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JUN 16 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Political Affiliation and Visa Ineligibility

As you may recall, the Department was asked by Dr. Brzezinski last March to coordinate with the Department of State in the preparation of a report to the President on the subject of political affiliation and visa ineligibility. By letter dated April 11, you advised Secretary Vance of our concurrence in the State Department's recommendation that a relaxation of political affiliation criteria for visa eligibility be accomplished through administrative action rather than by seeking legislation if consultations with congressional leaders revealed that the prospects for enactment of liberalizing legislation were not bright.

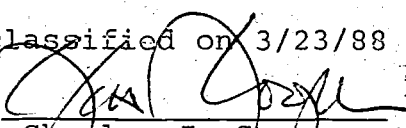
By memorandum of June 1, Dr. Brzezinski advised you that the President has reviewed the State Department's paper and would like you and the Secretary of State to discuss this matter with Senator Eastland and Representative Rodino to sound out their views on the question of relaxing the political affiliation criteria of visa ineligibility.

Background

The main focus of attention here is on section 212(a) (28) of the Immigration and Nationality Act. That section generally provides that advocates of anarchy, terrorism, or world communism, members of organizations advocating these doctrines, and members of domestic or foreign communist parties are ineligible to receive immigrant and nonimmigrant

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By


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visas and to be admitted into the United States. 1/ However, under section 212(d)(3), an alien who is barred by section 212(a)(28) may be issued a nonimmigrant visa and be admitted into the United States temporarily as a nonimmigrant if the Secretary of State or a consular officer so recommends and the Attorney General approves. At present, the Department of State recommends waivers in all but three classes of situations in which an otherwise admissible alien is barred by section 212(a)(28). The three categories of persons on whose behalf the State Department does not presently seek waivers are:

- (1) Communist officials travelling to attend United States party meetings or on other party business;
- (2) senior officials of Communist parties in non-Communist countries; and
- (3) Communist labor representatives.

When the State Department elects to seek waivers, INS grants them in the vast majority of cases. INS denials are generally based on national security grounds, and the waiver procedure therefore affords this Department an opportunity to screen an applicant with Communist party affiliations before a visa is even issued to him.

The Administration is committed as a matter of policy to freedom of travel, and the United States is committed to freedom of travel under the Final Act of the Conference on Security and Cooperation in Europe (CSCE) -- the Helsinki

1/ An alien falling in these categories may receive a visa and be admitted if his affiliation with a proscribed organization is or was involuntary or if the affiliation has ceased and the alien has actively opposed its doctrines and programs for five years.

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Agreement. There is some feeling that the provisions of section 212(a)(28) making a person ineligible to receive a visa or be admitted into the United States because of political affiliation will be cited by the Soviet Union and others as a failure by the United States to live up to the CSCE commitment.

Among the options that could be considered to institute a more liberal policy at the present time are to amend section 212(a)(28) to delete political affiliation as a basis for visa ineligibility (for nonimmigrants only or for immigrants as well) or for the State Department to adopt a more liberal policy administratively for nonimmigrants by requesting waivers for some or all aliens in the three categories for which waivers are not sought at the present time. Presumably, the Department of Justice would be prepared to approve waiver recommendations in many of these additional situations. 2/

Legislative Developments

Since your letter of April 11 to Secretary Vance, there have been two legislative proposals addressing the issue of political affiliation and visa ineligibility.

McGovern Amendment

The first is the so-called "McGovern Amendment" to the Foreign Relations Authorization Act for 1978 (H.R. 6689), adopted without objection by the Senate Foreign Relations Committee. The McGovern Amendment provides that within 30 days of receipt of an application for a nonimmigrant visa from an alien excludable from the United States "by reason of membership or affiliation with a proscribed organization," the Secretary of State must either recommend that the Attorney

2/ Of course, a relaxation of administrative practice with respect to waivers would not eliminate any potential embarrassment that could result from merely having the political affiliation basis of visa ineligibility on the statute books.

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General grant a waiver or certify in writing to the chairman of the Senate Foreign Relations Committee and the chairman of the House International Relations Committee that admission of the alien would threaten the security of the United States. 3/

The express purpose of the McGovern Amendment is to achieve satisfactory compliance by the United States with the Final Act of the CSCE. The report on the bill states that the amendment would have the effect of opening the way for visits by ~~officials~~ of European Communist party leaders and Communist labor leaders without the executive branch having to make the politically difficult individual decisions which might imply a change in overall U.S. policy toward Communism. S. Rep. No. 95-194, 95th Cong., 1st Sess. 13 (May 16, 1977). It should be noted in this connection, however, that the "proscribed organizations" that give rise to visa ineligibility include not only Communist-dominated organizations, but others, such as the Palestine Liberation Organization.

