



ARCHITECTURE FOR IMMIGRATION REFORM:

Fitting the Pieces of Public Policy

University of Denver • Strategic Issues Program • 2009 Immigration Panel • Final Report

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Letter from the Chancellor

The measure of a great university is its commitment to the public good, and the manner in which it acts on that commitment to achieve results that have a real and positive impact. At the University of Denver, we believe that one of our roles is to stimulate a rich and informed public discourse on critical issues in the belief that such discourse will contribute to a just, prosperous and sustainable future for Colorado, our home since 1864.

It is with that goal in mind that the University sponsors the Strategic Issues Program. The program brings together concerned citizens from across the state, convening as a strategic issues panel, to examine the many facets of a single complex issue. Previous panels have examined Colorado's economic future, water issues and Colorado's need for constitutional reform. The reports from these panels have stimulated both further debate and positive actions.

The work of the 2008–2009 strategic issues panel confronted one of our nation's thorniest, most complex and politically charged issues—immigration, both legal and illegal. Depending on one's perspective, the issue is driven by considerations of human rights, respect for the law, business/labor relations, the evolution of the U.S. economy, the educational

rights of children, separation of authority between the states and the federal government, the fundamental nature of the relationships between the U.S. and its neighboring countries, or the basic attributes of citizenship itself. The panel was comprised of twenty distinguished citizens whose lives, beliefs and political persuasions span a very broad spectrum. Their work was informed by in-depth research and face-to-face interactions with a vast array of experts in all of the areas noted above. As you read this report, you will find that in spite of the many dimensions of the issue and the disparate perspectives brought to the table by the panel members, a thoughtful, fact-based approach did indeed bring consensus.

We hope that the work of this panel and the ideas brought forth in this report will stimulate similarly civil, thoughtful, fact-based debate among the public at large and its representatives in government, such that this broader conversation might lead to a desperately needed consensus for action.



Robert D. Coombe
Chancellor, University of Denver



Overview from the Panel Chair

For the United States, immigration has become a perplexing policy puzzle. As a nation, we understand our history and heritage; we know where we have been. We are less sure of where we wish to go.

Nevertheless, solving the dilemma of immigration policy is a task of some urgency and considerable gravity. Immigration affects our national security, shapes the fabric of our society and impacts our economic future. Few topics are more consequential—and few have been more resistant to resolution.

The problem is not a dearth of ideas. Indeed, policy proposals of all stripes are offered every day, from every quarter. Nor is it a shortage of research. In fact, it is difficult to find a topic that has more think tanks, university centers and research organizations analyzing data, producing studies and conducting symposia. Nor is it a lack of advocacy. Few issues have more advocates, pressing more positions, more passionately, than immigration.

Rather, in the panel's view, the difficulty arises from a lack of architecture. What is required is an overarching design that can guide the formation of a comprehensive immigration policy. Such an architecture begins with an understanding of

the landscape, proceeds to define purpose and priorities, and establishes clear goals. These things provide a framework within which specific policy recommendations may be ordered.

Creating such an architecture, and organizing policy recommendations within that framework, is the aim of this report.

Taken alone, few of the panel's recommendations are completely original. Most of the proposals have previously been advanced, in one form or another, by others. Indeed, portions of some of the panel's recommendations are already law. Rather than attempting to offer wholly new notions, the panel has tried to glean the best ideas from many sources and bring them together in a meaningful way. The goal has been to provide a sound foundation for policy, a comprehensive view of the issue, a balanced perspective and a logical ordering of ideas.

In formulating recommendations, the panel has attempted to steer a middle course between policy pronouncements so broad as to be platitudes and recommendations so detailed they strain the panel's technical competence. The result is a set of recommendations that are intended to describe the

desired outcomes of an effective immigration policy rather than try to specify the legislative details. In doing so, however, the panel recognizes that the details are always of great importance and urges care be taken to ensure policy proposals align with intended outcomes.

As with prior University of Denver strategic issues panels, this year's Strategic Issues Panel on Immigration was nonpartisan in nature and composed of accomplished citizens from various segments of the Colorado community. While nonpartisan, the panel brought very diverse views to the subject of immigration. The panel's 20 members were appointed by the chancellor of the University of Denver and the panel's work was funded by the University as part of its ongoing commitment to support the public good.

The approach taken by all University strategic issues panels is one that begins by trying to gain a clear understanding of the problem. To that end, throughout the winter and spring of 2009, the panel met on an intensive basis receiving some 30 presentations from individuals in academia, government, business, labor, law enforcement, education, health care and other fields. The panel

heard from immigration advocates and opponents; federal, state and local officials; business executives and community organizers; immigration attorneys; consul from Canada; and others.

Only then, after listening to many perspectives and reviewing an extensive list of readings, did the panel begin its own deliberations. During the summer and into the fall, panel members weighed the research and opinions offered and engaged in discussions based on the information presented and panelists' own views and experience. The panel sought practical solutions rather than ideologically oriented outcomes and used a consensus process to identify underlying issues and develop recommendations.

After much listening, learning and discussion, the University of Denver Strategic Issues Panel on Immigration has reached a consensus on an architecture for immigration policy. That consensus is the subject of this report.



James R. Griesemer, Chair
Strategic Issues Panel on Immigration
University of Denver



Report of the Strategic Issues Panel on Immigration

GLOBAL MIGRATION

Global migration is shaping the world. It is a force that may be managed, but is not likely to be stopped. Understanding the drivers of global migration is a starting point for developing an effective immigration policy for the United States.

A Shifting World

Immigration is perhaps best understood in the context of interdependent, globally linked economies and societies. In the same way that currency flows around the world seeking higher returns, so people move in search of greater opportunity. Driven by a desire to escape poverty, political upheaval and natural disasters, global migration is a force of extraordinary power. It is the consequence of a host of actions taken over decades, the sum of millions of business, policy and individual decisions made in many places throughout the world.

There are currently some 214 million international migrants. Collectively, they represent more than 3 percent of the entire world population. Between 1990 and 2005, global migrants grew by nearly 40 million and the tide of migration appears to be swelling. Not only are the numbers growing, but the rate of growth is rapidly increasing as well, from 1.3 percent during

1990–1995 to 1.8 percent for 2005–2010. The United Nation’s definition of global migrant is broad, encompassing many types of legal migration as well as illegal or undocumented migrants. It does not, however, include refugees who currently number about 16 million persons. Combining the populations of migrants and refugees, migrants represent 93 percent of the total global migrant population and refugees about 7 percent. The growth of global migration is shown in Figure 1.

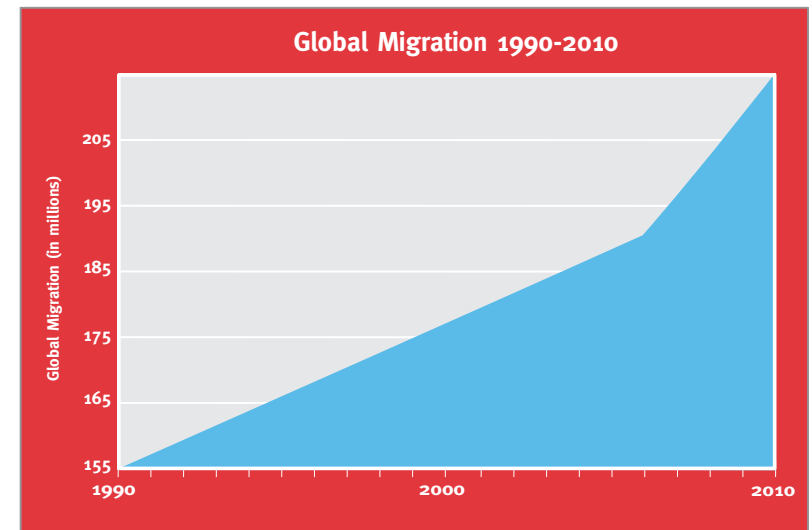


Figure 1 – Growth of Global Migration

(Source: United Nations Department of Economic and Social Affairs)

Of all global migrants, roughly 60 percent currently live in industrialized nations. But this percentage greatly understates the situation. In recent years more than 90 percent of all migrants have moved to developed countries where economic opportunities are more readily available. Figure 2 graphically illustrates this trend. It shows the total number of migrants in various types of countries, categorized as more, less and least developed. The flow of immigrants to developed nations that offer economic opportunities, and sometimes greater political freedom, is clear.

In terms of regions, North America and Europe experienced the largest percentage increases of global migrants, while other regions remained relatively stable or experienced a reduction of migrants as a percent of population. In absolute numbers, the regions of Europe, Asia and North America have the greatest number of migrants. Figure 3 depicts the number of migrants in the eight major regions of the world and also shows the United States individually. As the chart shows, the United States is on the leading edge of global population shifts with an estimated 42 million migrants in 2009, a number greater than any other nation, representing about 20 percent of all global migrants.

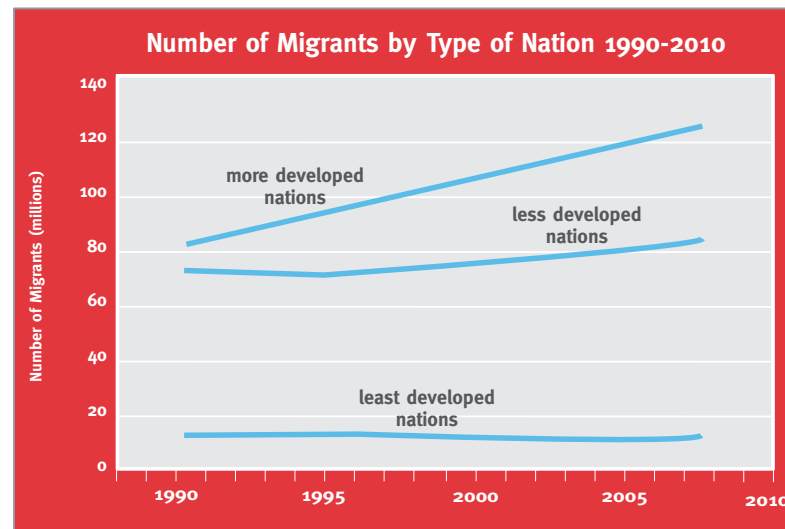


Figure 2 – Migrants by Type of Nation

(Source: United Nations, Department of Economic and Social Affairs, Population Division)

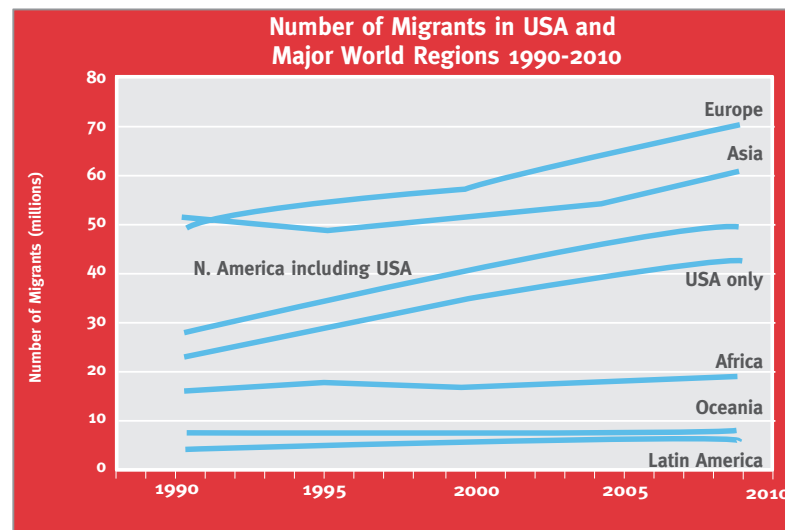


Figure 3 – Number of Migrants by Location

(Source: United Nations, Department of Economic and Social Affairs, Population Division)



Pete Coors
2009 Immigration
Panel member

“The question before the United States is **less about halting the flow of global migration** and more about managing it to our advantage.”

