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1st Session }

HOUSE OF REPRESENTATIVES

REPORT
No. 97-307

COMPLETED

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT
ACT OF 1981

ORIGINAL

OCTOBER 29, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MAZZOLI, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 3517]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3517) to authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE AND FINDINGS

SECTION 1. (a) This Act may be cited as the "Virgin Islands Nonimmigrant Alien Adjustment Act of 1981".

(b) Congress finds—

(1) that in order to eliminate the uncertainty and insecurity of aliens who—

(A) legally entered the Virgin Islands of the United States as nonimmigrants for employment under the temporary alien labor program,

(B) have continued to reside in the Virgin Islands for long periods (some for as long as 20 years), and

(C) have contributed to the economic, social, and cultural development of the Virgin Islands and have become an integral part of the society of the Virgin Islands,

it is necessary and equitable to provide for the orderly adjustment of their immigration status to that of permanent resident aliens; and

(2) because—

(A) the Congress has special responsibility and authority with respect to the territories and the establishment of immigration policy, and

(B)(i) the Virgin Islands is a small and densely populated insular territory with limited resources,

(ii) most of the aliens eligible for benefits under section 2 of this Act are natives of islands in the Caribbean and have relatives residing in such islands, and such relatives, if they were permitted to immigrate to the United States, are likely to settle in the Virgin Islands, and

(iii) the admission of a significant number of these relatives would have a severe and detrimental impact on the limited health, education, housing, and other services available in the Virgin Islands, there is a necessary and compelling need to prevent a secondary migration of a significant number of such relatives to the Virgin Islands.

ADJUSTMENT OF IMMIGRATION STATUS

SEC. 2. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

(1) makes application for such adjustment during the one-year period beginning on the date of the enactment of this Act,

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except for the grounds of exclusion specified in paragraphs (14), (20), (21), (25), and (32), of section 212(a) of the Immigration and Nationality Act (hereinafter in this Act referred to as "the Act"), and

(3) is physically present in the Virgin Islands of the United States at the time of filing such application for adjustment.

If such an alien has filed such an application and is or becomes deportable for failure to maintain nonimmigrant status, the Attorney General shall defer the deportation of the alien until final action is taken on the alien's application for adjustment.

(b) The benefits provided by subsection (a) apply to any alien who—

(1) was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker under section 101(a)(15)(H)(ii) of the Act or as a spouse or minor child of such worker, and

(2) has resided continuously in the Virgin Islands of the United States since June 30, 1975.

(c)(1) The numerical limitations described in sections 201(a) and 202 of the Act shall not apply to an alien's adjustment of status under this section. Such adjustment of status shall not result in any reduction in the number of aliens who may acquire the status of an alien lawfully admitted to the United States for permanent residence under the Act.

(2) The Secretary of State, in his discretion and after consultation with the Secretary of the Interior and the Governor of the Virgin Islands of the United States, may limit the number of immigrant visas that may be issued in any fiscal year to aliens with respect to whom second preference petitions (filed by aliens who have had their status so adjusted) are approved.

(3) Notwithstanding any other provision of law, no alien shall be eligible to receive an immigrant visa (or to otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence)—

(A) by virtue of a fourth or fifth preference petition filed by an individual who had his status adjusted under this section unless the individual establishes to the satisfaction of the Attorney General that exceptional and extremely unusual hardship exists for permitting the alien to receive such visa (or otherwise acquire such status); or

(B) by virtue of a second preference petition filed by an individual who was admitted to the United States as an immigrant by virtue of an immediate relative petition filed by the son or daughter of the individual, if that son or daughter had his or her status adjusted under this section.

(4) For purposes of this subsection, the terms "second preference petition", "fourth preference petition", "fifth preference petition", and "immediate relative petition" mean, in the case of an alien, a petition filed under section 204(a) of the Act to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 203(a)(4), 203(a)(5), or 202(b), respectively, of the Act.

(d) Except as otherwise specifically provided in this section, the definitions contained in the Act shall apply in the administration of this section. Nothing contained in this Act shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Act or any other law relating to immigration, nationality, and naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section

shall not preclude him from seeking such status under any other provision of law for which he may be eligible.

TERMINATION OF TEMPORARY WORKER PROGRAM IN THE VIRGIN ISLANDS

SEC. 3. Notwithstanding any other provision of law, on and after the date of the enactment of this Act the Attorney General shall not approve any petition filed under section 214(c) of the Act in the case of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii) of such Act for employment in the Virgin Islands of the United States.

