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The New Immigration Law

Its Impact on Workers and Unions

The immigration law that Congress passed last year seeks to accomplish two goals long sought by the trade union movement.

One objective is to reduce the flow of illegal immigration that has depressed wages in many parts of the United States, added to unemployment and allowed employers to exploit workers subject to deportation if reported to immigration officials.

The new law seeks to accomplish this by imposing penalties on employers who hire illegal aliens. At the same time, it strengthens anti-discrimination remedies in an effort to prevent employers from turning away job applicants of Hispanic appearance who are legal residents of the United States.

The other labor-supported goal is a legalization program that makes it possible for a large portion of illegal aliens already in the United States to obtain legal status that will make them eligible for employment. After a waiting period, they will be able to follow the pattern of earlier generations of immigrants from all over the world and apply for citizenship.

The legislation Congress passed was a compromise, which in some areas fell short of labor's goals. But the AFL-CIO considers it important that persons affected by the law and the unions that represent them have accurate information about its often complex provisions.

At AFL-CIO President Lane Kirkland's request, the federation's Legal Dept. prepared this Question-and-Answer explanation of the law's principal features:

EMPLOYER SANCTIONS

Q: What is prohibited?

A: —to hire, or to recruit or refer for a fee, an alien known to the employer, the recruiter, or the referrer not to be legally authorized to work in the United States;

—to hire, or to recruit or refer for a fee *any* person without checking the required documents (listed below);

—after hiring an alien lawfully (that is, complying with the requirements above), to continue to employ that person after learning that the alien is not, or is no longer, legally authorized to work in the U.S.;

—to use a contract or subcontract or swap to obtain the labor of an alien known not to be legally authorized to work in the U.S. (that is, to try to evade the ban on "hiring" by using a contract, a subcontract, or a swap arrangement)

Q: Are *all* employers covered?

A: Yes.

Q: When does the prohibition go into effect?

A: Technically, November 6, 1986, was the effective date *BUT* until June 1, 1987, there will be no enforcement; that period is to be used for education of the public and dissemination of the necessary forms for use by employers, recruiters and referrers for a fee. Additionally, during the 12 months beginning with June 1987, only a citation (a warning) will be issued for any person's or organization's *first* violation.

[NOTE: here, as elsewhere, there are special rules for seasonal agricultural work, all of which will be described below in the section on that subject.]

Q: Is it a violation of this law to continue to employ an unauthorized alien hired before this law was enacted?

A: No.

Q: Which aliens are legally authorized to work in the U.S.?

A: An alien who has lawful permanent resident status, and any other alien with special authorization from the Immigration and Naturalization Service (INS), either in the form of a visa or some other document.

Q: What are the document-checking requirements that must be met by one who hires, or recruits or refers for a fee?

A: First, the employer, etc., must state on a form, under penalty of perjury, that the eligibility of the person being employed, recruited or referred has been verified by examining specified documents. Second, the person hired, etc., must also swear to his/her eligibility on a designated form. And third, the employer, etc., must retain the form(s) for 3 years or (in the case of hiring) until 1 year after the employment is terminated if that date is later.

The documents to be checked must show both authorization to work and identity:

Some documents show both:

—a U.S. passport,

—a certificate of U.S. citizenship or of naturalization, a foreign passport bearing the Attorney General's authorization to work,

—a resident alien card or other alien registration card that bears the person's photograph, or

—some other means of identification that has been approved in the Attorney General's regulations and that shows authorization to work in the U.S.

The job applicant need show only one of these.

If none of the documents listed above is available, the employer, etc., must examine one each of two kinds of documents.

Category one—those that will show employment authorization:

—a social security card,

—a U.S. birth certificate or certificate of nationality, or any other document that the Attorney General approves in the regulations that he must issue under these provisions.

Category two—documents that will show identity:

—a driver's license or other identification document issued by a state so long as it contains the person's photograph or other personal identifying information okayed by the Attorney General, or

—if none of those is available, then any document showing personal identity that the Attorney General approves in his regulations.

Q: Does the employer, etc., have to guarantee that the required documents are genuine?

A: No. So long as the employer, etc., shows that the requirements have been complied with in good faith—that is, that every necessary document has been examined, each reasonably appeared to be genuine, the required signatures were obtained and the forms retained—the employer, etc., has established an affirmative defense that it has not violated the law.

Q: Does a state employment agency have to check the documents of persons the agency refers for jobs?

A: No. But if a state agency does so, the employer, etc., to whom the applicant is referred will be treated as in compliance with the Act's verification requirements without itself checking them so long as the employer, etc., obtains and retains documentation of the state agency referral certifying that the agency has done the necessary checks for that individuals' referral.

Q: May an employer (or a recruiter or referrer for a fee) require an employee or an applicant to put up money to reimburse the employer, etc., in case that hiring etc. leads to a fine under this Act?

A: No. The Act makes any such requirements unlawful, with a $1,000 penalty plus return of any money required and paid.

Q: What are the penalties for violation of the sanctions provisions?