Global migration, like the new, intertwined global economy, is a fact of 21st century life that must be recognized. It cannot be wished away. The panel believes that an appreciation for the forces of global economics in general, and global migration in particular, is an appropriate starting point for considering U.S. immigration policy. The question before the United States is less about halting the flow of global migration and more about managing it to our advantage. To that end, *the*

panel recommends that global migration be recognized as an opportunity to be capitalized upon to our national benefit, rather than a reality to be ignored.

The Rise of U.S. Immigration

Over a relatively brief period of time, the rising tide of global migration has resulted in remarkable changes to the U.S. immigration picture. In little more than 35 years, the number of foreign born in the United States rose from an estimated 4.7 percent of the population in 1970, to 13.5 percent of the current U.S. population, not far from the all-time high of 14.8 percent reached in 1890. As Figure 4 shows, the flow of immigration into the United States has shifted significantly, falling from a high in 1890 to a low in 1970, and then rising sharply once again to present levels. Given these changes it is no surprise that immigration has re-emerged as a key issue in the United States.

The debate over immigration has resurrected a long-running American dilemma. On one hand, the history, accomplishments and prosperity of the United States are the result of a great national experiment in meritocracy. Imperfect, to be sure, but extraordinary in terms of aggregate achievement, it has been an experiment built largely on immigration. The achievements of the United States are a result of the innovation, inventiveness

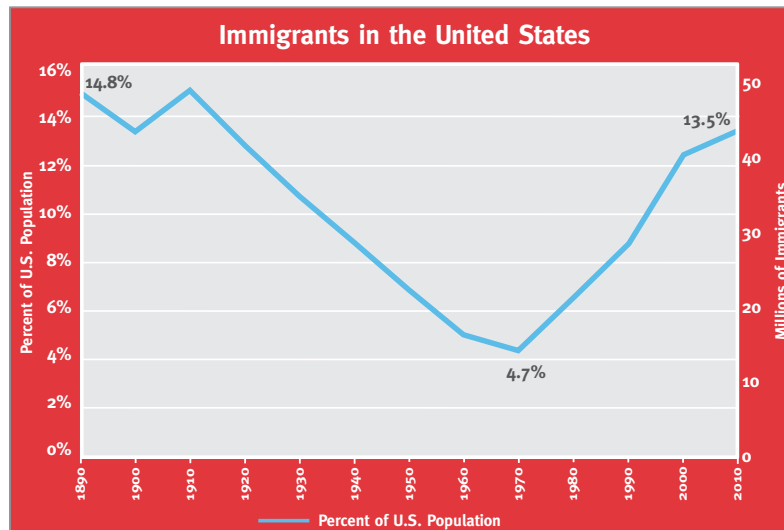


Figure 4 – Immigrants in the U.S.

(Sources: United Nations and Migration Policy Institute)



Polly Baca
2009 Immigration
Panel member

“The history, accomplishments and prosperity of the United States are the result of a great national experiment in meritocracy... an experiment built largely on immigration.”

and hard work of a populace, the vast majority of whom had their ancestry in other lands. The irony of immigration lies in our present inability to engage for the future an issue that has so profoundly shaped our past.

Even as we recognize the important role of immigration in our national success, we remain conflicted about the best future course. The question of immigration policy remains one of our most intractable issues. It has become a Gordian knot that even bipartisan attempts of recent years have failed to untie. It is a knot pulled ever tighter on one end by immigration advocates and on the other by immigration opponents.

Yet it is important to consider the choices. The nature of American society in the 21st century and its economic strength, security, and global competitiveness will be influenced by immigration policy. One way or another, either by action or inaction, a course will be set. If we cannot as a nation find a common framework through which to engage the issue of immigration, we will likely be engaged by it without our consent, as the forces of global migration bear upon the United States.

Drivers of Migration

Given the impact of global migration, understanding the factors

that drive migration is a necessary first step in developing an effective immigration policy. Migration decisions made by individuals are complex and based on a combination of factors. It is not easy to decide to leave one's family and homeland. The individual is pushed and pulled by many factors.

Lack of opportunity, unemployment, hunger, disease, natural disasters, armed conflict, political repression, previous immigration to a particular country by family and friends, and other factors push the migrant to leave his or her native land. At the same time, economic opportunity, the chance to reunite with family or friends abroad, and greater political freedom pull the individual toward one country or another. Figure 5 illustrates just some of the many factors affecting migration decisions. The harsh realities that make up push factors exist in many places while attractive pull factors tend to be stronger in developed countries. With the difficulties that exist in many countries, it is not surprising that individuals are migrating to developed nations, especially the United States, in great numbers.

While perspectives differ concerning the exact mix of factors, conditions and circumstances that surround migration decisions, there is widespread agreement that the quest for economic opportunity is one of, and most likely the primary



Ellis Island 1918
(Source Library of Congress)

“The irony of immigration lies in our present inability to engage for the future an issue that has so profoundly shaped our past.”



driver of migration. What constitutes “economic opportunity” for a migrant turns out to be a complex calculus that includes economic conditions in both the source and receiving countries. In the end, however, many migrants tend to go where they perceive economic opportunity to be the greatest.

Two other important drivers of migration include the desire for family unification and refugee resettlement. Family unification, while producing large numbers of migrants, is better thought of as a consequence of a migration decision made by an initial family member which later results in an understandable desire to reunite the family in a new homeland. Refugee events are also a significant driver of migration as armed conflict, political repression and environmental disasters force refugees from their homes. These forces, creating refugees and those seeking asylum, are very real although they can be difficult to predict and often impossible to control.

Although the desire for family unification produces large numbers of immigrants, and refugee-producing events are powerful motivators of migration, the quest for economic improvement is, on balance, the most important driver of immigration from a policy-development viewpoint. It is significant not only in the sheer numbers of migrants influenced

by economic opportunity, but also because, unlike family unification, it is a primary driver of immigration rather than a secondary consequence. Moreover, unlike the factors producing refugees, the quest for economic improvement is a reasonably predictable force that is at least partially within the control of the receiving country. Thus, from the panel’s perspective, focusing on economic improvement provides a key point of leverage for both managing immigration and maximizing its potential benefits.

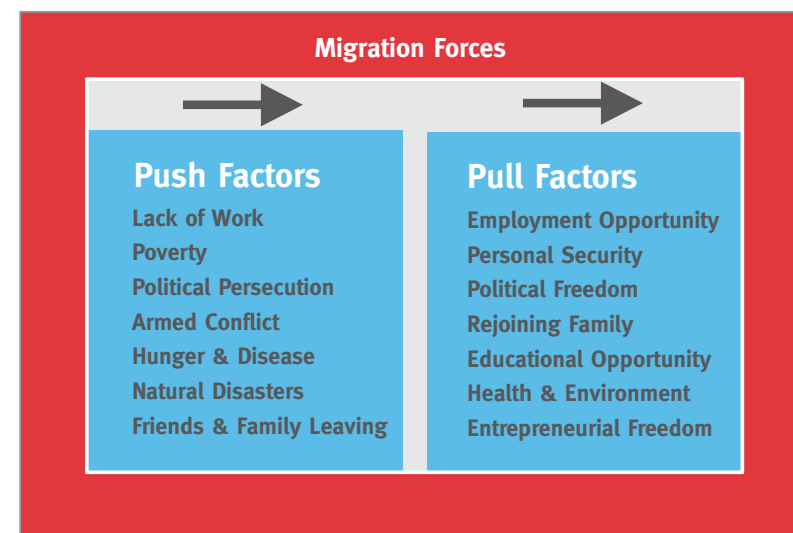


Figure 5 – Migration Forces

A FOUNDATION FOR POLICY

Creating an effective policy begins with a consensus about the broad aims to be achieved. The panel believes that U.S. immigration policy should be grounded in creating economic and social benefits to the nation as a whole while maintaining national security. This premise suggests the broad purpose to be served by immigration policy and provides a foundation for establishing priorities and organizing goals.

Purpose and Priorities

Unclear or conflicting goals are the nemesis of good public policy. Nowhere is this better illustrated than in our own nation's immigration policy, which is a tangled web of statutory and administrative approaches that have been patched together over many years. In truth, it is difficult to speak of an immigration policy as if it were a coherent set of actions leading to defined goals. Rather, today's immigration policy is the result of a series of decisions based upon goals and priorities that seem to shift over time.

In most policy areas there exists a consensus on broad aims to be achieved, even though there may be disagreement on the best means of realizing those goals. In national defense, for example, while there may be disagreement on specific programs or spending levels, all parties agree on the importance of an effective U.S. defense capability. In public health, everyone shares the goal of keeping the public safe from disease, although there are often legitimate differences on the best way of doing so. In these examples, and in many other issue areas, there is general agreement about the broad goals to be achieved.

Not so with immigration, where no shared consensus on fundamental goals yet exists. Without agreement on basic goals, there is the risk that the gridlocked status quo will define our future rather than defining for ourselves the role immigration should play. There is an urgent need to be clear about the ends we seek. With that in mind, *the panel recommends that the basic purpose of U.S. immigration policy be the creation of economic, social and other benefits to the nation as a whole.*



Don Ament
2009 Immigration
Panel member

“Focusing on **economic improvement** provides a key point of leverage for both managing immigration and maximizing its potential benefits.”

Although this recommendation may seem obvious, it carries with it significant implications. The recommendation suggests that immigration policy should be grounded on enlightened self-interest rather than altruism. It means that all immigration-related proposals must clearly demonstrate how they benefit the nation as a whole. The panel's perspective asserts immigration as a means of creating a stronger nation, not simply an end in itself.

If the creation of benefit to the nation as a whole is the overarching purpose of U.S. immigration policy, the first task is to establish goals and the criteria around which policy aims and priorities will be organized. It is important that any such criteria not be sub-rosa, but be clearly articulated. To that end, *the*

panel recommends that the criterion for ordering immigration priorities and goals be the relative degree of benefit to the United States as a whole compared with the benefit to prospective immigrants. Using this criterion, goals providing greater benefit to the U.S. receive a higher priority, while the goals providing a greater degree of benefit to the individual immigrant receive a lower priority. This relationship is depicted in Figure 6.

Immigration Goals

In the course of its meetings, the panel received presentations from a large number of immigration experts, advocates and public officials, many of whom suggested goals to be achieved through U.S. immigration policy. These included such policy



Marguerite Salazar
2009 Immigration
Panel member

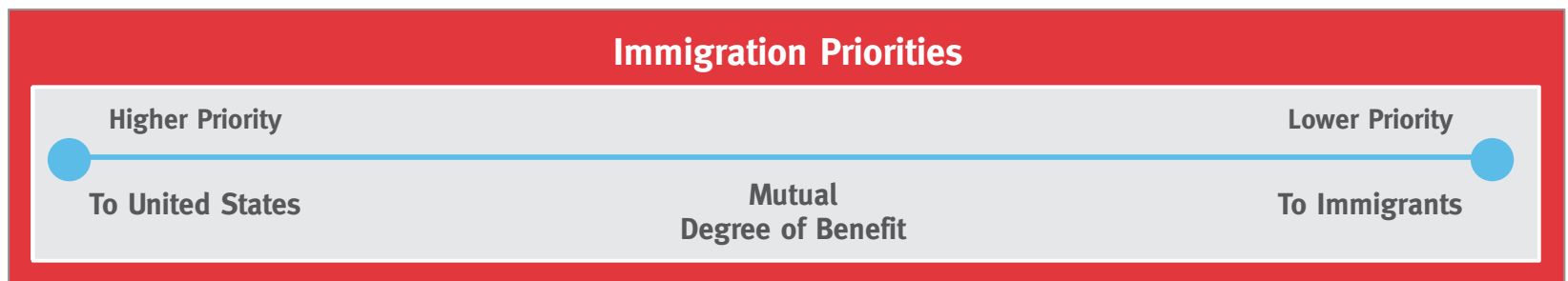


Figure 6 – Basis for Immigration Priorities

“Immigration policy should be grounded on enlightened self-interest rather than altruism.”



aims as meeting employer needs for workers; creating a younger, more vital society; protecting the jobs of U.S. citizens; eliminating abuse of immigrant workers; reuniting families; providing for refugees; maintaining national security; improving border security; protecting the current quality of life in the U.S.; attracting the best and brightest to our country; reducing human trafficking; etc.