IMPACT ASSESSMENT AND REPORT

SEC. 4. The Secretaries of Health and Human Services, Education, Housing and Urban Development, Labor, and the Interior, and the Attorney General, in consultation with officials of the Government of the Virgin Islands of the United States and within such amounts as may otherwise be available through appropriations, shall jointly assess the impact on the Government of the Virgin Islands of providing health, education, housing, and other social services to individuals whose status is adjusted under section 2 of this Act (and to relatives of such individuals who enter the Virgin Islands as a result of such adjustment) and the need for assistance to the Government of the Virgin Islands to assist it in meeting the needs of these individuals and relatives. They shall, within one year after the date of the enactment of this Act, report to the President and the Congress on the results of their assessment and on any recommendations for changes in legislation which may be appropriate.

PURPOSE OF THE BILL

The purpose of the bill is to authorize the granting of lawful permanent resident status to certain nonimmigrant alien (H-2) workers and their families who reside in the U.S. Virgin Islands and to require the Secretaries of various Federal Departments, in consultation with officials of the Virgin Islands, to assess, and issue a report on, the impact on the Government of the Virgin Islands of providing needed services to individuals whose status has been adjusted under this bill.

HISTORY OF LEGISLATION—PRIOR TO 97TH CONGRESS

1975 report of immigration subcommittee

Following a trip to the Virgin Islands by the Immigration Subcommittee, a special Committee report was issued describing in detail the background of the problem and making various findings and recommendations to resolve the problem.¹ These findings and recommendations included:

1. H-2 aliens had become a vital and integral part of the U.S. Virgin Islands labor force.
2. Because of this fact, and based on their contributions to social and economic life in the Islands there was a moral obligation to provide permanent resident status to those H-2 workers and their families who have established substantial equities while working and residing there over the years; and
3. Legislation to regularize their status should be enacted, separate and apart from general immigration legislation.

1976 subcommittee hearings and legislation

Legislation was introduced in 1976 with the full support and cooperation of the Honorable Ron deLugo, the Delegation from the Virgin Islands.

¹ "Nonimmigrant Alien Labor Program on the Virgin Islands of the United States", Committee on the Judiciary, 94th Cong., 1st Sess., October 1975.

The bill would have established a Commission to individually adjudicate the status of the H-2 workers and to grant permanent residence based on the equities in each case. The equities set forth in the bill included: length of residence, employment history, immigration history, and the alien's contributions to the Islands.

During two days of hearings held in March 1976, the Ford Administration opposed the legislation preferring instead to adopt a blanket regularization program for all H-2 workers.² No further action was taken on the legislation.

97TH CONGRESS

On May 12, 1981, Congressman Ron deLugo of the Virgin Islands, along with 30 co-sponsors, introduced H.R. 3517. The bill was considered by the Subcommittee on Immigration, Refugees, and International Law during one day of hearings on June 18, 1981. During the hearing the Subcommittee heard testimony from the Departments of State, Justice, Labor and the Interior, as well as from the bill's chief sponsor, Congressman deLugo; the Governor of the Virgin Islands, Juan Luis; and various public and community Virgin Islands representatives.

The Subcommittee marked up the bill on October 6, 1981, and adopted an amendment in the nature of a substitute. That same day, H.R. 3517, as amended, was favorably reported to the full Committee by voice vote.

COMMITTEE VOTE

On October 27, 1981, the full Committee, by roll call vote of 20-0, ordered H.R. 3517, as amended, favorably reported to the House.

ANALYSIS OF THE LEGISLATION—ADJUSTMENT OF STATUS

H.R. 3517 would allow an alien who was admitted to the U.S. Virgin Islands as a temporary worker, and who has resided in those islands continuously since June 30, 1975, to have his status adjusted to that of lawful permanent resident of the United States.

The alien's spouse and minor children could also adjust under the bill if they, like the alien worker, have met the specified residence requirement. No alien may have his status adjusted if he is found to be excludable from the United States under the Immigration and Nationality Act. The Justice Department estimates that up to 7,360 aliens would be eligible for adjustment of status under the bill.

PREFERENCE SYSTEM RESTRICTIONS

Under U.S. immigration law over 300,000 immigrant visas per year are made available to relatives of U.S. citizens and lawful permanent residents. These visas, which are allocated under what is called the "preference system," are not be issued unless the U.S. citizen or lawful permanent resident files a petition with the Immigration and Naturalization Service requesting the admission to the United States of the alien relative.

² Hearings on Alien Labor Programs in the U.S. Virgin Islands, H.R. 11261, Committee on the Judiciary, 94th Cong., 2nd Sess. Ser. No. 50, March 11 and 31, 1976.

