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April 12, 1974

MEMORANDUM FOR MESSRS. WILLENS AND CARTER, AND MS. KRAMER

SUBJECT: Immigration into the Marianas

There are attached the following: a draft of the elements of a position on immigration for the MPSC, and a brief explanation of the draft. I solicit your comments.


Michael S. Helfer

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ELEMENTS OF MPSC POSITION ON IMMIGRATION

1. No U.S. immigration laws will become applicable until termination of the trusteeship. Until termination, the Marianas Commonwealth will have complete control over immigration, just as the TTPI and American Samoa do.

2. After termination, the U.S. immigration laws will be applicable in the Marianas, except as modified by the following provisions [for the first ____ years after termination only]:

(a) No immigrant alien (other than an immigrant alien who qualifies for admission because of his relationship to a person who resides permanently in the Marianas) otherwise fully qualified for admission under U.S. law will be permitted to enter the Marianas for permanent residence unless the Commonwealth Government, through procedures it will establish by law, either (i) certifies to an official selected for this purpose by the U.S. Government that the alien will perform necessary labor for which there are not sufficient workers in the Marianas, and that the employment of such alien will not adversely affect the wages and working and living conditions of workers in the Marianas, or (ii) waives such certification. In the event that the Commonwealth Government refuses to make the certification provided in (i), the alien may appeal to the

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U.S. Government official to whom the certification would have been made, and that official, after notice and an opportunity for a hearing, may order that the certification issue if he finds that the refusal to make the certification was arbitrary or capricious.

(b) No nonimmigrant alien otherwise fully qualified for admission under U.S. law (other than a non-immigrant alien who is a temporary visitor for business or pleasure, a transit alien, a foreign government official, a student or a student's spouse or child, a representative of an international organization, a representative of the foreign media, an exchange visitor, or the fiance or fiancée of a U.S. citizen or the children thereof) shall be permitted to enter the Marianas unless the Commonwealth Government, through procedures it will establish by law, either (i) certifies to an official selected for this purpose by the U.S. Government that the alien will perform necessary labor for which there are not sufficient workers in the Marianas, and that the employment of such alien will not adversely affect the wages and working and living conditions of workers in the Marianas, or (ii) waives such certification. In the event that the Commonwealth Government refuses to make the certification provided in (i), the alien may appeal to the U.S. Government official to whom the certification would have been made, and

that official, after notice and an opportunity for a hearing, may order that the certification issue if he finds that the refusal to make the certification was arbitrary or capricious.

3. Effective after termination of the Trusteeship, the Attorney General of the United States will be empowered and, upon the request of the Commonwealth Government, directed to issue such regulations and to take such actions as are necessary to assure that the total alien population which resides in the Marianas is no greater a percentage of the total population of the Marianas than the total alien population which resides in Guam is of the total population of Guam.

[to assure that the total alien population which resides in the Marianas is no greater a percentage of the total population of the Marianas than the total alien population which resides in the United States as a whole is of the total population of the United States.]

[to assure that the number of immigrant aliens admitted to the Marianas for permanent residence in any one year is not a greater proportion of the population of the Marianas than is the number of immigrant aliens admitted to Guam as a proportion of the population of Guam.]

4. Except for those persons who are closely related to persons who are citizens of the Commonwealth of the Marianas, residence in the Marianas will not count as residence in the United States for the purpose of becoming a naturalized citizen (see Section 204 of the JFL Status Agreement).

BRIEF EXPLANATION OF THE APRIL 11, 1974
DRAFT MPSC POSITION ON IMMIGRATION

Section 1: The purpose of this section is to give the Marianas some breathing time before the influx of aliens could begin (if it's coming at all). The section would not prevent an agreement between the Commonwealth and the INS so that tourists who wanted to go to the Marianas could obtain permission in the same way that tourists who want to go to Guam do. Since the people of the Commonwealth will not be U.S. citizens until after termination, it seems appropriate to grant them the kind of controls over immigration now permitted in the TTPI and American Samoa.

Section 2: This section is designed to give the Commonwealth Government considerable additional control over the admission of aliens to the Marianas, while retaining the ultimate authority of the federal government. In essence it adds a new requirement to all the other requirements of law for many of the immigrants and non-immigrants who want to enter the Marianas, and it assures that the decision as to whether the requirement is met will be made, at least in the first instance, by the Commonwealth Government. It may be necessary or desirable to limit the length of time that this section would be effective.

Subsection (a): Except for aliens who qualify for admission to the U.S. because of their family relationship to a permanent resident of the Marianas, no immigrant alien could be admitted to the Marianas unless the Commonwealth certifies that he will perform labor which is needed in the Marianas, and that his employment will not adversely affect wages or working or living conditions there. This requirement is based on the labor certification requirement of existing law but (1) it is expanded to permit consideration of living conditions, and (2) existing law is altered to require the new certification for aliens other than those admitted under occupational preferences, or as temporary workers. Because of the possibility that the Commonwealth will want to admit immigrants who will not perform any work (e.g., Japanese who retire to the Marianas), the Commonwealth can waive the requirement. Federal control is assured by permitting review of the Commonwealth's refusal to certify.

Subsection (b): This subsection requires certification or waiver, as in Subsection (a), for non-immigrant aliens who can be expected to remain in the Marianas for a substantial period of time (e.g., temporary workers, like the H-2's).

Section 3: This is a fail-safe provision, based on the argument that the Marianas is willing to do its fair share with respect to immigration, but no more. Action which the A.G. could take would include not permitting any additional immigrants or non-immigrants (other than tourists) to enter the Marianas until the percentage fell to the designated level. Aliens account for approximately 16% of the population of Guam (based on reports under the alien address program); this would permit a total of about 2,400 aliens to reside in the Marianas. Aliens account for approximately 2% of the population of the United States; this would permit a total of about 300 aliens to reside in the Marianas. The third alternative presented in the text assumes that immigrants are the main problem; it would permit about 300 immigrants a year into the Marianas. One wonders whether both this section and Section 2 are necessary.

Section 4: This provision is designed to discourage immigrant aliens from entering the Marianas. It is apparently already part of the position the MPSC has taken with respect to citizenship.