While the suggested policy goals did not all array themselves into neat categories, most fell into one of five areas: national security, social vitality, economic enhancement, family unification and refugee concerns. Taken together, these areas embrace many of the principal issues and sub-issues of

immigration and form a basis on which to establish goals. Each of these five areas is important in its own right. Yet, in a world of limited resources, where not every objective can be equally served, priorities must be established if a coherent and effective policy is to be created. As noted earlier, the criterion used by the panel for establishing priorities among goals is the degree to which a goal provides benefits to the United States as a whole compared with benefits provided to prospective immigrants. This criterion provides a basis to organize five key goals.

1. National security includes maintaining the security of the United States, protecting citizens and guarding national borders. The benefits derived from protecting national security flow

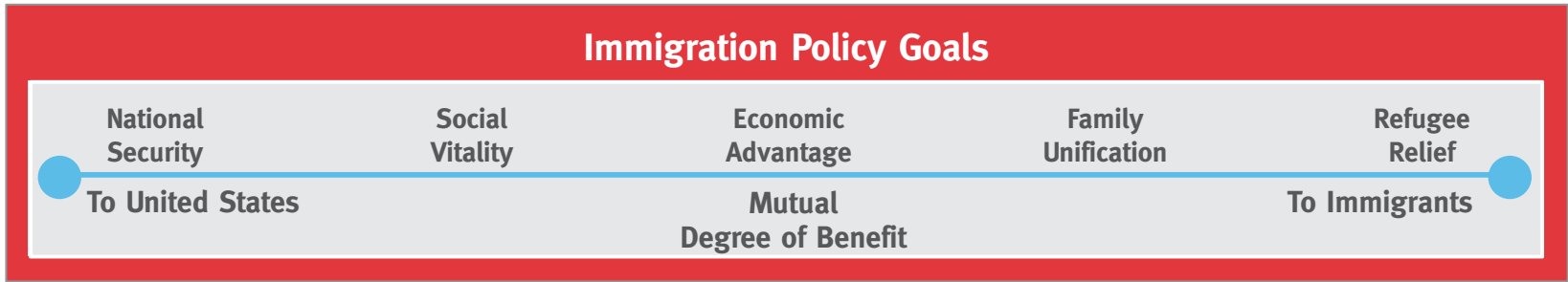


Figure 7 – Immigration Policy Goals



overwhelmingly to the United States as a whole compared to prospective immigrants. For this reason, national security must be the first priority.

2. Social vitality relates to strengthening the social cohesion of the nation while recognizing the benefits of a diverse society. It is about interweaving a wide range of cultures, mores and perspectives into a social fabric that is stronger, more vibrant and more resilient than the sum of its strands. Enhancing social vitality and cohesion is of direct benefit to the U.S. as a whole while providing indirect benefits to prospective immigrants. Social vitality is the second goal.

3. Economic advantage focuses on strengthening the economic viability and global competitiveness of the United States. The panel believes that creating economic advantage for the United States should be a key purpose of immigration policy. Properly structured, immigration policy in this area can create both economic enhancement for the U.S. and economic opportunity for qualified immigrants.

4. Family unification centers on bringing families together after one or more members initially migrate to the United States. After creating economic advantage, family unification should be the next priority for U.S. immigration policy. The benefits here accrue directly to immigrants and their families; however, the nation as a whole benefits from the employment productivity and social strength derived from stable family life.

5. Refugee concerns are an important humanitarian matter offering momentous benefit to the individual refugee, while benefit to the United States may be uneven or indirect. That notwithstanding, relative to other nations the U.S. has had a generous refugee policy. According to OECD (the “Organization for Economic Cooperation and Development”), since 1994 the U.S. has accepted more refugees than all other 30 OECD nations combined. Even though the number of refugees as a percent of international migrants has declined from 12 percent in 1990 to about 7.6 percent today, the conditions endured by many refugees continue to be extremely difficult, even life-threatening. Although refugee policy was not within the panel’s scope of

“These policy goals and the basis on which they are prioritized **represent a framework for immigration policy.**”

study, and is thus not an area in which recommendations are offered, it remains an important part of the immigration policy framework and a priority to be addressed.

Consistent with the criterion for policy priorities described in the preceding section, *the panel recommends that the goals for United States immigration policy be: national security, social vitality, economic advantage, family unification and refugee*

relief, in that order. These policy goals and the basis on which they are prioritized represent a framework for immigration policy. Goals and the relationship between them are depicted in Figure 7.

It is important to note that these goals are not congruent with current U.S. immigration policy goals, nor do they share the same priorities. Current U.S. policy goals are family unification,

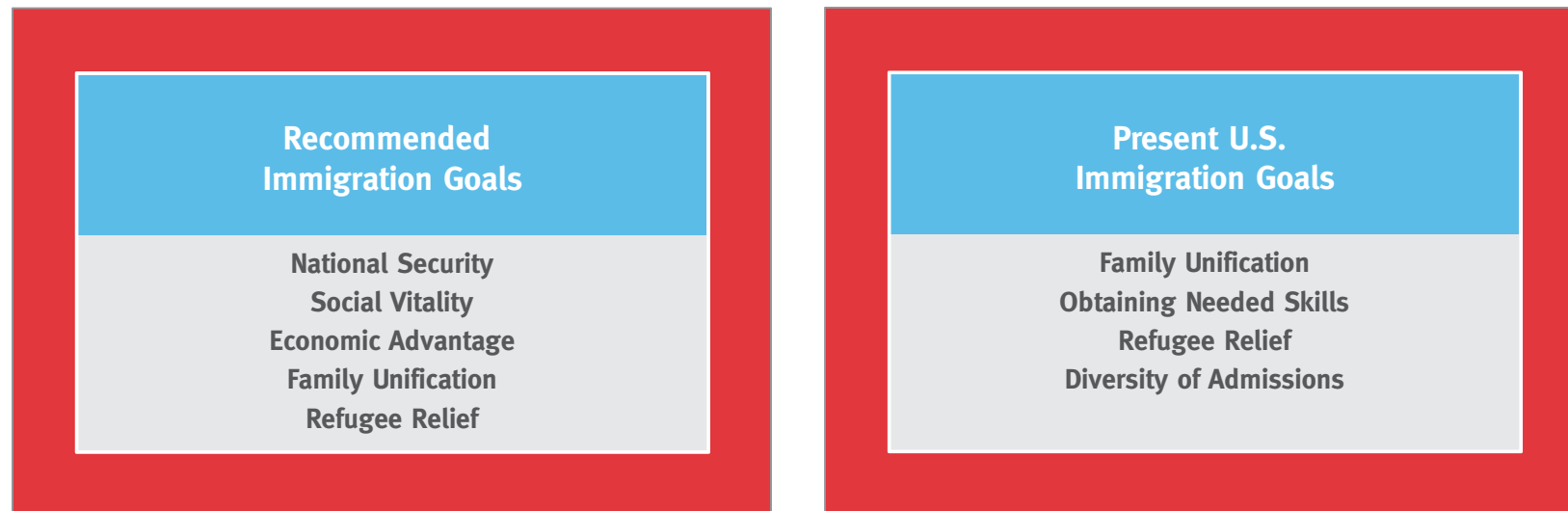


Figure 8 – Recommended and Present Immigration Goals



Steve Halsted
2009 Immigration
Panel member

admission of immigrants with needed skills, refugee relief and diversity of admissions by country of origin. This variation in goals and priorities underlies some of the differences between the recommendations in this report and current U.S. policies and practice. The variation in goals is shown in Figure 8.

Federal and State Roles

Identifying a shared purpose, ordering priorities and establishing clear goals are essential prerequisites to successful policy. But policy is not performance and rhetoric is not results. To achieve real results, both policy and implementation must be harmonized among three levels of government: federal, state and local. For immigration policy this is, at the moment, not always the case. At the policy level, there is too little coordination and consistency among federal, state and local legislation. As to enforcement, multijurisdictional cooperation, while improving, still remains disjointed and subject to serious funding concerns. Without effective coordination among all levels of government, creating and implementing a successful immigration policy is likely to remain an elusive goal.

The federal government has plenary power when it comes to establishing immigration policy. This does not mean, however, that states cannot legislate in the area so long as their statutes are consistent with federal law. And legislate they have, for better or worse. In recent years states have become very active, adopting more than 550 immigration-related statutes since 2005. Legislative activism extends to the local level where an estimated 100 cities have enacted or are considering their own legislation relating to immigration. The result is a legislative potpourri dealing with a wide spectrum of immigration and immigrant issues including education, employment, health, human trafficking, law enforcement, legal services, public benefits, voting and other topics.

In the panel's view, legislative inconsistency and policy conflicts are due to the absence of clear federal statutes delineating appropriate governmental roles. As a result, state and local policies, while sometimes supporting federal law, are just as likely to weaken or conflict with federal policy. The failure of the federal government to define its own sphere of exclusive action and designate appropriate domains for state and local legislation



Colorado Governor Bill Ritter addresses the 2009 Immigration Panel



exacerbates the ineffectiveness of U.S. immigration policy and implementation. While there may be legitimate debate as to the extent to which it is desirable for the federal government to preempt state and local authority, there can be little question about the importance of clear roles and responsibilities among the various levels of government. For that reason, *the panel recommends that the federal government define by statute appropriate spheres of legislative activity for itself and for the states*. States, in turn, can take similar action with respect to local governments within their jurisdictions.

In the same way that legislative boundaries between levels of government are unclear, coordination in the implementation and enforcement of immigration policy remains an area ripe for improvement. For example, the idea of sharing law enforcement personnel seems to make a great deal of sense since federal officers represent only about 13 percent of all civilian law enforcement personnel in the U.S. while state and local officers account for the remaining 87 percent. But progress has, frankly, been painfully slow. A variety of issues, including a lack of funding to reimburse state and local governments for their

costs, have hampered efforts at cooperation. For example, by October 2009, just over 1075 state and local officers had received training and been certified by the U.S. Immigration and Customs Enforcement (ICE) to assist with immigration enforcement. This group represented barely one-tenth of 1 percent of all state and local law enforcement officers.

In the course of its meetings, the panel received presentations from officials at federal, state and local levels. Presenters consistently identified the need for more effective coordination between federal and state officials in terms of implementation and enforcement of immigration policy. Whatever immigration policies eventually emerge, it is essential that implementation be coordinated among various levels of government. For that reason, *the panel recommends that Congress establish a shared process of implementation that allocates responsibilities for implementing and enforcing immigration policy among federal, state and local government; balances revenues and costs; and prohibits unfunded federal or state mandates*.

“Without effective coordination among all levels of government, creating and implementing a successful immigration policy is likely to remain an elusive goal.”



REFORMING THE SYSTEM

In order to consider specific recommendations related to national security, social vitality, economic advantage and family unification, it is necessary to look at the structure and operation of the current U.S. immigration system. For the vast majority of U.S. citizens, employers and immigrants, the immigration system often seems well-nigh incomprehensible. Almost every thoughtful observer, regardless of party affiliation or perspective, believes the American immigration system is broken and in need of fundamental reform. Yet changing the system has proven to be no easy matter, in large part due to its complexity. As the Congressional Research Service noted, “The sheer complexity of the current set of provisions makes revising the law on permanent immigration a daunting task.”

The Need for Change

The present U.S. immigration system is built on the foundation of the Immigration and Nationality Act (INA), initially codified in 1952 and since amended many times. Conceptually, the INA establishes two broad categories of legal aliens: immigrants and non-immigrants. Non-immigrants include tourists, students, diplomats, temporary agricultural workers and others here for a

specific purpose and a limited period of time. Immigrants, also called legal permanent residents (LPRs), are foreign nationals who come to live permanently in the United States. What begins as a neat theoretical categorization for immigration gains astounding complexity in practice.

Structurally, the immigration system may be thought of as a layered arrangement of visa categories and subcategories with legislatively determined allocations, further limited by country of origin, overlaid with a system of preferences related to family members, employees, diversity, refugees, asylees and several other special preference categories. Depending upon how one counts, the result is a complicated labyrinth of over 40 principal visa categories and more than 195 subcategories for both immigrant and non-immigrant purposes. In most cases, the numeric limits for each category, and often the procedures for calculating those limits, are established by Congress via federal statute.