H.R. 3517 places certain restrictions on the ability of individuals whose status is adjusted under the bill to utilize the preference system. Specifically, the bill gives the Secretary of State discretionary authority to limit the number of immigrant visas that may be issued to aliens who are the spouses or unmarried children of aliens who become lawful permanent residents pursuant to this bill. Similarly, aliens who eventually become U.S. citizens pursuant to this bill will be unable to effectuate the admission of their married children or siblings unless they show that the denial of this ability would, under the facts of the particular case, result in exceptional and extremely unusual hardship.

The Committee is convinced that these restrictions are necessary to prevent a further influx of new immigrants to the already overpopulated and resource-strained U.S. Virgin Islands.

Preference system restrictions of the type contained in H.R. 3517 are without precedent in U.S. immigration law. In considering these novel restrictions, the Committee obtained legal memoranda discussing the constitutional issues which these restrictions could conceivably raise. Such memoranda were supplied by the Congressional Research Service, the Immigration and Naturalization Service, and the Office of Legal Counsel in the Department of Justice. According to the memoranda, the most prominent legal issues posed by H.R. 3517 involved equal protection (i.e. the right to be free of discriminatory or arbitrary treatment) and the constitutional right to travel.

With respect to the right to travel, as originally introduced, H.R. 3517 would have allowed aliens affected by the bill to regain their preference system petitioning powers by moving to the United States and living there continuously for two years. This provision, although deemed by the legal memoranda to be constitutional, was deleted by the Committee.

Each of these three memoranda concluded that the most likely constitutional challenge remaining, one based on equal protection, would not succeed. In reaching this conclusion the memoranda pointed variously to the plenary power of Congress in immigration matters, the general reluctance of the courts to examine Congress alien admissions policies, and the important governmental purposes served by the restrictions.

TERMINATION OF TEMPORARY WORKER PROGRAM

H.R. 3517 terminates the temporary worker program in the U.S. Virgin Islands. The Committee is convinced that for the foreseeable future no labor shortages requiring the importation of alien temporary workers will exist. Accordingly, the Committee finds it reasonable and proper to relieve the Secretary of Labor of authority with respect to this matter. Should current circumstances sufficiently change, Congress could reexamine its decision to terminate the program.

IMPACT ASSESSMENT AND REPORT

The bill also provides for a report to Congress and the President on the impact on the U.S. Virgin Islands of providing needed services to aliens whose status has been adjusted or who have been permitted to immigrate as a result of the bill. This report, includ-

ing recommendations, is to be the joint product of the specified Department Secretaries, the Attorney General, and Virgin Islands officials. Funding for these activities is to be derived only from otherwise available appropriations.

SECTION-BY-SECTION ANALYSIS OF H.R. 3517

Section 1(a) states that this Act may be cited as the "Virgin Islands Nonimmigrant Adjustment Act of 1981."

Section 1(b) expresses the findings of Congress, to wit: that the aliens addressed by this Act have been in the U.S. Virgin Islands for many years; that they have become an integral part of their society and should be given the opportunity to become lawful permanent residents; that the Virgin Islands is a small territory with limited resources; and that in accordance with Congress' special authority for the welfare of U.S. territories, it is necessary for Congress to prevent a further influx of significant numbers of aliens into the Virgin Islands by limiting the ability of those whose status is adjusted under this bill to file immigrant visa petitions for their alien relatives.

Section 2(a) of the Bill provides for the adjustment of status of any alien described in subsection 2(b) of the Bill to that of lawful permanent resident alien if application therefor is made within one year of the Bill's enactment, and is otherwise eligible to receive an immigrant visa and (with certain exceptions) is otherwise admissible to the United States for permanent residence, and is physically present in the Virgin Islands of the United States at the time the application is filed.

Section 2(b) applies the benefits noted in Sec. 2(a) to any alien who was inspected and admitted to the Islands as a nonimmigrant alien worker under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (INA) or the spouse or minor child of such worker; and has resided continuously in the Islands since June 30, 1975.

Section 2(c)(1) excludes adjustments under this Bill from the numerical limitations of Sections 201(a) and 202 of the INA and forecloses any reduction in the number of aliens who may acquire lawful permanent residence status under the INA by reason of this Bill.

Section 2(c)(2) provides the Secretary of State with discretionary authority (after consultation with the Secretary of the Interior and the Governor of the Virgin Islands) to limit the number of immigrant visas that may be issued in any fiscal year to aliens who are beneficiaries of second preference petitions filed by persons who have adjusted status under this bill.

Section 2(c)(3) denies (with certain exceptions) an immigrant visa (or adjustment of status to lawful permanent resident) to any alien by virtue of a fourth or fifth preference petition filed by an individual who had his status adjusted under this section. Similar benefits are denied an alien for whom a second preference petition is filed by an individual admitted to the United States as an immigrant on the basis of an immediate relative petition filed by the individual's son or daughter, who, in turn, had his or her status adjusted under this section.

