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The Selective Capacity of the Likely to Become a Public Charge Clause in the Visa Issuance Process

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The Selective Capacity of the Likely to Become a Public Charge Clause in the
Visa Issuance Process

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Master of Arts
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by

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ABSTRACT

The Selective Capacity of the Likely to Become a Public Charge

Clause in the Visa Issuance Process

by Camila Morsch

This paper provides an empirical examination of how the Likely to Become a Public Charge Clause (LPCC) is used in the American visa issuance process. This work covers literature on the logic and usage of the LPCC since the late 1800's to present, suggesting administrative use of the LPCC expands according to different circumstances beyond its intended purposes. The quantitative portion of this work evaluates the use of the LPCC (for both immigrant applicant and nonimmigrant applicant populations) from 1966 to 2002 to ascertain the effect of economic and security conditions on the use of the LPCC. Applied Statistical Logistic Transformation and Regression techniques support the hypothesized relationship between the use of the LPCC and the terrorism-related variable for the non-immigrant applicant population at the 0.03 level of significance. Descriptive time-series techniques indicate co-variance between the use of the LPCC and unemployment rate for the immigrant applicant sample.

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DEDICATION

This thesis is dedicated to my fiancé, who freed my heart and filled it with happiness.

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INTRODUCTION

The celebration of the immigration tradition in the United States is not shared by all in American society. Policy makers, administrators, economic interest groups, scholars and the general public differ on opinions related to the dilemma of whether the U.S. should honor its origins of open doors or have a more selective immigration policy. For any of these arguments the visa issuance process is critical, and so are the restrictions that apply to applicants seeking entrance to the United States for permanent or temporary reasons. Many who advocate a more selective immigration policy and, equally, many who fight for a more open and egalitarian immigration system do not realize that since 1822 the “Likely to Become a Public Charge” clause (LPCC) has survived historical and legal changes to become the most used ground of ineligibility (or, restriction clause) to deny an American visa (Edwards 2001, 4).

If use of the LPCC is considerably larger than any other subjectively restrictive clause, then what factors stimulate an expansion in the use of the LPCC? Has this open legal provision been used more frequently in years of major socio-economic difficulties and in critical border-security challenges caused by terrorist attacks against the U.S.? Has the LPCC functioned as a loophole in the Immigration and Nationality Act (INA) to adapt the selection of aliens receiving visas according to the demands that the country faces in specific periods? Is this restrictive role of the LPCC a tradition of the American visa issuance policy, or is it more a result of repeated adjustment practices?

The power of the Public Charge Doctrine to restrictively select immigrant (permanent residents) and nonimmigrant visa applicants (temporary visa holders) has rarely been studied. Most of the information on the Likely to Become a Public Charge (LPC) doctrine is provided by government reports and general historical investigations of immigration practices (Daniels 2004;

Tichenor 2002.) Following the guidelines of the Clinton administration on the interpretation of the LPC clause, the Immigration and Naturalization Service (INS)¹ proposed that the LPC doctrine be classified into two different types (INS 1999). The first focuses on the use of the public charge clause after an immigrant is already in the United States (i.e. grounds for removal) and the second type, here named pre-entry, which is the main theme of this study, refers to using the LPCC to deny entrance to aliens seeking American permanent residence or temporary visas.

The decision to concentrate on the pre-entry use of the LPCC, for this study, relies on the following three reasons. First, the number of people considered inadmissible by the American Consulate services abroad on the grounds of the LPCC pre-entry each year is much higher than the number of aliens removed on the grounds of the LPCC since 1980 (Department of Homeland Security 2003). Second, recent research has paid much more attention to the post-entry type of LPCC and has, consequently, undervalued the LPC clause's restrictive power and role in the current American immigration policy and practices. Third, the possibility to determine the LPC clause's use during different periods of social, economic, and security-related circumstances suggests that American immigration practices for visa issuance are variably selective.

This study begins with a historical overview of the immigration system, specifically of the usage of the LPCC since its recognition by federal legislation in 1822. In addition to the historical review, I also provide an analysis of data on the utilization of the LPCC from 1966 to 2002. The tests will determine whether correlations exist between the use of the LPCC and economic downturns, the arrival of the 1996 welfare reform, major terrorist attacks against the U.S., LPCC regulatory and legislative changes, and the total number of visas issued abroad for each population (immigrant applicants and nonimmigrant applicants.) Finally, the results on the

¹ Today United States Citizenship and Immigration Service (USCIS),

utilization of the LPCC are used to discuss possible quantitative and qualitative tendencies within the processes of visa issuance and selection of immigrants.

The results of the analysis substantiate the hypothesized relationship between the use of the LPCC and the security-related variable at the 0.03 level of significance, in regards to the non-immigrant population. In what concerns the immigrant population, descriptive time-series analysis indicates that the variable time plays a major role between the use of the LPC clause, and unemployment rate, and legislative-regulatory changes. While the former results are easily visualized, the analysis of the immigrant-population data requires a more detailed investigation of how unemployment rate and legislation changes have influenced the use of the LPCC over the years.

