

1987 Amendment Report Language

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ment has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.

The House bill contains no comparable provision.

The conference substitute (sec. 806) is similar to the Senate amendment, with the following exceptions: an amendment making technical corrections and clarifying the President's authority to curtail air transportation agreements with a foreign country in an orderly manner; an amendment making the shutdown of U.S. pre-clearance facilities discretionary rather than mandatory; an amendment deleting the provision which authorizes the President to reduce nonimmigrant visas by one-half to noncooperative countries; and an amendment to the Immigration and Nationality Act clarifying that individuals convicted of violations of drug statutes may be barred from entry into the United States. The provision dealing with reductions in nonimmigrant visas was given serious consideration by the committee of conference before it was deleted. The committee of conference intends to monitor carefully the cooperation received from drug-producing and drug-transit countries, and will give serious consideration to further expanding the list of sanctions in the future should those countries fail to cooperate fully in the fight against narcotics production and trafficking. In particular, the committee of conference notes that this provision is intended to address the continuing lack of cooperation from the Government of the Bahamas in curbing drug-related corruption in that country.

TITLE IX—IMMIGRATION AND REFUGEE PROVISIONS

PROHIBITION IN EXCLUSION OR DEPORTATION OF ALIENS OF CERTAIN GROUNDS

The Senate amendment (sec. 504) prohibits the exclusion of any alien on the basis of any past or current political beliefs or political associations, or on the basis of the expected contents of the alien's statements while in the United States.

The House bill contains no comparable provision.

The conference substitute (sec. 901) is intended to ensure that no alien is denied a visa or excluded from admission into the United States, subject to conditions or restrictions on entry into the United States, or subject to deportation because of any past, current, or expected beliefs, statements or associations which would be protected under the Constitution if engaged in by a U.S. citizen in the United States.

The committee of conference notes that current law provides authority to the executive branch to deny admission to aliens or to deport them on a variety of grounds including those related to national security, ideological or political beliefs, and, more generally, the interests of the United States (8 U.S.C. 1182(a)). These provisions, since their codification in 1952 as part of the Immigration and Nationality Act, have been used by the executive branch to deny aliens entry into the United States on the basis not only of their potential threat to the national security interests of the United States or their past involvement in criminal activity, but

also on the basis of their expression of beliefs, their advocacy of political positions, or their association in political organizations which would be constitutionally protected if engaged in by U.S. citizens within the United States.

During the past 35 years, a large number of well-known foreign politicians, authors, academicians, journalists, and artists, as well as thousands of ordinary citizens from foreign countries have been barred from entering this country, forced to undergo the indignity of answering embarrassing questions about their political or personal activities, or since enactment of the "McGovern Amendment" in 1977, required to submit to a lengthy bureaucratic process in order to obtain a waiver to enter the United States.

The committee of conference notes that, as a result of this history of visa denial, the citizens of the United States have been denied the opportunity to have access to the full spectrum of international opinion, and the reputation of the United States as an open society, tolerant of divergent ideas, has suffered. Though the U.S. record in this regard is on the whole exemplary and certainly far superior to that of most other nations, including those known for the frequent and egregious violations of their own citizens' human rights and freedom of expression, the committee of conference believes that, in order to make it clear that the United States is not fearful of foreign ideas or criticism or the individuals who espouse such ideas or advance such criticism, a thorough reform of the grounds for exclusion and deportation is necessary and long overdue. Furthermore, the committee of conference observes that some of the grounds for exclusion and deportation may be at variance with U.S. international obligations as expressed in the Helsinki Accords. Again, though the U.S. record of compliance with the provisions of the Helsinki Accords is superior to that of most nations of the world, the conferees believe that it would be appropriate to reform these grounds in order to further the process of improved Helsinki compliance.

The conference substitute continues to permit the denial of visas or the deportation of aliens when it is in the interests of the United States, but makes it clear that it is not in the interests of the United States to establish one standard of ideology for citizens and another for foreigners who wish to visit the United States. Accordingly, under this section the executive branch would retain the ability to exclude or deport aliens on criminal, espionage, and terrorism grounds (among others), and, in certain circumstances, on national security and foreign policy grounds. But national security or foreign policy exclusion or deportation would not be permitted if such exclusion or deportation were based on beliefs, statements, or associations which would be constitutionally protected if engaged in by U.S. citizens in the United States. Under this section, statements would be construed as including writings and other forms of non-verbal communications.

Under this standard, it would still be appropriate, to the extent it is consistent with this section and existing law, for the executive branch to deny a visa to an alien to avoid conveying the impression that the U.S. Government recognizes or supports any government or group which the United States does not choose to recognize or support. An example of this situation might be a case in which an

alien was applying to enter this country as the representative of a country which the United States or the international community does not recognize. Other examples might include: The exclusion of a former foreign leader whose mere entry into the United States would threaten imminent harm to the lives and property of U.S. citizens abroad; or the imposition of restrictions on the visa of a hostile foreign national who wanted access to sensitive information about nuclear power or who sought access to restricted areas or to sensitive technology.

