

The New Immigration Law

William A. W. Krebs, Jr., and Carmel P. Ebb¹
National Science Foundation, Washington, D. C.

ON DECEMBER 24 the McCarran-Walter Immigration and Nationality Act of 1952² went into effect. For the first time since 1917 the United States now has an integrated code of laws covering this broad field. The new act revises and brings up to date laws that have not been basically altered since shortly after the end of World War I, but that were modified by a series of measures passed after 1940 and particularly between 1948 and 1952, as U. S. immigration policy reacted to growing public concern over the threat of international Communism.

Since the official printing of the McCarran-Walter Act occupies 120 single-spaced pages and weighs perhaps a quarter of a pound, it may be fortunate, from the point of view of scientists, that only a relatively small number of its provisions are of special interest to them. These include, however, some of the controversial issues in the legislation. It is the purpose of this article to provide a brief digest of these provisions.

In immigration law, persons coming to this country are either immigrants or nonimmigrants. Immigrants are those who come to stay; nonimmigrants are those who come to visit. Since a number of the outstanding scientists in the U. S. today arrived as immigrants, science has a stake in those parts of the law that control admission for permanent residence. The new law retains, with certain changes, the national origins quota system, established in 1924, under which the number of persons of any nationality who may enter the U. S. as immigrants in a given year is determined on the basis of the number of persons of that national origin who resided in the U. S. in 1920. Within the limitations of this quota system, scientists are likely to be in a preferred group under the new law, since the first 50 per cent of the annual quota for any country is set aside for the admission of specially trained or skilled individuals.

Those provisions that control the admission of foreign scientists as visitors have, however, a more direct impact on science in this country because of their effect on the travel of foreign scientists to this country and the exchange of scientific information. These provisions are found in § 212(a) of the Immigration and Nationality Act, which lists classes of aliens in-

eligible to receive visas and required to be excluded from the U. S. Section 212 begins by requiring the exclusion of aliens who are feeble-minded, insane, mentally defective, addicted to drugs, convicted criminals, paupers, and the like. There are 28 excluded classes of this kind. In addition, the act requires the exclusion of three additional classes, described in § 212(a) (27), (28), and (29). These three provisions, which deal with the acceptability of both immigrants and visitors on political grounds, had their origin in legislation that was enacted shortly before the conclusion of World War I, and that excluded all persons advocating the violent overthrow of government. Except for relatively minor amendments made by the Alien Registration Act of 1940, they existed without substantial change for thirty years, until 1948, when they were expanded and restated in part. Further expansion and restatement occurred in the enactment of the Internal Security Act of 1950, when the provisions for exclusion on political grounds were given the form in which, with minor changes only, they have been carried into the Immigration and Nationality Act of 1952.

With some oversimplification it may be said that they exclude from entrance into this country the following classes of aliens:

1. Those who are believed by a consular officer or by the Attorney General to be seeking entry into the United States to engage in sabotage or attempted overthrow of the government, or to engage in other activities prejudicial to the public interest or endangering the safety or security of the United States (§ 212(a) [27] and [29]).
2. Those who are, or in the past have been, affiliated in a broad sense of the word³ with the Communist Party or any other organization that seeks to establish a totalitarian form of government in the U. S.⁴ (§ 212(a) [28]).

Exclusion on the first ground, often called the safety and security provisions, is based on a finding by an administrative officer (the consul or the Attorney General) as to the activity in which an individual alien is likely to engage after entry into the United States. This conclusion could be based, in part, on evidence of membership, past or present, in the Communist Party or a number of other subversive organizations, but it seems to require much more. Exclusion

¹ The following descriptive article on those features of the new immigration law of particular interest to scientists was prepared at the request of the AAAS by William A. W. Krebs, Jr., general counsel of the National Science Foundation, and Carmel P. Ebb, consultant to the foundation. Mr. Krebs and Mrs. Ebb are both members of the New York Bar. The statements are those of the authors and not of the National Science Foundation.

² Public Law 414, 82d Congress, 2d Session.

³ Under the law any person who contributes or lends money to be used for advocating a doctrine is presumed to advocate the doctrine, and any person who gives or lends money to any organization is presumed to be affiliated with the organization.

