

Where It All Began

Reportage by Robert Kyser

As the preceding articles in this feature section show, there is room for anger in the specialty fields of math and science. This anger and frustration is evident on the internet where conversations about employment opportunities and the impact of immigration abound. According to information available there, in the twenty years between 1959 and 1979 — permanent visas were granted to 7,093 university professors. In only the three years 1992-1994 that number jumped to 8,563.

Some of the history that has led to the current sad state of affairs is contained in a letter written by then-President of both of the Association of American Universities (AAU) and the University of Pennsylvania, John W. Oswald, to fellow Pennsylvanian, Rep. Joshua Eilberg (see box below). Eilberg chaired the House Subcommittee on Immigration at a time when, in the wake of passage

of the 1965 Immigration Act, Congress was trying to extend the preference structure and the 20,000-immigrants-per-country ceilings governing immigration from the Eastern Hemisphere to cover the Western Hemisphere. Eilberg was being lobbied by Oswald during what one contributor to the internet has characterized as “a period of deadlock in negotiations between the House and Senate Immigration Sub-committees” during which Eilberg could insert a parenthetical clause into the proposed amendment to Title 8 of the U.S. Code allowing universities the unique handling of sub-specialties as an end-run around Department of Labor categories:

*(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or **equally qualified in the***

Pennsylvania State University
University Park, Pa.
November 10, 1975

Hon. Joshua Eilberg
Chairman, Subcommittee on Immigration,
Citizenship, and International Law
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Eilberg:

In my role as President of Penn State and President of the Association of American Universities, I would like to acknowledge appreciation for your continued interest and leadership in problems related to the hiring of foreign faculty by U.S. institutions of higher education. The amendment which you have proposed to Section 212 (a) (14) of the Immigration and Nationality Act is particularly helpful.

It is our judgment that insertion of the phrase "equally qualified" will greatly ease the entry of exceptionally talented and able alien faculty into American higher education. By allowing institutions to make appointments from a pool of only those candidates with a highly specialized competence, whether the candidates be foreign or domestic, you have circumvented the primary rationale for denial of labor certification: that an unlimited supply of American manpower exists whose employment prospects are being usurped by alien labor.

While we are in accord with your bill, we are still somewhat concerned about its implementation. Although your repeated efforts to persuade the Department of Labor to employ a peer review panel have been to no avail, perhaps this concept could be modified rather than abandoned. By imposing qualitative standards upon certification, your bill would eliminate the need to utilize peer review in all but a few cases, and it would presumably be sufficient to insure satisfactory resolution of most cases. *(Continued...)*

case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. (Title 8, section 1182, U.S.C. 1976) [emphasis added].

The interesting story of how Eilberg got his bill through the House can be read at <http://www.mit.edu:8001/afs/athena.mit.edu/user/e/r/erw/Public/Pandora.html>. The important change for America's scientists and mathematicians is the result of what was intended to be a minor loophole through which one can now drive a truck filled with applicants. Total immigration by way of permanent visas granted in 1976 was 502,289, of which 267 were college or university teachers; in 1993, 3,452 of the 880,014 immigrants granted permanent visas were college or university teachers — an increase of 1193 percent. Could so many applicants possibly all be eligible for the "Einstein exemption"?

The situation on the nation's campuses has become so extreme that Dr. David Goodstein, Vice-Provost of California Technical Institute, himself a physicist as well as administrator, has commented:

*The American taxpayer (both state and federal) is supporting extremely expensive research at universities whose main educational purpose is to train students from abroad. When these students finish their educations, they either stay here, taking relatively high-paying jobs that could have gone to Americans, or they go home, taking our knowledge and technology with them. ...Congress and the public don't seem yet to have noticed that, while largely ignoring our own students, we are putting our money and our best talent into training our economic competitors. Just wait until this one hits the fan. ["Scientific Ph.D. Problems" by Dr. David Goodstein, *American Scholar*, Vol. 62, Spring 1993, pp.215-220.]*

Rep. Eilberg later pleaded guilty to federal conflict of interest charges amid allegations of peddling influence to higher education at a university in Philadelphia. **TSC**

However, for those few cases of DOL denial which an educational institution would consider erroneous, a peer review process of very modest scope could provide a valuable appellate mechanism. We would like to propose, therefore, that language be included in the report along the following lines:

"Limited numbers of foreign faculty members on American campuses who have scarce and often unique talents continue to make critical contributions to American basic research and graduate education. The highly specialized credentials of such expert faculty, and the availability of citizens with comparable credentials, can be evaluated most accurately only by those other individuals of comparable professional stature. For this reason, and because of the very limited number of faculty involved, we recommend that peer reviewers consisting of an appropriate number of persons of specialized competence from industry, government and universities, be used on an ad

hoc basis to advise the DOL when decisions on permanent labor certification are appealed to the DOL by the employing institution. A mail review procedure by selected peer reviewers should be utilized as necessary to resolve all such cases, and to advise the Department of Labor to affirm or deny the limited number of Labor certification rulings which have been appealed."

Once again we would like to thank you for your generous assistance on alien faculty certification concerns. We look forward to meeting with you in the very near future. If there is any further information which you might require, we will be happy to provide it.

Sincerely,
S/ John W. Oswald, President

[Text found in records of hearings on H.R. 367, H.R. 981, and H.R. 10323, ("Western Hemisphere Immigration") before the Subcommittee on Immigration, Citizenship, and International Law of the Committee on the Judiciary, House of Representatives, Ninety-Fourth Congress, September 25 and 30, October 9 and 29, December 11, 1975; and March 18, 1976; H521-27 page 361.]