CHAPTER ONE: LITERATURE REVIEW

The United States is a traditional immigrant state (i.e. a state that has a specific immigration policy instead of treating immigration as part of its foreign policy.) Since its foundation many people have dreamed about coming to the U.S. to be part of the American dream. Many people have had their applications denied. Whether or not the American immigration laws conform to a system that honors the label of a country with “safe borders and open doors” is yet to be verified. One of the major reasons for questioning how open America is for newcomers is the significant use of the LPC clause to deny visas for immigrant and non-immigrant² applicants since its recognition by federal law, in 1822 (Edwards 2001, 6). The LPCC is one of the most (if not the most) important and traditional mechanisms of visa constraint within the American immigration selection process.³

Although it is easy to find scholarship and historical investigations on American immigration policy, material specifically related to the LPC doctrine is scarce. However, when cited, the LPCC is frequently referred to as an instrument to “preserve the flow of qualified, capable immigrants. It is a tool for keeping out or expelling unproductive immigrants...” (Edwards 2001,

1)

² According to the Immigration and Nationality Act of 1952, immigrants are all aliens who come to the United States to reside permanently (lawful permanent residents, commonly known as “green card” holders). Non-immigrants are all aliens who enter the country for temporary and specific purposes (included under this category are foreign students, fiancés of U.S. citizens, and temporary workers. Asylees and refugees are treated differently, neither being considered immigrants nor nonimmigrants upon entry.) However, non-immigrants are becoming immigrants without leaving the country more frequently compared to twenty years ago. According to data provided by the Congressional Research Service, Report for Congress, in October 2004, there are more aliens acquiring permanent residence status through adjustment (procedure followed by aliens who are already in America as nonimmigrants or under humanitarian grounds to ask for their adjustment of status and become an immigrant without having to leave the country) than through a petition to an American consulate abroad (Wasem 2004, 6). Immigrants and nonimmigrants are subject to the LPC clause test. And given the fact that nonimmigrants have the possibility to become green card holders, the effect of the LPC test on the admission of temporary visa holders is connected to the effect of the LPC clause on the selection of future American permanent residents.

³ The Report of the Visa Office (1966-2002) brings all grounds for ineligibilities listed and divided by category, immigrant and non-immigrant. Among the subjective categories, the LPC clause is the most used clause to deny visas in both categories, in every year studied.

The LPC concept was first used in 1645 by the colony of Massachusetts and was recognized by federal law in 1822 (Edwards 2001, 2). The LPCC started to be adopted by the states at the end of the 17th century “to prevent the poor and the impotent from being imported.” When the Union took over the subject, the Federal law included the LPC clause with the text that excluded any immigrant “unable to take care of himself or herself without becoming a public charge.”⁴(Edwards 2001, 3)

In 1888, Richmond Mayo Smith wrote about the concerns over the large numbers of immigrants entering America. He explained that after the American Revolution “These [the immigrants], of course, were the most desirable members of their communities; and the wonderful progress of the United States has been due partly to the character of these newcomers” (Smith 1888, 61). As the profiles and the origin of immigrants changed over the years, Smith suggests that there is a constant necessity of congressional action to control immigrant flows. Although the American immigration policy has rarely set tight qualification requirements or low ceiling numbers for immigrants and nonimmigrants (except for the periods of Asian exclusionism,) administrative regulations have ensured the adoption of more stringent immigration control initiatives in difficult, especially economically harsh, periods (Morris 1985, 8). One of the best examples of the executive branch’s manipulative ability to administer immigration control is the discretionary power granted by law and regulations to immigration officers through the LPCC .

One century ago, Smith (1888) was already worried about the great amount of discretionary power given to immigration officials. In the case of LPCC utilization, the old preoccupation remains valid. The LPC test may apply not only to those who might, at any time, become

⁴ Since 1965, the text of the law permits deportation and requires visa rejection of “any alien likely at any time to become a public charge.” (Immigration Act 1990, Section 212 (a) 4)

financially dependent upon the federal government but to those, who, in the opinion of the consular officer may weaken or harm society, not only economically, but socially and culturally (INS 1999, 3). In 1888, the discussion was whether waves of immigration, similar to the 1850's, should continue (Daniels 2004, 11). If not, then, consular officers should find a mechanism to cut immigration numbers and elevate immigrants' qualifications. According to Smith (1888), the cultural and economic changes caused by the foreign-born population were as positive as the arrival of the railroads to the development of the United States as a potential world superpower. However, the circumstances brought by a pre-industrial society, which had already marched towards the American West, and which had already sufficed its needs for unskilled labor, required the use of the LPCC to balance immigrant numbers.

The issue of immigration reduction is very contradictory. Smith (1888), who favored immigration, at the same time agreed on the necessity to restrictively select immigrants. Smith (1888) was also concerned with the implications that this restrictionist posture would cause in terms of international relations. This same conflict persists at the center of the immigration debate today. How can the U.S. decrease the number of admitted aliens and increase the qualifications of immigrants and nonimmigrants without losing the libertarian features of the origins of the American immigration law? How do these limitations interact with the American foreign affairs? Once more, the LPCC becomes one convenient legal provision to apply qualitative restrictions through administrative regulations and guidelines. Not only have exclusionary clauses been used to restrict immigrants during economic crises, but also during periods of explicit racial discrimination and excessive immigration flows (Tichenor 2004, 179).

Although the LPCC is a potential instrument of immigration restriction, it is not in itself a cause for such practice. The varying usage of the LPCC is linked to major social, cultural and

economic factors, which have influenced the American immigration laws and practices, constantly or intermittently, during specific historical events or periods.

According to Daniels (2004, 19) race was the major factor that contributed to the American immigration policy to provoke a swing toward a closed position. Historical literature explains that, at many times, legislators and public administrators advocated in favor of a policy that would not be color-blind, or even neutral to other factors (Morris 1985, 20). Characteristics on morals and beyond were taken under consideration in the selection of immigrants. Benjamin Franklin, known for his salient American nativism (Daniels 2004, 8), advocated that immigrants who were not Caucasian (white) and who did not know how to speak English should not be welcomed in the American “Melting Pot.”