This structure is further complicated by the fact that certain categories are permitted to exceed their limits, other categories are permitted to use otherwise unused allocations from different categories, and unused visa numbers are allowed to roll down to

the next preference category—in most, but not all, cases. All of this must occur within the per-country limits except where there are statutorily established exceptions to the limits, such as for family-sponsored immigrants. In actual practice, of course, the system is much more complex than this brief overview depicts.

The mechanics of managing allocations within various categories, all constrained by national origin limits, would be complex enough if the flow was predictable and the system flexible. But neither condition exists. The decision to apply rests with the applicant, not with the U.S. Citizenship and Immigration Services (USCIS). Thus, the applicant flow is variable and essentially uncontrollable. This is compounded by the inflexibility of the system, since only Congress can change the total number of visas allowed. Each year, bills are introduced to change the numbers or tweak allocations between or within categories and subcategories. Those bills that pass simply become another patch on a system that is already hopelessly complex.

The result is a U.S. immigration system that is unpredictable, opaque, and that produces results that are sometimes exactly

the reverse of those intended. One stunning example is found in the non-immigrant category of visas that were not intended to result in permanent immigrants; that was the purpose of the immigrant category. In fact, about 80 – 90 percent of all employment-based green cards are now issued to persons from non-immigrant categories. The original, neat distinction between immigrant and non-immigrant categories is now largely irrelevant. The system creates frustrating uncertainty for everyone involved—employers, applicants and family members—with processing backlogs that almost defy imagination. Depending upon one's preference category, waiting times for visas might range from a few months to 22 years.

The United States immigration system requires fundamental rethinking. The U.S. needs a new immigration system that is supportive of national goals, responsive to rapidly changing economic conditions and that produces predictable outcomes. In addition, the system must be comprehensible, transparent and as straightforward as possible. As the U.S. Commission on Immigration Reform noted in its 1995 report: “Immigration policy should not be overly complex, and the mechanisms used ... should be efficient and comprehensible.” The panel



Carolyn Daniels
2009 Immigration
Panel member

“For the vast majority of U.S. citizens, employers and immigrants, the immigration system often seems **well-nigh incomprehensible.**”

agrees with the commission. Therefore *the panel recommends that Congress reform the U.S. immigration system in a comprehensive way so that it is supportive of national goals, responsive to rapidly changing economic conditions, produces predictable results and is as simple, comprehensible and transparent as possible.*

A Simplified System

The United States immigration system must be reformed and simplified. In approaching this task it is essential that any reform be done holistically, not via more legislative patches on an already badly listing ship. There are a number of ways the U.S. immigration system might be improved and many suggestions have been offered over the years. Without discounting the value of other approaches, the panel suggests that reform must begin with a dramatic simplification of the visa system. *The panel recommends that the visa system be simplified into eight broad visa categories: visitor, student, temporary, convertible, family, provisional, representative and refugee, and that immigrant/non-immigrant distinctions be eliminated.* Qualification for all visas would include a level of security screening appropriate to the type and duration of the visa and visas would be revoked if

the individual were convicted of a serious crime.

Visitor visas would be for those entering the country for a period not exceeding nine months. Visitors, businesspersons, trainees and others desiring short-term stays are among those included in this category. There would be no limit on the number of visitor visas that could be issued. Persons holding visitor visas could not bring family members unless those individuals secured their own visas. Visitor visa holders could leave the country and return again within the visa period, but could not renew the visa from within the United States. Persons holding visitor visas would not be eligible to adjust to legal permanent resident (green card) status.

Student visas are intended for students in formal educational programs leading to a degree from an accredited university or other recognized educational institution. Student visas would be valid for a period of five years, but terminate immediately if the student ceased his or her education prior to graduation. Spouse and minor children could receive family visas while the principal's visa remained valid. Student visa holders could leave the country and return again during the visa period. Students



Kay Norton
2009 Immigration
Panel member

“Almost every thoughtful observer, regardless of party affiliation or perspective, believes the **American immigration system is broken and in need of fundamental reform.”**



could renew the visa from within the United States only once, and only if they became a qualified graduate student. Persons holding student visas and their family members would not be eligible to adjust to permanent resident status. Students graduating from accredited U.S. universities with master's and

doctoral degrees would, however, be eligible for a special one-year extended student visa that would allow graduates time to seek employment and then be eligible for a convertible visa.

In this connection, it is useful to recognize the relationship between student visas and the ability to attract outstanding

| Type of Visa (Major Categories) | Duration of Visas | Renewability of Visa/ Conditions for Renewal | Family Allowed | Adjust to Legal Permanent Resident |
|------------------------------------|-------------------|---|-------------------|--|
| Visitor | 9 months | Yes/Only outside U.S. | No | No |
| Student | 5 years | 1 time/Graduate work only | Yes | No |
| Temporary | 1 year | Yes/Only outside U.S. | No | No |
| Convertible | 4 years | 2 times/Within U.S. | Yes | Yes |
| Provisional | 5 years | 1 time/Within U.S. | Conditional | Yes, with conditions |
| Family | Limited Term | Same term as principal's visa | n/a | Convertible visa only |
| Representative | Appointment | Runs with term of appointment only | Yes | No |
| Refugee | | Not addressed in this report | | |

Figure 9 – Summary of Recommended Visa Categories



workers in science, engineering and other important fields. By educating students here, the U.S. gains an inherent advantage in the global competition for highly skilled workers. For many years, the United States was the unquestioned leader in higher education and enjoyed the luxury of having the brightest and most motivated students flock to our doorstep. For example, the National Academy of Sciences indicates that, since 1990, more than half the U.S. Nobel laureates in the sciences were foreign born.

While still the leader in higher education, U.S. domination is diminishing. In 1989, American universities awarded twice the number of PhDs as those granted by major Asian countries. Just 12 years later Asian universities had closed the gap. A similar story exists in Europe. The United States is paying a heavy price for an immigration system that presents students with a confusing, ad hoc mixture of temporary visas and no convenient way to search for a job in the U.S. after graduation.

Representative visas are for persons representing foreign governments and trade organizations, the media, certain treaty workers and others in similar capacities. These visas would be for the duration of the representation only. Spouse and minor

children could receive family visas while the principal's visa remained valid. Visa holders could leave the country and return again during the visa period. Persons holding representative visas and their family members would not be eligible to adjust to either a convertible visa or to permanent resident status.

Refugee visas would be used for refugees approved for immigration, asylum seekers, certain employees of the U.S. government serving abroad and similar persons. Conditions and numerical limits for refugee visas would be established by Congress. Refugee policy was not within the panel's scope of study, and thus recommendations are not offered on refugee visas.

Temporary and convertible employment, family and provisional visa categories are discussed in following sections of this report. Figure 9 provides a brief summary of the panel's recommendations for simplified visa categories.

Immigration Management Commission

Presently, Congress determines the number of visas allowed for each category and subcategory in a highly detailed way. As might be imagined, the process of establishing or changing the visa limits is slow, cumbersome and subject to political

“The U.S. needs a new immigration system that is supportive of national goals, responsive to rapidly changing economic conditions and that produces predictable outcomes.”

compromise. Congressional deliberation is appropriate for crafting broad legislation and for establishing the total number of visas allowable annually under each major category such as those shown in Figure 9. It is far less effective as a means of establishing detailed subcategory-by-subcategory immigration limits that more closely resemble policy implementation than policy formulation. The difference is significant. Imagine if Congress were to set the federal funds rate on the basis of whatever political compromises could be achieved and whenever a majority could be found. Or, visualize a Congressional debate on the efficacy of a new drug and releasing it for public use, or not, based on the political climate at the time.

These are not the best approaches and Congress has, in its wisdom, created institutions such as the Federal Reserve and the Food and Drug Administration to execute its broad policy objectives. The same approach should be taken with respect to immigration visas. This is especially true in the area of employment-related visas where the system must reflect the needs of employers if it is to improve the strength and competitiveness of the U.S. economy. For these reasons, *the panel recommends that Congress establish only a maximum numeric limit for each major category of visa and that the allocation of visas within each major category be handled by*

an independent Immigration Management Commission to be created by Congress.

The Immigration Management Commission (IMC) would have a limited, but vital role. As noted above, Congress would establish an overall numeric limit for major visa categories or could allow a category to be unlimited, such as in the case of visitor, student or family visas. Within those overall limits, the IMC could annually determine the specific number of visas to be allocated within each category (but not between categories) and the priorities related to such allocations. The existence of such a commission would allow the immigration system to respond rapidly to changes in economic conditions. Congress would no longer be called upon to try to manage the details of the immigration system through the legislative process.

The Immigration Management Commission would be a small organization that might be housed within an existing department for efficiency, but would be independent in its decision making. It would have a small staff to conduct analyses and interact with federal and state officials and others with an interest in the process. The commission would not, however, replace the U.S. Citizenship and Immigration Services as the administrator of the immigration system. Rather, the IMC's role



David Trickett
2009 Immigration
Panel member

“The Immigration Management Commission would have a limited, but vital role...such a commission would allow the immigration system to respond rapidly to changes in economic conditions.”

would be to allocate visas tactically, based on current conditions, and to establish visa issuance priorities to be followed by the USCIS in implementing immigration policy. For example, when economic conditions contracted, the IMC could respond in a timely way, through reductions in allocations of employment-related visas. Conversely, when the demand for workers expanded, the commission could respond accordingly. In a similar fashion, if there was a severe shortage of scientists and engineers with expertise in nanotechnology, the commission could increase employment-related visas and encourage student visas in that field as well.

In recommending such an approach, the panel is particularly concerned that the Immigration Management Commission not preside over a centralized, top-down process. What is required, especially with respect to employment-related visa limits, is an employer-driven process. The panel feels strongly that the allocation of employment visas should start with employers, not with a government agency. The process would begin with employers in each state meeting with a designated state agency to identify annual needs for temporary and longer-term positions, giving careful consideration to the

availability of U.S. workers willing to fill such jobs. State-level analysis would be followed by formal, face-to-face discussions between state officials and commission members. The goal is a bottom-up, collaborative process that engages employers, states and the federal government and is responsive to economic and other conditions. To this end, *the panel recommends that the allocation of employment-based visas be based on a collaborative process in which each state presents detailed recommendations to the Immigration Management Commission based upon surveys and face-to-face discussions with employers throughout the state.*

Per-country Limitations

In addition to simplifying the visa structure and the way in which numeric limits are allocated, it is important to consider the matter of per-country immigration limitations. Initially created in 1965 to encourage diversity, per-country limitations require that no country exceed 7 percent of the worldwide level of U.S. immigrant admissions. Per-country limits are not an entitlement; rather they are intended as a barrier against monopolization of the immigration process. The diversity limit is, in effect, overlaid on the many visa categories and



Jerry Williams
2009 Immigration
Panel member

“The allocation of employment visas should start with employers, not with a government agency.”



subcategories and is administered through its own set of complex rules. In spite of several attempts at legislative workarounds, diversity limits continue to be problematic.

Diversity caps can inhibit the goal of using immigration policy to strengthen U.S. economic viability. In 2007, Mexico, China, Philippines and India were among the top countries sending immigrants to the U.S. Thus, a highly educated applicant from India or China, an experienced engineer from Mexico or a skilled worker from any other country that had reached its diversity limit might wait years for a visa. Preventing overwhelming numbers of immigrants to come from just one or two countries is an idea the panel supports, however the current limit has the potential to impede realization of other important goals.

The United States is a highly diverse nation and there is every indication that the country will continue to attract immigrants from throughout the world. The panel does not wish U.S. immigration to be dominated by a single country, but the current limits can thwart immigration policy goals, particularly in the area of employment. Therefore, *the panel recommends that per-country diversity limits be increased from 7 percent to 10 percent of the worldwide level of U.S. immigrant admissions*

and that waivers not be granted to any country to exceed 10 percent. Taking this step would not increase the total number of immigrants, since the maximum limit for each major category would continue to be established by Congress.