A: For a violation of the hiring, etc., prohibitions, the civil penalties are as follows: for a first violation, $250 to $2,000 per unauthorized alien with respect to whom the violation occurred; for a second violation, $2,000 to $5,000 per such alien; for a subsequent violation, $3,000 to $10,000 per such alien.

In the event of a pattern or practice of violation, the Attorney General may seek a criminal fine up to $3,000 per each such alien, up to 6 months imprisonment, or both.

For a violation of the requirement that documents be checked for each and every person hired, recruited or referred for a fee, the civil penalty is $100 to $1,000 for each individual with respect to whom the violation occurred.

Q: Do the sanctions provisions of the Act have any effect on state or local law?

A: Yes. These provisions preempt any state or local law that imposes civil or criminal sanctions (other than through licensing and like laws) on those who employ, or recruit or refer for a fee for employment, aliens not legally authorized to work in the U.S.

ANTI-DISCRIMINATION PROVISIONS

Q: Why are these provisions in the Act?

A: As the congressional managers of the bill explained, these provisions which protect both citizens and legal aliens were included to meet the concern of some Members of Congress and others around the country that people of "foreign" appearance or with foreign accents may be made more vulnerable to job discrimination because of the adoption of employer sanctions. The Act itself is not discriminatory, but there is concern that some employers may decide not to hire persons they believe to be "foreign" in order to avoid sanctions.

Q: What do these provisions prohibit?

A: Discrimination against a citizen or legal resident alien "with respect to the hiring, or recruitment or referral for a fee," or discharging such a person, because of the person's national origin or because of the person's citizenship status. "Citizenship status" is a technical term, defined in Section 274B(a)(3). The Act specifies that a preference for an individual citizen over an equally qualified alien is not made unlawful. Nor does the Act prevent a particular language requirement where that would be a "bona fide occupational qualification" under Title VII of the 1964 Civil Rights Act.

Q: Are there employers to whom these discrimination prohibitions *don't* apply?

A: Yes. Employers of three or fewer employees are not covered.

Q: Are there discrimination violations that cannot be processed under this Act?

A: Yes. Discrimination because of a person's national origin that violates the Civil Rights Act of 1964 must be challenged under that Act. The Civil Rights Act of 1964 covers only employers who employ 15 or more employees for 20 or more weeks a year. (Thus, national origin discrimination by an employer of more than three but fewer than 15 employees may be challenged only under the Immigration Act.)

Q: What are the remedies for a violation?

A: In every case, a cease-and-desist order (an injunction). Where appropriate, an order to hire individuals "directly and adversely affected" by the violation, back pay, and up to $1,000 in civil penalty for each person discriminated against (first violation) or up to $2,000 per such person (repeat violation). Attorney's fees may also be awarded in certain cases to a prevailing party other than the U.S.

Q: How are these prohibitions enforced?

A: A new administrative structure and process is to be established in the Department of Justice modelled on the NLRB procedures but with strict timetables and with these other significant differences:

(1) cases may be initiated not only through the filing of a charge by a person "adversely affected directly" or that person's representative, but also by the Special Counsel for Immigration-Related Unfair Employment Practices who is to be appointed by the President with the advice and consent of the Senate to prosecute these cases;

(2) if the Special Counsel has not filed a complaint of violation before an administrative law judge within four months after the filing of a charge, the charging party may file such a complaint and pursue the case through the administrative process and subsequent judicial enforcement;

(3) the order of an administrative law judge is the final agency order (that is, there is no equivalent to the National Labor Relations Board itself);

(4) there are provisions that should make judicial enforcement of an administrative law judge's order speedier than is the case with the NLRB orders.

Q: When do the discrimination prohibitions go into effect?

A: On November 6, 1986, when the President signed the bill into law.

THE LEGALIZATION PROGRAM

Q: Who is eligible?

A: An alien:

—who entered the country illegally, or whose legal authorization to be here lapsed, before January 1, 1982;

—who has lived here "in an unlawful status" continuously from then on;

—who has not been convicted of serious or multiple crimes committed here and is not ineligible by certain other criteria; and

—who applies within the designated one-year application period.

(Brief, casual and innocent absences from the country during the time since 1/1/82 do not break continuity).

Q: Is this program limited to aliens who have worked in certain occupations?

A: No. This program is open to all aliens who meet the requirements set out just above.

[There is a separate and additional program providing legalization for persons who entered the U.S. illegally and did seasonal agricultural work during specified periods in the past. See the section on agricultural workers below.]

Q: When must an alien apply for legalization?

A: During the 12-month period that will begin no later than early May 1987 on a date to be fixed by the Attorney General.

Q: What is the status of a successful applicant and how long will that status last?

A: Persons who meet the requirements set out above will become aliens "lawfully admitted for *temporary* residence." In order to maintain their right to remain in the U.S., such persons must later apply for permanent residence.

Q: When does a person legalized temporarily apply for permanent legal status, and what must that person show?

A: The application for permanent resident status is to be filed during the one-year period beginning immediately after the alien has held temporary resident status for 18 months. To be eligible for permanent resident status the alien must show continuous residence here since temporary status was granted, and either a minimal understanding of English and of U.S. history and government or that s/he is pursuing that understanding in an approved course of study. The alien also must not have been convicted of certain crimes in the U.S. and must not be inadmissible under certain other criteria.

