

# Immigration Reform and International Students

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*Legislation currently being considered by the United States Congress would require international students studying in America to return home for two years following completion of their studies. In this essay, Leslie Rowe argues that the legislation, which reflects the national preoccupation with jobs, the concern over uncontrolled borders, and the emotional response to recent events in Iran, could lead to a "brain-drain" away from the United States, would not benefit the developing countries and could impose hardship on some foreign students.*

If the United States is to maintain prominence in science and technology we must be able to focus our attention on an individual's talent rather than his or her citizenship. A law which requires all international students to return home & makes them all ineligible for permanent residence is not in the best interests of colleges and universities or American industry.<sup>1</sup>

Letter from Francis E. Low, Provost, MIT  
to Senator Strom Thurmond  
May 1982

The Immigration Reform and Control Act of 1982, sponsored by Senator Alan Simpson and Congressman Romano L. Mazzoli will result in sweeping reforms in current immigration law if enacted. A little-known section of the bill would require international students to return home for two years following completion of their studies. This provision could have serious consequences for colleges facing shortages of qualified science and engineering instructors, for corporations seeking specialized researchers, and for some students who, for political or personal reasons, are unable to return to their home countries immediately after graduation.

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1. From a letter by Francis E. Low, Provost MIT, to Senator Strom Thurmond, 14 May 1982. Copy obtained by author.

*The Simpson-Mazzoli Bill*

On August 17 the Senate passed S.2222, the Immigration Reform and Control Act of 1982, by a roll call vote of 80 to 19.<sup>2</sup> The bill was a "clean bill" in that very few amendments were approved. Section 212.(a), which deals with students, applies a two year home country residence requirement to all students on F and M visas. (Most high school and college students enter on F visas whereas students studying at vocational or technical institutes enter on M visas.) Students who marry American citizens are exempted from this requirement. Two other exceptions were approved in an amendment offered by Senator Kennedy:

1. F-1 students currently in the United States holding degrees in a natural science, mathematics, computer science or engineering and who have been offered a *faculty position* or a *research or technical* position. A maximum of *fifteen hundred* waivers is available for faculty positions and a maximum of *forty-five hundred* waivers is available for research or technical positions.
2. F-1 students currently in the United States who have a degree in natural science, computer science, engineering or business and who have been offered a *temporary trainee* position in U.S. industry. The period of training is limited to a maximum of four years, it must enable the student to return to his or her country of nationality or last residence and be employed there as a manager by the same firm or corporation.<sup>3</sup>

The House version of the Immigration Reform and Control Act (H.R.6514) submitted by Congressman R. Mazzoli makes major revisions in the section on students. There would be no limitation on waivers of the two year requirement for faculty, research, or technical positions. However, the waiver provision would expire after seven years.<sup>4</sup>

Another section of the House bill, concerning employment of foreign nationals, also differs substantially from the Senate version. In the Senate bill an international student or other foreign national would be required to have a doctoral degree in order to qualify for a visa preference for those

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2. Maurice A. Roberts, ed., "Update on Simpson-Mazzoli," *Interpreter Releases*. American Council for Nationalities Service, New York, 31 August 1982, p. 564.

3. U.S., Congress, Senate, *Immigration Reform and Control Act of 1982*, S.2222, 97th Cong., 2nd session, 1982.

4. U.S., Congress, House of Representatives, *Immigration Reform and Control Act of 1982*. H.R. 6514, 97th Cong., 2nd session, 1982.

of "exceptional ability." The student could not accept a job offer if an American with the minimum requirements to do the job applied for the same position.<sup>5</sup> In the House bill students would be required to have a degree but not necessarily a doctoral degree. Employers would be expected to hire an American over an international student only if the American was equally qualified for the job.<sup>6</sup> Particularly in sophisticated fields of research and technology, this gives the employer the flexibility to hire the best applicant for the position regardless of nationality. Clearly, the House version is more liberal than the Senate version.

In addition, both bills contain a "grandfather clause" in which the two year home country residence requirement would apply only to students admitted to the United States after enactment of the pending legislation. However, students admitted prior to enactment of the bill would not be permitted to adjust their status to permanent residence in the United States; they would have to return home to complete application procedures for U.S. permanent residence.