In 1875 the first legal recognition of race bias within the U.S. immigration policies came with the Chinese Exclusion Act (The Library of Congress, para.1). Not only was the U.S. more concerned about the quality of its potential immigrants, but also about preserving an occidental and liberal culture within the American borders. With the Asian exclusion laws in effect from 1875 to 1943, the Chinese community suffered a great loss in numbers, and because of this, there was little possibility to form Chinese families and strong communities during the period of legal exclusion (Lee 2003). Chinese women (and Asian women in general) suffered more with the period of restriction. First, the legal provision that had the goal of preventing the entrance of women for prostitution was interpreted very broadly. Second, many of the Asian women who traveled to American ports to reunify with their Asian families were denied entrance. In addition, Asian women were not strong or bold enough to take the chance to cross the Mexican borders illegally (Daniels 2004).

According to Lee (2003), many Chinese immigrants came into America illegally during the exclusionary period. The vast majority of these immigrants were men. On the other hand, a good number of aliens denied entrance at a port of entry during the 1920's and 1930's were Asian women (Lee 2003). The indication here, then, is that the LPCC might have been used at the port of entries to highlight the gender factor into an already racist policy. Besides, in this case, the LPCC functioned contrary to the principle of family reunification, which has always been considered one of the most important pillars of the American immigration policy (Daniels 2004, 8). The extreme precautions of the beginning of the twenty century, might be also related to the U.S. effort to prevent foreign anarchists from entering the country (anti-anarchist periods date from 1900-1914.) Therefore, during the first decades of the 1900's, when the LPCC was heavily used, we have historical indications of both security and racial concerns.

Despite the fact that racial bias was explicitly included in the exclusionary periods (1875-1943), and that the fear of the spread of anarchism from other countries contributed to difficult immigrant assimilation in America, economic factors contributed to a wider use of the LPCC. The numbers that show how immigration officers used the LPCC to avoid labor competition during the Great Depression are overwhelming. The administrative power used to guide the officers to adopt the LPCC incorporated the desperation and the emergency peculiar to the historical economic crash of 1929. Through the analyses of three sequential presidential statements, it is possible to infer how the rates of immigration and unemployment were manipulated by the usage of the LPCC during the 1930's. In the first presidential speech about the necessity to restrict immigration, Hoover (Federal Register Division 1956a) explicates that the recession is such that the country cannot wait on Congress to take action to decrease immigration numbers.

According to President Hoover, “the administration made recommendations to Congress in the last session as to restriction that might be made and, while the committees were favorable, no action was taken. This will at least carry over until Congress can consider the question” (Federal Register Division 1956a, para.4). In addition, in his opinion, the country may use the LPCC as an instrument to tighten up the volume of immigration. He explained that...

“.. practically all countries suffering from unemployment have tightened their immigration restrictions in the past few months—Canada and most of the European countries. There seems to be a general realization that each country should take care of its own problem and, while there is no denial of immigration at large, it is merely a tightening against persons likely to fall in the class of *public charges*.” (Federal Register Division 1956a, para.7, emphasis in the original)

On the same day, the White House released the report of the Department of State, which had inspired president Hoover to advise immigration officers to use the LPCC to restrict immigration. The report clearly explained the new circumstances in which an applicant could be denied on the basis of the LPC rule:

“In normal times an applicant for admission to the country (not otherwise ineligible) if he appears to be an able-bodied person who means to work and has sufficient funds to support himself and those dependent on him until he gets to his destination in that part of the United States where he is going, would be admitted without particular stress being placed on whether he has other means of support. But in abnormal times, such as the present, where there is not any reasonable prospect of prompt employment for an alien laborer or artisan who comes hoping to get a job and to live by it, the particular consular officer in the field to

whom application for a *visa* is made (upon whom the responsibility for examination of the applicant rests), will before issuing a *visa* have to pass judgment with particular care on whether the applicant may become a *public charge*, and if the applicant cannot convince the officer that it is not probable, the *visa* will be refused.” (Federal Register Division 1956a, para.4, emphasis in the original)

Two Presidential conferences (113 White House Statement on Government Policies to Reduce Immigration of March 26, 1931 and 189 The President's News Conference of May 15, 1931) demonstrated that the administrative recommendation to use the Public Charge clause to restrict the entrance of foreign labor had reversed immigration numbers drastically. In the months of February, March and April of 1931, the wider use of the LPC clause reversed immigration numbers from about 12,000 monthly to a net departure of about 3,500 (Federal Register Division 1956b, para.9). In the same vein, the numbers for the April/1930 to March/1931 are also very significant, as demonstrated by Table 1.

Table 1. Monthly Report on Immigrants Admitted/Departed or Deported (1930-1931)

Immigrant aliens		Emigrant aliens	
Month	Year	Admitted	Departed and Deported
April	1930	22,261	6,620
May	1930	19,414	6,089
June	1930	14,944	6,095
July	1930	13,323	7,047
August	1930	14,816	7,300
September	1930	17,792	7,702
October	1930	13,942	8,021
November	1930	9,209	7,178
December	1930	6,439	7,691
January	1931	4,091	6,921
February	1931	3,147	6,985
March	1931	3,577	7,562
Total		142,955	85,211

Source: Federal Register Division. National Archives and Records Service. Public Papers of the United States, Herbert Hoover, 1931, p.257, 1956b.