The desire to achieve diversity has also led to the creation of an annual diversity lottery through which 50,000 visas are granted each year. The only requirements are that the applicant be from an eligible country and have either a high school education or equivalent, or two years of experience in a profession that requires at least two years of training. The 50,000 diversity visas represent about one-third of all the visas available annually for skilled workers seeking to immigrate to the United States. The demand for skilled worker visas has dramatically outstripped the supply during most of the past decade. The panel believes that special measures are no longer required to foster diversity. Therefore, *the panel recommends that the annual diversity lottery be eliminated and its visa allocation be transferred to the convertible visa category.*



NATIONAL SECURITY

Maintaining the security of the United States and the safety of its citizens is a fundamental requirement. Near the top of national security concerns is the matter of border security.

Border Security

The rise in illegal immigration and a heightened concern about drug smuggling, crime and terrorism have combined to increase

the focus on U.S. border security. The responsibility for border enforcement rests with the U.S. Bureau of Customs and Border Protection (CBP). Over the past decade, the U.S. Border Patrol has seen its budget more than triple and its number of personnel nearly double. The addition of personnel and equipment, creating the most extensive air and marine resources of any law enforcement agency in the world, is improving border security. The growth of appropriations for the border patrol is shown in Figure 10.

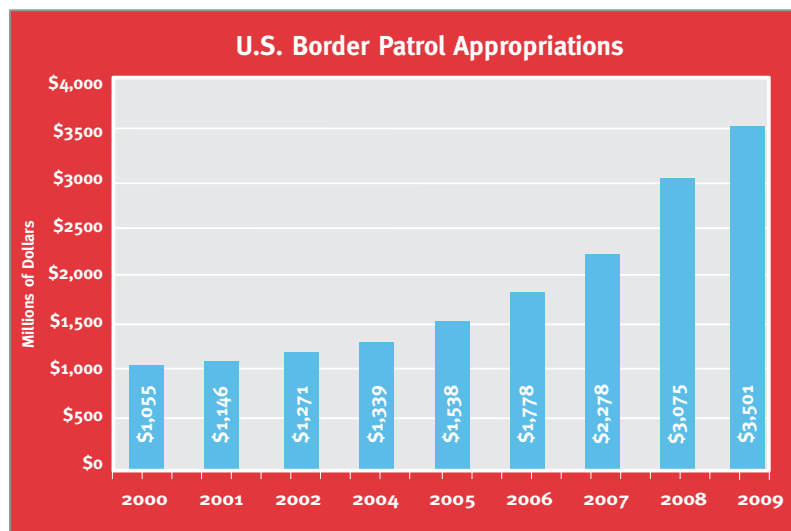


Figure 10 – Growth of U.S. Border Patrol Appropriations

(Source: Congressional Research Service)

In addition to significant increases in funding, personnel and equipment, the CBP has expanded the construction of physical barriers along the Mexican border as part of its Secure Borders Initiative. Construction of border barriers goes back to 1990, but in recent years the border infrastructure construction program has greatly accelerated. Enhancements to border security go well beyond fencing and walls and now include sensors, light towers, mobile night vision scopes, remote video surveillance systems, directional listening devices, and unmanned aerial vehicles.

It is difficult to determine with precision just how successful these increases in border security have been. For example, a 14 mile fence built nearly a decade ago near San Diego seems to have proven effective in terms of reducing the number of illegal

border crossings in that sector. That said, there is evidence that the flow of illegal immigration has adapted to the San Diego fence by shifting to the more remote areas of the Arizona desert. Nevertheless, as increased border security is extended to encompass some 700 miles along the southwest U.S. border, it is very likely that illegal border crossings will become increasingly difficult and expensive.

In addition to illegal immigration concerns, there is an urgent need to deal with violence, drug smuggling, human trafficking and potential terrorist activity in border areas. Indeed, CBP's top priority is now to keep terrorists and their weapons from entering the United States. Given the fundamental importance of border security for controlling illegal immigration, criminal and terrorist activities, *the panel recommends that the United States continue efforts to strengthen the security of the U.S. border and that Congress fund the Bureau of Customs and Border Protection at levels required to maintain effective border enforcement.* The panel views these steps, along with continued collaboration with Canada and Mexico in border enforcement efforts, as essential to the maintenance of U.S. border security.

The Central Role of Employers

Efforts by the Bureau of Customs and Border Protection

to secure U.S. borders against illegal immigration through enforcement, fences, video surveillance and other techniques are essential, but not absolute. A key challenge is the length of the United States border. According to the U.S. Geological Survey, the U.S. border with Mexico is just under 2,000 miles long and the border with Canada is about 4,000 miles not including Alaska, which adds an additional 1,500 miles. The U.S. seacoast is much longer, with the most conservative estimate putting the length at 12,500 miles. Given this vast expanse of land borders and seacoasts, it seems highly unlikely that immigration will be controlled by border security alone.

As noted earlier, the opportunity for economic improvement is a primary driver of migration. Hence, a key step in reducing illegal immigration is to remove the economic incentive to migrate. In this respect, U.S. employers have a central role to play in managing immigration. Although sometimes cast in the role of villains, in fact, employers are central to creating an effective immigration policy for one principal reason—they control the jobs. Migrants seeking economic opportunity are unlikely to move to a country where employment is unavailable. As a result, *the panel recommends that employers be recognized as key allies in implementing immigration policy and that*

“Employers are central to creating an effective immigration policy for one principal reason—**they control the jobs**”



Richard Ballantine
2009 Immigration
Panel member

they be given the tools and protections necessary to support immigration policy.

For more than 20 years, federal law has required all employers to examine documents presented by new hires to verify identity and work authorization, and to complete and retain employment eligibility verification forms (I-9). There is general agreement that the I-9 process has been undermined by fraud, both document fraud, where prospective employees present counterfeit or invalid documents, and identity fraud, where prospective employees present valid documents issued to other individuals. Even if employers are willing and motivated to comply with the law, as the great majority seem to be, the inability to positively and reliably verify immigration status is a major stumbling block to managing illegal immigration through employers.

In addition to being subject to fraud by job applicants, the I-9 process is complex for employers to administer, especially those who do not use immigrant labor on a regular basis. Currently there are more than 20 documents that employees can present to employers to establish their identity and employment eligibility. For many employers, especially small businesses and those who use the process only occasionally, understanding the procedures

can be difficult. In addition, record-keeping requirements give rise to errors and omissions, putting the employer in potential legal jeopardy for non-compliance.

To improve the identification process, in 1997 Congress established a pilot program for electronic verification of employment status. This Web-based program, now called E-Verify, allows the employer to send required I-9 data (name, date of birth, Social Security number, immigration/citizenship status, etc.) to the U.S. Citizenship and Immigration Services via the Internet where the information is verified against the Social Security and other databases. Plagued by problems and inaccuracies in its early years, the accuracy of the E-Verify system is now much improved.

All federal contractors and many state contractors are already required to use the system. In addition, as of May 2009 more than 122,000 employers of all types were enrolled in E-Verify, with an average of 1,000 employers joining the program each week. In spite of its recent impressive growth, less than 15 percent of non-agricultural employers are currently using the system. In 2008, E-Verify was used in fewer than 13 percent of all non-farm hires. Although there is much to commend the E-Verify system in terms of simplicity of use, speed and



Ved Nanda
2009 Immigration
Panel member

“Without a means of positive identification, it makes **very little difference what immigration policies are adopted** because they can’t be effectively enforced.”



a high level of accuracy, its potential to significantly reduce illegal immigration will not be reached until it is used, and can be relied upon, by all employers. For this reason *the panel recommends that E-Verify, or a similar program, be made permanent; that employers be required to use the system with secure identification cards to verify employment eligibility of all employees; that employers using the system in good faith be held harmless from enforcement actions; and that employers failing to use the system be subject to significant sanctions.*

Universal use of E-Verify or a successor system is an essential first step in controlling illegal immigration but it will not, by itself, solve the problem of illegal immigration. E-Verify has only limited ability to detect counterfeit documents and even lower probability of detecting identity fraud when an individual presents valid documents that were actually issued to another person. The current system places the responsibility to identify counterfeit documents primarily upon the employer, inappropriately in the panel's view. In order to control the employment of illegal migrants successfully, another step is required.

Employment Identification Card

Preventing the employment of illegal aliens requires three

things: a secure, reliable means of identifying individuals, a way to verify their status and a system that is actually used by employers. E-Verify or a similar system can handle verification, if the means of identification is accurate. The problem is, and has been, that the U.S. does not yet have a secure, reliable and universal means of identification.

The idea of a national card for identifying citizens and non-citizens has become the third rail of immigration politics. But in truth, without a means of positive identification, it makes very little difference what immigration policies are adopted because they can't be effectively enforced. A means of positive identification is essential to prevent the employment of illegal immigrants.

If a source of identification exists that is extremely difficult or impossible to counterfeit, a system like E-Verify can be highly effective. Using a secure identification card, the employer would simply scan the prospective employee's card into a scanner and await confirmation. The cost to the employer of acquiring a scanner is likely to be small and, in any event, far less than the time and expense of processing multiple documents and retaining records as employers must do today. After completing the process of ID card verification, the employer should be held

“A secure identification card would be required for employment, just as a passport is required for international travel.”



harmless from enforcement actions for that hire, thus creating a positive incentive for employer compliance. Such a system would help realize the potential of employers as powerful allies in the effort to control illegal immigration.

To be effective, the identification card must be issued by the U.S. government and be as tamper-proof as possible. This, of course, raises understandable privacy concerns. However, after listening to experts and advocates on all sides, the panel has concluded that the benefits of a carefully designed identification card for employment outweigh potential privacy issues. For years, would-be architects of immigration policy have gone through contortions trying to avoid the use of a universal employment identification card. But, in the end, immigration policy must be implemented, not just discussed. And implementation requires positive identification via a card that is government-issued, technologically advanced and extremely difficult to counterfeit. That is, a secure identification card.

There are many potential approaches to creating a secure identification card. The card could permit visual identification through a photo, fingerprint and physical description. It could also contain machine-readable data and biometric information that could be scanned and sent to the E-Verify database for

confirmation. In addition, for U.S. citizens and permanent residents, the card might also include the individual's Social Security number, thus creating at little additional cost a secure Social Security card, an idea which has long been discussed in Congress. In the case of immigrants, in addition to identification information, the card could include a taxpayer ID number to help assure that required taxes were paid.

A secure identification card is the cornerstone of an effective immigration management program. Whatever its exact characteristics, a secure identification card would be required for employment, just as a passport is required for international travel. Therefore, after careful consideration, *the panel recommends that the United States establish a secure identification card to be used by all employers, along with E-Verify, to ascertain the employment eligibility of all prospective and current employees.*

SOCIAL VITALITY

United States immigration policy must support the social vitality and cohesion of the nation. Social vitality embraces diversity, not for its own sake, but for the flow of new ideas, varying perspectives, innovation and entrepreneurship that it brings to American society. The goal of strengthening social vitality is of direct benefit to the U.S. as a whole while providing indirect benefits to the prospective immigrant.

A Common Language

Nothing is more important to the strength and viability of a society than a common language. In the panel's view, there is no contradiction between appreciating the benefits of a national community built upon a panorama of cultures, while at the same time recognizing the inestimable value of English as the binding thread of our social fabric. Anyone seeking to join American society as a permanent resident or citizen needs to be proficient in English.

In addition to serving as the basic force of social cohesion, English is the path to economic advancement. In the United

States some 1.3 million college educated immigrants, nearly 20 percent of all highly skilled immigrants in the country, are unemployed or working in unskilled jobs because of inadequate English language proficiency. Conversely, immigrants who speak English occupy more skilled positions and earn much higher salaries than non-English speakers or those with only limited English language ability. It is not surprising therefore that, in overwhelming numbers, persons of all backgrounds, income levels, language abilities and political party affiliations believe that teaching English to the children of immigrant families in the U.S. is very important.