If and when the House passes its version, a Senate-House conference committee will meet to reconcile the differences between the two bills. Because House Judiciary Chairman Peter W. Rodino, Jr. opposes some of the other major sections of the bill, it is possible that the bill will not pass in the current session.<sup>7</sup> However, strong concern over immigration reform will probably assure the re-emergence of the Immigration Reform and Control Act in the next session of Congress, beginning in January, 1983.

### *An Analysis of the Bill*

An analysis of the Simpson-Mazzoli Bill must consider the impact of the bill on U.S. interests, developing countries, and individual students, as well as its fairness and efficacy.

In a period when unemployment rates have exceeded 10 percent, the Simpson-Mazzoli Bill reflects the national preoccupation with preserving jobs for Americans. The proponents of the bill argue that forcing foreign students to leave the United States after their studies will make more jobs available for American college graduates. Colleges and corporation officials strongly disagree, and argue that the bill is not in the U.S. national interest. According to the Committee on Foreign Students and Educational Policy of the American Council on Education, passage of the two year

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5. U.S., Congress, Senate, *Immigration Reform and Control Act of 1982*.

6. U.S., Congress, House of Representatives, *Immigration Reform and Control Act of 1982*.

7. Peter M. Rodino, letter to editor, *The New York Times*, 24 August 1982.

home country requirement would result in a "brain drain" for U.S. business and schools.<sup>8</sup> The National Science Foundation recently reported that in 1979 four out of every ten engineering doctorates were awarded to international students.<sup>9</sup> American students with undergraduate engineering degrees can now enter the job market with starting salaries approaching \$30 thousand and thus have little incentive to teach at universities where entry salaries range from \$20 to 25 thousand.<sup>10</sup> As a result, according to the American Electronics Association, 24 percent of all junior engineering faculty in U.S. colleges and universities are foreign born and the numbers are increasing.<sup>11</sup>

College officials maintain that hiring former international students as junior faculty is necessary to train American students in engineering and the sciences. Salaries are already higher for most faculty members in engineering and the sciences than for those in the humanities and the arts. In order to attract American students to teaching positions in science and engineering, salaries would have to be raised substantially. Many colleges would have no alternative but to raise tuition to cover such high faculty salaries. This is unfeasible for many economically-strapped colleges. Although the Simpson-Mazzoli Bill provides 1,500 waivers for university teachers in engineering, computer sciences, mathematics and the natural sciences, an estimated 1,600 to 2,000 faculty vacancies currently exist in engineering schools alone.

Groups such as the National Association for Foreign Student Affairs and the American Council on Education oppose the proposed restrictions on international students. They argue that many students would not return to their home countries, but would instead seek employment in other industrialized countries such as Germany, Japan and France. Their skills would then be lost to the United States and their home countries.<sup>12</sup>

American corporations are also feeling the shortage of technically trained graduates. In the United States, only 5.7 percent of all bachelor's degrees are in engineering. In Germany, the percentage is 37.1, and in Japan, 20.7. One reason for this, according to Paul Gray, President of MIT, is the poor teaching of math and science at the high school level.<sup>13</sup>

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8. Committee on Foreign Students and Educational Policy, American Council on Education, "Immigration Bill Threatens to Shut Door on Foreign Academic Talent," *Higher Education and National Affairs*, vol. 31, no. 19, pp. 1-2.

9. National Science Foundation, *Foreign Participation in U.S. Science and Engineering Higher Education and Labor Markets* (Washington, D.C.: U.S. Government Printing Office, 1982).

10. Ronald Rosenberg, "Immigration Bill has High Tech Angry," *Boston Globe*, 18 May 1982, p. 53.

11. *Ibid.*

12. Committee on Foreign Students and Educational Policy, p. 2.

13. Gregory M. Lamb, "How the U.S. Can Keep its High-Tech Edge," *Christian Science Monitor*, 6 October 1982, p. 1.

Major corporations such as Xerox, Ford Motor Company, Westinghouse Electric and Hewlett Packard — all represented by the Alliance for Immigration Reform — oppose the proposed restrictions on international students. They have asked the Administration to support them by endorsing amendments to the bill in return for business support for the Administration's record tax increase.<sup>14</sup> Leaders of these corporations, along with many Americans concerned with higher education, do not believe the Immigration Reform and Control Act is in the U.S. national interest.

