

.....WOMEN AND CURRENT U.S. IMMIGRATION POLICIES.....

Fact Sheet

ELIZABETH J. CLIFFORD, PhD, TOWSON UNIVERSITY
 SUSAN C. PEARCE, PhD, TOWSON UNIVERSITY AND GLOBAL WOMEN OF BALTIMORE
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OVERVIEW: In 2003, there were over 73,000 more immigrant women than men entering the United States. This includes people either entering the country with a legal immigration status or adjusting their status while in the U.S. Historically, immigration laws regarding women were based in the law of coverture, which was derived from English common law. Under this law, a wife had no legal identity of her own; it was derived from her husband. Immigration law traditionally viewed women's immigration status as derivative of her husband's status. (See timeline beginning on page two for legislation to reverse this tradition.)

Foreign- and Native-Born in the U.S. Population 2003 (21 Years and Older)

Origin	Women	Men	Total Women and Men
Foreign-born	14,664,000	14,584,000	29,248,000
Native-born (total)*	89,841,000	81,767,000	171,608,000
Total Population	104,505,000	96,351,000	200,856,000

*Native-born also includes individuals born in Puerto Rico, U.S. island areas, and born abroad to American parents. (Source: U.S. Bureau of the Census, Current Population Survey, 2003)

IMPORTANT TERMINOLOGY [1]

"Lawful Permanent Resident" (LPR): This immigration status gives holders the right to work and live permanently in the U.S., and travel to other countries. Often referred to as "green card holders."

"Undocumented Immigrants": People who are in the U.S. without legal permission. They may have entered illegally, or overstayed a visa that they previously held (called "overstays"). They must change their status in order to have the right to work, live in the U.S., or travel outside of the country.

"Refugee": Someone who is outside of her or his native country, and cannot return due to persecution (or "well-founded fear" of persecution).

"Human Trafficking": According to U.S. law: "1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18, or 2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery." [4]

CURRENT SITUATION:

1994: Violence Against Women Act (VAWA): Under this act, spouses and children of U.S. citizens or lawful permanent residents may self-petition to obtain lawful permanent residency. Certain battered immigrants may file for immigration relief without assistance of or knowledge by their abuser, in order to seek safety and independence from the abuser. [2]

1996: Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) ("Welfare Reform") and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA): PRWORA barred both documented and undocumented immigrants from public benefits such as food stamps and some Social Security Income. IIRIRA also limited the number of public benefits available to immigrants. In addition, it made it easier for immigration officials to deport immigrants, for a wider range of crimes. It also required immigrants trying to sponsor family members for immigration to be at least 125% of the federal poverty level. [3]

2000: Victims of Trafficking and Violence Protection Act: This law was re-authorized in 2003, and is designed to provide access to benefits and services for victims of severe forms of trafficking, such as information about the victim's rights, referral for counseling, medical services, legal assistance, food, housing, and victim restitution. The Act also improves access to protection and services for women and children who were not covered under the immigrant provisions of VAWA. The global industry of trafficking in persons is estimated to be worth between \$9 billion and \$17 billion annually. This industry disproportionately affects women and children. [4]

2001: The USA Patriot Act: Entitled "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism," this law provides for imprisonment without trial of non-U.S. citizens identified by the Attorney General as threats to national security. The imprisonment can be indefinite; detainees do not have the right to counsel. The act allows other surveillance techniques, such as wiretapping of individuals, and, under certain conditions, the search of a residence with no immediate warning to the occupants. Additional provisions in 2004 also gave the FBI the power to obtain records from financial institutions without requiring the action of a judge. [5]

2003: The Immigration and Naturalization Service ceased to exist, and responsibility for immigration was moved from the Department of Justice to the newly created Department of Homeland Security.

T Visa: A temporary residency (nonimmigrant) status that may be adjusted to a permanent residency status. It is available to eligible victims of severe forms of trafficking in persons. These victims must 1) agree to assist in investigations or prosecutions of acts of trafficking and 2) demonstrate that if they were removed from the U.S., they would suffer extreme and unusual harm. [6]

U Visa: This visa is available to victims of crime who have suffered substantial physical or mental abuse. In order to qualify, the crime must have occurred in the U.S., or the perpetrator must have violated the laws of the U.S. The crime categories include domestic violence, rape, sexual assault, trafficking, prostitution, abusive sexual contact, sexual exploitation, female genital mutilation, and other crimes. Regulations are being released in 2004 for this visa. [6]

GENDER AND U.S. IMMIGRATION POLICY TIMELINE [10], [11], [12], [13]

1875 "Page Law": Exclusions included felons, contract laborers, prostitutes, and Asian women thought to be brought over for "lewd and immoral purposes." In reality, it was used to exclude most Asian women attempting to immigrate.

