

trolled water supply. This means they must buy considerable inputs and sell food to finance them.

David T. Leary, Secretary
International Relations Section



"You and the Alien's Agony"

Speaker: IRWIN TRESTER
Attorney Experienced in Labor Relations

How would you, as an employer, feel if suddenly many of your employees disappeared? It is a shattering experience. Yet, it has happened quite regularly through immigration raids. Immigration agents appear and employees who are unable at that time to establish lawful residence may be arrested. In the case of Mexicans, they may be transported to Mexico the same day; yet, some deportees are here legally. Mr. Trester believes that in this country every citizen has, and even illegal aliens have, the right to counsel, bail, a hearing, and an appeal. He discusses the present situation and the companies' legal liability for hiring and employing illegal aliens. He points out that under pending legislation the situation could become punitive. Mr. Trester concentrates on management's position regarding labor relations. His labor relations experience has been in aerospace, construction, metal fabricating, the garment industry, meat packing, restaurants, and many other industries.

Presented to Town Hall Industrial Relations Section
Julius N. Draznin, Acting Chairman

Recent headlines have reported the deportation of virtually all of the employees in one business. How can a company survive if many of its employees suddenly disappear? Yet, such a cataclysmic event happens every day almost everywhere in the country as a result of raids by the Immigration and Naturalization Service.

An Immigration Service raid is a traumatic experience. Immigration officers suddenly appear on the premises of a company. Employees unable to prove lawful residence may be arrested and often are returned to their original country all in the same day. This is particularly true in states that border on Mexico, since Mexican nationals may be arrested in cities near the border and returned to Mexico the same day. This is a common practice in the Los Angeles area, for example.

ALIEN'S RIGHTS

It has been my experience that most people believe that the illegal alien has no rights and the raid and return of the alien to his country by the Immigration Service is an unchallengeable procedure. But, this is not the case at all.

Illegal aliens have certain rights under our Constitution. They are entitled to the right to counsel and to bail (within the reasonable discretion of the Immigration Service). The same illegal aliens are entitled to a hearing before an immigration judge. During that hearing they have the right to know what section of the Immigration and Nationality Act they are charged with violating and they have the right to produce witnesses and to examine witnesses. The alien may also appeal an adverse decision rendered by an immigration judge, as long as he has some reasonable grounds for an appeal.

By far, the alien's most important right is his right to legalize his stay in this country if he is qualified to do so under the Immigration and Nationality Act.

THE EMPLOYER'S RESPONSIBILITY

How, then, can we establish whether a particular alien is entitled to any benefits under the Immigration Act? Let me direct my answer to employers across the country who are caught up in the dilemma of the alien's agony. I feel strongly that the first step for any employer is to establish a progressive labor-relations program covering the problems of all of his employees. As part of that labor-relations program, I believe that each employee should be separately counseled, with the assistance of counsel, as each case is unique. There are no simple or all-pervasive answers to immigration problems.

As I have said, immigration law is very complex and I am not advising that it be dabbled in without counsel. However, I should like to share with you a little symbolic device that tells us some of the benefits an alien may have under the Immigration Act. The symbolic device is a magic word. If you remember the word and remember what each letter stands for, you will have some feeling for the benefits an alien may have under the act. Our discussion certainly will not cover all the possible benefits an alien may have. Accordingly, we shall only discuss a limited number of benefits and rights. The magic word is "VICTIMMS." This word obviously has some chilly overtones. One might conclude that aliens are "victims" of the Immigration Service. I must say that, in all fairness, the Immigration Service is composed principally of dedicated public servants. Although the Immigration Service is terribly understaffed, its employees exert every effort to carry out their duties under the Immigration Act.

THE MEANING OF "VICTIMMS"

Now, let us get into what our magic word stands for. The "V" stands for "visitor." An alien may obtain a temporary visitor's visa from the U.S. Embassy in his country. This will allow him to visit the United States for a stated period, with extensions of the visit granted at the discretion of the Immigration Service. Immigration is quite literal in its classifications. The visitor is a *visitor*. That means a visitor is not a worker, and so a visitor may not work during his visit to our country. He is expected to have sufficient funds available to support himself, to travel, and to return. Only

under special circumstances may some visitors be allowed to obtain permanent residence in the United States.

The first "I" stands for "investor." Aliens who invest a substantial amount in a business in the United States and who meet certain other requirements may be entitled to permanent residency if approved by the Immigration Service.

