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MAY 30, 1973

MEMORANDUM FOR MR. WILLENS

SUBJECT: The Law on Alien Workers

The immigration laws provide for the admission of aliens under either "nonimmigrant" or "immigrant" status. The former category denotes those aliens who have been granted the privilege of residing permanently in the United States.<sup>1/</sup>

A. Nonimmigrant Aliens

1. Generally

While there are many types of nonimmigrant aliens admitted into the United States,<sup>2/</sup> the type which would most directly affect the Marianas is the skilled or unskilled worker. The U.S. laws define him as "[A]n alien having a residence in a foreign country which he has no intention of abandoning . . . who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country . . . ." <sup>3/</sup>

Whether such persons can be admitted depends on what has been labelled the "adverse effect" test. This is provided in 8 U.S.C. § 1182(a)(14):

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<sup>1/</sup> 8 U.S.C. §§ 1101(a)(15), (20), (27).

<sup>2/</sup> 8 U.S.C. § 1101(a)(15).

<sup>3/</sup> 8 U.S.C. § 1101(a)(15)(H).

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"Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, [shall be excluded] unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined 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." [Emphasis added.]

The decision then is up to the Secretary of Labor without any requirement for approval or consultation with local or state governments. Moreover, the funding can be very specific -- to a particular skill in a particular locality.

This would mean in the future that, regardless of the views of the Marianas Government, the Secretary of Interior could determine that there was, say, a shortage of construction workers on Saipan and allow Filipinos and Koreans to come there as workers. Offsetting this is the fact that their stay would be "temporary," though the shortage could conceivably continue for years.

## 2. An Agreement with the Philippines

Besides the general statutory provisions above, there is an agreement between the United States and the Philippines regarding recruitment of Philippine workers for work in certain

areas of the Pacific and Southeast Asia.<sup>1/</sup> The area, defined as west of 180° longitude, includes the Marianas. Under this agreement, the basic employment terms are established for Philippine workers recruited by the U.S. military and contractors for the U.S. military and military-related agencies.

This agreement does not supplant the general statutory provisions. Rather, it covers areas outside the United States and, for areas within the United States (like the Marianas would be), it formalizes the terms on which these workers can be recruited. It would be an important document if the military or its contractors imported Philippine workers to build facilities in the Marianas.

One source<sup>2/</sup> said that there were special provisions for the importation of persons from the Philippines and Trust Territory into Guam specifically to work under contract in disaster/reconstruction programs authorized by the Guam Rehabilitation Act of 1963.<sup>3/</sup> However, the Act says nothing about this and no special Executive Orders were located.

Barry Carter

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<sup>1/</sup> Agreement with the Philippines Relating to the Recruitment and Employment of Philippine Citizens By the United States Military Forces and Contractors of Military and Civilian Agencies of the United States Government in Certain Areas of the Pacific and Southeast Asia; December 28, 1968, [1968] 6 U.S.T. 7560, T.I.A.S. No. 6598. A copy is attached.

<sup>2/</sup> W. Johnson, Facts About Doing Business in Guam, Guam Economic Development Authority 15 (1969).

<sup>3/</sup> 77 Stat. 302 (1963), amended 82 Stat. 863 (1968). (A copy is attached.) Incidentally, the Act applies only to Guam and not to the Marianas.