



A D V A N C I N G E Q U A L I T Y

CONGRESSIONAL TESTIMONY

**Asian American Perspective on
Comprehensive Immigration Reform**

**Oral 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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Executive Summary

Asian Immigration

Of the 13.9 Asian Americans in the United States, over 60 percent are foreign born. Therefore immigration and immigrant rights are a priority for the Asian American community and the Asian American Justice Center. Over 90 percent of Asian immigration comes through the family categories. In 2005, for example, 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 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. AAJC cannot support any immigration legislation that does not allow the entire family backlog to come in before immigrants seeking legalization.

Family Reunification

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. AAJC cannot support any immigration legislation that significantly cuts the current family immigration categories and family-based visa allocations.

Point Systems

Point systems result in a mismatch of skills to fit the needs of the economy. 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. Those generally left out of the system will include those with poor language skills, those without high school diplomas, older persons, those with no work experience in high-skilled jobs, and those 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 their entire families. 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 come as a tradeoff for eliminating the family categories or the ability of legalizing immigrants and new workers to sponsor their family members. Nor can a pilot program substitute for enacting comprehensive immigration reform now.

Madame Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to submit the following testimony on behalf of the Asian American Justice Center (formerly the National Asian Pacific American Legal Consortium). 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, 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. 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.

Introduction

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.¹ 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.
- 27.3 percent are foreign-born and not U.S. citizens.

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

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

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.² In the family immigration system, a U.S. citizen parent petitioning for an unmarried adult son or daughter from China must wait approximately 6 years before s/he can immigrate to the U.S. A U.S. citizen petitioning for a brother or sister from India must wait approximately 11 years before s/he can immigrate to the U.S. If the brother or sister is from the Philippines, the wait is approximately 23 years.

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 U.S. 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 U.S. 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.³ 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 1 in 10 Asian Americans do not have access to legal immigration status.

In order to solve these problems, Asian Americans need comprehensive immigration reform that will:

- Allow the entire family immigration backlog to come through before undocumented immigrants gain legal status;
- Facilitate timely and full reunification of families, including parents, adult children and siblings;
- Provide legal status and a path to permanent residence for undocumented immigrants who work hard, pay taxes, undergo criminal and national security checks, and learn English and civics;
- Create legal ways for people who want to contribute to our economy to come work in the U.S.; and
- Assist more immigrants to learn English and prepare for citizenship.

The History of Asian Immigration in the United States

Historical Exclusion

Exactly 125 years after the United States separated countless families and halted innumerable dreams with racially biased immigration policy, law makers 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

² http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

³ http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf

immigration from Asia. In 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration. Asian immigration was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region; 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 1910; and the National Origins Act of 1924, which banned immigration of persons who were ineligible for citizenship. 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. 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.

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, similar legislation to include Asian Americans was rejected. The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship. The last of these laws were not repealed until 1952.

Previous Reforms

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.

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.

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 4 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 US citizen or permanent resident is the most common way of gaining US residency. Qualifying relationships are grouped into two main categories – immediate relatives and other close family members. Currently, spouses, unmarried minor children, and parents are considered immediate relatives. Other close family members of citizens and permanent 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.

Benefits of Family-Based Immigration

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.

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 hardships, 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. Any proposal that would eliminate family categories, prohibit immigrants legalizing their status from reuniting with their families, or

force immigrant workers to maintain lengthy separations from their family violates those values. In addition, the entire backlog of immigrants, who have waited in line for as many as 22 years to join their families, must get their visas before immigrants seeking to gain legal status.

Proposed Reforms

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, a proposal created by Senator Jon Kyl (R-AZ) and supported by 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 proposal 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.

The details of this plan continue to change, but they carry 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.

The concept of a so-called “merit-based” point system for permanent residency has also emerged. Proponents of the proposal 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.

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 those with poor language skills, those without high school diplomas, older persons, those with no work experience in high-skilled jobs, and those 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 their entire families.

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 people with no legal means to come to this country.

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.⁴ 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.⁵

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. 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.

⁴ <http://numbersusa.com/PDFs/ChainMigrationchart.pdf>

⁵ <http://www12.georgetown.edu/sfs/isim/Event%20Summaries&Speeches/Lowell,%20ProjectionsWorkshop.pdf>

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 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.

Studies have shown that the long backlogs in the family-based immigration system contribute to the rise in undocumented immigration.⁶ 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.⁷ America has no other choice, but to keep family reunification the cornerstone of its immigration policies.

Conclusion

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.

AAJC cannot support any policy that does not address the entire family immigration backlog in a fair and workable manner or any law that significantly cuts the current family immigration categories and family-based visa allocations. Furthermore, legislation that prohibits immigrants legalizing their status from reuniting with their families or force immigrant workers to maintain lengthy separations from their family is unacceptable. 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.

⁶ *Placing Immigrants at Risk: The Impact of Our Laws and Policies on American Families*, Catholic Legal Immigration Network, 2000.

⁷ <http://www.whitehouse.gov/news/releases/2007/03/20070313-9.html>