



ADVANCING EQUALITY

CONGRESSIONAL TESTIMONY

Asian American Perspective on Comprehensive Immigration Reform

**Testimony before
The Subcommittee on Immigration
Committee on the Judiciary
United States House of Representatives**

**Hearing on Perspectives of Immigrant Advocacy
Organizations on Comprehensive Immigration Reform**

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Oral Testimony

Dear Madam Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to testify on behalf of the Asian American Justice Center (AAJC). AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, community education and litigation.

May is Asian American and Pacific Islander Heritage month. And 2007 is the 125th anniversary of the Chinese Exclusion Act, which prohibited the immigration of Chinese laborers to the United States. This led to a long string of legislation discriminating against immigrants from Asia until the passage of the 1965 Immigration Act. AAJC hopes 2007 will also be the year America enacts comprehensive immigration reform legislation that is workable, effective, fair, and humane.

According to the U.S. Census Bureau, there are 13.9 million Asian Americans living in the United States. Over 60 percent are immigrants, half of whom have become citizens. Some have come as refugees or asylum seekers, others through H1-B and other employment based programs, and some are undocumented, but the majority have come through the family visa system.

Immigrants coming to join Asian American families face some of the worst immigration backlogs in the world. A U.S. citizen petitioning for an unmarried adult son or daughter from China, for example, must wait approximately 6 years before that child can immigrate to the U.S. A U.S. citizen petitioning for a sibling from India, meanwhile, must wait approximately 11 years. And if the brother or sister is from the Philippines, the wait is approximately 22 years.

In the employment-based immigration system, highly educated and skilled immigrants from China, India, and the Philippines currently face waits of 4 to 6 years before they can become lawful permanent residents.

The backlog of family visas and the insufficient number of employment-based visas – both high and low-skilled – are two of the major reasons for undocumented immigration. The Department of Homeland Security's Office of Immigration Statistics estimates one in 10 Asian Americans have no access to legal immigration status.

For these reasons, AAJC has been a longtime advocate for comprehensive immigration reform. We seek reform that effectively addresses the “push and pull” factors for undocumented immigration. The system should include tough but fair enforcement measures, a workable system of earned legalization for the undocumented, and a realistic number and system of permanent visas that reflect both the needs of our economy and of our community.

To be effective, legislation must:

- Provide sufficient visas to facilitate timely and full reunification of families, including parents, adult children and siblings of citizens, as well as spouses and minor children of

legal permanent residents (or LPRs) to eliminate long periods of separation that result in undocumented immigration;

- Expedite the entire family immigration backlog before undocumented immigrants begin receiving legal permanent residency status so that the legalization process can begin in a timely fashion while ensuring that the undocumented are getting in line behind those who played by the rules;
- Provide legal status *and* a path to permanent residence for undocumented immigrants and their families in a workable system;
- Create legal ways for people who want to contribute to our economy to come work in the U.S., fully protected by our laws with a path to citizenship.
- Restore due process to the immigration system that allows for meaningful judicial review of individual cases as well as challenges to immigration policies.

The White House has argued that family categories should be cut in favor of a point system which gives very little weight to the value and reality of family ties.

Ignoring the reality of strong family ties will mean a failure to address one of the reasons for illegal immigration, which will continue because of the strength of those ties.

This is a false choice based on a belief that we need to severely restrict immigration levels. It ignores the fact that the retiring baby boomer generation and expanding economy means that we need to increase immigration, not cut it.

Indeed, some argue that the family-based immigration system causes “chain-migration.” While this sounds ominous, the reality is very much to the contrary.

The requirement of affidavits of support already works to limit broad sponsorship. This requirement also results in a powerful incentive for the sponsors to help ensure the family member they bring in will be contributing to the family’s overall economic well being.

Moreover, siblings as well as parents and their adult children provide an important safety net for each other.

Finally, separation of families impedes the actual process of integration. It forces many immigrant workers to send money overseas, rather than being able to invest all of it in local communities and to delay fully putting down roots into their new communities.

AAJC strongly believes Congress can and must find workable, fair, and humane solutions to our immigration problems. The STRIVE Act of 2007 provides a good framework for comprehensive reform and includes family immigration provisions that serve our national interests well.