Labor's Outreach Effo

America's unions are joining in an unprecedented outreach campaign in the Hispanic community and in the nation's workplaces to help undocumented workers attain legal status and prevent discrimination by employers.

Labor's special contribution will include telephone hotlines, trained union counsellors, mobile vans, public service television spots, union publications and pamphlets. In some locations, labor programs are already in operation.

AFL-CIO headquarters departments are monitoring the administration and enforcement of the new immigration law, reviewing proposed regulations, and providing assistance to international unions and central bodies on immigration-related matters.

In addition to advice on procedures for qualifying for amnesty, federation departments are providing guidance on such matters as entitlement to social services, civil rights protections, and establishment of adult education classes to help bridge the gap from legal resident status to eventual citizenship. The Human Resources Development Institute (HRDI) of the AFL-CIO plans to seek certification to allow affiliated unions to process legalization applications.

The Labor Council for Latin American Advancement is in the forefront of the trade union effort, President J. F. Otero reports.

"There may be as many as 6 million Hispanics eligible for amnesty," he stressed. "Some of them are already union members and many more will become eligible to become union members as they assimilate fully into American life and work."

LCLAA has put together an Amnesty Assistance package for union and community use. It includes video programs explaining the new law, news reports for television programs and public service announcements for use by Spanish-language stations.

Unions with large numbers of immigrant members and central bodies in areas with large numbers of undocumented workers are especially involved in labor's outreach effort. While Hispanics are the largest group affected by the new law, labor's outreach program in a number of communities is also aimed at concentrations of Asian workers.

One of the most ambitious local union programs has been launched by California's big Local 770 of the Food & Commercial Workers, with some 33,000 members in the Los Angeles area.

Local 770 President Ricardo F. Icaza, who is also a vice president of LCLAA, reports that his union has set up information hotlines staffed by trained bilingual advisers to answer questions about amnesty and other provisions of the immigration law. The union has been "besieged by calls" for assistance, he said.

Icaza said Local 770 is also using its hotlines "to issue warnings about unscrupulous operators who are preying on unwary and often fearful immigrant workers during the law's transition period." The union has received many complaints about self-styled immigration consultants, he noted.

Some of those helped are Local 770 members—such as the young mother who is supporting her two-year-old daughter by working as a meatcutter. She has been living in the United States illegally since 1979. Through the amnesty program, Icaza said, she can free herself "from the fear and insecurity which plagues so many illegal workers."

The union, he stressed, feels "a duty to the entire community" and is providing advice and assistance "to all workers without papers, whether they are union or non-union." Through amnesty and eventual citizenship, Icaza predicted, workers who qualify will be able to participate fully in the social, economic and political life of their communities.

Q: What if an alien who has obtained temporary status doesn't apply for permanent status during the prescribed time?

A: The Act directs the Attorney General to "provide for termination" of the temporary status in this situation, which would mean that the alien could be deported.

Q: Is an alien legally authorized to work in the U.S. while in temporary or permanent resident status under the Act?

A: Yes. The Attorney General is to provide aliens holding temporary status an appropriate work permit. An alien with permanent resident status is a so-called green carder, authorized to work.

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"Labor has historically been in the forefront of civil rights and equal opportunity battles," he stressed. In the same tradition is the current effort of "helping to bring undocumented workers among us out of the shadows."

Local 770 is hardly alone in the Los Angeles area. Even as the AFL-CIO News was going to press, an all-day conference organized by the Los Angeles County AFL-CIO was under way.

It was set up by the central body's Immigration Committee, composed of representatives of a cross-section of the area's unions. AFL-CIO Organization & Field Services Director Charles McDonald, HRDI Director Michael McMillan and Regional Director David Sickler were among the speakers, along with attorneys expert in the immigration law and community leaders from affected groups. Los Angeles also has a large Korean population that includes undocumented workers who will be seeking legal status.

McDonald anticipates a new spurt in organizing as workers become free from intimidation by employers and the implicit threat of being reported to immigration authorities if they actively support a union campaign. He also sees an important reservoir of good will for the trade union movement as a byproduct of labor's efforts to assist the immigrant community.

The Dept. of Organization & Field Services has prepared an easy-to-understand pamphlet on the new immigration law as guidance for undocumented workers and employers. It includes practical suggestions on obtaining documents to show residence in the United States for the period required under the amnesty program and notes that both current and former employees have a right to employment records to help document their eligibility for amnesty.

The Clothing & Textile Workers and the Ladies' Garment Workers, unions that in their early years helped generations of European immigrants become Americans, have set up active programs in cities across the country.

An ILGWU Task Force, operating out of the union's headquarters in New York, is concerned both with helping undocumented workers obain legal status and preventing discrimination by employers against job applicants with Hispanic names or who speak with an accent. Union immigration counsellors are being trained to assist members. The union's big Chinatown local in New York has set up an extensive immigration assistance program.