⁴ Until recently, the law excluded past or present members of any totalitarian organization; i.e., any Communist or fascist organization. The law now effective excludes only members of such organizations advocating the establishment of a totalitarian government in the United States.

on the second ground, past or present political affiliation, does not require a finding by the administrative officer as to the activity in which the individual alien is likely to engage; it rests on the general conclusion embodied in the law that political affiliations of the kind described are likely to result in activities prejudicial to the public interest, without further proof of intent or motive.⁵

⁵ Section 212 (a) (28) provides for the exclusion of:

"Aliens who are, or at any time have been, members of any of the following classes:

"(A) Aliens who are anarchists;

"(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

"(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: PROVIDED, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

"(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

"(E) Aliens not within any of the other provisions of this paragraph, who are members or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

"(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

"(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized

The Attorney General is given discretion (§ 212[d] [3]) to modify this general conclusion in the case of any particular individual seeking admission as a visitor. Upon the recommendation of a consular officer or the Secretary of State, and if he believes it to be in the public interest, he may admit a visitor who would otherwise be excluded solely because of a past or present political affiliation of this type. Each exercise of this authority must be reported in detail to the Congress. No discretion exists for the admission of persons excluded under the safety and security provisions.

government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

"(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

"(I) Any alien who is within any of the classes described in sub-paragraphs (B), (C), (D), (E), (F), (G), and (H) of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;"

Apart from the discretionary power of the Attorney General, which can be used to permit the entry of visitors but not immigrants, there are provisions that permit the entry, either as visitors or as immigrants, of persons who would normally be excluded because of their past political affiliations. Such persons need not be excluded if their affiliation was involuntary, or occurred when the alien was under 16 years of age, was by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living. An alien who has, for at least five years prior to his application for a visa, actively opposed the doctrine, program, principles, and ideology of the organization in question may be admitted if there is a finding by both the consular officer and the Attorney General that admission would be in the public interest. Each such admission must also be reported to the Congress by the Attorney General.

Administration of these provisions is placed in the hands of the consular officers so far as the issuance of visas is concerned, and of the Attorney General, who acts through the Immigration and Naturalization Service of the Department of Justice, so far as admission to this country through ports of entry is concerned. Before granting a visa, the consular officer must satisfy himself that the applicant does not come within any of the classes of excluded aliens discussed above. Exercise of discretion to admit otherwise inadmissible aliens requires action by both the Attorney General and the Secretary of State or a consular officer. The issuance of a visa by a consular officer ("an endorsement made on a passport by the proper authority denoting that it has been examined and that

the bearer is permitted to proceed . . .," *Merriam-Webster*) does not guarantee passage through the port of entry in the continental United States, which is under the jurisdiction of the Attorney General. The law places an independent responsibility on the immigration officer at the port of entry to determine the admissibility of all persons coming into the country.

In recent months, several suggestions have been made in the press, in scientific publications, in testimony before the President's Commission on Immigration and Naturalization, and in the Commission's report published early in January⁶ for the revision of the laws governing the admission of visiting scientists. Among these proposals was the setting up of special procedures for the speedy processing of applications by scientists for admission as visitors. More fundamental is the suggestion that a distinction be made between the substantive and administrative requirements for temporary admission and the requirements for admission for permanent residence. In line with this proposed distinction, it has been suggested that the criterion requiring exclusion of an alien *visitor* might rationally become present sympathetic association with a foreign subversive organization rather than, as now, affiliation at any time in the past with such an organization. An additional proposal has been the development of a definitive listing of subversive organizations, the character of which as such has been publicly identified by an authoritative body or officer after due investigation.

⁶ *Whom We Shall Welcome*, Report of the President's Commission on Immigration and Naturalization. Washington, D. C.: GPO (1953).



Leigh Page: 1884–1952

W. F. G. Swann

Bartol Research Foundation of the Franklin Institute, Swarthmore, Pennsylvania

ON SEPTEMBER 14, 1952, death claimed Leigh Page, professor of mathematical physics at Yale University, a renowned scholar and a great teacher, who left his mark on the creative realm of American mathematical physics.

Leigh Page was born October 13, 1884, at South Orange, New Jersey. He was the son of Edward Day Page, merchant, and Cornelia Lee Page. He had his early schooling in New York City, but thereafter his whole life was associated with Yale University, where he obtained his B.S. degree in 1904 and his Ph.D. in 1913.

Starting his teaching as an assistant in physics in 1910, he progressed until, in 1922, he was appointed full professor of mathematical physics—a chair first

held by Willard Gibbs—and he held this position until his death.

Page published sixty or seventy scientific papers and was the author—in some cases a co-author—of six books, of which the best known are probably his *Introduction to Electrodynamics* and his *Introduction to Theoretical Physics*. Both books have had a profound influence in the development of many of America's leading mathematical physicists.

His research interests were primarily in the field of relativity and electrodynamics, with ramifications into quantum theory, optics, and allied fields. One of the achievements that stood at the top, or near the top, of those on which he himself placed greatest weight was his derivation of the equations of electrodynamics on the basis of a postulate having to do with