Written Testimony

Executive Summary

Asian Immigration

Of the 13.9 Asian Americans in the United States, over 60 percent are foreign born, half of whom have become citizens. Some have come as refugees or asylum seekers, others through H1-B and other employment-based programs, and some are undocumented. The majority, however, have come through the family visa system. In 2005, for example, 56 percent of immigrants from Asia came to the U.S. through family immigration. Nonetheless, Asian countries suffer from some of the worst immigration backlogs in the world and an estimated 1.5 million family members of Asian American U.S. citizens are currently waiting in line. Studies have shown that the long backlogs in the family-based immigration system contribute to the rise in undocumented immigration, which includes 1.3 million Asian Americans without legal immigration status. For these reasons, the Asian American Justice Center (AAJC) has been a longtime advocate for comprehensive immigration reform. We seek a system that includes tough but fair enforcement measures, a workable system of earned legalization for the undocumented, and a realistic number and system of permanent visas that reflect both the needs of our economy, and of our community.

Family Reunification

AAJC supports immigration legislation that provides sufficient visas to facilitate timely and full reunification of families. We also support a fair and workable legalization program that includes a path to citizenship. We believe the entire family backlog must come in before immigrants seeking legalization get their permanent visas. Family reunification is a fundamental cornerstone of our nation's legal immigration system. Families are also the backbone of our country and their unity promotes the stability, health, and productivity of family members contributing to the economic and social welfare of the United States as a whole. In addition, the ability to reunite with family members is important to attracting and retaining the most talented and hardest working immigrants the world has to offer.

Point Systems

Any legislation seeking to reform legal immigration must have sufficient visas that more realistically match the intense pull of families and our economic needs. Moreover, the point system proposed in the Senate does not serve families or business. High-skilled immigrants who are admitted because of their education and work experience have no guarantee of finding a high-skilled job in their field. U.S. citizens with family members in countries that do not have strong educational systems, traditions of English-language education, and recognized certification systems will be unable to reunite with their adult children and siblings. Immigrant women will be disproportionately negatively affected by proposals to favor immigrants who have access to higher education, job experience and English-language education because of the widespread gender discrimination many women still face around the world. If a point system must be considered, AAJC recommends a pilot program to test its workability and evaluate its impact. However, a point

system cannot and need not come as a tradeoff for eliminating the family categories or the ability of legalizing immigrants and new workers to sponsor their family members.

Legalization Program

AAJC supports a workable legalization program with a path to citizenship. Undocumented immigrants, who pay a reasonable fine, work hard, pay taxes, learn English and civics, and pass background checks should be given legal status in a fair and workable system. These immigrants should have a path to citizenship and be reunited with their family members in a timely manner. There should not be barriers such as onerous risky touch back requirements, unreasonably high penalties and fees, or other conditions which make it less likely that undocumented immigrants will come forward.

New Workers and Employment Verification System

American businesses and communities also want a visa program that allows employers to invest in their new employees. In addition to full labor protections, these immigrants also need the opportunity to be reunited with their family members and an opportunity for legal permanent residency. AAJC does not support a new worker program that fails to give immigrant workers a path to citizenship. Employers should have to do more to ensure there are no workers already in the U.S. available for these jobs and there must be an increase in resources and the use of testing for wage and hour, safety, and anti-discrimination laws.

Any new employment verification system must have effective safeguards to protect workers from mistakes in the system.

Due Process and Civil Liberties

AAJC is also concerned that America's current detention and deportation system does not respect due process rights for immigrants. AAJC seeks to ensure that any reform of the immigration laws fully incorporates the American tradition of respecting and protecting the rights of individuals to due process, including fair proceedings, and holding the government accountable for its actions.

AAJC Policy Recommendations

In order to address the needs of American communities and businesses, Asian Americans support comprehensive immigration reform that will:

- Provide sufficient visas to facilitate timely and full reunification of families, including parents, adult children and siblings of citizens, as well as spouses and minor children of legal permanent residents (LPRs) to eliminate long periods of separation that result in undocumented immigration;
- Expedite the entire family immigration backlog before undocumented immigrants begin receiving legal permanent residency status so that the legalization process can begin in a timely fashion while ensuring that the undocumented are getting in line behind those who played by the rules;

- Provide legal status and a path to permanent residence for undocumented immigrants and their families in a workable system;
- Create legal ways for people who want to contribute to our economy to come work in the U.S., fully protected by our laws with a path to citizenship.
- Restore due process to the immigration system that allows for meaningful judicial review of individual cases as well as challenges to immigration policies.

Introduction

The Asian American Justice Center (AAJC) works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. AAJC is one of the nation's leading experts on issues of importance to the Asian American community including affirmative action, anti-Asian violence prevention/race relations, census, immigrant rights, immigration, language access, and voting rights. AAJC is affiliated with the Asian American Institute of Chicago, the Asian Pacific American Legal Center of Southern California in Los Angeles and the Asian Law Caucus in San Francisco.