1882 Chinese Exclusion Act: excluded Chinese immigrants for a period of ten years.

1891 Immigration Act: placed immigration under control of the federal government, expanded excluded classes, and allowed for deportation. New excluded groups included those likely to become "public charges," those with "loathsome and contagious diseases," and those who had been found guilty of "crimes of moral turpitude," including adultery, rape, and sodomy.

1892 Geary Act: Extended Chinese exclusion.

1903 Immigration Act: Exclusions expanded to include all involved in the prostitution trade. Pregnancy was also listed as a ground for exclusion.

1907 Immigration Act: Again expanded excluded groups, and expanded grounds for deportation. Women who entered into prostitution within three years of arrival were now subject to deportation.

1907 Gentlemen's Agreement: Excluded further Japanese labor migration, but allowed wives of Japanese immigrants already in U.S. The practice of "picture brides" immigrating became an important way for Japanese women to enter legally.

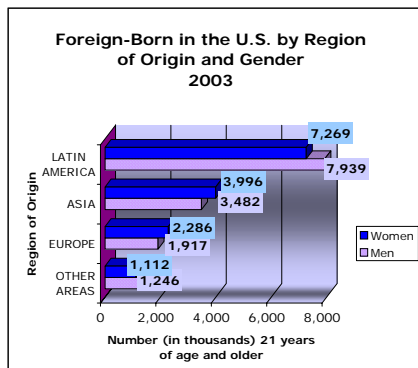
1910 Mann Act: Enacted due to fears of "white slave trade." Furthered bans against women being imported for purposes of prostitution.

1917 Literacy Act: Required immigrants to be able to read a certain number of words in their native language in order to gain admittance.

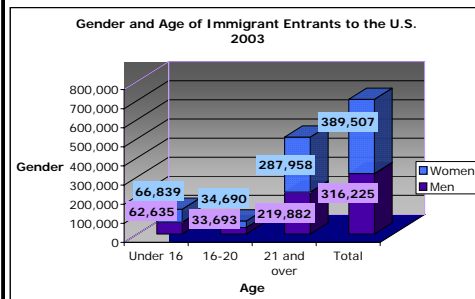
1920 "Ladies Agreement": The agreement between the U.S. and Japan ended immigration of "picture brides."

1921 Quota Act: Quotas were set on how many immigrants could enter from any given country, giving preference to immigrants from Northern and Western Europe. Within quotas, family members were given preference.

DEMOGRAPHICS OF GENDER AND U.S. IMMIGRATION:



(Source: U.S. Bureau of the Census, 2003)



(Source: 2003 Yearbook of Immigration Statistics, USCIS)

OTHER POLICY CONCERNS:

Gender-based Asylum Claims

In 1996, in the *Matter of Kasinga*, the Board of Immigration Appeals for the first time granted asylum based on gender as a category. In this case, a young woman sought asylum arguing that if she were to return to her home country she would face female genital mutilation. Since this landmark decision, women have been recognized as a "particular social group" for the purposes of gaining asylum. Women who are fleeing countries in which there is state-sanctioned harm to women, such as Afghanistan under the Taliban, have also successfully pressed cases of gender-based asylum. Sex trafficking, sexual slavery, and honor killings have also been grounds for asylum. It has become harder to have domestic violence acknowledged as grounds for which asylum can be granted. As of Feb. 2004, the *Matter of Rosa Alvarado* was decided in favor of granting asylum to women fleeing their country due to domestic violence. Attorney General John Ashcroft is currently revisiting the case. As of November, 2004, there is a concern that such decisions will be reversed, and there is a possibility the Bush administration will limit the ability of women fleeing gender-based violence and human rights abuses to seek asylum in the U.S. successfully. In 1999, 1,085 of the 42,207 applications for asylum were sought based on gender. [7]