For its southern California members, the ILGWU already has in operation an office staffed by a union attorney and a paralegal to give free advice on amnesty procedures.

The Farm Workers, operating in an area where a large part of the agricultural workforce is made up of undocumented workers, is planning a major information and education effort, UFW Vice President Delores Huerta said.

So are the Service Employees, and unions as diverse as the Carpenters and the Hotel Employees & Restaurant Employees. In communities with large numbers of undocumented workers, just about every element of the trade union movement is involved in amnesty assistance programs.

Many unions have also taken steps to make sure that the employers with whom they have contracts are aware of the anti-discrimination provisions of the law and understand that employers may not require documentation from workers who were on the payroll before the new immigration law went into effect.

For workers who have been in the United States long enough to qualify for the amnesty program, the trade union message is a helping hand to achieve legal status and equal rights—under the law and in actuality.

Q: May an alien who has applied for temporary status but on whose case no decision has yet been made—and, for that matter, an alien who believes s/he will be eligible but cannot apply because the application period has not yet begun—legally work in the U.S.?

A: The Act directs that aliens who are able to show "prima facie" eligibility prior to the time s/he files an application, and those who file a prima facie valid application, *may* legally work here until the next step is taken. The Attorney General is required to carry out these directions and to issue appropriate work permits.

Q: May the INS deport an alien before applications may be filed or deport an alien whose application has not yet been acted on?

A: An alien entitled to work as described just above also may *not* be deported during the same periods applicable there.

Q: Does an alien who believes s/he is eligible for legal status have to go to the INS in order to apply?

A: No. An application may be filed either with the INS or with a qualified organization designated by the Attorney General. Only the Attorney General may approve an application, but the alien may consult with, and file with, the organization and his/her application is not to be forwarded to the government without the person's consent. Confidentiality of dealings with these organizations is to be maintained, as is "the information furnished pursuant to an application" to the Department of Justice.

Q: May a union act as a "qualified designated entity" to which aliens may go in seeking legalization?

A: The Act states that "for purposes of assisting in the program of legalization" the Attorney General "shall designate qualified voluntary organizations and other qualified state, local, and community organizations." (The Attorney General also may designate "other persons" who have substantial experience, competence and "traditional long-term involvement in" the preparation and submission of applications for adjustment of status under certain other provisions of the immigration laws.)

Q: What proof must an alien provide to establish eligibility for temporary legal resident status under the Act?

A: The Act directs the Attorney General to require that "continuous residence and physical presence" in the U.S. as defined in the Act be established through documents that are "employment-related" if such are available, together with "independent corroboration of the information contained in such documents." Beyond this, a precise answer must await the issuance of regulations by the Attorney General after consultation with the congressional judiciary committees.

Q: Are aliens legalized under these provisions entitled to welfare?

A: Generally, newly legalized aliens will be ineligible for five years for any federally-funded financial assistance that is based on need, and states are authorized to exclude them from certain state and local assistance. There are, however, a number of exceptions, particularly with respect to the aged, blind and disabled and to emergency medical assistance, services to pregnant women, and a number of educational programs, programs for children, and the Job Training Partnership Act.

AGRICULTURAL WORKERS

Introduction:
The Act contains two different programs with respect to agricultural workers. The first one is a permanent program allowing employers to bring in foreign workers temporarily to do temporary or seasonal work in agriculture (this is an amendment to the pre-existing "H-2" program which adds a Subsection H-2A).

The second is a temporary program allowing aliens who have done or will in the future do seasonal agricultural work to acquire legal resident status (whether they are new entrants or persons who are here illegally).

Each of these programs is described below.

The H-2A Agricultural Worker Program

Q: What must an employer show to be allowed to bring in an H-2A worker?

A: The assumption underlying the H-2 program is that there are not "unemployed persons capable of performing such service or labor /to/ be found in this country." An employer or other person (see below) who seeks to bring in an H-2A worker must petition the Attorney General for a visa and, in doing so, show that he has previously applied to the Secretary of Labor for a certification that:

(A) there are not sufficient workers here who are able, willing and qualified and who will be available at the time and place where the work will be done, and

(B) employment of the alien in this work won't adversely affect the wages and working conditions of U.S. workers doing similar work.

Q: What are the restrictions on the Secretary of Labor issuing a certification?

A: A certification is not to be issued if:

(1) the requirements in (A) or (B) above aren't met;

(2) there is a strike or lockout of the kind described in federal regulations;

(3) the employer substantially violated a term of an H-2A labor certification within the previous two years;

(4) the employer hasn't guaranteed occupational accident and illness insurance, if the state's workers' compensation law doesn't cover the work;

(5) the employer hasn't made positive efforts to recruit U.S. workers in a multi-state region designated by the Secretary of Labor; or

(6) the employer has, or has referrals of, qualified eligible U.S. workers who've agreed to a job offer meeting the requirements of the Secretary of Labor.

Q: Is a qualified and able U.S. worker who is available for, but doesn't learn of a job until the H-2A worker is on the job just out of luck?