Because over 60 percent of the Asian American community is foreign born, immigration and immigrant rights are a priority for AAJC.¹ The goal of AAJC's immigration and immigrant rights program is to pursue fair, humane and nondiscriminatory immigration policies. We educate the general public and the Asian American community through use of ethnic and mainstream media, conferences and briefings; inform policy makers as to the impact of various restrictive and discriminatory proposals; provide the community with information on a wide range of immigration issues; monitor implementation of immigration laws by the Department of Homeland Security and other agencies; advocate for tough enforcement of anti-discrimination laws; and develop and disseminate education materials about various aspects of immigration laws of most relevance to the Asian American community. Furthermore, AAJC seeks to ensure Asian American communities have a strong voice in the national debate over how to reform our broken immigration system.

Family reunification is a fundamental cornerstone of our nation's legal immigration system. The current push to pass a comprehensive immigration reform bill must not abandon this foundation, but rather improve the ability of American families to contribute to our American economy. The ability to reunite with family members is important to attracting and retaining the most talented and hardest working immigrants the world has to offer.

According to the 2005 American Community Survey by the U.S. Census Bureau, 61 percent (over 8.5 million) of all Asians living in the U.S. are immigrants.² Of the foreign-born Asian Americans, about 53 percent (over 4.5 million) immigrated to the U.S. within the last 15 years. The breakdown of native-born and foreign-born U.S. citizens and non-citizens in the Asian American community are as follows:

- 38.5 percent are native-born U.S. citizens.
- 34.2 percent are foreign-born but naturalized U.S. citizens.

¹ http://factfinder.census.gov/home/saff/main.html?_lang=en

² *Id.*

- 27.3 percent are foreign-born and not U.S. citizens.

Majority of Asian Americans Immigrate as Family Members

Although many foreign-born Asian Americans arrive in the United States through the employment-based immigration system or as refugees and asylees, the majority of Asians immigrating to the U.S. do so through the family-based immigration system. In 2005, 56 percent of immigrants from Asia came to the U.S. through family immigration. However, Asian countries suffer from some of the worst immigration backlogs in the world.³ In the family immigration system, a United States citizen petitioning for an unmarried adult son or daughter from China must wait approximately 6 years before he or she can immigrate to the United States. A United States citizen petitioning for a brother or sister from India, meanwhile, must wait approximately 11 years before he or she can immigrate to America. If the brother or sister is from the Philippines, the wait is approximately 23 years.

Asian Americans Need Comprehensive Immigration Reform

In the employment-based immigration system, highly educated and skilled immigrants from China, India, and the Philippines currently face possible waits of 4 to 6 years before they can become lawful permanent residents. Finally, unless you have a qualifying United States citizen or permanent resident family member who can petition for you, or have highly specialized skills and/or post-secondary education, it is virtually impossible to legally immigrate to the United States. As a result, the population of undocumented immigrants from Asia continues to rise.

The Department of Homeland Security's Office of Immigration Statistics estimates 1.3 million of the 10.5 million total undocumented immigrants in the United States in 2005 originated from Asia.⁴ To put this number in context, there were 13.9 million Asian Americans living in the U.S. in 2005. This would mean that approximately one in 10 Asian Americans do not have access to legal immigration status.

For these reasons, AAJC has been a long time advocate for comprehensive immigration reform. We seek a system that includes tough but fair enforcement measures, a workable system of earned legalization for the undocumented, and a realistic number and system of permanent visas that reflect both the needs of our economy and of our community.

In order to address these needs, Asian Americans support comprehensive immigration reform that will:

- Provide sufficient visas to facilitate timely and full reunification of families, including parents, adult children and siblings of citizens, as well as spouses and minor children of LPRs to eliminate long periods of separation that result in undocumented immigration;
- Expedite the entire family immigration backlog before undocumented immigrants begin receiving legal permanent residency status so that the legalization process can begin in a

³ http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

⁴ http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf

timely fashion while ensuring that the undocumented are getting in line behind those who played by the rules;

- Provide legal status and a path to permanent residence for undocumented immigrants and their families in a workable system;
- Create legal ways for people who want to contribute to our economy to come work in the U.S., fully protected by our laws with a path to citizenship.
- Restore due process to the immigration system that allows for meaningful judicial review of individual cases as well as challenges to immigration policies.