Sexuality-based Asylum Claims

Asylum-seekers from countries where gays and lesbians are routinely penalized and tortured due to their sexual orientation have had the right to claim asylum in the U.S. since 1994. Such individuals must have a well-founded fear that they would be persecuted if forced to return to their home country. Making such claims became more difficult, however, in 1998, when a strict one-year deadline was imposed. In other words, gays and lesbians in this category must file their asylum claims within one year of entry into the U.S. Unfortunately, many who fit into this category do not even know that it is possible to make this claim during their first year here, or for other reasons may have difficulty making this claim. [8]

Detention System:

The Department of Homeland Security (DHS) arrests 1.6 million foreign-born individuals annually. Many are detained locally in facilities such as county jails. Several hundred foreign-born residents were sent to Guantanamo Bay, Cuba, as a result of a major round up of suspected terrorists or terrorist sympathizers following the September 11, 2001 attacks. Due to space limitations, DHS has started implementing alternatives to detention, which include: Order of Recognizance (ROR), release on bond, release using electronic monitoring devices (EMD) and the Intensive Supervision Appearance Program (ISAP). [9]

PENDING LEGISLATION:

While none of these acts are gender-specific, all would have a significant impact on immigrant women, particularly those who are undocumented. Undocumented immigrant women would be more likely to be able to pursue higher education, and be granted amnesty if the Development, Relief, and Education for Alien Minors (DREAM) and Safe, Orderly, Legal Visas Enforcement (SOLVE) acts were to pass. Lesbians would be able to sponsor their immigrant partners if the Permanent Partners Immigration Act (PPIA) passed. On a more negative note, undocumented immigrants would be at more jeopardy of deportation and would be less able to obtain help from the police if the Clear Law Enforcement for Criminal Alien Removal (CLEAR) act were to pass. These Acts are all pending at the federal level.

GENDER AND U.S. IMMIGRATION POLICY TIMELINE (continued)

1922 Cable Act: Ended the practice of American women losing their citizenship upon marrying foreigners, provided the foreigners were themselves eligible for citizenship. Also ended the practice of foreign women automatically obtaining American citizenship upon marrying American citizens. Such women now had to go through the naturalization process.

1924 National Origins Act: Reduced quotas, particularly from Southern and Eastern Europe. Also made Asian exclusion more complete.

1945 War Brides Act: Allowed the foreign wives and fiancés of American servicemen to immigrate.

1952 McCarran-Walter Act: Ended exclusion of Asians, but created very small quotas for immigrants from Asian countries. Also specified "subversives" and gays and lesbians as excludable and deportable categories.

1965 Immigration and Nationality Act: Ended racially based national quotas. Placed a new emphasis on family reunification immigrants and workplace skills in high demand.

1986 Immigration Marriage Fraud Amendments: Increased penalties for those involved in "sham marriages", and created a 2-year provisional green card for immigrant spouses of citizens and permanent residents.

1986 Immigration Reform and Control Act: Allowed limited amnesties for undocumented immigrants. Also made it more difficult for undocumented immigrants to work in the U.S., by requiring employers to check workers' documents.

1994 Violence Against Women Act (VAWA): Allowed certain battered immigrants to file for immigration relief without assistance of or knowledge by their abuser, in order to seek safety and independence from the abuser. [2]

1996 Illegal Immigration Reform and Immigrant Responsibility Act: Limited public benefits available to immigrants, increased deportable crimes, and made it more difficult for poor immigrants to sponsor family members. [3]

PENDING LEGISLATION, continued

DREAM (Development, Relief, and Education for Alien Minors) Act: The version introduced in the U.S. Senate in 2003 would eliminate a federal provision that discourages individual states from granting in-state tuition rates regardless of immigration status; and allow certain students of foreign-born parents to apply for legal immigration status. The Act sets up a two-stage process: Immigrant students who grew up and graduated from high school in the U.S., and demonstrate good moral character, would initially qualify for "conditional lawful permanent resident" status. During a conditional period of six years (normally), the student would be required to attend college, join the military, or work a significant number of community service hours. Following the conditional period, the students would be eligible for regular lawful permanent resident status. [18]

SOLVE (Safe, Orderly, Legal Visas Enforcement) Act: This act would establish clear pathways to legalization, lawful permanent resident status, and eventually citizenship for undocumented immigrants who contribute to the economic, cultural, political, and social life. It will help re-unite families where existing laws have kept family members from immigrating. In addition, it will uphold labor rights for workers regardless of a worker's immigration or citizenship status. [15]