As one can see, the use of the LPCCs to deny admission has been significant since the very early periods of the nation to either bar the creation of strong foreign-born communities in America or to protect labor. One question that arises is whether the current use of the LPCC still follows these same principles. Once the Civil Rights movement changed America, how did the immigration policy and practices respond?

With Lyndon B. Johnson in power a lot of the desires of the founding fathers, who “took as a given that continued immigration was vital for the health of the nation,” (Daniels 2004, 6) gained life. From the 1970’s till 1986 (year the Immigration Reform and Control Act, IRCA, was passed) the country watched the numbers of newcomers skyrocket as a result of the legislation

enacted right after the Civil Rights era. At that time the American Golden Doors were perceived as more open “to receive not only the opulent and respectable stranger, but the oppressed and the persecuted of all nations and religions, whom we shall welcome to participate in all of our rights and privileges.” (George Washington, as cited in Daniels 2004, 7).

However, even during the golden years of relatively easy entrance the principles of restrictionism were revisited; the origins of nativism were often cited as mechanisms of resistance against the new libertarian perspective on immigration. While the ideas of George Washington were adopted by the advocates of a more moderate policy, Benjamin Franklin (as cited in Daniels 2004) was a legendary American father who was remembered by extreme restrictionists. Franklin’s ideas concerning immigration control inspired the restrictionist movements of the 1980’s. According to Franklin:

Why should the Palatine door be suffered to swarm into our settlement and by herding together establish their language and manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of aliens who will shortly be so numerous as to Germanize us instead of our Anglifying them. (Daniels 2004, 8)

Despite the presence of very conservative lobbying in the twentieth century, more liberal and egalitarian perspectives on immigration control were in fact institutionalized with the help of the Civil Rights Movement. In 1965, new liberalizing provisions amended the American immigration policy to increase legal immigration in order to contribute to the assimilation of foreign-born families and communities that were already in the United States.

Although the recognition of restrictionist viewpoints are denied by numbers of massive immigration after Lyndon Johnson's presidency⁵, the indexes on the usage of the LPCC during the early 1970's continued high for the population of immigrant applicants. With the difficult economic periods of the late seventies and early eighties, the population started to complain about the huge numbers and benefits granted to the foreign-born population. A new era of restrictionism and some isolated ideas of exclusionism started to occur (Morris 1985, 25). During the same period, international terrorism became a growing menace. How best to control terrorism is a subject now discussed among international public and private entities. In 1978, the United States and Western Europe were consolidated as preferred international targets in the battle against secularism and modernization (CIA, 2005).

Perhaps because of the novelty of the terrorist argument, the literature on immigration restriction clauses paid more attention to the economic reasons for immigration restraint, rather than to security-related predictors. Calavita (Cornelius, Martin and Hollifield 1994, 64) believes that since the Immigration Reform and Control Act (IRCA) of 1986, immigration policies and regulations have indeed been made to "respond both to the long-standing economic realities of immigration and to the new restrictionism." One of the greatest changes with the IRCA was the implementation of sanctions to punish employers who would contract illegal immigrants. Another innovation of IRCA was to create a "Special Agricultural Workers (SAW) program, [both of] which contributed to a further influx of immigrant workers into the U.S. labor market." (Calavita 1994, 65)

Differently from the 1990 Immigration Act, which changed the whole structure of application and admission processes for legal immigrants, the 1986 IRCA focused more on

⁵ The numbers of massive admission during the 1960's and 1970's were mainly caused by an overwhelming number of immigrant applicants who were preferentially admitted, like immediate relatives of American citizens and American residents (Daniels 2004, 36)

providing tools to assure border control and, at the same time, cheap labor. It is not a surprise that the IRCA contributed to the failure of immigration law in its goal to reduce the problem of border crossers in America. In addition, the changes made in 1986 and 1990 seem not to have diminished the disagreements and questions that have surrounded the matter of legal immigration and its frustrating outcomes either. Scholars and policy-makers believe that these laws are not efficient to stop illegal immigration and to encourage the arrival of new immigrants who would likely integrate better in American society (Cornelius *et. al* 2003, 13). The fact here is not an issue of arrogance, neither of conservatism, but the discovery of what is best for the American society.

When the subject is the desirable profile of immigrants, different ideas emerge. Restrictionists, in the late 1980's till the present, have repeated the idea that young adults should have preference to get into the country due to the amount of tax payments that they generate (Martin 1994, 135). On the other hand, some feel that young adults generate more taxes and, at the same time, displace more Americans from their jobs (Martin 1994, 97). Most scholars believe immigrants should be admitted to this country if they qualify for jobs, which have more demand than people to cover open positions (Suro 1996). If scholarship differs in the matter of personal attributes that should be taken under consideration to deny or admit an alien, consular officers also significantly disagree.

Jasso (1988), through the analysis of a fictional sample of immigrant applications, judged by twelve immigration officers, found that certain applicants' attributes, such as the condition of having immediate family already in the U.S. and the condition of having a job offer, are unanimously taken under consideration when it comes to an alien admission. Although other characteristics, such as race, were proven to be inconsistent, Jasso focused her work on family

reunification and employment availability. Before the 1990 Immigration Act, which established new legal preferences specially allowing employers to sponsor skilled employees to preferentially immigrate to the U.S., Jasso demonstrated that having a citizen sibling in the United States and having a job offer were characteristics that caused unanimous agreement among the Immigration Commission officers to elevate one's applicant level of desirability. Coincidentally or not, the two umbrella categories in effect today (since 1990) to establish preferences for permanent resident status are exactly related to these two requirements.