The History of Asian Immigration in the United States

Asian Americans Have Experienced a Long History of Exclusion

Exactly 125 years after the United States separated countless families and halted innumerable dreams with racially biased immigration policy, lawmakers are again considering anti-family measures as the means to reform a broken immigration system. The Chinese Exclusion Act of 1882, which prohibited the immigration of Chinese laborers, epitomizes the early record on immigration from Asia.⁵ In 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration.⁶ Asian immigration was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region⁷; the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the United States as of 1910⁸; and the National Origins Act of 1924, which banned immigration of persons who were ineligible for citizenship.⁹ A decade later, the Tydings-McDuffie Act of 1934 placed a quota of 50 Filipino immigrants per year.

It has been a generation since the Chinese Exclusion Act and its progeny were repealed in 1943.¹⁰ Yet after the repeal, discriminatory quotas were nevertheless set using formulas giving special preference to immigration from Europe. Until 1965, for example, the German annual quota was almost 26,000 and the Irish almost 18,000 while the annual quota from China was 105, for Japan was 185, the Philippines was 100 and the Pacific Islands was 100.¹¹

The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were ineligible to become naturalized citizens for over 160 years. A 1790 law allowed only "free white persons" to become citizens. Even after the law was changed to include African Americans,

⁵ Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 7 (1992).

⁶ U.S. Dept. of State, Paper Relating to the Foreign Relations of the United States 1924 (1939), Vol.2, p. 339. See Higham, American Immigration Policy in Historical Perspective, 21 Law and Contemp. Probs. 213, 227 (1956).

⁷ Act of Feb. 5, 1917, 39 Stat. 874.

⁸ This quota limited non-European immigration. For example, Great Britain with two percent of the world's population had 43% of the quota. National Lawyers Guild, *Immigration Law and Defense*, p.2-4.

⁹ At the time, only immigrants from Asia were ineligible for citizenship solely on the basis of race. See *Ozawa v. U.S.*, 260 U.S. 178 (1922).

¹⁰ Ch. 344, 57 Stat. 600 (1943).

¹¹ *Id.*

similar legislation to include Asian Americans was rejected.¹² The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship.¹³ The last of these laws were not repealed until 1952.¹⁴

Previous Reforms Fell Short of Addressing the Needs of Asian Americans

Congress sought to eliminate most of the racial barriers imbedded in the immigration system with the passage of the Immigration and Naturalization Act of 1965. Unfortunately, the Act did not address the effect of earlier biases. In fact, the 20,000 per country limit, imposed without any connection to size of originating country or demand, resulted in extremely long waiting lists for Asian immigrants.¹⁵

The Immigration Act of 1990 also failed to address the tremendous backlogs that already existed for countries like Mexico, India, the Philippines, South Korea, and China. Instead, the problem was exacerbated with the reduction in number of visas available for adult sons and daughters of United States citizens. At the time the backlog consisted primarily of children of Filipino veterans who were allowed to naturalize under the Act because of their service to this country in fighting as a part of the United States Armed Forces in World War II. Despite this fact, the quota was cut in half and other family categories were reduced, causing the backlog to increase by close to 70 percent.¹⁶

As a result, although Asians have constituted over 30 percent of the country's immigration for the past two decades, the community still makes up only about four percent of the United States population. Most recent numbers indicate that well over 1.5 million Asian immigrants are still waiting in backlogs for entry visas to reunite with their families. Almost half of immigrants waiting to join their loved ones in the United States are from Asian countries. Thus any additional restrictions or reduction in the overall numbers, particularly in the family preference categories, will have an inordinate impact on Asian American families.

Family Reunification as the Foundation of Our Immigration System

In keeping with American notions of the importance of the family, immigration through a family member who is a United States citizen or permanent resident is the most common way of gaining U.S. residency. Qualifying relationships are grouped into two main categories – immediate relatives and other close family members. Currently, spouses, unmarried minor children, and parents of U.S. citizens are considered immediate relatives. Other close family members of citizens and permanent

¹² P. Chew, William and Mary Law Review, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, p.13 (1995).

¹³ See *Ozawa v. U.S.*, 260 U.S. 178 (1922); *U.S. v. Bhagat Singh Thind*, 261 U.S. 197 (1923); and *In re Ah Yup*, 1 F. Cas. 223 (Cir. Ct. D. Cal. 1878).

¹⁴ H. Kim, Ed., *Asian American History*, *Asian Americans and American Immigration Law* by T. Knoll, pp.52-3 (1986).

¹⁵ H. Kim, Ed., *Asian Americans and the Supreme Court*, *Asian Americans and Present U.S. Immigration Policies*, A Legacy of Exclusion, by W. Tamayo, p. 1112-1113 (1992).