PPIA (Permanent Partners Immigration Act): This act would allow same-sex partners to be sponsored by American citizens and permanent residents. This was introduced in 2000, and referred to the House subcommittee on Immigration and Claims in 2001. It had not moved out of the subcommittee as of Sept. 2004. [16]

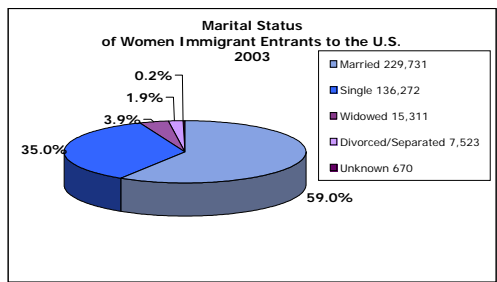
CLEAR Act (Clear Law Enforcement For Criminal Alien Removal): The act would require state and local law-enforcement officers to enforce immigration laws. Women's rights activists are concerned that such a law—and its practice—would further endanger immigrant women and children. Victims of domestic violence, trafficking, or other crimes might be afraid to file a report, which could jeopardize their immigration status. Although Congress has not recently moved forward on this bill, some members of Congress are seeking to attach it to other bills. A version similar to the CLEAR Act was attached to the bill HR10 (the 9/11 Recommendations Implementation Act), which passed the House of Representatives in October 2004, but its equivalent in the Senate was pending. [17]

AgJOBS (Agricultural Jobs, Opportunity, Benefits, and Security Act): Introduced in 2003, this act would allow undocumented workers to apply for temporary immigrant status, with the possibility of adjusting their status to permanent status after a period of time. They would also be able to apply for permanent status for their spouses and children. In addition, it would enhance labor protections for immigrant agricultural workers.[19]

Reauthorization of VAWA (Violence Against Women Act): This act of 1994 is set to be re-authorized in 2004. Advocates are working to embed several additional immigration provisions in the re-authorized act. The new version would include more language on sexual assault than the previous act. Advocates are working to ensure that the approach of the act is to place trafficking, domestic violence, sexual assault, and other acts of violence against women on the same continuum.

On the state level: State-level efforts are also underway in some places, particularly regarding undocumented immigrants and post-secondary schooling, the ability to hold a driver's license, and state versions of the CLEAR act. A few cities allow lawful permanent residents to vote in local elections.

WOMEN'S WORK AND PERSONAL LIFE STATUS:



Professional and technical	18,725
Sales	5,836
Administrative support	6,409
Farming, forestry, and fisheries	2,290
Operators, fabricators, and laborers	6,734
Precision production, craft, and repair	2,170
Service	12,909
Military	19
No occupation/not working outside home	194,740
Homemakers	78,777
Students or children	96,613
Retirees	1,272
Unemployed	18,078
Unknown	132,614
Total	389,507

*Does not include refugees or asylees.

(Source: 2003 Yearbook of Immigration Statistics, USCIS)

GENDER AND U.S. IMMIGRATION POLICY TIMELINE (continued)

1996 Defense of Marriage Act:

Also not specifically an immigration policy, but impacted efforts of same-sex couples in regards to immigration, as it limited the definition of marriage to be only male-female couples. [14]

2000 Victims of Trafficking and Violence Protection Act:

criminalized trafficking in persons, including sex trafficking. [4]

2001 Patriot Act: Enhanced surveillance procedures for the purpose of investigating terrorism. Fully implemented and expanded the foreign student visa monitoring program. Made available limited humanitarian relief and immigration petitions to surviving non-citizen spouses and children of citizens who die from specified terrorist attacks. [5]

2002 The National Strategy for Homeland Security and the National Security Act: established the Department of Homeland Security (DHS). The United States Citizenship and Immigration Services created as a DHS bureau, to replace the former INS.