Jasso's findings (1988) also suggest that high educational levels and English proficiency were considered favorable by most of the officers. Despite the fact that there is no institutional recognition regarding levels of desirability in terms of age, gender, race, education and English proficiency for permanent residents in the current immigration policy, an officer may use these criteria to deliberate whether an applicant is eligible or not to enter the country. "Although immigration law specifies the qualifications for admission, consular officers are ordinarily the final arbiters of whether an individual meets these qualifications." (Morris 1985, 96)

Immigration laws also specify grounds for refusal or ineligibility. In this section of the legislation, health threats, security threats and the likelihood of becoming a public charge, among other items, are considered as legitimate grounds to deny visas.⁶ While all other grounds for refusal or ineligibility are very well defined, the LPCC remains an open legal provision.

Considering the heavy numbers on the utilization of the LPCC to deny visas and the administrative guidelines on how to apply the LPC doctrine,⁷ one can infer that consular officers may make use of this legal provision to control flows of immigration qualitatively. If this is true,

⁶ Grounds for refusal or ineligibility are analyzed in the next chapter, which deals specifically with legislation and regulations about or related to the LPC clause. The grounds of ineligibility established by the INA (1952) are listed in Appendix 1.

⁷ Specific analysis of the LPC clause within legislation and administrative interpretations will be covered in the next chapter.

the LPCC becomes an “administrative back door” to control quality of immigration flows, while institutionally the American front door is still open. As the same LPC test applies to nonimmigrant visa candidates, who are the largest public to be considered to adjustment of status (a procedure that includes the change from temporary to permanent status,) the nonimmigrant visa issuance process becomes another important administrative device to restrictively select who will become an American permanent resident.

The fact that the LPCC may be used more or less without congressional oversight interferes with the function of restriction clauses within the visa issuance process in different circumstances. As mentioned above, not only economic emergencies are relevant to the study of the LPCC. Not long after the American population had felt the power of international terrorism against the U.S. in the early 1990’s, another urgent concern was rising among the general public: domestic terrorism and its immediate relationship with foreign-born communities. With few legal documents linking immigration and terrorism in the 1990’s, immigration officers became part of the system that legally declared war on terror in 2001. The 9/11 Commission (Wasem and Garcia 2005, 3) described the consular officers as necessary “full partners in counterterrorism efforts,” which changed the manner of examining immigrants’ and nonimmigrants’ applications after September 11.

Scholars like Amir Etzioni (2004) defend the influence of certain anti-terrorism policies on immigrants’ freedoms. The effect of September 11 on the admission of permanent residents to the United States is not thoroughly studied to this point. However, the application procedures have become stricter for certain applicants, according to guidelines of the Consular Affairs Bureau.⁸ In addition, the usage of restrictive tools such as the “Likely to Become a Public

⁸ The Visa Office website brings the newest reports on immigration tendency. Stricter rules and regulations for applicants from terrorist-related countries made headline on the website during the month of August/2005.

Charge” clause is cited by Tichenor (2002, 154) as tool to prevent dangerous people from entering the country. If the LPCC may be used by immigration officers upon their discretion, one can also say that terrorism and national-security challenges may encourage an officer to deny entrance to aliens who may, in his or her opinion, become harmful to society, and who cannot be denied on grounds of security issues.⁹

After September 11 the population, stimulated by the media, instantly reacted against the Arab community and the temporary visa-holders (immigration status of all September terrorist hijackers upon entry); the discussion about the relationships between ethnicity and threat, and threat and immigration were revisited. Shall America accept massive numbers of temporary immigrants such as students and specialized workers, who have such different cultures and beliefs? What kinds of people are safe for America? Without questioning the issues of racial discrimination, qualitative immigration restrictions exist considering factors such as age, educational levels and skills. Liberal countries like New Zealand¹⁰ have clearly established means of qualitative selection within their immigration laws.

In New Zealand, a student that successfully graduates from college and who proves to be well assimilated in society (assimilation is established through the demonstration of good credit, proof of participation in civic associations, letters of recommendations from friends and previous employers, and bank statements) is encouraged to immigrate (Immigration New Zealand 2005). The prospective immigrants are offered permanent residence status and most of the rights and entitlements that a New Zealand citizen has. It seems that New Zealand has taken advantages of a filtration system in order to promote diversity, contentment and assimilation. Contrary to the

⁹ Terrorism and Security as grounds for ineligibility, although expanded by the PATRIOT ACT (2001), are still very strict and require proof of terrorism involvement or terrorism linkage to serve as motives for visa denial (GAO 2002)

¹⁰ The official immigration New Zealand website has defined “studying in New Zealand” as an alternative way to permanently immigrate to New Zealand. (Immigration New Zealand, 2005)

American system, this system offers temporary visa holders, who obtained educational and training skills in the country, an automatic right to immigrate.

According to Ruiz (2003), based on the Spanish experience, the best decision is to select immigrants upon their capacity to get involved and integrated to the foreign environment. Ruiz also advocates that the process of integration of immigrants would be enhanced by their nationality, as the indigenous population would receive and better accommodate people with similar culture. Surprisingly, in Spain, Latinos were considered the most desirable race in the opinion of Spaniards (*Centro di Investigaciones Sociologicas* 2001). Although the fact of choosing on the grounds of nationality may not be totally negative, it is very difficult to separate discrimination from any race-related criterion of selection. Scholars, including Ruiz (2003), have found solid arguments not to advocate in favor of a discriminatory or nationalist environment, but to establish a connection between nationality and a better process of adaptation, once the immigrant has been accepted by the foreign land.