English proficiency is a basic force of social cohesion and a prerequisite to full participation in American society. For those reasons, *the panel recommends that English language training classes be funded by the federal government and made widely available to participants at an affordable cost, and that no person be granted permanent resident or citizen status without demonstrating a level of proficiency in the English language as defined by Congress.*



Linda Childears
2009 Immigration
Panel member

“English proficiency is a **basic force of social cohesion** and a prerequisite to full participation in American society.”

Existing Illegal Immigrants

It is estimated that between 10 million and 12 million individuals live in the U.S. illegally, of which more than 8 million work in the labor force. Employment opportunity is a primary driver for illegal migrants whose movement tends to be responsive to economic conditions. Some entered the country as unauthorized aliens while others initially entered the U.S. legally, on visas that have since expired. Currently, about 4 percent of the entire population of the United States resides here illegally.

Whatever the means of entry, there is little doubt that illegal immigration continues. Without in any way excusing illegal activity, many of those making presentations to the panel noted that the existing immigration system, with its convoluted processes and lack of responsiveness to the labor market realities, might encourage such behavior. Whether one chooses to call this group “undocumented persons” or “illegal aliens,” the fact remains that a great many individuals are living outside the boundaries of established American society, an inherently unhealthy situation. For social, economic, security and familial reasons it is an issue that must be addressed.

The panel sees compelling reasons to bring illegal immigrants into a legal status. From a security perspective, these include the ability to identify persons who may pose security, criminal or medical risks to society. Economically, legalization presents an opportunity to expand the productivity and realize the potential of workers whose opportunities are limited by their illegal status. The chance to become a part of the community while acquiring English language skills and civics education strengthens society by creating shared values as immigrants are brought into the mainstream of American life. Finally, creating a pathway to legal status for those who qualify strengthens families by removing the threat of family breakup through selective deportation.

While the benefits of bringing illegal immigrants into some type of legal status may be significant, the problem involves a great many individuals, and it is structurally complex. Illegal immigrants are not a homogeneous group, but are composed of single men and women as well as families with children, some of whom may be U.S. citizens. The situation becomes especially complex in mixed-status families, defined as those with at least



Del Hock
2009 Immigration
Panel member

“The panel sees compelling reasons to bring illegal immigrants into a legal status.”



one unauthorized immigrant parent and one U.S.-born child. Figure 11 shows the estimated makeup of such families by age group and immigration status.

Given the nature of the problem, the idea of rounding up and deporting some 10 million to 12 million individuals and their family members makes interesting talk-show chatter but strains credibility in terms of feasibility and logistics, whatever one's

moral perspective on the issue. Similarly, broad-stroke plans that would grant amnesty with few requirements seem equally far-fetched. The panel believes that neither legalistic retribution theories nor unbridled humanitarianism provide a sound foundation for dealing with illegal immigrants.

Many citizens have suggested that it is not appropriate to consider allowing illegal immigrants to legalize their status until U.S. borders are secure. The concern is, quite logically, that creating a route to citizenship for existing undocumented immigrants simply encourages more individuals to enter the country illegally. The panel shares this concern and also recognizes the significant strides made in border security in recent years. These advances in border security, coupled with the recommended employment identification card and the mandatory use of E-Verify by employers, set the stage for a policy to address existing illegal immigrants.

The strategy proposed by the panel is based upon three premises. First, improved security is making illegal border crossing increasingly difficult and expensive. Second, denying illegal immigrants jobs, through the use of a secure identification card

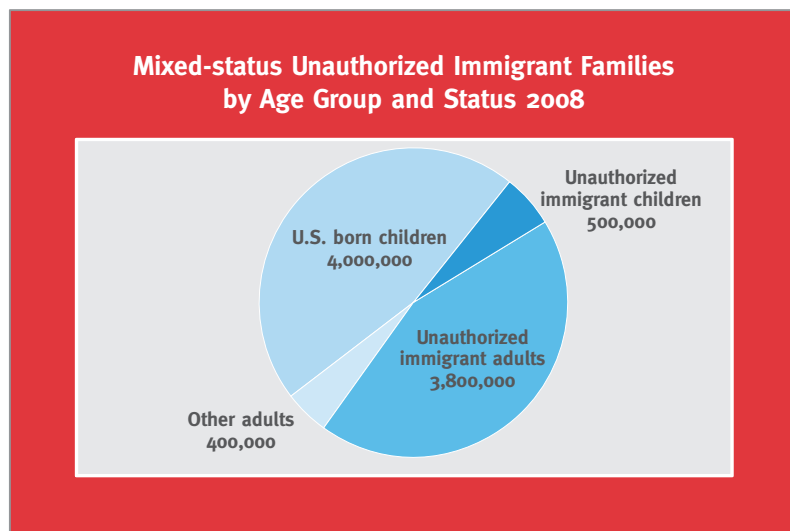


Figure 11 – Makeup of Mixed-Status Families
(Source: PEW Hispanic Center)

“The panel believes that neither **legalistic retribution theories** nor **unbridled humanitarianism** provide a sound foundation for dealing with illegal immigrants.”



and a database confirmation system such as E-Verify, removes the primary incentive for illegal immigration: employment. Third, existing regulations limiting public services available to undocumented immigrants provide a limitation on benefits for those who choose to remain in an illegal status. Offering illegal immigrants a one-time opportunity to gain provisional legal status, with possible permanent legal residency thereafter, is a clear incentive to bring millions of persons out of the shadows and into full participation in society.

Creating a Provisional Legal Status (PLS) program for illegal immigrants raises legitimate concerns that such a program, whatever its merits, will simply serve to attract more undocumented migrants. For this reason, the sequencing of several recommendations in this report is important. The panel believes that legislation establishing a secure identification card, mandating the use of E-Verify or a similar system by employers, and the creation of a Provisional Legal Status program all be enacted together, but implemented in phases as part of a comprehensive immigration reform package.

Before offering provisional legal status it is important that the primary incentive for immigration—employment—not be available to undocumented immigrants. Thus, a secure identification card and use of a verification database for all hires need to be in operation before a provisional visa plan for illegal immigrants is implemented. Specifically, implementation of the PLS program would begin after E-Verify was mandated and issuance of secure identification cards had been initiated, although not necessarily completed. These measures, coupled with the improvements in border security, will make it both physically difficult to enter the country illegally and economically unattractive to remain. Conversely, creating a pathway to legal permanent residence without the recommended staging has the potential to worsen, not lessen, the problem of illegal immigration. This sequence of activities is shown in Figure 12.

As illegal border crossings become more difficult, dangerous and expensive, and as it becomes extremely difficult or impossible to get a job without verification of a secure identification card, illegal immigrants will face the dilemma of either remaining

“Implementation of the **Provisional Legal Status program** would begin after E-Verify was mandated and issuance of secure identification cards had been initiated.”

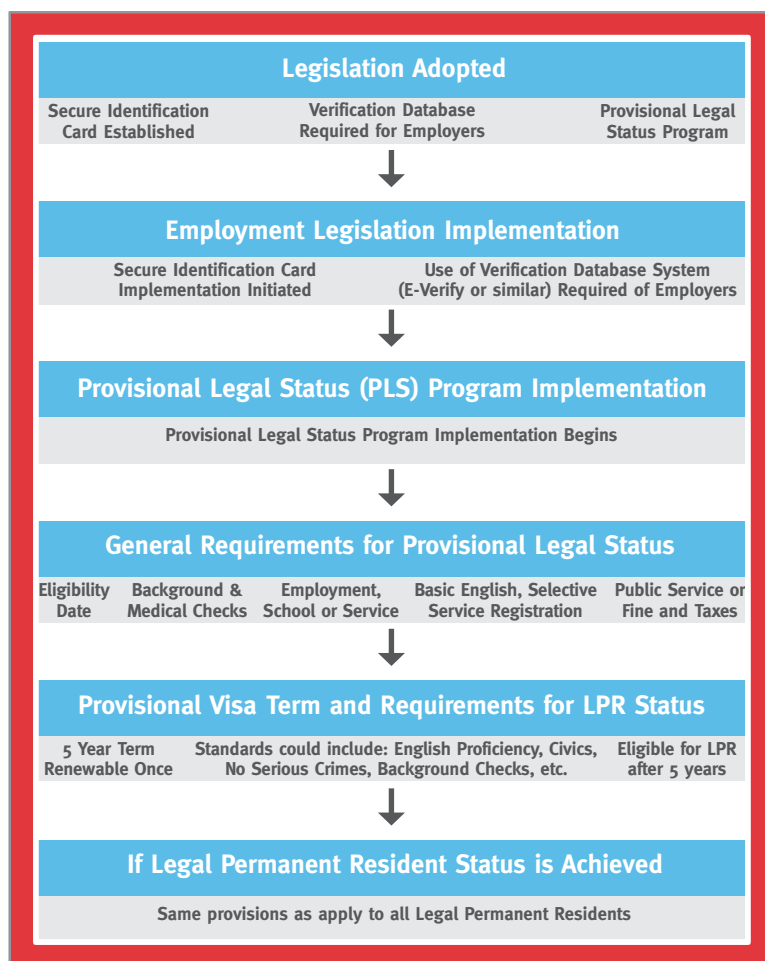


Figure 12 – Provisional Visa Process for Illegal Immigrants

in the U.S., unemployed and with few benefits, or returning to their own country. The panel believes these conditions will provide a strong incentive for undocumented persons to present themselves for participation in a Provisional Legal Status program. For the reasons described above, *the panel recommends that, contemporaneous with the creation of a secure identification card and mandatory use of an employment verification system, Congress create a time-limited Provisional Legal Status (PLS) program for persons illegally in the U.S. and that the PLS program be implemented after employment verification has been required of all employers and issuance of secure identification cards has begun.*

The Provisional Legal Status program would permit illegal immigrants who were physically present in the United States as of a specific date and who met other eligibility standards to register for a provisional visa. Standards for eligibility could require the individual to: pass criminal, national security and medical background examinations; be employed, in school or involved in unpaid community service; speak basic English; participate in civics classes; register for selective service, if appropriate; and



Barbara Bauer
2009 Immigration
Panel member

pay all taxes due. In addition, participants could be required to pay a fine or provide a significant amount of unpaid community service managed and documented by the immigrant's local government. Provisional visa holders meeting requirements could achieve legal permanent resident status after five years. Illegal immigrants not applying under the PLS program within the deadline would be subject to deportation. With these criteria in mind, *the panel recommends that illegal residents residing in the United States on a date certain and meeting eligibility standards: be required to register for a provisional visa; be permitted to obtain a government-issued employment identification card; be allowed to seek or continue employment or education at any location; and, upon meeting requirements, be given the opportunity to eventually achieve legal permanent resident status.*

Provisional visas would be issued to persons meeting the eligibility requirements of the Provisional Legal Status program. For persons of working age a special secure identification card authorizing employment would be made available at the time of visa issuance. Illegal adult immigrants would be required to apply for provisional visas for themselves and for their minor

children who qualified under the program. Provisional visas for minor children would be valid as long as the parent's provisional visa remained valid and after the parent obtained LPR status. Upon reaching the age of majority, such children would be required to apply for their own provisional visas.

Provisional visas would be valid for a period of five years and could be renewed only once. Provisional visas would not require employer sponsorship and would not count toward per-country diversity cap calculations. If an individual had not met the requirements for legal permanent residency by the end of the renewal period (10 years after initial issuance) the visa would expire, the person would not be eligible for employment or education in the U.S., and would be required to leave the country. If the holder of a provisional visa were convicted of a serious crime the provisional visa would be terminated and the individual would be deported without any opportunity for future entry into the United States. Figure 12 depicts the overall Provisional Legal Status process.

Public Services to Illegal Immigrants

The desirability of providing various public services to illegal immigrants and the cost of doing so has been the subject



Dick Koepp
2009 Immigration
Panel member

of endless debate and innumerable studies. From a policy perspective the situation is complex because it involves both state and federal statutes and important judicial decisions such as Plyler v. Doe which effectively guaranteed K–12 education to both legal and illegal immigrants. In general, under the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) passed in 1996, illegal immigrants are prohibited from receiving federal and most state benefits, excluding emergency health care and disaster relief, immunizations against communicable diseases, subsidized school lunches and certain community services such as soup kitchens, or short-term shelters.