On the surface it might appear that imposing a two year home country requirement would be particularly beneficial to developing countries suffering from the so-called "brain drain". However, even now, if a developing country wants to ensure that its students will return, it can require that they study in America on the J-1 Exchange Visitor Visa administered by the U.S. Information Agency. Students with the J-1 visa must return to their home country after completing their studies. These exchange visitors, such as Fulbright and Humphrey Fellows, are usually funded to study or do research by the U.S. or their own governments. Other individuals may be privately funded and are given J-1 visas because the training they obtain is needed in their home countries. Some countries, like Algeria, already require that their students enter on the J-1 visa only.

Actually forcing all F-1 students to return home could cause more problems for countries with high unemployment rates such as Mexico. The fact that all students do not return home acts as a safety valve for some developing countries. Former students also send money to relatives at home, benefitting the home country's balance of payments.

Because statistics are not available on how many students remain in the United States after graduation or return to their country, it would be difficult if not impossible to measure the impact of such legislation. The report on science and engineering students by the National Science Foundation found that only one in every ten overseas scholars awarded doctorates in science and engineering planned to remain in the U.S. after graduation.<sup>15</sup> Imposition of a two year home country requirement on students who planned to go home anyway would be meaningless, yet might create resentment among students.

Clearly the Senate and House bills were not designed with the interests of developing countries in mind. Waivers of the two year requirement would be granted only to engineering and science students whose skills are of direct use to the technological development of their countries.

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14. Ben Garratt Brown, Executive Editor, Alliance for Immigration Reform, letter to Ken Duberstein, Assistant to the President for Legislative Affairs, 19 August 1982, pp. 1-2, Copy of letter obtained by author.

15. National Science Foundation.

For some students ineligible or unable to obtain a waiver, the proposed legislation could cause hardship to them or their families at home. When a change in home government occurs (as it has recently for students from Iran, Ethiopia, and Afghanistan) students often wish to delay their return. Without the flexibility of transferring to another visa or applying for permanent residence, students might be left with only one alternative — applying for political asylum in the United States.

For most students in this situation, political asylum is regarded as the last resort. It represents the final step — a cutting off of all ties with their home country. Moreover, students fear that family members still at home will be persecuted as a consequence of the request for political asylum. Most would prefer simply to delay their return home by remaining in America with proper legal status. By forcing students to apply for political asylum, such legislation could have the reverse effect of its intent — it could place students in a position that would ensure that they could not easily return to their home countries.

Under present U.S. Immigration law, an individual can enter the country temporarily in one of the thirty-seven non-immigrant categories. In addition to students, such categories include tourists, treaty traders, crewmen, UN officials, diplomats, professors, individuals of distinguished merit and ability, trainees and dependents in each category. In 1978 (the most current statistics available from Immigration and Naturalization Service), approximately eight million individuals were in the United States in one of these categories.<sup>16</sup>

The vast majority of non-immigrants in the U.S. were tourists, with students accounting for less than 300,000 or only 4 percent of all non-immigrants.<sup>17</sup> Under immigration law, any non-immigrant can apply for permanent residence while in the United States, with the exception of crewmen and some individuals holding the previously mentioned J-1 visa.<sup>18</sup>

With passage of the proposed legislation, students would be denied this possibility. In fact, a tourist spending Christmas vacation in Disneyland could, if he wished, apply for permanent residence in the United States. The Immigration and Naturalization Service is required to accept such applications. Meanwhile, the tourist could remain pending adjudication of the application. A student, however, who may have studied in America for three or four years, spent \$40 to 50 thousand in tuition and living

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16. Immigration and Naturalization Service, *Immigration and Naturalization Service, 1978 Statistical Yearbook* (Washington, D.C.: Government Printing Office, 1979), table 4.

17. Douglas R. Boyan, ed., *Open Doors 1978/79, Report on International Educational Exchange* (New York: Institute of International Education, 1978), p. 1.

18. Interview with a Boston Immigration and Naturalization Service Official, October 1982.

expenses, and obtained skills which are currently needed in this country, would not even be able to file an application under the proposed legislation.

