or another, as well as GovGuam:

There is blame for everyone for getting the Territory of Guam into this situation: The U.S. Department of Labor has not done its job in protecting and fostering the interests of American workers. The U.S. Department of Defense agencies have abused their powers for years in efforts to obtain a steady supply of cheap, indentured workers. The Department of Justice has mechanically administered the Immigration and Nationality Act. The Department of the Interior has not properly supervised the territory. The Territorial government has not vigorously or faithfully executed its responsibility to protect its own residents.⁵⁷

Early on, the report observed that, "It is apparent that a major key to the success of all the Department of Labor's programs on Guam, as well as those of other Federal agencies responsible for social and welfare activities, is the effective implementation of the alien certification program."⁵⁸

2. 1977 actions

On July 25, 1977, at the request of the Department of Labor, the INS regulations relating to the issuance of temporary labor certifications (8 CFR 214.2(h)(3)(i)) were amended by the deletion of the provision dating back to 1952 that in the case of Guam, a certification from the Guam Employment Service would be accepted in lieu of one issued by the Secretary of Labor or his designated representative. Quoting from the accompanying supplementary information, "the Service had determined that the consultation and labor certification requirements which must be met before nonimmigrant alien workers may be imported into the United States should be uniform throughout the United States."⁵⁹

Following this action, the U.S. Department of Labor circulated its August 1977 draft regulations on "Labor Certification Process for Temporary Employment on Guam" among interested parties for comment. Final regulations governing certification for temporary foreign labor for industries other than agricultural or logging, for Guam only, were published in the Federal Register of September 13, 1977. They were preceded by a preamble setting forth the reasons why special regulations were needed, including Guam's high unemployment rate, and the domination of the "enormously significant" construction industry by nonimmigrant aliens (82 percent). The preamble specifically noted:

It is not the Department's intention, in issuing these regulations, to stop the flow of non-immigrant alien workers into Guam. Such workers have contributed

⁵⁵ Ibid., p. 31.

⁵⁶ Ibid., p. 40.

⁵⁷ Ibid., p. 38.

⁵⁸ Ibid., p. 4.

⁵⁹ 42 Fed. Reg. 37795 (July 25, 1977).

greatly to the growth of Guam's economy. They form an important and vital element in the island's economic structure. The Department, however, under the Immigration and Naturalization Service regulations, must take immediate steps to see that the wages and working conditions of U.S. workers are not adversely affected by the use of such aliens, and to see that qualified U.S. workers are not displaced by such aliens.⁶⁰

The Labor Department regulations proposed to accomplish this primarily by the setting of adverse effect wage rates. Outside of the construction industry, these were to be the prevailing wage rates paid U.S. workers in Guam. However, the adverse effect wage rate for construction was to be higher than the prevailing rate paid nonimmigrant workers. Quoting further from the preamble:

The Department has concluded...that the employment of non-immigrant aliens in the Guam construction industry has adversely affected U.S. workers by keeping the wage rates artificially low to the point that nearly all such work is being done by non-immigrant aliens. The Department, therefore, is publishing adverse effect rates for the Guam construction industry which are higher than the rates which are currently being paid to non-immigrant aliens. These adverse effect rates are based on the rates which have been found by a U.S. Navy Wage Board as applicable to construction craft workers on Guam. These rates are those which are prevailing for U.S. workers employed by the U.S. Government in construction trades on Guam and give the best indication as to what the Guam construction wage rates would be if they were not depressed by the use of non-immigrant aliens.⁶¹

The construction wage rates are to be increased at six month intervals until September 1, 1979, at which point they will be based upon the current U.S. Navy Wage Board rates.⁶²

The regulations also provide that the final determination on the certification requests processed by the Guam Employment Service will be made by a Federal Department of Labor Certifying Officer. The requirements regarding efforts to recruit U.S. workers, and the wages and working conditions which must be offered by employers applying for certification of alien workers are set forth in detail in the regulations.

The U.S. Department of Labor also took steps to insure increased training of U.S. citizens on Guam, primarily through funds available under the Comprehensive Employment and Training Act (CETA). The CETA grant process on Guam in 1977 and 1978 was the source of considerable controversy, resulting in litigation. The following description of this legal controversy is derived from a fact sheet prepared by the U.S. Government.