A: Often not. For at least three years, such a person will be entitled to the job if s/he applies to the employer before 50 percent of the period of the H-2A work contract has elapsed. The Secretary of Labor is authorized to extend this rule after studying the matter.

Q: Is an employer required to provide any particular working conditions?

A: Yes. In addition to workers' compensation or equivalent insurance, H-2A employers are required to furnish housing meeting specified standards to all workers who would have been entitled to housing under the Department of Labor regulations that were in effect on June 1, 1986. In addition, the Secretary of Labor is authorized to set qualifications for a job offer as a condition of issuing a certification.

Q: Are there timing rules in this program?

A: The Act provides timetables for every step of the process both for employers, etc., applying to bring in H-2A workers and for the Secretary of Labor in granting or denying a certification.

Q: Who may bring in H-2A workers?

A: An employer (individual, corporate, etc.) of temporary or seasonal agricultural workers or an association of agricultural producers that use agricultural services. There are special rules as to when H-2A workers may be transferred among the producers who are members of such an association, and as to when an association's violation of H-2A requirements will disqualify its producer members and when a producer member's violation will disqualify the association or other employers.

Q: How are an employer's (or association's) contractual obligations to its H-2A workers enforced?

A: The Secretary of Labor has enforcement authority, and the H-2A workers are also eligible for Legal Services assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's employment contract.

Q: When do these amendments to the H-2 law take effect?

A: These amendments will apply to visa petitions and certification applications filed on and after June 1, 1987.

Q: Do these amendments have any effect on state or local law?

A: Yes. These and related provisions of the federal immigration law "preempt any state or local law regulating admissibility of nonimmigrant workers."

Q: Does any Federal official other than the Attorney General and the Secretary of Labor play a role in the H-2A program?

A: Yes. The Department of Agriculture (as well as the Department of Labor) is entitled to be consulted by the Attorney General in the approval of all

regulations under the H-2A program and on particular visa applications.

Q: Does the 1986 Immigration Reform and Control Act change the H-2 program outside the area of agriculture?

A: No.

The Special Agricultural Worker (SAW) Program

Q: How does the SAW program differ from the H-2A program just described?

A: The SAW program is a temporary seven-year program added to the legislation in order to meet the claims of western agricultural producers that because their workforce consists in great part of aliens not legally authorized to work in the U.S., the enactment of employer sanctions will deprive those producers of needed workers to do seasonal agricultural work. In order to protect the workers and U.S. working conditions, the SAW program makes the workers whom the program authorizes legal residents of the U.S. Thus, the special agricultural workers under this program (SAWs) will be U.S. residents not tied to a particular employer rather than aliens temporarily admitted to do a particular job.

Q: Who may become a SAW?

A: Any alien who resided in the U.S. and did seasonal agricultural work in the U.S. for at least 90 days between May 1, 1985, and May 1, 1986, who is not inadmissible under criteria generally applicable to would-be immigrants, and who applies within the designated application period may become a SAW.

Q: When is the SAW application period?

A: It is the 18 months beginning June 1, 1987.

Q: What is "seasonal agricultural work"?

A: The Act's definition is: "the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture."

Q: Are there special provisions concerning the application of employer sanctions to employment in seasonal agricultural work?

A: Yes. There is to be no enforcement for alleged sanctions violations with respect to employment of an individual in seasonal agricultural work until the end of the SAW application period (that is, for six months longer than will be true for a first violation in all other employment, and there is no limitation here to a first violation).

The Act also provides, however, that during the SAW application period, it is unlawful for anyone to recruit outside the U.S. a person who is not legally authorized to work in the U.S., to come into the U.S. to do seasonal agricultural work unless the recruiter reasonably believes the alien qualifies as a SAW. A violation of this prohibition after June 1, 1987, will subject the violator to sanctions penalties.

Q: What is the status of a SAW?

A: A SAW obtains legal temporary residence. That status is to be adjusted to permanent residence as follows:

(1) An alien who shows that s/he did the 90 days work between 5/1/85 and 5/1/86 described above will be entitled to permanent status after two years in temporary status (counting from the day that status was obtained or the last day of the 18-month application period, whichever is later). There is no limit on the number of aliens who may become permanent residents by this route.

(2) An alien who shows that s/he did at least 90 days of seasonal agricultural work during each of the three years ending on May 1, 1984, 1985 and 1986, will be entitled to permanent residence after one year in temporary status (counting in the same way) *IF* the alien is among the first 350,000 eligibles to apply. If an alien with these qualifications is not among those 350,000, s/he will have to wait another year and thus qualify under (1) just above.

Q: What limitations are there on the rights of a SAW?

A: While in temporary status, the SAW may not petition to bring in relatives; and for the first five years after temporary status is acquired, the alien will not be eligible for certain welfare programs.

Q: Is a SAW legally authorized to work in any job in the U.S.?

A: Yes. A SAW may legally work in any occupation in the U.S. and is entitled to a "work permit" from the Attorney General. A SAW may also travel abroad, and may commute across the border to a U.S. job.