In addition, tourists and most other non-immigrants would continue to be able to apply to transfer to another non-immigrant visa if they wished, whereas students would not have this flexibility. For example, students who wished to transfer to another non-immigrant visa category to gain a couple of years of practical experience before returning home would be denied this opportunity.

Furthermore, some students would be barred from continuing their studies in the United States. For example, a high school junior who came to study English to prepare for college would be subject to the two year home country requirement. The student would have to spend a year in addition to the senior year back in his or her home country before being allowed to return to study in an American university. Faced with this restriction, many students would choose to study at a college in another country.

It is not clear why the United States would wish to impose more restrictions on international students who, according to the American Council on Education, pour approximately two to five billion dollars into the American economy annually.<sup>19</sup> Students already have many unpleasant bureaucratic encounters with some U.S. Immigration officials, many of whom tend to view non-immigrants entering the country as potential illegal aliens. More restrictions could foster resentment among the educated elite of other countries — the very groups which will affect their countries' attitudes toward the United States in the future.

Even if the proposal is adopted, can it be implemented effectively? As mentioned in the previous section, there are some students currently in the United States on the J-1 Exchange Visitor visa. The reality is that these individuals do not always return home despite the two year home country residency requirement. The requirement may be waived for any one of four reasons:

1. Exceptional hardship to a U.S. citizen or permanent resident spouse or child of the Exchange Visitor which would be caused by the Exchange Visitor's departure from the U.S. and residence abroad.
2. Persecution because of race, religion, or political opinion if the Exchange Visitor is forced to return to his country of last residence or nationality.
3. Interest of a U.S. Government agency. If an Exchange

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19. American Council on Education, *Foreign Students and Institutional Policy: Toward an Agenda for Action* (Washington, D.C.: American Council on Education, 1982), p. 37.

Visitor is engaged in a program of interest to a U.S. Government agency, the head of that agency or his designee may apply to the Waiver Review Branch, Office of the General Counsel, USIA for a waiver of the two year home country residence requirement on the grounds that the granting of the waiver would be in the public interest and that the Exchange Visitor's absence from the U.S. could be clearly detrimental to a program or activity of interest to that agency.

4. Statement of no objection by home country.<sup>20</sup>

Probably the most common waiver granted is the last one — no objection by home government. One would expect that most developing countries would rarely issue this type of statement. Some countries, such as the Philippines, seldom issue a statement of no objection to their citizens studying in essential fields. However, some developing countries grant them almost routinely. In fact, India gives letters of no objection routinely to many engineers. According to one Indian embassy official, there is a surplus of engineers, and technology within the country is not developing quickly enough to employ all of them. Rather than force engineers to return home, the Embassy liberally issues statements of no objection enabling its citizens to remain in the United States.

Since the two year requirement model has already existed for many years under the J-1 visa, it would be logical for similar if not identical implementation procedures to be used for similar if not identical implementation procedures to be used for those on F or M visas, should the Simpson-Mazzoli bill pass. As in the case of the J-1 visa, those who plan to go home would probably go home anyway. Those who do not would probably seek waivers and be granted them.

In light of the preceding arguments it is interesting to consider where the idea for such restrictive legislation concerning international students originated. The ailing American economy is clearly one factor. Statistics released by the American Council on Education in the fall of 1981, which predicted a potential one million international students in the United States by 1990 (triple the current number) may have raised some concern among legislators concerned about preserving jobs for Americans. However, two other factors have probably contributed considerably to this negative reaction toward international students: one, the notion in the words of Attorney General William French Smith that "the U.S. has lost control

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20. National Association for Foreign Student Affairs, "Two-Year Home Country Residency Requirements," *Advisor's Manual of Federal Regulations Affecting Foreign Students and Scholars*, 1982, pp. 33-34.



of its borders”<sup>21</sup> and two, the negative feelings of many Americans toward Iranian students which developed during the hostage crisis in Iran.