During the week of December 12 [1977], [U.S. DOL] Regional Office staff assisted the staff of Guam's Agency for Human Resource Development (AHRD) prepare its Title I grant proposal for FY 78. A major element of the grant, which was signed by the Governor on December 22, provides that two-thirds of the Title I funds will be used to finance a program to train local residents for jobs in the Guam construction industry. Because it was felt it would be in the public interest to start the program as soon as possible, it was agreed that sole source procurement was in order and that a proposal suggested by the Regional Office from the Dillingham Corporation and the Operating Engineers, Local No. 3, acting jointly to conduct the training program, be considered. The Operating Engineers also will be awarded a Title III grant for \$450,000 to conduct training on Guam.

Meetings were held in the Regional Office February 21 and 22 [1978] to formalize the joint venture agreement between the Operating Engineers and the

⁶⁰ 42 Fed. Reg. 45899 (Sept. 13, 1977).

⁶¹ Ibid.

⁶² 42 Fed. Reg. 45902 (Sept. 13, 1977).

Dillingham Corporation. Representatives of major business industries on Guam, particularly in the construction field, were also invited to attend this meeting. The Guam Contractors Association sent two representatives to the meeting as observers; the Guam Employers Council (primarily composed of non-construction firms) declined to participate. As a result of the meeting, several Guam construction employers will join the joint venture. The Dillingham Corporation, now that local employers are participating, will not be part of the joint venture, although two of its subsidiaries on Guam will be members. Further meetings are scheduled in Guam the week of March 6 involving the Operating Engineers, the Guam Contractors Association and local Guam construction firms interested in training. It is expected that six or eight major construction firms will be parties to the joint venture.

The Guam Employers Council, the Black Construction Corporation and Modular Homes, Inc., have filed a formal complaint with the Secretary of Labor alleging improprieties on the part of the San Francisco ETA Regional Office and the Government of Guam in the development of the plans for training construction workers. The charges involve questioning the plans to award a grant to the joint venture rather than using an RFP; the imposition by the Department of Labor of this plan upon the Government of Guam; and discriminatory enforcement of alien labor certification procedures by the Department of Labor to coerce employers to participate in the training program. These charges are being investigated by ETA's Office of Investigation and Compliance. In addition, the same parties have filed suit in the U.S. District Court for the District of Guam against the Governor of Guam and the Secretary of Labor, seeking a preliminary injunction to stop the award of funds by Guam to the joint venture. The allegations are the same as involved in the formal complaint to the Secretary. The case is set for hearing March 8.⁶³

The case was dismissed by the District Court, and the training program is currently underway under the direction of Operating Engineers Local Union No. 3.

3. Results—1978

The number of alien workers approved and extended during the period September 17, 1977 to January 25, 1978, exceeded the number approved and extended during the preceding six-month period, when the Guam Employment Service was responsible for certification: 3,636 compared to 2,430. This was due to an upswing in construction, combined with the lack of trained domestic workers, and was not unexpected by the Department of Labor.⁶⁴

Positive results were observed with regard to the awarding of construction contracts to U.S. firms. As noted earlier, one of the concerns which led to the change in certification procedures in Guam was a charge by U.S. employers that foreign contractors were receiving most of the Navy contracts due to their advantageous situation vis-a-vis wage costs. The following contract awards had been granted by the Navy between September 1, 1977 and January 1978:

[Dollar amounts in thousands]

Country of origin of contractor	Contracts awarded	Dollar value	
		Amount	Percent
Total.....	23	\$64.8	100
United States.....	16	30.7	47
Japan.....	4	22.8	35
Taiwan.....	3	11.3	17

⁶³ U.S. Department of Labor, Employment and Training Administration, Region IX, San Francisco, "An Update on DOL programs on Guam," March 3, 1978, p. 3.

⁶⁴ Ibid., p. 2.

Similar results were noted by the Department of Labor in March, 1978.⁶⁵

Optimism has also been expressed by the local press, which voiced the hope that "our 35-year battle over the alien labor problem is at last coming to an end." Quoting from a May 1978 editorial:

Skilled craftsmen have gone to the United States to work, leaving a gap in the construction trade here. This means that whenever a contractor has work, he must import even more alien workers, perpetuating the circle.