Section 2(c)(4) is a technical section relating descriptive terms to specific sections of the INA.

Section 2(d) is a general savings clause.

Section 3 is a blanket provision prohibiting the Attorney General from approving any petition filed in the case of the importation of any temporary worker under section 101(A)(15)(H) (ii) of the INA for employment in the U.S. Virgin Islands.

Section 4 directs the Secretaries of HHS, HUD, Labor, and the Interior, and the Attorney General, in consultation with Government officials of the Virgin Islands, to assess the social and economic impact of this Act on the Virgin Islands, and report their findings and recommendations to the President and Congress within one year of this bill's enactment.

DEPARTMENTAL POSITION

The Administration supports passage of the bill. A copy of statements by Ambassador Diego C. Asencio, Assistant Secretary for Consular Affairs, Department of State, David O. Williams, Administrator, U.S. Employment Service, U.S. Department of Labor, and a Statement of Billy Lee Hart, Acting Deputy Assistant Secretary (Operations), Territorial and International Affairs, Department of Interior, regarding the bill follow:

STATEMENT OF AMBASSADOR DIEGO C. ASENSIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear before you today to present the department's comments on H.R. 3517, and on the situation in the United States Virgin Islands.

The Department of State has been involved in this situation over the years only on a collateral basis, since the so-called "off-island" workers, who have been admitted to the Virgin Islands, have been exempt from the visa requirement. Thus, the process of documenting these workers and of processing their applications for admission and stay in the islands has been handled by the Departments of Justice and Labor without the operational participation of the Department of State. However, the Department has had an interest in the situation because the ability of these workers to continue their employment in the United States Virgin Islands has been of fundamental economic importance for the British, French, and independent islands whence they came. Therefore, any action which would alter the existing state of affairs has implications for these other islands and, thus, implications which concern us.

These off-island workers have lived and worked in the United States Virgin Islands for years. They have developed enduring economic, social and family ties there, yet under existing immigration law they have no real chance of obtaining legal resident status. It is the Department of State's view that, in general, the provisions of this Bill, H.R. 3527, supply the best solution for this knotty problem which has long been a source of concern for the people and Government of the Virgin Islands and the Government of the United States.

Section 2(a) of the bill provides for the adjustment of status of any alien described in subsection 2(b) of the Bill to that of lawful permanent resident alien if application therefor is made within one year of the bill's enactment, and is otherwise eligible to receive an immigrant visa and (with certain exceptions) is otherwise admissible to the United States for permanent residence, and is physically present in the Virgin Islands of the United States at the time the application is filed.

Section 2(b) applies the benefits noted in Sec. 2(a) to any alien who was inspected and admitted to the islands as a nonimmigrant alien worker under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (INA) or the spouse or minor child of such worker, and has resided continuously in the Islands since June 30, 1975.

Section 2(c)(1) excludes adjustments under this Bill from the numerical limitations of Section 201(a) and 202 of the INA and forecloses any reduction in the number of aliens who may acquire lawful permanent residence status under the INA by reason of this Bill.

The Department supports these provisions.

Section 2(c)(2) provides the Secretary of State with discretionary authority (after consultation with the Secretary of the Interior and the Governor of the Virgin Islands) to limit the number of immigrant visas that may be issued in any fiscal year to aliens who are beneficiaries of petitions filed by persons who have adjusted status under this bill. Discretionary authority such as this could result in frivolous, but extensive litigation against the Secretary for exercising this discretion in an allegedly discriminatory manner. The Department therefore cannot support this provision.

Section 2(c)(3) denies (with certain exceptions) an immigrant visa (or adjustment of status to lawful permanent resident) to any alien by virtue of a fourth or fifth preference petition filed by an individual who had his status adjusted under this section. Similar benefits are denied an alien for whom a second preference petition is filed by an individual admitted to the United States as an immigrant on the basis of an immediate relative petition filed by the individual's son or daughter. Who, in turn, had his or her status adjusted under this section. Once again this provision may open the gateway to litigation, particularly by citizens who file fourth or fifth preference petitions, to claim discrimination and a denial of due process under the 14th Amendment to the Constitution. The Department cannot support this provision, which, in its effect, would establish a second-class citizenship.

It should be noted that the provisions of section 2(c)(3) could not become operative for three to five years after the acquisition of lawful permanent resident status.

One final thought on these provisions. If the Congress retains its intention to enact them denial action should be taken at the time of petitioning, not at the time of visa issuance.