In recent years, estimates by the Census Bureau of the number of illegal aliens in the United States have ranged from one and a half to three million. Estimates by the Immigration and Naturalization Service have ranged from six to twelve million.<sup>22</sup> No one really knows how many people live and work in America illegally. The absence of reliable information has created confusion in the minds of many Americans as to the severity of the problem. Moreover it has caused considerable frustration among U.S. Immigration officials charged with apprehending illegal immigrants. In short, we have not devised an effective means to deal with illegal immigrants “pushed” from economically devastated countries such as Mexico, and “pulled” to the United States by employers seeking cheap labor. Since we cannot control the millions of illegal immigrants flowing across the borders, we attempt to exert ever more control over those who enter the country legally — in this case 325,000 international students. Even if all international students returned to their countries after graduation, we would be imperceptibly further down the road to controlling or dealing with the greater problem: illegal immigrants living as second-class citizens in the United States. Moreover, it is ironic that the Simpson-Mazzoli Bill would grant amnesty to illegal aliens who have in a sense been “lawbreakers” during their stay, while the very same bill seeks to penalize students who have been law-abiding while in the U.S. Some would characterize the bill as rewarding “lawbreakers” and punishing law-abiders.

Recent U.S.-Iranian relations also had a major impact on American views towards international students. The sight of screaming Iranian “students” burning America in effigy in Tehran — brought home by the nightly news — was too much for many Americans. Iranian students in the U.S. bore the brunt of much of America’s anger. In addition, dozens of legal requirements were imposed on them in an attempt by Washington to force Iran to free the American hostages. Again in response to a situation we could not control, the U.S. imposed restrictions on students who were here under proper legal status. In the end, only a handful of Iranian students out of 50 thousand in the United States were actually deported.<sup>23</sup>

While it is true that a few Iranians studying in America crossed the line from civil disobedience to unacceptable violent demonstrations against the Shah, the vast majority of Iranian students did not demonstrate, but

21. Jonathan Harsch, “Economist Puts Blame for Illegal Alien Problem on U.S. Employers,” *Christian Science Monitor*, 26 January 1982, p. 18.

22. Robert M. Press, “Estimates of Illegal Aliens Tumble,” *Christian Science Monitor*, 28 January 1982, p. 1.

23. Immigration and Naturalization Service, *Iranian Student Status Verification Project*, Summary Report (Washington, D.C.: Government Printing Office, 18 May 1981).

retreated to study and waited to hear if families were safe at home. The sanctions against them were mostly symbolic — to make it appear that we were doing something to address the hostage crisis.

The positive image which many Americans had of international students was shattered by the events in Iran. Thus it is not surprising to see restrictive legislation for all international students appearing in the first major reform of immigration law since 1965.

### *Summary*

The legislation proposed in the Simpson-Mazzoli bill to restrict international students is not in the best interests of the United States or developing countries. The legislation may cause undue hardship for some students, and by singling out students and not individuals in other non-immigrant visa categories, it is unfair. The bill seems to be based at least in part on an emotional response to recent events in Iran and our inability to control our borders. In the past when immigration legislation or restrictions grew out of emotion rather than logic (such as the Chinese Exclusion Act and the "barred zones" of 1917 designed to cut off entry of "Asiatics") we have come to regret it.<sup>24</sup>

This legislation seems to be based on the assumption that most international students remain in the United States after graduation. Certainly some do. But most international students return home to use their skills to help the development of their countries, to be reunited with family members after a long separation and to feel at home in the culture that has molded them. For example, Venezuelan students, who represent the sixth largest number of students in the United States, rarely remain in America because of close family ties and the excellent career opportunities awaiting them at home.

Moreover, not only do most students go home but they often return to assume important leadership positions in business, education and government. The list of foreign leaders who studied in the United States is lengthy and impressive. Miguel de la Madrid, the new President of Mexico, was a student in the United States as was Jean Francois-Poncet, former Foreign Minister of France, Fernando Belaúnde Terry, President of Peru, and Colette Flesch, the mayor of the city of Luxembourg. These are well-known examples but there are thousands of others in key positions in their home countries.

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24. John P. Roche, "Immigration and Nationality: A Historical Overview of United States Policy," *Ethic Resurgence in Modern Democratic States* (New York: Pergamon Press, 1980), p. 69.

Many others will return home too, and their impressions of the United States will be far better without additional bureaucratic procedures and restrictive legislation such as that proposed in the Simpson-Mazzoli bill. Some students may be discouraged from coming to the United States at all and may go to other countries for their education. If so, we will be deprived of the opportunity to establish dialogue and understanding with future leaders of countries throughout the world.