2003 Special registration program of U.S. resident men from 25 countries was abolished.

RESOURCES:

Advocacy Organizations

The Global Alliance Against Traffic in Women: A network linking anti-trafficking groups and individuals across globe. www.gaatw.org

National Network for Immigrant and Refugee Rights: An umbrella organization of local immigrant, refugee, civil rights, and labor organizations, the NNIRR focuses on immigrant and refugee issues in general. A number of their initiatives, however, have been centered on immigrant women, such as "Hands that Shape the World: A Report on the Conditions of Immigrant Women Five Years After the Beijing Conference." www.nnirr.org

Immigration Equality (formerly Lesbian and Gay Immigration Rights Task Force): This coalition of immigrants, attorneys, and activists focuses on three main areas: discrimination against same-sex couples in U.S. immigration law, discrimination against people with HIV/AIDS in U.S. immigration law, and improving the process of sexual orientation-based asylum. www.lgirtf.org

Sweatshop Watch: This coalition of civil rights, immigrant rights, women's rights, and labor organizations is seeking to eliminate sweatshop exploitation, focusing primarily on garment workers in California, whose employees are primarily immigrant women. www.sweatshopwatch.org

Center for Gender & Refugee Studies: Focuses on women seeking gender-based asylum. Provides information, public education, and resources related to gender-based asylum law and policy. <http://w3.uchastings.edu/cgrs/>

Freedom Network: Provides education, advocacy, and network-building to combat trafficking across the United States. Consists of member organizations with staff devoted to trafficking services or advocacy. <http://www.freedomnetworkusa.org>

Legal Momentum's Immigrant Women Program (formerly *NOW Legal Defense and Education Fund*): Focuses on the legal rights and economic issues effecting immigrant women, particularly battered immigrant women. <http://www.legalmomentum.org/issues/imm>

Tahirih Justice Center: Dedicated to "promoting justice for women and girls worldwide." This center address legal services for immigrant and refugee women who flee to the U.S. for protection from human rights abuses. The staff provides legal advocacy, holistic services, public policy advocacy, and outreach and education to bring justice to these women's lives. <http://www.tahirih.org>

Immigrant Workers' Freedom Ride Coalition: Drawing on the model of the 1960's civil rights Freedom Rides, almost 1,000 immigrants and allies rode throughout the country for 12 days in 2003, drawing attention to the injustices of the present immigration system. The Coalition today continues to work for better immigration policies, and towards empowering immigrants with the vote. <http://www.iwfr.org>

On-line Resources

National Public Radio, "Immigration in America" website: Includes results of a survey about American attitudes towards immigration conducted by the Kaiser Family Foundation and Harvard's Kennedy School of Government. Also includes a series of reports on immigration from NPR shows such as Morning Edition, Talk of the Nation, and All Things Considered. <http://www.npr.org/news/specials/polls/2004/immigration/>

BBC News "Migrant World" site: For a more global exploration of immigration. Includes "factfile" on world immigration and refugee flows, multi-media insights into immigrants' and refugee's lives, as well as interactive features on opinions about immigration. http://news.bbc.co.uk/1/hi/talking_point/special/migration/

"Women Immigrants 1945 to the Present: A Bibliography," compiled by Eleanore O. Hofstetter. A comprehensive, multi-disciplinary bibliography concerning women immigrants worldwide. <http://www.towson.edu/users/hofstet/>

Multicultural Domestic Violence Bibliography: www.lib.jjay.cuny.edu/research/DomesticViolence/

Human Trafficking.Com (on-line training and resource center): www.humantrafficking.com

National Domestic Violence Hotline: 1-800-799-7233 or 1-800-787-3224 [TDD]

Anti-Trafficking Hotline:1-888-373-7888

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VIDEOS:

"Home is Struggle" (1991): directed by Marta Bautis. Immigrant women from Nicaragua, Chile, Argentina, and the Dominican Republic tell their stories. Available through *Women Make Movies*. (www.wmm.com)

"Knowing Her Place" (1990): The story of Vasu, an Indian woman who has lived most of her life in the U.S., as she wrestles with the conflict between her goals and her traditional upbringing. Available through *Women Make Movies*. (www.wmm.com)

"Chasing Freedom" (2004): A Court TV produced drama about two women – a woman who is seeking asylum in the U.S. after fleeing the Taliban in Afghanistan, and the pro-bono lawyer who reluctantly defends her. Despite being a made-for-TV film, this is a compelling look at the asylum system in the U.S., as well as conditions for women under the Taliban. Court TV's web site on the movie also includes fact sheets and other teaching resources about the asylum process. <http://www.courtvtv.com/movie/chasing%5Ffreedom/>

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