"C" stands for "certification." To greatly oversimplify — a labor certification is the agreement between a state's employment office, the Department of Labor, and the Immigration Service that the wages paid to the alien are sufficient and that the alien will not be putting an American out of a job by doing the work.

The "T" stands for "time." The passage of a substantial amount of time may possibly be accepted as grounds for an alien to legalize his status here, even though the person has been living in the country illegally. The requirements for qualifying for adjustment of status under this category are very elaborate and strictly enforced. But, if someone has been in this country more than 7 years without returning to his own country, there is some possibility that he could obtain legal residence.

The second "I" stands for "immediate relative." That means an alien having close family ties in the United States; such as, a brother, sister, mother, or father who has been legally admitted to permanent residency in the United States. This alien may be eligible for adjustment of status.

The letter "M" stands for "marriage." An alien may obtain permanent residency by marriage to a citizen or to a permanent resident of the United States. But, this must be a legitimate marriage, an act of love and not an act of convenience simply to obtain a "green card" for the alien. The Immigration Service will carefully scrutinize a marriage by an alien.

The second "M" stands for "military service." In this situation, an alien who has served in the Armed Forces for the specified period can go directly to citizenship based upon such military service.

Finally, we come to the "S." It stands for "student." A student is exactly what the word indicates. That is, an alien who is here to study with a full course of instruction. It does not mean someone who is here to work or to visit. A student can lose his classification as a student if he is working, even though he is a full-time student. However, some exceptions are made to this rule; but the decision lies within the discretion of the Immigration Service.

EMPLOYER'S LIABILITY

Now, I would like to discuss a very critical area. What is the liability for hiring and employing illegal aliens? There is no liability at present. But, the future looks bleak. In the past some states, like California, have attempted to regulate illegal aliens. Such legislation was held unconstitutional on various grounds, one being that the regulation of aliens is within the power of Congress and not a matter for the states. So, the burden is shifted from the states to Congress for enactment of new legislation concerning illegal aliens. Congress has been slow to act; however, our slow economy is the spawning ground for legislation concerning illegal aliens. And so the Rodino Bill was born. The Rodino Bill proposes to make it unlawful for an employer, his agent, or any person, for a fee, like an employment agency, to either refer for employment or

employ any alien who has not been lawfully admitted to the United States.

The employer will be deemed not to have violated this law if he complies with the following requirements: First, the employer must make an inquiry as to whether the prospective employee is a citizen or alien. If the prospective employee is an alien, the employer is expected to establish whether the alien is lawfully admitted to the United States. This part of the bill runs into trouble. First, there is conflicting federal legislation that says the employer *may not* inquire as to the nationality or origin of prospective employees. Also, an employer might well argue that the Rodino Bill would place the burden of establishing the legality of the presence of an alien in this country on the employer. Most employers believe that the responsibility is that of the government and not the employer.

The bill further provides that the employer, agent, or referer shall obtain from a potential employee a signed statement, prescribed by the U.S. Attorney General, that the person is a citizen in the United States, is lawfully admitted as a permanent resident, or is an alien authorized to work by the Attorney General. This signed statement will be sufficient proof that the employer, agent, or referer has made a sufficient good-faith inquiry into the legality of the alien's presence.

If the Immigration Service concludes that the employer is in violation of the act, the employer will be served with a citation informing him of the alleged violation. If the employer, after notice, continues to violate the act during a 2-year period after receiving the citation, the Attorney General can fine the employer up to \$500 for each alien who is working for the employer in violation of the act. The employer will be entitled to a hearing before an immigration officer to determine if the violation has, in fact, occurred and to establish the amount of the civil penalty, if any.

If the employer or person who has been assessed the penalty violates the act again, he then becomes guilty of a criminal misdemeanor and, if convicted, shall be fined up to \$1,000 or put in jail for up to one year or both. This penalty is for each alien, when a subsequent violation of the act occurs. Needless to say, this bill is strong, bitter medicine with enormous ramifications.

I think the Rodino Bill brings home to both employer and employee alike that each had better get his house in order. That immigration and labor problems must be properly handled before it is too late. Only then will both have peace of mind. Without peace of mind, the employee cannot work as well and production suffers. Without peace of mind, an employer cannot minister to the business needs of the company.

QUESTIONS & ANSWERS

Q. Please explain the rights of a noncitizen under the Constitution.

A. The Constitution does not refer to citizens but to guaranteed rights to "persons" in these United States. The courts have construed the Constitution to mean rights are accorded to individuals whether here legally or illegally, to persons rather than only to citizens.

Roland D. Headlee, Rapporteur