Section 2(c)(4) is a technical section relating descriptive terms to specific sections of the INA.

Section 2(D) is a general savings clause.

Section 3 is a blanket provision prohibiting the Attorney General from approving any petition filed in the case of the importation of any temporary worker under section 101(A)(15)(H)(II) of the INA for employment in the U.S. Virgin Islands. The Department of State defers to the Departments of Justice and Labor on this provision.

Section 4 of the Bill establishes an Interagency Task Force on Virgin Islands Immigration. Although believing there may be a less expensive solution to the problem posed therein, the Department of State defers in its views to those of the Departments named in that Section.

Once again, may I express my appreciation for the opportunity, extended to us by the Subcommittee, to present the views of the Department of State.

Thank you, Mr. Chairman and members of the subcommittee.

STATEMENT OF DAVID O. WILLIAMS, ADMINISTRATOR, U.S.
EMPLOYMENT SERVICE, U.S. DEPARTMENT OF LABOR

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 3517, the Virgin Islands Nonimmigrant Alien Adjustment Act of 1981. The Department of Labor defers to the other Federal agencies with respect to those provisions of H.R. 3517 that affect their jurisdiction and responsibilities. I shall therefore restrict my comments to those provisions in this bill that relate to the Department of Labor's responsibility for labor certifications of nonimmigrant aliens for temporary services or labor (H-2's) in the U.S. Virgin Islands.

As the Subcommittee is aware, the current H-2 situation in the U.S. Virgin Islands is the result of sui generis conditions that go back many years. Briefly stated, a long history of inter-island travel and labor migration prior to the application and enforcement of U.S. immigration laws, severe labor shortages during World War II, and a postwar U.S. Virgin Islands policy of rapid economic growth, in a time of very low unemployment, combined with a series of changes in U.S. immigration laws to produce a large influx of aliens and an unusual H-2 situation. By 1970, the population of the Virgin Islands (62,468) had almost doubled since 1960, the alien population had more than quadrupled (rising from 3,826 in 1960 to 18,928 by 1970), and foreign workers constituted almost half of the Virgin Islands labor force. Many of these nonimmigrant workers had been employed in the Virgin Islands for a number of years.

In order to ameliorate a situation of deteriorating labor conditions and inadvertent economic dependency on foreign labor, the Department sought to integrate these nonimmigrant workers into the Islands' permanent labor force. During the late 1960s, when changes in the Immigration and Nationality Act increased the number of avail-

able immigrant visas, this Department issued permanent labor certifications to H-2 workers employed at prevailing wage rates in permanent jobs in the Virgin Islands economy. A total of 13,466 permanent labor certifications were issued by the end of fiscal year 1969.

The current H-2 situation reflects special procedures set down by the Department in May 1970 to deal with the large number of H-2s for whom permanent labor certifications were granted but immigrant visas were not yet available. To enable these H-2s to remain employed in the Virgin Islands, the Department also issued them indefinite certifications for employment in the Virgin Islands as nonimmigrants. These nonimmigrant workers have also been free to change employers, provided that the new jobs meet prevailing wage rates, and that no more than 60 days have lapsed between Department-approved jobs.

During the past decade, the number of nonimmigrant workers in the Virgin Islands has progressively declined, as immigrant visas became available or job opportunities declined. Most labor certification activity has consisted of renewals of nonimmigrant labor certifications of the kind I have previously mentioned—that is, most certifications have been approvals of job changes. For example, by 1977, the Department's Alien Certification Office in St. Thomas estimated that there were only 6,200 H-2 workers in the Virgin Islands, and an additional 5,600 H-2 spouses and children.

In fiscal year 1980, the Department issued 2,302 labor certifications for employment in the Virgin Islands. Approximately 95 percent were renewals. The remainder were permanent certifications for permanent resident visas or temporary certifications for H-2s admitted for temporary jobs, such as entertainers, with certifications generally issued for 60 days.

Nonimmigrant labor certifications of the group of alien workers who were granted permanent labor certification before 1970 are renewed only if the alien seeks a new job. Because the Virgin Islands program has been a part of our computerized data system for only about two years, cumulative data on labor certifications are available only through a manual check of files. Data from the 1978 INS Annual Report, however, suggest that relatively few aliens remain in nonimmigrant status. Of the 22,449 aliens who reported under the alien address system, 13,353 were immigrants. We understand that about half of the remaining 9,096 are H-2s and H-4s.

Our New York Regional Office estimates that only about 100 certifications have been issued for newly arriving aliens since June 30, 1975. We believe, therefore, that virtually all the H-2s and the H-4s currently residing in the Virgin Islands would be eligible for the benefits provided by the section 2 of H.R. 3517.