¹⁶ *Id.* At pp. 1120-1121; Sec. 405 of the Immigration Act of 1990, Nov. 19, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

residents are also allowed to immigrate. These include unmarried adult children of citizens, spouses and unmarried children of permanent residents, married adult children of citizens, and siblings of citizens. Currently, the annual ceiling for family-based immigration is 480,000 individuals per year. This number is divided into immediate relatives of U.S. citizens as well as the four different family preferences listed above. There is also a cap on how many people are allowed into the United States from any one country. A combination of these visa ceilings as well as the per-country cap often contributes to long waits for the average immigrant family.

Family-Based Immigration Benefits American Communities and Businesses

Family reunification has rightly been the cornerstone of United States immigration policy. Families are the backbone of our country and their unity promotes the stability, health, and productivity of family members contributing to the economic and social welfare of the United States.

Employment-based immigrants are not the only ones who are vital to the economy. Family-based immigrants tend to come in the prime of their working lives. In addition, families pool their resources to start and run businesses, purchase homes and send children to college. Many immigrant businesses are indeed run by families.¹⁷

Family members help to take care of young children so that other family members can work. Brothers and sisters support each other's dreams, help each other find jobs and provide support and care for each other's families. We cannot attract and retain the best and the brightest if those coming to share their hard work and talents face long term or permanent separation from close family members. Long term separation of families generates stress and is distracting to those in our work force. It forces many immigrant workers who are separated from their families to send money overseas rather than being able to invest all of it in their local communities.

America has always recognized that family members play an important role in helping immigrants build communities. Siblings as well as parents and their adult children often share the same home in immigrant families. Even when they don't, they help teach the newcomers what they need to understand about American values and about the job market. They provide an important safety net, not just for the immigrants but also for the U.S. citizen relatives. They take care of one another in times of economic, physical or emotional hardship, thus lessening the need for reliance on government services or private charities. In addition, having loved ones together in the U.S. increases the ability of immigrants to focus on putting down permanent roots in their new country.

Family immigration reflects the strong family values that are at the foundation of our nation while also contributing to America's social and economic well being.¹⁸ AAJC supports immigration legislation that provides sufficient visas to facilitate timely and full reunification of families. We also support a fair and workable legalization program that includes a path to citizenship. We believe the entire family backlog must come in before immigrants seeking legalization get their permanent

¹⁷ Harriet Orcutt Duleep and Mark C. Regets, *Immigrants and Immigration Policy: Individual Skill, Family Ties, and Group Identities*, JAI Press, 1996.

¹⁸ *Family Values, Betrayed*, NY Times, Editorial, May 4, 2007.

visas. Family reunification is a fundamental cornerstone of our nation's legal immigration system. Families are the backbone of our country and their unity promotes the stability, health, and productivity of family members contributing to the economic and social welfare of the United States. In addition, the ability to reunite with family members is important to attracting and retaining the most talented and hardest working immigrants the world has to offer.

Proposed Reforms and Point Systems

Although the House of Representatives passed the anti-immigrant H.R. 4437 in 2005 and the Senate passed a more comprehensive but deeply flawed S. 2611 the following year, neither bill became law. On March 22, 2007, Congressmen Luis Gutierrez (D-IL) and Jeff Flake (R-AZ) introduced the STRIVE (Security Through Regularized Immigration and a Vibrant Economy) Act. This comprehensive immigration reform bill contains workable solutions in provisions that would eliminate the backlog for family-based immigrants in approximately six years.

Unlike the STRIVE Act, the current Senate compromise bill supported by Senator Jon Kyl (R-AZ) and the Bush Administration includes plans that would severely impair the ability of U.S. citizens to bring their parents with an arbitrary and unrealistic cap on the number of available visas. The proposed bill would also eliminate all visas for siblings and adult children of U.S. citizens. In addition, this proposal arbitrarily cuts off the ability of immigrants already waiting in line and carries on a long tradition of attacks on family-based immigration that began soon after Asian and Latino immigrants became the major users of the kinship system in the 1980s.¹⁹

Although this Senate proposal allows new workers to contribute to the U.S. economy, these immigrants would only be able to work on a temporary basis and the new visa program does not include a path to legal permanent residency. Instead of this temporary new worker program, American businesses and communities want a visa program that allows employers to invest in their new employees. In addition to full labor protections and legal status, these immigrants also need the opportunity to be reunited with their family members and become a permanent part of the communities they come to help build.

While both bills contain an earned legalization program with a path to citizenship for undocumented immigrants, AAJC is concerned about the workability of the requirement for exit and re-entry. Immigrants, who pay a reasonable fine, work hard, pay taxes, learn English and civics, and pass background checks should be given legal status in a fair and workable system. These immigrants should have a path to citizenship and be reunited with their family members in a timely manner.