Solid arguments against racial discrimination and stereotypes seem even more fundamental after September 11. Anti-terrorism policies contributed to the adoption of extreme immigration measures by the American Consular Posts abroad (Papademetriou 2003, 52). Since the Homeland Security Department took control of the former INS, (now, United States Citizenship and Immigration Services [USCIS]), U.S. immigration regulations and practices function on the basis of strict security and surveillance measures against immigrants and, especially, nonimmigrants who come from terrorist-related countries (Papademetriou 2003, 49). If the LPCC is used more frequently after terrorist attacks, it can be labeled as one of the extreme administrative actions taken in response to these dreadful events. Nevertheless, if the use of urgent proceedings becomes part of ordinary practice, it may be a sign that new legislation is

required. A comprehensive immigration reform seems to be needed to “clarify the murky areas in current policies and practices and to provide new incentives for compliance, thereby easing the administrative burden” (Morris 1985, 136). In addition, a strong and clear public policy is fundamental to preserving consistency within the visa issuance process.

In times of wars and expenditures that were not forecasted (natural disasters, for example), America tries to review its immigration policy in order to reach harmony between the policy and practices, law and goals. Suro (1996) advocates that the first and only goal of policy makers, in reducing the problems that surround the question of immigration, is to decrease the numbers of immigrants admitted. “Beyond this, at least as far as immigration is concerned, not much forward thinking went into deciding what the future should look like” (Suro 1996, 16). The likelihood of a better future for all residents of this country seems to be connected to the revision of the current immigration policy, not only in terms of quantity, but also in terms of quality. While this does not happen, the study of the LPC doctrine as a mechanism to deny the entrance of individuals who are not productive, self-reliant and who will not positively contribute to society may indicate a qualitative facet of the American visa issuance process rarely identified up to this point.

CHAPTER 2: RESTRICTION CLAUSES, LEGAL AND REGULATORY OVERVIEW

The Immigration and Nationality Act has undergone several amendments since its enactment in 1952. This chapter deals with historical legislative and regulatory changes specifically related to the LPC clause. The main legal documents studied in this section are the INA (1952) and its recent major reform, the Immigration Act of 1990. This Act not only reformed the INA preference system, but also revised the Grounds for Exclusion Section (Section 212), preserving the LPC clause, but collapsing some of the other subsections, which are named today “grounds for ineligibility.” The legislative and regulatory investigation provided in this chapter is the result of the study of the American immigration legal restrictions and regulations provided by the USCIS on-line database (USCIS 2003) and the on-line database of the Library of Congress (Law Library of Congress 2005).

The Immigration and Nationality Act of 1952 (INA) is considered the main current immigration law in the United States. It is included in the U.S. Code under Title 8, “Aliens and Nationality.” When it was enacted, the 1952 INA fortified the American immigration process as a system of quotas and preferences, expanded the classes of nonimmigrant visas, augmented and systematized grounds for the exclusion and denial of visas, and inserted qualitative exclusions within the law. On the other hand, INA also “made all races eligible for naturalization, thus eliminating race as a bar to immigration.” Another advancement was the elimination of sexism from the text of immigration laws (USCIS 2004).

First of all, when one analyzes the INA in more detail, it is necessary to clarify the issue of racial bias. Although the statement of non-discrimination is very impressive in terms of the year in which it occurred (1952), the non-discrimination rule is more suitable to the process of naturalization than to the immigrant selection process. Naturalized Americans are the corollary

of the immigration system, but they cannot be considered the core of immigration numbers. Immigrants are considered by the legislation as any alien who ingresses in American territory to permanently reside. There is an enormous difference between the legal status of an American citizen and an American permanent resident. Although the goal of a color-blind naturalization statute had been realized (Daniels 2004, 119), in 1952, the national origins quota system and the general rules of the visa selection process are found still restrictive and surrounded by racial tendencies.

In relation to immigrants of Asian ethnicity, for example, Daniels (2004, 119) explains that the INA kept the rule, which “no matter where they [Asians] were born or had citizenship, had to be charged to the quotas of the nation of their ancestry.” Asian quotas were minimum compared to the generous quotas allotted to the Europeans. Therefore, generally speaking, it seems that the American immigration policy originally had a preoccupation with keeping the process of immigration selection a lot more restrictive than the naturalization process. Consequently, the national origins quotas that were kept in the 1952 Act applied to the immigrant candidates, naturalization candidates to-be. In any case, the liberalizing clause of naturalization for all is extremely important, especially once the immigration legislation became more egalitarian in the 1960’s by the adoption of the general worldwide quota-system established by the 1965 Hart-Celler Act. In short, the Hart-Celler Act was a series of amendments to the INA, which transferred the thrust of the Civil Rights Movement to the American immigration policy (USCIS 2003).

The issue of racial bias in the INA allows us to better understand the distinction between a permanent resident applicant and a candidate for citizenship, and the applicability of the LPCC. The LPC test does not apply to the process of naturalization (conferment of citizenship by any

means other than birth), but it does apply to the granting of permanent or temporary immigrant status (INS 2002, 132). The LPCC is one of the grounds for refusal included in the 1952 INA, originally under Section 212 (a) (15). However, Section 212 of the INA also suffered modifications in the early 1990's: the section was now referred to as grounds for "ineligibility" instead of grounds for "refusal", and many categories within this section were collapsed. The LPCC was placed under Section 212 (a) (4).