It's possible we'll see the end of this circle, if the Labor Department can do what it has promised. It must tighten alien worker rules on the island, and enforce federal wage and hour rules in government contracts. These actions, coupled with massive training programs, may finally provide Guam with its own labor force.⁶⁶

The Department of Labor is currently funding a research project on Guam by the Center for Applied Manpower Research, Berkeley, California. At least in its planning stages, the project was to consist of "a wage survey, a survey of working conditions among imported construction workers, and an analysis of the direct and indirect socio-economic effects of efforts to raise the wages of local construction workers by raising the 'adverse' wage rates of imported construction workers."⁶⁷

F. 1978 HOUSE JUDICIARY COMMITTEE HEARINGS ON GUAM

On July 5th, Congressman Billy Lee Evans, a Member of the Subcommittee on Immigration, Citizenship, and International Law held an informal public hearing on Guam. Mr. Evans was accompanied by Subcommittee staff and a representative from the office of Congressman Antonio Won Pat, the delegate from Guam. The hearing was held in order to receive the views of interested organizations and individuals on the temporary alien labor situation on Guam. Statements were presented by businessmen, employer associations, organized labor representatives, and by federal and local governmental officials. Comments were also received from a representative of the American Civil Liberties Union and interested members of the general public. During the course of the two-hour hearing, testimony was received from some twenty witnesses and a general consensus emerged that the temporary alien labor program was in urgent need of reform. However, significant disagreement existed over the nature and extent of the reforms required. The issues explored were almost identical to those covered in the Committee's 1973 hearings, except that greater emphasis was placed on the abuses and problems associated with the alien labor program. Following is a brief summary of the views expressed during the hearing:

1. *Need for alien labor*

As expected, contrasting viewpoints were presented on the necessity for, and method of, terminating the importation of H-2 workers into Guam. Representatives from the construction industry asserted that

⁶⁵ DOL internal memo, Navy Contract Awards—Guam," ETA Region IX Regional Administrator to Acting Administrator, Office of Field Operations, Jan. 10, 1978.

⁶⁶ "Positive step coming in worker training," Editorial, *Pacific Daily News*, May 25, 1978, p. 23.

⁶⁷ Letter from Howard Rosen, U.S. Department of Labor to Dr. Curtis C. Aller, Center for Applied Manpower Research, Jan. 24, 1978.

American workers were simply not available to satisfy the labor needs of Guam's contractors and that some form of alien labor program must be continued.

According to William Hagen, President of the Guam Contractor's Association (which represents 50 local construction companies employing some 2,400 persons—60% of whom are H-2 aliens), "if you were to eliminate the H-2 program *today*, the construction industry would come to a stop" (emphasis supplied). At the same time, a phaseout of the program was supported by a majority of the witnesses, including the business community. The mechanics for implementing such a phaseout, however, remained in doubt.

Mike McClure, Executive Director of the Guam Employers Council, described the dilemma in the following manner: "I think that we would all like to see the alien labor program come to an end, but we don't have a specific answer as to how to do it."

On the other hand, representatives of the American Civil Liberties Union, Chuck Huxel and Tim Stewart, called for the termination of the H-2 program as currently administered. They noted that the importation of alien labor to fill permanent jobs undermines efforts to develop a local labor force. The ACLU officials described the program as a "last ditch effort to bring cheap alien labor to Guam."

Albert C. Meierer, Jr., Chief of the Alien Certification Section of the U.S. Department of Labor for Region IX (encompassing Guam), indicated that the September 1977 regulations represented an effort "to correct many of the adverse conditions that existed (and) to raise wages being paid for skilled occupations to a point that local Guamanians and other U.S. resident workers would then be willing to accept and work in such jobs." He described the problem in the construction industry as follows:

We found that the local workers and workers from Hawaii and the mainland were not willing to take any of the construction jobs because on Guam the wage was approximately \$3.00 an hour while the wages for the same occupation in Hawaii and the mainland would range from \$7.50 to \$10.50 per hour. We tried to establish a wage rate equal to that being paid by the Government of Guam and the U.S. Navy for civilian workers.