Cost estimates for providing services to immigrants, as well as studies of tax revenue generated by immigrants, tend to vary widely due to individual state situations and significant methodological differences. A recent report by the National Conference of State Legislatures examined more than 20 studies related to immigrant costs, revenues and economic impact on states. Some studies concluded that the net fiscal impact of immigrants on the state budget was positive, while others concluded the opposite. All studies did agree that the economic (as opposed to budgetary) impact of immigrants upon the gross state product was positive.

Based on the prior recommendation that a Provisional Legal Status program be created allowing qualified illegal immigrants to achieve a legal status, *the panel recommends that federal, state and local public benefits for illegal immigrants be strictly limited to those currently required by law and that such benefits not be expanded in the future by any level of government.*





ECONOMIC ADVANTAGE

The strategic use of immigration policy to build economic strength and create global competitive advantage for the United States represents an exceptional opportunity. Educated, experienced and skilled workers are the raw material of a knowledge-based society. Strengthening the U.S. education system to produce citizens who are well educated and possess the skills necessary to serve in key positions in business, education, government and non-profits is, of course, a vital step. At the same time, the United States needs to make every effort to attract the best and the brightest from throughout the world.

It is difficult to overstate the importance of immigrant talent to maintaining U.S. leadership in a highly competitive global economy. Traditionally, our excellent higher education system, political freedoms and business-friendly environment have helped the United States maintain a competitive edge. For example, over the past 15 years immigrants have started 25 percent of all U.S. public companies that were backed by venture capital. These companies employ hundreds of thousands of American workers, often in high-tech, high-paying fields such as software, semiconductors and biotechnology. Companies started by immigrants read like a who's who of high-tech leaders: Intel,

Sun Microsystems, eBay, Yahoo! and Google.

There is, however, no assurance that our traditional competitive advantage in attracting extraordinary global talent will continue. Indeed, there is reason for concern. The U.S. is not the only country to discover that human capital is the critical ingredient of economic success. Major industrialized countries around the world are actively pursuing trained scientists, engineers, entrepreneurs and those possessing the education, experience and skills to strengthen their global competitiveness. The United States needs to be on an aggressive talent hunt, working hard to improve our educational and training systems to maximize talent development at home while actively recruiting the best and brightest from abroad. A strategic immigration policy focused on enhancing national economic strength and creating global competitive advantage offers great potential for the United States. It is an opportunity that we ignore at our own peril.

Attracting Skilled Workers

No aspect of immigration is more important than the ability to attract the world's most talented individuals to the U.S. for employment—and no part of the system is more broken. Attracting the best and brightest is not the main priority of current U.S. immigration policy. The main priority is family reunification. The degree to which this affects immigrant

“The strategic use of immigration policy to build economic strength and create global competitive advantage for the United States represents an exceptional opportunity.”

admissions is clearly illustrated in Figure 13. Of the 1.1 million immigrant admissions to the U.S. in 2007, a typical year, only 15 percent were employment-based while 65 percent were family-based. Even this understates the situation, because of the 15 percent employment-based visas, about 60 percent were for family members of employment visa holders, further reducing visas actually used for employment. The lack of emphasis on employment visas is illustrated by the fact that of some 70 non-immigrant visa categories, only about 15 are primarily designed

for employment. As if that were not enough, current per-country limitations can further constrain employment-based immigration from some countries offering the greatest potential for skilled workers.

The present allowable limit for immigrant (green card) visas for all types of skilled workers is 140,000, far below the actual demand for skilled workers during every year of the present decade through 2008. To some degree, this shortfall has been made up through the use of temporary, non-immigrant work-related visas, currently estimated to be in the range of 600,000 per year. To be sure, the demand for skilled immigrant workers will ebb and flow with economic conditions, which is why the panel recommends the creation of an Immigration Management Commission process with the ability to determine actual demand and respond accordingly. At the same time, it is essential that the overall numeric limit on employment-related visas for skilled workers, which is established by congress and difficult to change, be set high enough to accommodate the demands of a strong economy. With this in mind, *the panel recommends that the total number of employment-based visas authorized by Congress be increased significantly, to be allocated annually by the Immigration Management Commission based on economic conditions.*

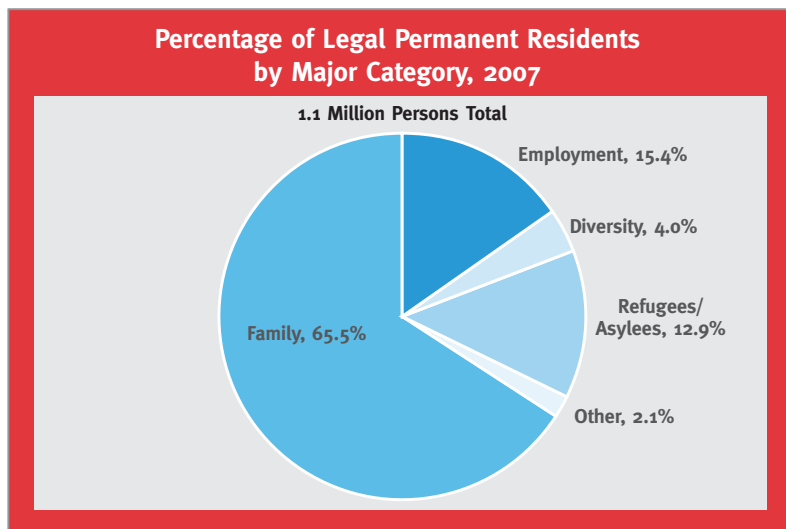


Figure 13 - Legal Permanent Residents by Major Category, FY2007
(Source: Congressional Research Service)

“The United States needs be on an **aggressive talent hunt**, working hard to improve our educational and training systems to maximize talent development at home while actively recruiting the best and brightest from abroad.”



Kim Patmore
2009 Immigration
Panel member

The objective of a reformed employment-based system is not simply to admit as many workers as possible or undercut wages and opportunities for U.S. workers. Rather, the goal is to provide a reliable, market-responsive means of attracting the talent needed by U.S. employers. To realize the potential for enhancing U.S. economic strength and global competitiveness, *the panel recommends creation of a convertible visa category for immigrants with superior education, experience, skills and talent that would allow individuals to change employers and, if eligible, adjust to permanent resident status.*

Convertible employment visas would be dual-purpose in nature. They would be available to individuals possessing highly desirable qualifications such as advanced degrees, professional experience, entrepreneurial ability, technical and physical skill, extraordinary talent, etc. Convertible visas would allow such workers and their families to live and work within the U.S. and, upon meeting the requirements for legal permanent residency, convert to permanent resident status. Recent graduates from accredited U.S. universities with master's and doctoral degrees would be eligible for a special one-year extended student visa providing time to seek employment, after which they would be eligible to apply for a convertible visa.

Convertible visas would have a term of four years, renewable twice from within the United States. Employer sponsorship would be required for initial application, but not for extensions. After two years with the sponsoring employer, the holder of a convertible visa could change employers. The ability to change employment is important: it will insure that visa holders receive pay and benefits at market levels, because they will leave if inadequately compensated. It also provides the opportunity for both employers and visa holders to assess the success of the relationship.

Spouse and minor children could receive family visas so long as the principal's convertible visa remained valid. Visa holders could leave the country and return again during the visa period. Persons holding convertible visas would be eligible to adjust to legal permanent resident status after five years, without requiring employer sponsorship. As with all legal permanent residents, if the holder of a convertible visa was granted LPR status, his or her immediate family members would be eligible to apply for LPR status as well.

The convertible visa is intended to be very attractive to workers who can make important contributions to the U.S. economy and to our global competitiveness. The visa is intended to



Peter Schuck addresses the 2009 Immigration Panel

“The convertible visa is intended to be very attractive to workers who can make important contributions to the U.S. economy and to our global competitiveness.”



significantly reduce the bureaucratic red tape now associated with hiring a highly qualified immigrant worker. Currently an employer must operate within visa limits that are inadequate in terms of allowable numbers, must find an applicant that meets the correct preference categories (and is not from an oversubscribed country) and then must convince the Department of Labor (DOL) that a shortage exists for the skill category or that no domestic worker is available. The process is complicated, cumbersome and ineffective.

The panel proposes a process for convertible visas that is market-responsive in terms of recruitment. As long as visas were available employers would simply advertise for the position. If the best-qualified applicant happened to be an immigrant, that individual could be hired. The applicant could not be paid less than others in the organization doing similar work and would be entitled to the same benefits and protections. These provisions would be subject to audit. Employers violating these standards could be fined and lose the ability to hire immigrant workers for a period of time.

Temporary Workers

A strong economy requires both skilled workers as well as those needed for seasonal and short-term assignments. Currently,

short-term agricultural workers enter through the H-2A visa program and other seasonal workers use the H-2B visa program. Employers are required to pay workers the higher of the federal or state minimum wage, and those employing agricultural workers must provide housing, transportation and other benefits.

Obtaining an H-2 visa requires application to the Department of Labor which must certify that capable U.S. workers are not available and that the employment of alien workers will not adversely affect the wages and working conditions of U.S. workers. As part of this labor certification process, employers must attempt to recruit U.S. workers and cooperate with state employment departments. With respect to agriculture in Colorado, testimony by those experienced in using the program suggests that the bureaucratic nature of the process, counterpoised against the time-sensitive nature of agricultural production makes temporary agriculture visa programs difficult to use. Presumably that experience exists in other states as well. For businesses using seasonal workers, such as the resort industry, a similar situation seems to exist although larger resort operators may have greater capability to navigate the system.

In presentations to the panel, some suggested that temporary worker programs as currently structured were cumbersome and



bureaucratic to use. On the other hand some labor advocates contend that these programs provide insufficient protections for U.S. workers. While few people seem entirely happy with either H-2 program, there is clearly a high demand for temporary workers as shown in Figures 14 and 15.

In recent years a number of ideas have been suggested to improve the use of temporary immigrant labor. Many of these are offered under the rubric of “guest worker” programs,

although definition of the term varies considerably from proposal to proposal. While there is probably no perfect way to resolve the dilemma of temporary workers, the panel favors a flexible system that would rely upon collaboration between employers, the states and the Immigration Management Commission. One model for such an approach can be found in the Canadian immigration system, which relies heavily upon a partnership between the national government and Canada’s provinces and territories.

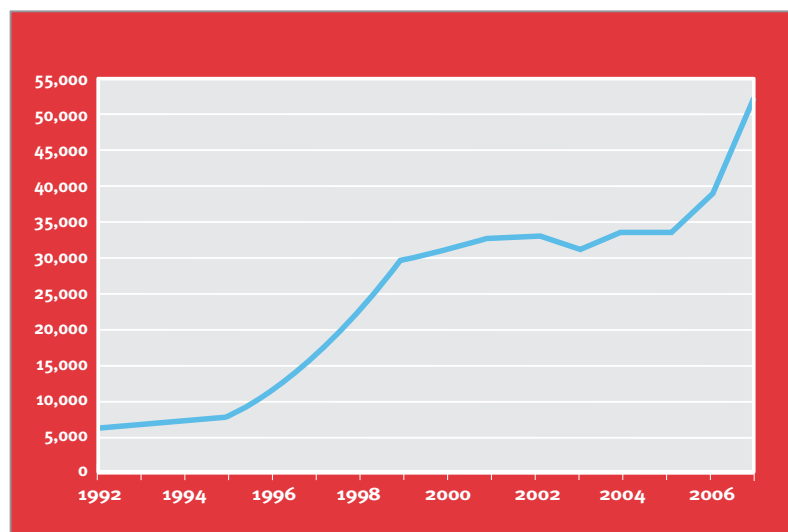


Figure 14 –H-2A Program Growth
(Source: Congressional Research Service)

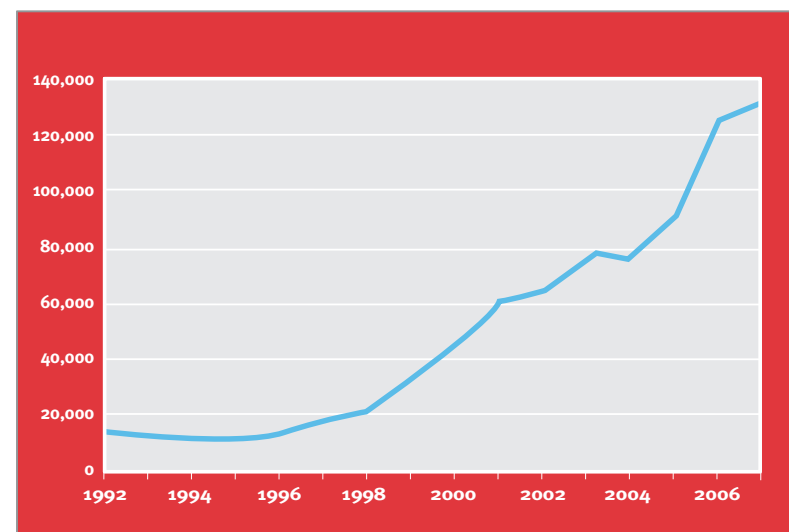


Figure 15 –H-2B Program Growth
(Source: Congressional Research Service)

A similar approach could be taken with temporary employment visas using the Immigration Management Commission process described earlier in this report. States would begin by contacting employers to determine the number of agricultural and other seasonal workers required. Based on employer needs, state governments would annually certify to the Immigration Management Commission the number of short-term employees needed. After conferring with each state, the commission would establish the number of temporary visas to be allocated to each state for the coming year. The total number of visas authorized by the commission could not exceed the overall number of employment-based visas established by Congress.