Before the enactment of the 1990 Immigration Act, institutional restrictions had already been part of the American immigration policy for more than one century, accompanying the evolution of immigration legislation from its origins to present. According to Tichenor (2002), when the port states of the Northeast started to screen immigrants, the organization of a selective system was still very fragile. Most of the work was delegated to volunteers, who intended to provide assistance for the newcomers (Tichenor 2002, 49). However, once the nineteenth century arrived "with a whole new scenario of party and electoral organization, [it] created opportunities to the debate between the recognition of rights to white Europeans and the nativist ideals of superiority and isolationism to rise" (Tichenor 2002, 49). Tichenor also explains that "when the federal judiciary stripped states of the authority to screen immigrants in 1890's, nativists hoped for broad new restrictions on European immigration settling in the country" (Tichenor 2002, 49).

Nevertheless, the states kept with the practice of screening prospective immigrants and relying on volunteers' and officials' discretionary powers to decide who might become a public charge for America. At that point, the pillars of the American demographics were being built to keep the European lineage and also a nation of healthy and strong workers. However, if the LPCC was first used "to keep out persons physically and mentally unable to take care of themselves, it eventually barred the able-bodied poor" (Daniels 2004, 28).

The head taxes and the bonds required for each passenger who could likely become a public charge were the first practical mechanisms used by the states to restrict immigration (Tichenor 2002, 58-59). The state's justification to regulate entrance of certain immigrants was tied to the premise that a state could take measures to fight "against the moral pestilents of [foreign] paupers, vagabonds and possible convicts" (Tichenor 2002, 59). Tichenor explains the evolution of immigration practices in relation to the LPC clause, as saying that...

"...the few modest immigration controls established by state legislation both authorized the potential exclusion of individual immigrants deemed "undesirable" (such as criminals, the diseased, unmarried pregnant women and disabled persons considered likely to become public charges), and created a system of bonding and head taxes to support immigrant poor relief and other services. Enforcement of these measures continued to be the task of philanthropists and volunteers of state immigration borders. Their chief concerns were to maintain an efficient reception process and to assist immigrants in need of temporary support" (Tichenor 2002, 66).

Although the federal government eventually took jurisdiction over the immigration matter and the bureaucratic system was empowered to screen immigrants at the ports of entry, the concern about creating an environment favorable for all people willing to come to America was no longer unanimous (Daniels 2004, 28). The numbers of European immigration in the first decade of the twentieth century increased considerably, and so did the number of people who were deported and denied because of the LPCC (Edwards 2001, 4). If the LPC clause started as a legal provision to prevent "any convict, lunatic, idiot, or any person unable to take care of

himself or herself” from entering the U.S., over time the clause was broadened and its capacities varied according to the preferences of immigration officials (Daniels 2004, 29).

The selection process of immigrants in the first decades of the nineteenth century was troublesome and expensive for the states. The scrutiny that began with a desire to keep American society racially pure and physically strong soon became a reason to eliminate those who could threaten the progressive economy of the Industrial years and the security of America.

After the World War I, European countries and the United States created a visa system as a mechanism of protection of their borders (Wasem 2004). Protection was not the only advantage of having a visa system. In terms of restrictions, the requirement of visa issuance lessened the burden and the expenses of the state and federal governments. Instead of applying selective tests in ports of entry, the tests could, at least partially, be applied in Consular posts abroad (Edwards 2001, 5). In other words, the first selective check could be taken miles and miles away from the country, and another selective test could still be run when the immigrant would be *de facto* crossing territorial lines. It seems very obvious that before the establishment of a visa system, the United States was not very much concerned about quantitative restrictions, but the country was already concerned about not having the “undesirable” accepted into American territories.

Under federal command, state or federal immigration officials were expected to deny a visa or deport any person who could be at the margin of society. During many decades of the 1900’s, pregnancy, civil status, and ethnicity could prevent an alien from proving his or her “good character” to immigration officers. Circumstances like these were also excuses to judge aliens as not capable of assimilation in America. Therefore, these aliens could easily be considered under the conditions of becoming public charges. Eventually, the LPCC became what it is today, an open legal provision, perhaps, a clause to be used according to special circumstances of certain

times, more specifically, a clause that is used to follow economic patterns and to broaden the limits of bureaucratic power in the battle against terrorism.

Although the literature and government records specifically related to the evolution of immigration policy restriction clauses such as the LPCC, in the first half of the twentieth century, are scarce, historical reviews such as Tichenor (2002), Edwards (2001), Daniels (2004), and Richmond (1994) demonstrate that the use of exclusionary tools dates since the first day of the Union. However, contemporary investigations of the usage of the LPCC as an important tool to deny entrance to immigrants and non-immigrants applicants are rare. However, before such an analysis can begin, it is necessary to point out the differences that seem to exist between the selective instruments of the past and the system we have today.

First, the necessity to populate the U.S. and constantly stimulate foreigners to come to America no longer exists. Second, the responsibilities acquired by immigration officers in the new immigration organization and the refined bureaucratic system considerably augments the guidelines for using the LPCC while it speeds the application process. Third, although the section 212 of the INA experienced important changes in 1990, the LPCC remained unchanged. Different practical applications are present (i.e. the number of deportations based on the LPC clause declined to near zero, but the numbers of visa rejections continued very significant) (Yearbook of Immigration Statistics 2002 and Report of the Visa Office 1966-2002).¹¹ In any case, since the establishment of a strong American consular system abroad, the LPCC has been regularly used.¹²

¹¹ Visa ineligibilities are separated into subject matter. Also, Appendix 1 corresponds to a table with the “subjective causes for ineligibility” (section 212(a)) and “objective causes” like the 3 last subsections listed in the same table. This research does not consider the objective causes for its theoretical purposes or for its quantitative analysis.