Q: May an alien who has applied to become a SAW but whose application has not been passed upon—and, for that matter, an alien who believes s/he will be eligible but cannot apply because the application period has not yet begun—remain in the U.S. and work here?

A: The Act directs that an alien who is picked up by the INS before the application period and can make "a nonfrivolous case of eligibility," as well as an alien who presents such a nonfrivolous application, may *not* be deported and may legally work here until the next step is taken. The Attorney General is to provide work permits to such persons.

Q: Does an alien have to go to the INS in order to apply for SAW status?

A: No. Within the U.S., an application may be filed with the INS or with a qualified organization designated by the Attorney General. Only the Attorney General may approve an application, but an application is not to be forwarded to the government without the applicant's consent. Outside the U.S., an alien may apply at a U.S. consular office. Confidentiality of an organization's files and records and information provided to the government is to be maintained.

Q: May a union act as a "qualified designated entity" with which aliens may file SAW applications?

A: Yes. The Act states that the Attorney General *shall* designate "qualified voluntary organizations and other qualified state, local, community, farm labor organizations, and associations of agricultural employers"; and may also designate qualified persons experienced in processing applications for adjustment of immigration status.

Q: What proof must an alien provide to establish eligibility for SAW status?

A: The alien may use government employment records, records supplied by employers, farm labor contractors, or collective bargaining representatives, "other reliable documentation," or other evidence from which the required work history may reasonably be inferred.

Q: Does the Act provide for the admission or authorization of additional special agricultural workers if a shortage of workers to do seasonal agricultural work develops after the SAW application period has ended?

A: Yes, the Act authorizes additional workers—newly admitted or newly legalized—in specifically limited circumstances and only during the four fiscal years 1990-1993.

These Additional Special Agricultural Workers (ASAWs, or as they are sometimes referred to, Replenishment Agricultural Workers or RAWs) may be authorized only pursuant to a complicated formula to be applied by the Secretaries of Labor and Agriculture in order to determine whether a shortage exists. Any shortage number found is then subject to a numerical cap that lowers over the four years.

Q: Assuming ASAWs are authorized for a year, who is eligible?

A: An alien who petitions for temporary resident status and is not inadmissable under criteria generally applicable to would-be immigrants.

Q: What are the rights of an ASAW?

A: After three years of lawful temporary status, the ASAW will be entitled to adjustment to permanent legal residence. During those three years, the alien may work in the U.S., is entitled to a work permit, may travel abroad and may commute to U.S. work from across the border. But, during those three years, the ASAW may not petition to bring in relatives, and is generally subject to the same five-year public assistance disqualifications that apply to persons legalized under the general legalization program (see that section above), with the notable exception that the alien is not ineligible for Legal Services assistance or certain housing assistance.

Q: Is an ASAW obliged to do agricultural work in the U.S.?

A: An ASAW is liable to be deported unless s/he can establish to the Attorney General that s/he has done agricultural work for at least four hours on each of 90 days during each of the three years s/he is in temporary resident status.

In addition, an ASAW will not be eligible for citizenship unless s/he has met the same 90-day work requirement during each of five fiscal years.

Q: Does the Act have any labor protections for ASAWs or U.S. workers doing comparable seasonal agricultural work?

A: Yes. In addition to the ASAWs' entitlement to Legal Services assistance, the Migrant and Seasonal Agricultural Worker Protection Act protections apply. And an employer who provides transportation for ASAWs doing seasonal agricultural work must provide comparable assistance for others doing such work.

OTHER PROVISIONS OF NOTE FOR UNIONS

I. Throughout the Act there are provisions prohibiting the knowing use of false or fraudulent documents and the deliberate making of false statements. These provisions carry very stiff penalties, including significant prison terms.

II. For the first year after enactment, the Act prohibits admission of alien crewmen to the U.S. under "D" visas to serve on board a vessel or aircraft "at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service." This prohibition is not to apply, however, to an alien employed prior to commencement of the strike and who is seeking entry to continue service as a crewman to the same extent and on the same route as that person performed prior to the commencement of the strike.

III. The Act authorizes a three-year pilot "visa waiver" program involving up to eight countries, each of which must extend reciprocity to U.S. citizens and nationals. Those freed of the need to obtain visas are persons seeking to enter as nonimmigrant visitors (tourists) for 90 days or less; they are persons who otherwise would need "B" visas. The program is in the hands of the Attorney General and the Secretary of State.

IV. The Act bars INS entry without a warrant (or the owner's consent) onto the premises of a farm or other outdoor agricultural operation for the purpose of questioning a person believed to be an alien as to the person's right to be or to remain in the U.S.

V. The Act expands the present pilot SAVE program (System for Alien Verification of Eligibility) to require states to verify the legal status of all aliens applying for benefits under certain programs by checking through INS computer records, with a significant exception: a waiver may be granted by the federal Secretary in whose jurisdiction the program falls where a state has an alternative in place or where the verification program would not be cost-effective. The affected programs are: AFDC, Medicaid, Unemployment Compensation, Food Stamps, Housing Assistance and Higher Education.