The local Labor Department official, Lloyd Umagat indicated that as of January 1, 1978, there were 4,897 H-2 workers in Guam out of a total work force of 33,800 persons. Two-thirds of the H-2 aliens were Filipinos and the vast majority are employed in the construction industry. Mr. Umagat described the adverse effect the 1977 DOL regulations may have on the island's agricultural self sufficiency efforts. He noted that "we do not have our people who are willing to work on the farms, especially now that (farming) has to compete with the construction rates . . . which are going up every six months." In short, Mr. Umagat concluded, "I just don't see how Guam can basically provide its own produce without the continuation of the alien labor program."

2. *Abuse of H-2 program*

Extensive testimony was presented concerning employer abuses of the H-2 program and exploitation of the workers themselves. These allegations included: fraudulent preparation of labor certification applications by employers; nonpayment of wages and overtime to, and

physical abuse of, H-2 workers; substandard housing and working conditions; and direct violation or circumvention of the laws and regulations governing the H-2 program.

Evidently, these allegations had been the subject of investigations by Federal and local officials and some recent improvements were noted. As Mike McClure stated "the alien labor worker program has been abused and badly abused by members of the employer groups." This situation, coupled with the "high threshold of abuse" in the case of most H-2 workers, requires closer scrutiny by all government agencies involved in the various aspects of the program.

Almost all witnesses recommended increased compliance efforts by INS, DOL and the local Department of Labor. In particular, increased staffing was suggested in order to improve the monitoring of: immigration violations (i.e. "moonlighting" by H-2 workers), wages and hour violations, CETA funding and OSHA regulations.

Mark Stechbart, Operating Engineers, Local 3, cited specific abuses of the H-2 program. He disagreed with Mike McClure that the level of abuse was now minimal and he maintained that "a lot of contractors live off cash flow from wages that aren't paid" to H-2 workers.

In view of the severity of the allegations made, it is clear that the Departments of Labor and Justice must give high priority to this problem. Additional compliance personnel are urgently needed to review and investigate any allegations that are received and to take corrective action where appropriate. In addition, there must be close coordination between the various agencies of government in Guam, as well as at the Regional Office level. Most importantly, the Departments of Justice and Labor in Washington must recognize the unique labor and immigration problems confronting Guam and give higher priority to addressing and resolving these problems. The pervasive feeling of isolation and neglect by the Federal Government was summed up as follows by one witness, "Guam has been forgotten for years and years and years by Uncle Sam."

Or as described by another witness:

Guam is so far out here * * * people come out and spend 2 days every 3 or 4 years to look at its' (problems). I think all Federal agencies are guilty of that. Its' only been the last year that suddenly Guam has popped out like a blossom and everybody is looking at it. But, we still are not getting the staff and enforcement people out here.

3. *New developing industries program (NDIP)—"Brain Drain"*

As noted earlier in this report, the NDIP was established in 1974 to train Guamanians to become skilled workers in certain fields of endeavor, such as farming and aquaculture. In addition to farming and fishing, 13 other "start up" industries utilized this special program: 8 garment manufacturers, a watch assembler, a gas manufacturer, a plastic manufacturer, an automobile repair business, and a greyhound racetrack.

According to several sources, progress of NDIP was greatly hampered by *Typhoon Pamela*, which struck the island on May 20, 1976, and by general economic conditions. Additionally, the garment manufacturers encountered certain problems under U.S. Customs Laws. Governor Bordallo, in a June 21, 1978 letter to the Regional Office of the Department of Labor in San Francisco urged extension of the

NDIP. In an attached proposal supporting the extension it was indicated:

It is without doubt that if the NDIP is curtailed, Guam will regress economically, and will revert back to those days when the people of Guam will be dependent once more upon the military and civilian governments, and retail businesses to find jobs. New industries will not be attracted to Guam because we lack the skilled manpower to do the job.

An extension and expansion of the program was also recommended by Mr. Umagat during the hearings, with particular emphasis placed on the farming portion of NDIP. Mike McClure maintained that Guamanians "are not given sufficient opportunity to go into different crafts and trades" and as a result are forced to go into construction as well as hotel and retail work.

Another witness, Marvin Zamora, a private contractor, commented generally on the question of training and the prospects for the future. He stated that the "local government has not had the capability to train local residents [although] we have been talking about an apprenticeship program for years—only talking—no actions or accomplishment." He added, however, that, "I think we are on the right track. We have a community college and I think it is a matter of time." Mr. Zamora then raised the possibility of losing locally-trained workers to the mainland. He warned that, "if the young man of Guam hasn't seen a favorable climate he is going to get his training, do his shop work and then fly off to the U.S."