Point Systems do not Meet the Needs of American Businesses

The concept of a so-called "merit-based" point system for permanent residency has also emerged. Proponents of these proposals look to Canada's point system and argue that a similar model will serve America's economy more effectively than the existing family-based immigration system. The experience in Canada has shown that a point system results in a mismatch of skills to fit the needs of the economy.

¹⁹ Bill Ong Hing, *Deporting Our Souls*. Cambridge University Press, 2006, p. 119.

In fact, Canadian businesses struggle with their point system, because they cannot keep jobs unfilled while visas are being processed. The system works best for individuals who are already working legally in Canada on a temporary visa. High-skilled immigrants who are admitted because of their education and work experience have no guarantee of finding a high-skilled job in their field. Low skilled workers do not qualify for visas under the system and foreign credentials are often not accepted. This forces many high-skilled and experienced immigrants to take low-skilled jobs in entirely new fields.

For some Asian immigrants, especially family members of H1-B visa-holders, the point system may be beneficial. However, those generally left out of the system will include people with poor English-language skills, people without college diplomas, people with no work experience in high-skilled jobs, and people with work experience in low-skilled or semi-skilled industries. U.S. citizens with family members in countries that do not have strong educational systems, traditions of English-language education, and recognized certification systems will be unable to reunite with their adult children and siblings.

Trading Family-Based Immigration for a Point System will have Disparate Impact on Women

Cutting back on family-based immigration options also has a disparate impact on immigrant women. Historically, lack of access to capital and gender discrimination, both in their home countries and in the United States, result in immigrant women disproportionately immigrating through family based immigration compared to men.²⁰ Immigration exacerbates women's vulnerability, heightening women's dependency on husbands, sponsors or employers, nuclear or extended families, and their own ethnic/racial communities.²¹

Reducing access to family immigration enhances the likelihood that women will face victimization by limiting avenues through which women can attain legal immigration status and bring in parents or siblings who can help provide support. In addition, a point system emphasizing education and job training or experience is gender biased given the reality of discrimination against women in many countries.

False Arguments and False Choices

Many arguments have been made for changing the current family-based immigration system. Some argue that the waiting periods for visas are too long and encourage undocumented immigration. While the backlogs are truly a problem, the real solution is to raise the number of available visas to meet the demand of law-abiding immigrants and their families waiting in the United States. Eliminating the family immigration categories will only create greater strain on families and leave

²⁰ Kelly Jeffreys, *Characteristics of Family-Sponsored Legal Permanent Residents: 2004*. Washington, DC: Office of Immigration Statistics, Department of Homeland Security, October 2005, "Table 1: Demographic Characteristics of All LPRs and Family-Sponsored Principal LPRs": Fiscal Year 2004.

²¹ Edna Erez. "Immigration, Culture Conflict and Domestic Violence/Woman Battering," *Crime Prevention and Community Safety: An International Journal* 2:27-36, 2000 in Edna Erez and Carolyn Copps Hartley. "Battered Immigrant Women in the Legal System," *Western Criminology Review* 4(2), 2003, p. 156.

people with no legal means to come to this country. Moreover, a point, even one less biased against family, will not solve the problem absent a sufficient number of visas.

Others argue that the family-based immigration system causes “chain-migration.” Some anti-immigrant groups even claim that one single immigrant will ultimately bring 373 additional immigrants.²² That study was replete with faulty assumptions and questionable math. The reality is to the contrary. Researchers have found that, on average, an immigrant will bring in 1.2 additional immigrants.²³

One of the limitations on the ability of immigrants to bring in family, in addition to the strict quota assigned each category, is that our laws require the sponsor of a family member to sign an affidavit of support to guarantee they will take care of the family member being brought in. Sponsors must also prove they have enough income to cover that pledge. This provides a limit on sponsorship and a strong incentive for the sponsors to help ensure the family member they are bring in will integrate and be self sufficient.

Opponents of immigration often claim, mistakenly, that each immigrant can bring in extended family members, such as cousin, uncles, and aunts. Under our immigration system today, visas in very controlled numbers are available only for a spouse, minor children, parents, adult children, and brothers and sisters. There are no visas for aunts, uncles, and cousins.

Some argue that the family immigration system does not benefit the economy, thus should be changed. In reality, family-based immigrants benefit the U.S. economy by developing areas and businesses that would not otherwise be developed. Proposals which dismantle the family immigration system in the name of the U.S. economy do not address the actual needs of American businesses. Americans and foreign workers are demanding more high-skilled and low-skilled visas, but some policy makers choose to distort the issue and offer a point system that will leave high-skilled immigrants without jobs in the United States and low-skilled workers without opportunities to contribute to our economy.