VI. The Act authorizes supplemental appropriations for the INS of $422 million for FY 1987 and $419 million for FY 1988, of which sufficient funds shall be allocated to increase the border patrol personnel so that the average number shall be at least 50 percent higher in each of the fiscal years than the level in FY 1986. (There are also authorizations for enforcement activities of the DOL Wage and Hour Division and its OFCCP of the sums necessary to deter employment of aliens not legally authorized to work in the U.S. and to remove the economic incentives for employers to exploit and use such aliens.)

:e these prohibitions enforced?

lministrative structure and process is ablished in the Department of Justice LRB procedures but with strict time- se other significant differences:
: initiated not only through the filing rson "adversely affected directly" or esentative, but also by the Special gration-Related Unfair Employment be appointed by the President with the of the Senate to prosecute these cases; l Counsel has not filed a complaint of administrative law judge within four ling of a charge, the charging party plaint and pursue the case through the ess and subsequent judicial enforce-

an administrative law judge is the (that is, there is no equivalent to the ations Board itself);
visions that should make judicial en- inistrative law judge's order speedier h the NLRB orders.

do the discrimination prohibitions effect?

mber 6, 1986, when the President e bill into law.

LIZATION PROGRAM

eligible?

e country illegally, or whose legal au- re lapsed, before January 1, 1982; ere "in an unlawful status" continu-

en convicted of serious or multiple ere *and is not ineligible* by certain

thin the designated one-year applica-

l innocent absences from the country ince 1/1/82 do not break continuity).

rogram limited to aliens who have in certain occupations?

program is open to all aliens who requirements set out just above.
te and additional program providing ersons who entered the U.S. illegally agricultural work during specified ast. See the section on agricultural

nust an alien apply for legaliza-

e 12-month period that will begin no early May 1987 on a date to be fixed neral.

the status of a successful applicant v long will that status last?

vho meet the requirements set out l become aliens "lawfully admitted nce." In order to maintain their right ., such persons must later apply for

oes a person legalized temporarily or permanent legal status, and ust that person show?

cation for permanent resident status ed during the one-year period begin- ter the alien has held temporary resi- onths. To be eligible for permanent lien must show continuous residence ry status was granted, and either a ling of English and of U.S. history hat s/he is pursuing that understand- course of study. The alien also must cted of certain crimes in the U.S. and ssible under certain other criteria.

Labor's Outreach Efforts Fill a Need

America's unions are joining in an unprecedented outreach campaign in the Hispanic community and in the nation's workplaces to help undocumented workers attain legal status and prevent discrimination by employers.

Labor's special contribution will include telephone hotlines, trained union counsellors, mobile vans, public service television spots, union publications and pamphlets. In some locations, labor programs are already in operation.

AFL-CIO headquarters departments are monitoring the administration and enforcement of the new immigration law, reviewing proposed regulations, and providing assistance to international unions and central bodies on immigration-related matters.

In addition to advice on procedures for qualifying for amnesty, federation departments are providing guidance on such matters as entitlement to social services, civil rights protections, and establishment of adult education classes to help bridge the gap from legal resident status to eventual citizenship. The Human Resources Development Institute (HRDI) of the AFL-CIO plans to seek certification to allow affiliated unions to process legalization applications.

The Labor Council for Latin American Advancement is in the forefront of the trade union effort, President J. F. Otero reports.

"There may be as many as 6 million Hispanics eligible for amnesty," he stressed. "Some of them are already union members and many more will become eligible to become union members as they assimilate fully into American life and work."

LCLAA has put together an Amnesty Assistance package for union and community use. It includes video programs explaining the new law, news reports for television programs and public service announcements for use by Spanish-language stations.

Unions with large numbers of immigrant members and central bodies in areas with large numbers of undocumented workers are especially involved in labor's outreach effort. While Hispanics are the largest group affected by the new law, labor's outreach program in a number of communities is also aimed at concentrations of Asian workers.

One of the most ambitious local union programs has been launched by California's big Local 770 of the Food & Commercial Workers, with some 33,000 members in the Los Angeles area.

Local 770 President Ricardo F. Icaza, who is also a vice president of LCLAA, reports that his union has set up information hotlines staffed by trained bilingual advisers to answer questions about amnesty and other provisions of the immigration law. The union has been "besieged by calls" for assistance, he said.

Icaza said Local 770 is also using its hotlines "to issue warnings about unscrupulous operators who are preying on unwary and often fearful immigrant workers during the law's transition period." The union has received many complaints about self-styled immigration consultants, he noted.

Some of those helped are Local 770 members—such as the young mother who is supporting her two-year-old daughter by working as a meatcutter. She has been living in the United States illegally since 1979. Through the amnesty program, Icaza said, she can free herself "from the fear and insecurity which plagues so many illegal workers."

The union, he stressed, feels "a duty to the entire community" and is providing advice and assistance "to all workers without papers, whether they are union or non-union." Through amnesty and eventual citizenship, Icaza predicted, workers who qualify will be able to participate fully in the social, economic and political life of their communities.

"Labor has historically been in the forefront of civil rights and equal opportunity battles," he stressed. In the same tradition is the current effort of "helping to bring undocumented workers among us out of the shadows."