I would like to turn to certain provisions of the bill affecting the Department of Labor. Section 2 of H.R. 3517 would authorize the granting of permanent resident alien

status to aliens admitted as H-2s or as an H-2 spouse or minor child, if they have resided continuously in the U.S. Virgin Islands since June 30, 1975. Such an adjustment of status would obviate the need for indefinite special H-2 certifications. We believe that this provision is a fair and equitable solution to the problem of aliens whose status has been in limbo for many years because of the unavailability of preference numbers. These aliens have established roots in the Virgin Islands and have contributed to its social and economic development.

Section 3 of the bill would terminate the H-2 program for the Virgin Islands. It may be useful to point out that, under such an extension as contemplated by section 3, only aliens of distinguished merit and ability (H-1s) and industrial trainees (H-3s) would be admissible for temporary employment in the Virgin Islands. Aliens not qualifying as H-1s or H-3s now admissible for temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found (H-2s), would no longer be admitted in the U.S. Virgin Islands. The Department of Labor believes the resulting effect of this provision would be premature. The Immigration and Nationality Act incorporates territories as "States" for coverage purposes through the provisions of sections 101(a) (36) and (38). As such, the H-2 program is operable in the various territories. While we recognize that historically the Virgin Islands has had particular labor force considerations, we do not believe that a special immigration policy, as provided by section 3 of the bill, should be enacted absent full consideration of the broader policy question of how territories should be treated under the Act.

Section 4 of the bill would establish an Interagency Task Force on Virgin Islands Immigration to analyze the impact on the government of the Virgin Islands of this legislation. In our view, the purposes of this provision could be accomplished by increased interagency cooperation. The Department of Labor would be pleased to provide whatever assistance may be needed which is within its expertise.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

STATEMENT OF BILLY LEE HART, ACTING DEPUTY ASSISTANT SECRETARY (OPERATIONS), TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to be here today to express the views of the Department of the Interior on H.R. 3517, a bill that would adjust the status of a number of alien workers who have been long-term residents of the United States Virgin Islands.

THE PROBLEM

In the 1950s and 1960s, a large number of alien workers were imported into the United States Virgin Islands to relieve an acute labor shortage. At that time there was

insufficient local labor to fill the jobs created by that era's economic boom. These alien workers entered the Virgin Islands under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, which allows entry into the United States of nonimmigrant aliens for temporary periods of time to work at temporary jobs. The spouses and minor children of many of these workers entered the Virgin Islands under the so-called H-4 provision. The temporary jobs soon evolved into permanent jobs and the Virgin Islands became the permanent home for these workers and their families.

The alien worker problem in the Virgin Islands did not become acute until the end of the 1960s when the economic boom lost its momentum and periods of recession were experienced. Job competition among alien laborers and with United States citizens intensified. Despite strong ties with the Virgin Islands, many were forced to return to their countries of origin due to lack of work. The insecurity caused by this tenuous status has reputedly made these nonimmigrants, with strong ties in the Virgin Islands, ripe for exploitation.

THE BILL

H.R. 3517 presents a viable solution to this long-standing immigration problem in the Virgin Islands. We recommend enactment of H.R. 3517 with the amendments I will outline shortly.

Section 2 of H.R. 3517 would establish a mechanism whereby the Attorney General may adjust the status of a qualified nonimmigrant alien in the Virgin Islands to that of an alien lawfully admitted for permanent residence in the United States. Section 2 also contains provisions for the potential limitation on the granting of immigrant visas to relatives of an individual who has his status adjusted under H.R. 3517.

Section 3 of H.R. 3517 would repeal applicability of the temporary alien worker program in the Virgin Islands under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

Section 4 would establish a task force with an authorization of \$100,000 to examine the impact on the Government of the Virgin Islands of providing health, education, housing, and other social services to individuals who have their status adjusted under section 2 of the bill.

THE INTERIOR RECOMMENDATIONS

The Department of the Interior recommends enactment of section 2. That section with its objective mechanism for adjusting the status of Virgin Islands nonimmigrant alien workers and their families to that of permanent residents of the United States presents a viable solution to the immigration problem that has long plagued the Virgin Islands.

The Department of the Interior does not recommend enactment of section 3 at this time. We note that the temporary worker program is not needed in the Virgin Islands at this time. If, in the future, a shortage of labor should develop in the Virgin Islands, the problem could probably be met by the importation of United States citizens from Puerto Rico or the 50 States. Therefore, assuming the United States labor supply is sufficient reactivation of the (H)(ii) program for the Virgin Islands may not be necessary.