Not only are family-based immigrants helpful to the economy, there is no need to cut family immigration in order to expand employment immigration. In the late 1990s, there was very high immigration to the U.S., including more than two million family-based immigrants. The economy easily absorbed all of the employment- *and* family-based immigrants – and a record number of undocumented immigrants. During the same period, unemployment in the U.S. was at a near-record low.

The U.S. economy will increasingly need new workers to maintain and grow our economy as the baby boomers begin to retire. Immigration – both family- and employment-based – will help to provide much needed labor. While we do need to reform the employment-based immigration system to better fill the needs of our changing demographics and economy, such reform need not – and should not – come at the expense of family immigration. Indeed, employment-based and

²² <http://numbersusa.com/PDFs/ChainMigrationchart.pdf>

²³ <http://www12.georgetown.edu/sfs/isim/Event%20Summaries&Speeches/Lowell,%20ProjectionsWorkshop.pdf>

family-based immigration are intertwined. Family-based immigration helps to support and supplement employment-based immigration.

One additional false argument being used against the current family-based immigration system is that the legalization of 10 to 15 million undocumented immigrants demands countermeasures to stave off a massive flood of relatives entering the United States. As discussed above, the current family-based immigration system already has effective safeguards against such mass migration. In addition, it is in America's interest to make sure that all new legal immigrants have the familial support necessary to assimilate into this nation.

America Needs a Fair and Humane Immigration System with Sufficient Visas

Studies have shown that the long backlogs in the family-based immigration system contribute to the rise in undocumented immigration.²⁴ Allowing the entire backlog to come through in a timely fashion would help solve this situation. Not addressing the backlogs or arbitrarily invalidating the applications of those who have played by the rules and waited in line would only exasperate the situation. In addition, eliminating family preference categories or reducing the numbers of available visas will force many immigrants to choose between family unity and following the law.

Finally, the days of America as the only land of opportunity are long gone. Immigrants have many choices when it comes to setting down roots and contributing to a new nation. Family values do not stop at the Rio Grande, as President George Bush repeatedly states, and they help guide individuals around the world in their decisions to immigrate to another country.²⁵ If America wants to recruit and retain the best and the brightest, America should hold onto this competitive advantage of being a country which values the whole family.

Any legislation seeking to reform legal immigration must have sufficient visas that more realistically match the intense pull of families and our economic needs. Moreover, the point system proposed in the Senate does not serve families or business. Immigrant women will be disproportionately negatively affected by proposals to favor immigrants who have access to higher education, job experience and English-language education because of the widespread gender discrimination many women still face around the world. If a point system must be considered, AAJC recommends a pilot program to test its workability and evaluate its impact. However, a point system cannot and need not come as a tradeoff for eliminating the family categories or the ability of legalizing immigrants and new workers to sponsor their family members.

Legalization of Undocumented Immigrants

It is in America's interest to bring all Americans into a regularized and legal immigration system. We must provide legal status and a path to permanent residence for undocumented immigrants and their families in a workable system. With one in 10 Asian Americans without legal immigration status, AAJC supports a workable legalization program with a path to citizenship. Undocumented

²⁴ *Placing Immigrants at Risk: The Impact of Our Laws and Policies on American Families*, Catholic Legal Immigration Network, 2000.

²⁵ <http://www.whitehouse.gov/news/releases/2007/03/20070313-9.html>

immigrants, who pay a reasonable fine, work hard, pay taxes, learn English and civics, and pass background checks should be given legal status in a fair and workable system.

There should not be barriers such as onerous risky touch back requirements, unreasonably high penalties and fees, or other conditions which make it less likely that undocumented immigrants will come forward. These immigrants should have a path to citizenship and be reunited with their family members in a timely manner.

Individuals should not be denied legalization or deported for conduct for which they have never been tried or convicted. DHS officials should have full discretion to waive bars to eligibility in cases where an individual's circumstances, such as their connection to the community, prior military service or other humanitarian factors, indicate that the person should be eligible for the legalization program. Also, individuals should not be permanently excluded from legalization or other programs based on minor offenses, because exclusion from the program would be a very harsh punishment for these past offenses.

New Worker Program and Employment Verification System

We must also create legal ways for people who want to contribute to our economy to come work in the U.S., fully protected by our laws, and with a path to citizenship. American businesses and communities also want a visa program that allows employers to invest in their new employees. AAJC does not support a new worker program that fails to give immigrant workers a path to citizenship or fails to give these workers the full protections in the work place that citizens have. In addition, employers should have to do more to ensure there are no workers already in the U.S. available for these jobs and there must be an increase in resources and the use of testing for wage and hour, safety, and anti-discrimination laws.