Local 770 is hardly alone in the Los Angeles area. Even as the AFL-CIO News was going to press, an all-day conference organized by the Los Angeles County AFL-CIO was under way.

It was set up by the central body's Immigration Committee, composed of representatives of a cross-section of the area's unions. AFL-CIO Organization & Field Services Director Charles McDonald, HRDI Director Michael McMillan and Regional Director David Sickler were among the speakers, along with attorneys expert in the immigration law and community leaders from affected groups. Los Angeles also has a large Korean population that includes undocumented workers who will be seeking legal status.

McDonald anticipates a new spurt in organizing as workers become free from intimidation by employers and the implicit threat of being reported to immigration authorities if they actively support a union campaign. He also sees an important reservoir of good will for the trade union movement as a byproduct of labor's efforts to assist the immigrant community.

The Dept. of Organization & Field Services has prepared an easy-to-understand pamphlet on the new immigration law as guidance for undocumented workers and employers. It includes practical suggestions on obtaining documents to show residence in the United States for the period required under the amnesty program and notes that both current and former employees have a right to employment records to help document their eligibility for amnesty.

The Clothing & Textile Workers and the Ladies' Garment Workers, unions that in their early years helped generations of European immigrants become Americans, have set up active programs in cities across the country.

An ILGWU Task Force, operating out of the union's headquarters in New York, is concerned both with helping undocumented workers obain legal status and preventing discrimination by employers against job applicants with Hispanic names or who speak with an accent. Union immigration counsellors are being trained to assist members. The union's big Chinatown local in New York has set up an extensive immigration assistance program.

For its southern California members, the ILGWU already has in operation an office staffed by a union attorney and a paralegal to give free advice on amnesty procedures.

The Farm Workers, operating in an area where a large part of the agricultural workforce is made up of undocumented workers, is planning a major information and education effort, UFW Vice President Delores Huerta said.

So are the Service Employees, and unions as diverse as the Carpenters and the Hotel Employees & Restaurant Employees. In communities with large numbers of undocumented workers, just about every element of the trade union movement is involved in amnesty assistance programs.

Many unions have also taken steps to make sure that the employers with whom they have contracts are aware of the anti-discrimination provisions of the law and understand that employers may not require documentation from workers who were on the payroll before the new immigration law went into effect.

For workers who have been in the United States long enough to qualify for the amnesty program, the trade union message is a helping hand to achieve legal status and equal rights—under the law and in actuality.

Q: What if an alien who has obtained temporary status doesn't apply for permanent status during the prescribed time?

A: The Act directs the Attorney General to "provide for termination" of the temporary status in this situation, which would mean that the alien could be deported.

Q: Is an alien legally authorized to work in the U.S. while in temporary or permanent resident status under the Act?

A: Yes. The Attorney General is to provide aliens holding temporary status an appropriate work permit. An alien with permanent resident status is a so-called green carder, authorized to work.

Q: May an alien who has applied for temporary status but on whose case no decision has yet been made—and, for that matter, an alien who believes s/he will be eligible but cannot apply because the application period has not yet begun—legally work in the U.S.?

A: The Act directs that aliens who are able to show "prima facie" eligibility prior to the time s/he files an application, and those who file a prima facie valid application, *may* legally work here until the next step is taken. The Attorney General is required to carry out these directions and to issue appropriate work permits.

Q: May the INS deport an alien before applications may be filed or deport an alien whose application has not yet been acted on?

A: An alien entitled above also may same periods applicable the

Q: Does an alien v for legal status order to apply?

A: No. An applicatio INS or with a q nated by the Attorney Gene eral may approve an applica sult with, and file with, tl application is not to be fo without the person's consent with these organizations is information furnished pursu Department of Justice.

Q: May a union ac entity" to whic legalization?

A: The Act states tha in the program o General "shall designate qu tions and other qualified sta ganizations." (The Attorney "other persons" who have s petence and "traditional lor preparation and submission ment of status under certain gration laws.)

Q: What proof mu tablish eligibili dent status und

A: The Act directs t quire that "contin presence" in the U.S. as defi through documents that ar such are available, together ration of the information co Beyond this, a precise answe regulations by the Attorney with the congressional judic

Q: Are aliens legal *entitled to welf*

A: Generally, newly l gible for five yea financial assistance that is b authorized to exclude them assistance. There are, howe particularly with respect to and to emergency medical nant women, and a number o grams for children, and the J

AGRICULTURAL

Introduction:
The Act contains two differ agricultural workers. The fi gram allowing employers t temporarily to do temporary ture (this is an amendment to gram which adds a Subsecti

The second is a tempora who have done or will in the tural work to acquire legal r are new entrants or persons

Each of these programs is

The H-2A Agricul Program

Q: What must an lowed to bring

A: The assumption u that there are not ble of performing such serv this country." An employer who seeks to bring in an H- Attorney General for a visa a has previously applied to the tification that:

(A) there are not sufficier willing and qualified and v time and place where the w

(B) employment of the a versely affect the wages and workers doing similar work.