The McGovern Amendment would accomplish by legislation the administrative policy proposed by the State Department of relaxing nonimmigrant visa eligibility standards by seeking waivers in additional cases. The amendment would not affect the discretion of the Attorney General to deny waiver requests; but as noted above, it has been the practice of INS in the past to issue waivers in virtually all situations in which they are requested. Waivers are denied only on security grounds -- the very situations in which the Department of State would not be required by the McGovern Amendment to request a waiver. The alien would be ineligible to receive a visa or be admitted in these situations under sections 212(a)(27) and (29) in any event. These sections relate to aliens coming to the United States to engage in espionage, sabotage, or other activities

3/ There are a number of apparent drafting problems with the amendment. For instance it speaks in terms of the Attorney General issuing a visa, when in fact the Attorney General only grants a waiver permitting the State Department to issue a visa. Also, the McGovern Amendment would apparently not apply to individuals who advocated anarchy or Communism but did not belong to a proscribed organization.

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which would be prejudicial to the public interest or would endanger the national security. Ineligibility under sections 212(a)(27) and (29) cannot be waived.

Because the McGovern Amendment would not affect the authority of the Attorney General under existing law to grant or deny waivers recommended by the Department of State, the Justice Department would retain the ability to screen applications received from members of Communist parties and other organizations covered by section 212(a)(28) to determine whether the visa should be denied on national security grounds. The FBI and the Criminal Division have stressed the importance of this screening function. The McGovern Amendment would therefore not appear to be objectionable to this Department's interests.

However, it seems reasonable that Senator McGovern and the Senate Foreign Relations Committee assumed that the Justice Department would continue current practice and approve waiver recommendations in virtually all cases in which the Secretary of State would be required to submit them. If section 212(a)(28) is to be waived in all cases except those involving national security (in which case the alien would be ineligible under sections 212(a)(27) and (29) in any event), there may be some question whether section 212(a)(23) should continue to be applicable to nonimmigrants at all.

If some arrangement could be made for advance screening by the Department of Justice of all nonimmigrant visa applications from persons who are members of or are affiliated with certain "proscribed organizations," deletion of nonimmigrants from the coverage of section 212(a)(23) altogether may be warranted.

The bill containing the McGovern Amendment has been reported to the full Senate. The bill as it passed the House did not contain a comparable provision. We were informed by the Department of State that Senator Eastland is attempting to hold up floor consideration of the entire bill because of the McGovern Amendment, presumably because he views it as an encroachment upon the Judiciary Committee's and his subcommittee's jurisdiction over the Immigration and Nationality Act.

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The June 1 memorandum from Dr. Brzezinski states that the President is not ready to commit himself to a specific course of action but that he is leaning toward favoring the McGovern Amendment.

Drinan Bill

On April 9, Congressman Drinan introduced H.R. 6308, which would amend section 212(a)(28) to eliminate visa ineligibility based on political beliefs and associations, except for ineligibility based on advocacy of terrorism or membership in a terrorist organization. The McGovern Amendment deals only with nonimmigrant visitors, but the Drinan bill would apply to immigrants as well.

The prospects for the Drinan bill are not known at the present time. However, as the State Department has pointed out, it will probably be controversial because it would permit the immigration to this country of persons who currently advocate Communist doctrine or are currently members of Communist organizations. Because political belief and affiliation would be deleted as a basis for ineligibility, there would be no statutory basis under the Drinan bill for the Justice Department to screen members of Communist organizations for possible security problems before a visa is issued.

Steps to be taken

As mentioned earlier, Dr. Brzezinski has advised that the President has requested you and Secretary Vance to discuss this matter with Senator Eastland and Representative Rodino. I understand that Secretary Vance believes that you and he should meet with Senator Eastland and Representative Rodino on the issue. While it might be possible for Secretary Vance to make the necessary contacts by himself after talking with you, this may not be entirely satisfactory because it is the Chairmen of the Judiciary Committees who will be contacted and because the administration of the Immigration and Nationality Act is generally your responsibility.

Secretary Vance will probably be speaking with you in the near future to discuss arrangements for discussions with

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Senator Eastland and Representative Rodino to sound out their views. A copy of suggested talking points prepared by the State Department's Bureau of Security and Consular Affairs for use in conversations with Senator Eastland and Representative Rodino is attached. The talking points listed appear to be satisfactory, although I recommend that you make some mention of the Justice Department's interest in screening visa applicants who are members of proscribed organizations.

John M. Harmon
Acting Assistant Attorney General
Office of Legal Counsel

Attachments (7)

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