Once the number of temporary visas for each state was established, employers would be free to begin soliciting applications for workers. Employers might contract with foreign workers directly or they could use approved private agencies operating inside or outside of the United States. Whatever the process, individuals seeking temporary visas would be required to have employer sponsorship before applying for a visa. The visa, along with the required secure identification card could be issued by the U.S. embassy or consulate in the worker's home country. Before hiring the employee, the employer would be

required to scan the employee's identification card through the employment verification database system. This not only verifies the legitimacy of the employee, but also identifies the employer, who would be required to uphold pay, benefit and working-condition standards appropriate for the position.

Temporary employment visas would be issued for a period up to one year, a limitation that would be contained in the data on the individual's secure identification card. Those holding temporary visas could not be accompanied by family members, nor would they be eligible to adjust to permanent resident status. Holders of temporary employment visas could leave the country and return again within the visa period. During the one-year term of the temporary employment visa the individual could change employers. As with the convertible visa, the ability to legally change employers while the visa was active is intended to help assure that visa holders receive pay and benefits at market levels. Temporary visas would be renewable but could not be renewed from within the United States, so workers would be required to leave the U.S. to renew. With these criteria in mind, *the panel recommends the creation of a temporary employment visa for seasonal and short-term workers to be established consistent with the standards described in this report.*



Wayne Murdy
2009 Immigration
Panel member

FAMILY UNIFICATION

Family unification is an important goal of U.S. immigration policy. The individual immigrant and his or her family benefits from unification and the United States benefits from having strong families. The panel strongly supports family unification but believes that the historical approach has been founded on a faulty premise. Traditionally, family unification has been positioned so as to compete with employment-based and refugee immigration. The panel considers this zero-sum approach to be inappropriate.

Rather, the panel believes that family unification should be viewed primarily as a consequence, not a competitor of employment and refugee immigration. Of the major visa categories recommended by the panel, only family members of convertible visa holders who had themselves become legal permanent residents could apply for permanent resident status. Family members of those holding visitor, student, temporary and representative visas would not be eligible for permanent residence. Thus, the family members of current U.S. citizens and LPRs, including those who obtained LPR status from convertible visas, would be eligible for legal permanent resident status. Depending upon the conditions established by Congress for refugee visas, family members from

that visa category might be eligible for LPR status as well. With this perspective on family visas in mind, *the panel recommends that family-based immigration not be subject to a numerical cap but instead be managed through the number of employment and refugee visas issued.*

As the foregoing recommendation makes clear, the panel believes it is more effective to manage family-member immigration through other visa categories rather than having family unification compete with employment-based or refugee immigration. At the same time, the panel believes that removing the limit on family visas is a reasonable step *only if* the definition of “family” is limited to members of the immediate family. Therefore, *the panel recommends that for all purposes, “family members” be defined to include only the spouse, unmarried minor children and parents and that all temporary and permanent family visas and adjustment of status actions be limited only to the members of the immediate family as identified in this recommendation.*

The panel recognizes that this recommendation would no longer permit immigration of (1) adult children, (2) married sons or daughters, (3) the children of married sons or daughters, (4)



Ronald Williams
2009 Immigration
Panel member

brothers and sisters and (5) and the children of brothers and sisters. The panel believes that extended family immigration is not consistent with the goals on which the recommendations in this report are founded. Extended family members wishing to immigrate to the United States should do so by applying in their own names under an appropriate visa category.

It is important to note that the panel considers the recommendations regarding family unification in this section to be linked. If the definition of “family” is not limited to members of the immediate family as defined herein, the panel does not recommend that restrictions on the number of family visas be removed. Taken together, however, the panel feels that these recommendations provide strong support for family unification.





CONCLUSION

If there were a simple answer to the question of immigration, the issue would have been resolved long ago. Even the term “immigration,” with its singular tone, belies the complexity of the topic. Immigration is not one issue, but rather a host of interconnected issues. It is more like a puzzle to be assembled—where the pieces must correctly relate to one another—than a single question to be answered.

An effective immigration policy is about applying enlightened self-interest to capture a national opportunity. It is about creating benefit to the United States in a highly competitive global economy. In the process of benefitting the United States there is also the ability to provide opportunity to talented people from other countries who can contribute to a stronger, more vital American society. Immigration policy need not be a win-lose game between the nation and prospective immigrants.

Achieving these benefits requires more than simply adding new legislative patches to a sagging and inefficient system. It requires an overall architecture for immigration policy, grounded in a shared purpose with clear goals, priorities, and governmental roles and responsibilities. Within that framework, an effective

policy requires strategies to address structural reform of the system and a number of specific issues that constitute key elements of immigration policy. These elements include border security, the role of employers, a national identification card, employment verification, supporting a common language, a plan for dealing with illegal immigrants, a mechanism for attracting persons with extraordinary talent, a process for temporary workers, family unification and others.

It is this architecture and these elements that the DU Strategic Issues Panel on Immigration has addressed. Findings and recommendations on these topics are reflected throughout this report and summarized in the following section. It is the panel’s hope that its work will help inform the public discussion on immigration policy.



Richard Robinson
2009 Immigration
Panel member

Summary of Panel Recommendations



The Environment of Immigration

Recommendation 1: Perspective on Immigration

The panel recommends that global migration be recognized as an opportunity to be capitalized upon to our national benefit, rather than a reality to be ignored.

A Foundation for Policy

Recommendation 2: Purpose of Immigration Policy

The panel recommends that the basic purpose of U.S. immigration policy be the creation of economic, social and other benefits to the nation as a whole.

Recommendation 3: Immigration Priorities

The panel recommends that the criterion for ordering immigration priorities and goals be the relative degree of benefit to the United States as a whole compared with the benefit to prospective immigrants.

Recommendation 4: Immigration Goals

The panel recommends that the goals for United States immigration policy be: national security, social vitality, economic advantage, family unification and refugee relief, in that order.

Recommendation 5: Federal, State and Local Legislation

The panel recommends that the federal government define by statute appropriate spheres of legislative activity for itself and for the states.

Recommendation 6: Shared Implementation Responsibility

The panel recommends that Congress establish a shared process of implementation that allocates responsibilities for implementing and enforcing immigration policy among federal, state and local government; balances revenues and costs; and prohibits unfunded federal or state mandates.

Immigration System Reform

Recommendation 7: Characteristics of Immigration Reform

The panel recommends that Congress reform the U.S. immigration system in a comprehensive way so that it is supportive of national goals, responsive to rapidly changing economic conditions, produces predictable results and is as simple, comprehensible and transparent as possible.

Recommendation 8: Simplified Visa Categories

The panel recommends that the visa system be simplified into eight broad visa categories: visitor, student, temporary, convertible, family, provisional, representative and refugee, and that immigrant/non-immigrant distinctions be eliminated.

Recommendation 9: Immigration Management Commission

The panel recommends that Congress establish only a maximum numeric limit for each major category of visa and that the allocation of visas within each major category be handled by an independent Immigration Management Commission to be created by Congress.

Recommendation 10: Employment Visa Process

The panel recommends that the allocation of employment-based visas be based on a collaborative process in which each state presents detailed recommendations to the Immigration Management Commission based upon surveys and face-to-face discussions with employers throughout the state.

Recommendation 11: Per-country Diversity Limits

The panel recommends that per-country diversity limits be increased from 7 percent to 10 percent of the worldwide level of U.S. immigrant admissions and that waivers not be granted to any country to exceed 10 percent.

Recommendation 12: Per-country Diversity Lottery

The panel recommends that the annual diversity lottery be eliminated and its visa allocation be transferred to the convertible visa category.

National Security

Recommendation 13: Border Security

The panel recommends that the United States continue efforts to strengthen the security of the U.S. border and that Congress fund the Bureau of Customs and Border Protection at levels required to maintain effective border enforcement.

Recommendation 14: Role of Employers

The panel recommends that employers be recognized as key allies in implementing immigration policy and that they be given the tools and protections necessary to support immigration policy.

Summary of Panel Recommendations, continued

Recommendation 15: E-Verify Program

The panel recommends that E-Verify, or a similar program, be made permanent; that employers be required to use the system with secure identification cards to verify employment eligibility of all employees; that employers using the system in good faith be held harmless from enforcement actions; and that employers failing to use the system be subject to significant sanctions.

Recommendation 16: Employment Identification Card

The panel recommends that the United States establish a secure identification card to be used by all employers, along with E-Verify, to ascertain the employment eligibility of all prospective and current employees.

Social Vitality

Recommendation 17: English Language

The panel recommends that English language training classes be funded by the federal government and made widely available to participants at an affordable cost; and that no person be granted permanent resident or citizen status without demonstrating a level of proficiency in the English language as defined by Congress.

Recommendation 18: Illegal Immigrants: Policy Timing

The panel recommends that, contemporaneous with the creation of a secure identification card and mandatory use of an employment verification system, Congress create a time-limited Provisional Legal Status (PLS) program for persons illegally in

the U.S. and that the PLS program be implemented after employment verification has been required of all employers and issuance of secure identification cards has begun.

Recommendation 19: Illegal Immigrants: Policy Outline

The panel recommends that illegal residents residing in the United States on a date certain and meeting eligibility standards: be required to register for a provisional visa; be permitted to obtain a government-issued employment identification card; be allowed to seek or continue employment or education at any location; and, upon meeting requirements, be given the opportunity to eventually achieve legal permanent resident status.

Recommendation 20: Illegal Immigrants: Public Services

The panel recommends that federal, state and local public benefits for illegal immigrants be strictly limited to those currently required by law and that such benefits not be expanded in the future by any level of government.

Economic Advantage

Recommendation 21: Number of Employment-based Visas

The panel recommends that the total number of employment-based visas authorized by Congress be increased significantly, to be allocated annually by the Immigration Management Commission based on economic conditions.

Recommendation 22: Convertible Visa for Skilled Workers

The panel recommends creation of a convertible visa category for immigrants with superior education, experience, skills and talent that would allow individuals to change employers and, if eligible, adjust to permanent resident status.

Recommendation 23: Temporary Visas

The panel recommends the creation of a temporary employment visa for seasonal and short-term workers to be established consistent with the standards described in this report.

Family Unification

Recommendation 24: Family-based Immigration

The panel recommends that family-based immigration not be subject to a numerical cap but instead be managed through the number of employment and refugee visas issued.

Recommendation 25: Limitation on Eligible Family Members

The panel recommends that for all purposes, “family members” be defined to include only the spouse, unmarried minor children and parents and that all temporary and permanent family visas and adjustments of status actions be limited only to the members of the immediate family as identified in this recommendation



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