Notwithstanding the fact that the (H)(ii) program is not being used in the Virgin Islands at present, and the further fact that the Virgin Islands labor needs in the future could probably be met by United States resources, we nevertheless recommended that access to the program by the Virgin Islands not be foreclosed. The program should be kept as a stand-by alternative should the United States labor supply prove insufficient to meet Virgin Islands needs. While it may be desirable to modify the program, we agree with the Department of Labor that we should not legislate a special policy for the Virgin Islands until consideration of the broader policy question of the treatment of the territories under immigration law is resolved.

As to the section 4 provision for a task force that would assess the impact of this bill on the Government of the Virgin Islands, we believe that the Government of the Virgin Islands itself is capable of, and should be responsible for, assessing any impact. We see no need to establish a new task force and spend an additional \$100,000 for this purpose. We recommend, therefore, that section 4 of H.R. 3517 be deleted.

CONCLUSION

We support section 2 of H.R. 3517—the heart of the bill—because it is the best solution to this persistent immigration problem that we have seen. We appreciate the opportunity to present our views on the bill.

STATEMENT OF ANDREW CARMICHAEL, ASSOCIATE COMMISSIONER, EXAMINATIONS, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman, members of the committee, I am pleased to be here today to testify on H.R. 3517, a bill to provide for the adjustment of status of certain alien workers who have for some years lived and worked in the United States Virgin Islands.

H.R. 3517 addresses a problem that has its roots in the acute labor shortage in the U.S. Virgin Islands in the 1950's. An economic boom on the islands created thousands of tourist-related and industrial jobs which could not be filled by the local labor market. In 1956, therefore, a temporary worker program was instituted. Initially, only British subjects who resided in the British Virgin Islands could enter under the program, and they could perform only certain kinds of labor. In 1959, the program was

expanded to include workers from the British, French, and Netherlands West Indies. By the early 1960's the program's original geographical and occupational restrictions had been abandoned. By the late 1960's, over 13,000 temporary workers had entered the U.S. Virgin Islands under the program. Nonimmigrants were then estimated to constitute 45 percent of the labor market, and to hold up to 90 percent of the construction jobs and 60 percent of the so-called "service" jobs.

Although these workers entered as nonimmigrants, under a "temporary" worker program, it soon became obvious that they in fact were permanent workers, or at least that their stays in the United States would be of indefinite duration. The Department of Labor recognized this reality in 1970, when it issued a policy statement authorizing these aliens to be indefinitely certified for employment in the U.S. Virgin Islands. However, they continued to be admitted as nonimmigrants.

In the 1970's the situation in the Virgin Islands began to change. Economic conditions worsened, and for the first time since the institution of the temporary worker program, unemployment became a problem. In response, the Department of Labor in 1973 announced that it would issue no more "H-2" temporary work certifications to persons who had not been previously certified. As a result of this policy, the number of temporary workers in the U.S. Virgin Islands now hovers around 2,000.

The problem addressed by H.R. 3517 is how to now handle the temporary workers still in the Virgin Islands. Although, as indicated above, these aliens were technically admitted as temporary workers, in fact their work was usually of a permanent nature, and many of the aliens who would be affected by the bill have now lived in the U.S. Virgin Islands for many years. They have raised their families there, and many have had United States citizen children. They entered to perform labor no one else then on the islands could, or would, perform. Yet their status has always been tenuous; despite their strong ties to the islands, they have had no permanent right to remain there. H.R. 3517 would give some of these workers, and their immediate families, that right.

H.R. 3517 would allow an alien who was admitted to the U.S. Virgin Islands as a temporary worker, and who has resided in those islands continuously since June 30, 1975, to have his status adjusted to that of a lawful permanent resident of the United States, subject to certain conditions. His spouse and minor children could also adjust under the proposed law. The Department views this bill as an appropriate method of regularizing the status of aliens who have made their homes in the United States, and who have over the years made valuable contributions to the economy of the U.S. Virgin Islands.

The burden on the government in processing these adjustments would be manageable. It is estimated that less than 5,600 persons would be adjusted under the proposed

law, including workers presently in status and their spouses and children, applicants for suspension of deportation, and aliens who have been awaiting visa numbers to adjust their status. Approximately 1,850 of those adjusted would be "H-2" workers currently in status, 2,000 would be the spouses and children of these workers, 1,050 would be former "H-2" workers with pending suspension of deportation applications, and 600 would be former "H-2" workers eligible for adjustment under section 245 of the Act, but awaiting visa numbers.

Processing the adjustment applications would take an additional 10 employees, four CS-11 examiners and six GS-4 clerk-typists. Present INS employees could be detailed to the Virgin Islands for this project. The total cost of the program would be approximately \$100,000, and it would take approximately nine weeks.