These and other foreign policy and national security based exclusions, restrictions, or deportations would be appropriate provided that they were not based on the constitutionally protected activities described in paragraph (a) of the conference substitute. For example, such exclusions, restrictions, or deportations would not be appropriate if based on an alien's criticism of the United States or U.S. policies; an alien's attempt to influence lawfully the outcome of legislation before the Congress; or an alien's mere membership in a Communist, anarchist, or other organization proscribed under current law. However, this section should not be construed as conferring additional constitutional rights on aliens.

Notwithstanding the general prohibition on exclusion or deportation because of constitutionally protected activities, the executive branch would retain the discretionary power to exclude or deport in certain limited circumstances.

First, exclusion or deportation would be appropriate in the case of an individual who has committed or who is likely to engage after entry in terrorist activity. In considering whether a person has been involved in terrorist activities under paragraph (b)(2), it is the intent of the managers to include persons involved in hostage taking, kidnaping, threatened violence or other acts which do not actually involve death or injury. These acts, whether or not they actually result in bodily harm, are a form of violence and are crimes. The managers also consider that organizing, abetting, or participating in terrorist acts or activities would include not only actually pulling a trigger or planting a bomb but providing support or assistance, such as but not limited to: planning, providing facilities, recruiting, financing or fundraising, surveillance, courier service, transportation, providing weapons, or forging or unlawfully procuring documents. The term "terrorist activity" as used in paragraph (b)(2) of the substitute is intended to include international, targeted acts of terrorism such as assassination. The phrase "individuals not involved in armed hostilities" as used in paragraph (b)(2) of the substitute is intended to mean noncombatants. An alien would be considered to have participated in an act of terrorism whether he or she did so individually or as a member of an organization.

Second, the executive branch would be permitted to exclude or deport representatives of labor organizations which are instruments of totalitarian states when such representatives are traveling in an official capacity. Therefore, the section would not prevent such an official from entering the United States to, for example, travel as a tourist, visit relatives or receive medical treatment.

Third, the prohibitions on exclusion and deportation, in particular those based on constitutionally protected associations, would

not apply to aliens who have assisted in Nazi persecutions, aliens seeking refugee status, asylum, withholding of deportation or legalization who have engaged in persecution, or an alien who is a member, officer, official, representative, or spokesman of the PLO.

Finally, the conferees do not intend that this section be viewed as in any way affecting the existing authority of the President to deny admissions by proclamation or to deny entry to aliens when the United States is at war or during the existence of a national emergency proclaimed by the President.

Paragraph (c) of the conference substitute simply makes clear that no standing beyond that which currently exists would be conferred by the section. The committee of conference notes that there are several pending legislative proposals which would expand such standing, and the conferees take no position on the advisability of adopting such changes.

The committee of conference notes that the Committee on Judiciary of both the House of Representatives and the Senate have under consideration legislation aimed at revising the grounds for exclusion and deportation by directly amending the Immigration and Nationality Act. The conferees expect that comprehensive legislation revising these grounds will be acted upon by these committees early in the second session of the 100th Congress.

Because of the expected expeditious consideration of comprehensive legislation revising these grounds by the Committees on Judiciary, the committee of conference has included a 1-year sunset provision in the conference substitute. Under this provision, visas which were applied for during calendar year 1988 and admissions into the United States which are sought during the period beginning on January 1, 1988, through February 28, 1989, would be covered by this section. The additional 60 days for admission into the United States was added in order to permit entry into the United States on the basis of visas issued late in 1988 which may not be used until early 1989.

It is the intent of the committee of conference that this section apply to all visas applied for in 1988, including immigrant and non-immigrant visas, and to all determinations in admissibility made after December 31, 1987, and before March 1, 1988. Aliens denied visas or found inadmissible in the past for reasons that would have been prohibited by this provision shall be eligible to reapply in 1988. The conference substitute would apply whether the alien was denied a visa or found inadmissible from abroad, at the border, or in the context of an application for permanent resident status. It is also the intent of the committee of conference that visas issued during 1988, and permanent resident status granted during 1988, shall not be subject to rescission after 1988 for reasons prohibited by paragraph (a) of the conference substitute.

ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF COUNTRIES FOR WHICH EXTENDED VOLUNTARY DEPARTURE HAS BEEN MADE AVAILABLE

The Senate amendment (sec. 528) provides that nationals of Poland who continuously resided in the United States since July 21, 1984, and for whom a record has been established by the Immi-