This fear was expressed by several other witnesses. Mr. McClure summed the problem up as follows:

If we are going to give the kids on this island an opportunity to grow and work in different professions, we have to expand the (type) and number of jobs and encourage stateside companies to come out here . . . and do their own training. [Because young Guamanians don't have an opportunity] to reach out into the professions . . . a lot of brighter kids leave the island and never come back. The land of 'milk and honey' is the United States.

4. Recruitment of U.S. labor

In addition to the need for expanded training opportunities, the witnesses also discussed the related issue of recruiting American workers to Guam to satisfy their labor needs. Once again, conflicting views were expressed as to the desirability and possible outcome of such recruitment efforts.

For example, the contractors claimed that under the wage structure, "we cannot afford to bring them in." Mr. Stechbart countered by stating that:

You pay the wage to get people to work; you don't rely on H-2 aliens at a very low wage scale when you have people in Hawaii and the mainland that are willing and able to work * * * they shouldn't turn toward Asia; they ought to turn to the rest of the United States.

Mr. Zamora cited "climate" as an additional factor discouraging mainland recruitment. According to him, "You bring an American worker out here and I don't care how efficient he is, the weather will get him after 3 months. I've seen it happen time and again." He discounted the fact that local wages hinder recruitment and added that Filipino workers are the only ones accustomed to Guam's heat and humidity.

With regard to recruiting local labor, Mr. Meierer indicated that the U.S. Labor Department "is trying to get the wages up to where the local worker will be enticed to go out into the hot weather and work rather than sit in an air-conditioned office."

A teacher who migrated from the mainland to Guam in 1973 supported the Labor Department's position with the following statement:

I disagree with the statement * * * that you cannot import American workers * * * You can bring people over but the only thing you have to do is pay them * * *. It's going to be very painful on the contractors who have to pay them and painful on the consumer who actually has to bear the brunt and carry the cost. The Department of Defense has done it and it's taken years and I think the local private sector can do that also.

5. *Foreign competition*

The competitive advantage enjoyed by foreign companies was cited by many witnesses as a justification for maintaining lower wage scales. In addition to the competition provided by foreign contractors, small homebuilders complained of the adverse impact caused by some 2500-3000 illegal aliens.

According to Mr. McClure, foreign companies received an overwhelming proportion of construction contracts in the past because "they could figure out ways to get around U.S. laws relative to wages" and working conditions. Similar problems confront the hotel industry and were described as follows by a local immigration attorney: "Our hotels compete with Asian hotels for the Japanese trade. We do not compete with Honolulu, San Francisco and Seattle and when we increase wages too dramatically . . . we put these hotels out of business and eliminate jobs."

John Taitano, President of Guam's Association, expressed his deep concern that an estimated 3,000 illegal aliens are "siphoning" contract work from small builders on the island. He observed that a large number of small companies have closed down because of (1) labor competition from illegal aliens and (2) the recently-instituted formula for setting wages in the construction industry.

6. *Recommendations by witnesses*

Following is a list of the major recommendations made by the various witnesses during the course of the hearing:

(a) Congress should actively consider whether a separate immigration policy should be established for Guam.

(b) Federal enforcement and compliance activities should be strengthened and expanded and additional personnel should be provided.

(c) Existing immigration laws regarding H-2 aliens and illegal aliens should be enforced and additional INS personnel (investigators, adjudicators and immigration judges) should be authorized.

(d) Congress should consider regularizing the status (granting permanent residence) of those H-2 aliens who have worked on Guam for long periods of time and who have specialized skills.

(e) The NDIP should be extended for another year and expanded to other industries.

(f) The H-2 program should be phased-out completely or should be strictly limited to those jobs which are "temporary" in nature.

(g) U.S. companies should be actively encouraged to relocate to Guam.

(h) Allegations of abuses of the H-2 program should be vigorously investigated by Federal and local agencies.

(i) Training programs in construction and other industries must be carefully designed and financially supported by the Federal and local Departments of Labor.

(j) Guamanians, as well as U.S. workers in Hawaii or on the mainland should be actively recruited to satisfy Guam's labor needs and wages should be increased in order promote such recruitment.