As the people who would adjust under the bill have already been living in the U.S. Virgin Islands for some years, the immediate impact on social services provided by the Virgin Islands government should not be great. If these people begin to bring in other relatives, however, the burden on social services may grow.

At the same time H.R. 3517 responds to the needs of persons who previously entered as temporary workers, it also puts an end to a program that is no longer necessary. Given the present economic climate in the U.S. Virgin Islands, and the continuing presence of individuals willing and able to perform any required labor, we think that statutory termination of the so-called temporary worker program is appropriate.

However, we are concerned that section 3 of the bill goes too far. This section is entitled "Termination of Temporary Worker Program in the Virgin Islands," which would indicate that the section's intent is simply to put an end to the special worker program in the Virgin Islands, through which, in practical effect, aliens coming to work permanently entered on nonimmigrant "H-2" visas. The actual language of the section, however, is so broad that no "H-2" worker could, after enactment, enter the Virgin Islands for employment, even of a truly temporary nature. If this is in fact what is intended by the bill, we think it is ill-advised, as there may be times when bona fide temporary workers legitimately could be needed on the islands. We recommend that section of the bill be changed so that "H-2" workers are not actually banned in the islands, but rather are admitted only in strict accordance with section 101(a)(15)(H)(ii) of the Act—that is, that they be admitted only for work that really is temporary.

We are somewhat concerned about sections 2(b)(2) and 2(b)(3) of H.R. 3517. These provisions of the bill seek to avert an influx into the Virgin Islands of the relatives of those adjusted under the bill. The reasoning behind these provisions is clear. It is feared that if the status of thousands of aliens is adjusted under the proposed law, many thousands more will eventually enter as the relatives of

those adjusted. These concerns are especially acute in the U.S. Virgin Islands because of the very small size of the islands (a combined land area of approximately 130 square miles, and an estimated population of less than 100,000), and because schools, hospitals, and other social services are already heavily overburdened.

Despite the rationale for these sections of the bill, the possible constitutional questions raised by it should be considered. These will be discussed in more detail in a formal bill report. I wish to point out to the Committee today, however, that we know of no statutory precedent for conditioning the ability of citizens to bring in relatives upon the place where the citizens live, or the method by which they originally became lawful permanent residents. Moreover, enacting such a law now could set a bad precedent.

We also question the need for these provisions. Many of the persons who would be adjusted under the proposed law come not from independent nations, but from colonies or dependent areas of foreign states, such as the British Virgin Islands. Immigration from any one colony, component or dependent area of a foreign state is strictly limited by the immigration laws to 600 persons a year. Thus, unless this small statutory quota is raised, or the colonies gain their independence, we do not anticipate huge numbers of aliens entering the United States as the relatives of persons adjusted under the bill.

The impact of this bill will also be lessened because most of those adjusted under it will not be eligible for citizenship until five years after adjustment. Some will choose not to seek naturalization after they become eligible. Thus, visa petitions under the fourth and fifth preferences, which can only be filed by citizens, will not begin to be filed until years after enactment of this bill, and even then, their numbers will probably be limited.

In view of the likely judicial challenge to the provisions, and our belief that elimination of the provisions would not have a huge impact on immigration in the U.S. Virgin Islands, we recommend that these provisions be deleted.

Except for the reservations I have expressed regarding certain portions of H.R. 3517, we support the bill, and respectfully urge the distinguished members of the Committee to adopt it. We consider the bill, overall, to be a fair one, and to be a reasoned response to a difficult problem which has long been of great concern to both citizens and aliens in the U.S. Virgin Islands.

Thank you very much for giving me the opportunity to address you on this important matter.

ESTIMATE OF COST

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee states that it concurs with the cost estimate submitted by the Congressional Budget Office an which is set forth below.

BUDGETARY INFORMATION

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budgetary authority.

Pursuant to clause 2(1)(3)(C) of rule XI, the Congressional Budget Office estimated this bill would result in a cost of \$100,000 to cover administrative expenses borne by the Immigration and Naturalization Service relating to the adjudication of adjustment of status applications.

OVERSIGHT STATEMENTS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee states that it has exercised close oversight with respect to all citizenship and immigration matters, but no specific oversight is necessary in this instance.

Clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the committee states that this resolution will have no inflationary effect on prices and costs in the operation of the national economy.

COMMITTEE RECOMMENDATION

The committee, upon consideration of all the facts and circumstances upon which this resolution is based, is of the opinion that this bill, as amended, should be approved and accordingly recommends that this bill do pass.

CHANGES IN EXISTING LAW

Pursuant to paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, the committee states that the instant legislation does not provide for any changes in existing law.