In addition to full labor protections, these immigrants also need the opportunity to bring their spouses and minor children with them.

Any new employment verification system must have effective safeguards to protect workers from mistakes in the system.

Due Process and Civil Liberties for all Americans and Immigrants

AAJC is concerned that America's current detention and deportation system does not respect due process for immigrants. Any reform of the immigration laws must fully incorporate the American tradition of respecting and protecting the rights of individuals to due process, including fair proceedings, and holding the government accountable for its actions.

The following are AAJC's policy recommendations in regards to due process and civil liberties:

- Protect due process in immigration proceedings and make sure judicial review is available.
- Stop automatic imprisonment without due process.
- Uphold the U.S. Supreme Court decision against indefinite detention of immigrants.

- Enhance judicial discretion so that judges can consider the circumstances in each individual case.
- Minor offenses should not result in deportation.
- Individuals should not be unfairly excluded from applying for legalization because of past conduct, which does not merit such harsh punishment.

Immigrants must be allowed to appeal to the federal courts if their rights are being violated or if an agency has made an error in adjudicating their immigration case. Judicial review should be available to everyone without obstacles regarding any agency decision and available at any time to ensure the program is implemented correctly. In addition, judicial review should be available in all individual deportation cases, so that arbitrary or capricious decisions by DHS or lower courts may be reviewed in the federal courts.

DHS officials should be able to consider individual circumstances in making detention decisions to ensure the decisions are humane and fair. For example, pregnant women who do not pose a flight risk should be released. The reform of our detention system should expand alternatives to detention rather than adding more beds to a broken detention system and to ensure that non-citizens are treated humanely. In addition, we must provide basic protections and safeguards for detained asylum seekers and other immigrants, encourage the use of secure alternatives to detention programs, and create new mechanisms for oversight and enforcement of standards governing the treatment of immigrant detainees.

American immigration law should not be changed to expand the powers of the executive branch currently kept in check by the U.S. Supreme Court. In Zadvydas v. Davis, 533 U.S. 678 (2001), and Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court held that the immigration service does not have the authority – outside of a judicial process – to impose indefinite detention, what is effectively a life sentence, simply because an individual’s country of origin will not accept the individual’s return. The Supreme Court said that the executive branch of the government cannot hand out life sentences to people who have already served their sentence. In essence, DHS wardens cannot issue prison sentences. The Court reaffirmed that in America the prison warden does not decide a person’s sentence.

For long-term residents facing deportation, our immigration system should provide discretion so these immigrants can stay in the U.S. by proving that the good factors in their case truly outweigh the negative factors. Such a provision could take into account (a) long-term residence, (b) U.S. citizen children, spouses or family members, (c) their work, (d) contributions to their community, (e) rehabilitation for the crime and (f) and the seriousness of the offense.

Rather than continuing to add penalties for conduct for which individuals already receive punishment under our criminal laws, Congress should address concerns about the existing detention and deportation system. Congress should revise the overly broad ‘aggravated felony’ definition so that it truly only applies to serious felonies rather than misdemeanors. Unless these laws are revised, long-term community members who are contributing to society will continue to be permanently banished from the U.S. without any individualized consideration of their case by a judge.

Conclusion

AAJC has been a longtime advocate for comprehensive immigration reform. We seek reform that effectively addresses the push and pull factors for undocumented immigration. The system should include tough but fair enforcement measures, a workable system of earned legalization for the undocumented, due process protections for all Americans, including non-citizens, and a realistic number and system of permanent visas that reflect both the needs of our economy and of our community.

Family-based immigration benefits the U.S. economy, U.S. citizens, and U.S. communities. We need to make the family immigration system even better to continue the American tradition of allowing family reunification to foster the entrepreneurial spirit, build stronger communities, and attract the best and brightest the world has to offer. The point system proposed in the Senate does not serve families or businesses.

AAJC supports immigration legislation that provides sufficient visas to facilitate timely and full reunification of families. We also support a fair and workable legalization program that allows immigrants legalizing their status to reunite with their families and includes a path to citizenship. We believe the entire family backlog must come in before immigrants seeking legalization get their permanent visas. In addition, we believe any new worker program must include a path to citizenship and allow their families to be reunited in a timely manner. The family members who are waiting in line now and those who will want to be reunited with family in the United States in the future must not be placed on the negotiating table.