¹² This statement is true if one considers only the subjective grounds for ineligibilities such as Sections 212 1, 2, 3, and 4 of the INA. It is clear that material errors in the application process are the main reason for a visa rejection (INA, Sections

After the 1990 Immigration Act, the LPCC was temporarily forgotten by legislators and immigration specialists; other grounds for exclusion became more notorious, such as clauses that were based on public health, political, and specific labor-related concerns.¹³ In 1996 when Californian immigrants reported enormous fear of being deported on the basis of the LPCC, the LPC doctrine, which was dormant for decades, was again the subject of investigation and the center of the legislative and administrative welfare/immigration debate. This special attention was due to the enactment of the Personal Responsibility and Immigration Responsibility Act (PRWORA, 1996) combined with the Illegal Immigration and Immigration Responsibility Act (IRIRA) of the same year. Both Acts created new rules for legal immigrants to take advantage of certain federal benefits.

According to the PRWORA, the part of the eligible population in legal permanent residence status that had not applied (except for the disabled) or that had arrived in the country after August 1996 was no longer eligible for the supplemental income program (PRWORA, 1996). This rule came along with the misleading idea that all immigrants who were on welfare would be subject to the LPC test and possibly subject to deportation. As a result, in the mid and late 1990's a different preoccupation connected to the LPC test arose: this antecedent became better known as a legitimate ground for deportation.

Immigrants were not the only ones who had reason to fear the new PRWORA and the LPC deportation threat. Applicants for permanent residence status were also covered by new PRWORA regulations. Besides, the 1996 IRIRA brought the requirement of a legally binding affidavit of support. Before 1996, the affidavit was not legally binding and neither the state nor

214 b, 221g.) However, material errors are not connected to individual attributes, which is a key-issue for this study. For a complete list on the current grounds of ineligibility, see Appendix 1.

¹³ Although the usage of exclusionary clauses based on Security-related grounds (212(a) (3) and those related to Labor Certification 212(a) (5) have never been as significant as the levels of LPCC usage specially before the year 2000, they were major concerns of both restrictionists and libertarians during the immigration debate of the mid 1990's and during the enactment of the 1996 welfare reform.

the federal government had legitimacy to recover social benefits from an immigrant or citizen sponsor, in case the sponsored immigrant received means tested benefits. These precautions seem to have different goals if analyzed in terms of pre or post-entry LPC doctrine. In the first case, the threat of recognizing public charges among immigrants who receive cash benefits from the government (a requirement that was clarified by the 1999 Federal Regulation 64, FR 28676-28688) works like a warning, like an alert element not only for legal but also for illegal immigrants who have been taking advantage of some state welfare programs. In terms of the pre-entry LPC doctrine, it is quite clear that there are indicators to assume that the LPCC has been used either to qualitatively select immigrants, or at least, to decrease the number of aliens granted a visa in a given year.

When one interprets the legislative mandates of 1990, the 1996 PRWORA, the 1996 IRIRA, and the regulatory clarification of 1999, it is possible to notice a change in perspective when compared to the legislation of 1986. Since 1990, legislators have inserted into the law a more qualitative approach with the systematization of a job-related visa preference and financial requirements. Besides, the 1999 regulation also inserts a qualitative approach directly into the LPCC. Although total immigration numbers are still rising, a fact that is consistent with the historical traditions of this country, a more stringent process of visa selection may be the answer to the hectic routine of the American posts abroad, which receive hundreds of new applications a day. But, again, how important is the overload fact since Congress has not recently discussed the INA restriction clauses and their strict applicability?

The strict legal interpretation of “public charge”, which includes those aliens who have more probability of becoming financially dependent on public assistance, does not completely explain the circumstances around the large utilization of the LPCC by American posts abroad. First of

all, until 1999 similar LPC clauses had been used for almost two centuries and its single meaning and usages had never been officially clarified. Because of the furor caused by the PRWORA, the Clinton administration published a regulation (INS 1999) explaining the meaning of the public charge clause and the circumstances for its use. However, the regulation was more an explanation of the PRWORA than a clarification of the applicability of the LPCC. In any case, the 1999 regulation was relevant especially in respect to the operation of the post-entry LPCC. It determined that only immigrants who have been receiving cash assistance in their first five years of presence in America would be subject to the deportation test (INS 1999).

According to Edwards (2001), the current numbers on deportations caused by the applicability of the LPCC are almost insignificant. It could not be any different, considering that federal cash assistance is no longer part of the pool of benefits that new immigrants are eligible for (after 1996), and Temporary Assistance for Needy Families (TANF), a means tested federal program administered by the states, is likewise not available for the permanent residents for the first five years of residence.¹⁴ Therefore, if one reads the welfare reform of 1996 and the 1999 regulation combined, the post- entry LPC test, based on abuse of the public safety net by permanent residents, as it was presented in 1996, becomes inoperant.

The pre-entry LPC doctrine, however, has been studied less and used more than the post-entry doctrine, which was the main subject of the regulatory clarification issued in 1999. Different from the post-entry LPC test, the pre-entry LPC test applies for immigrants and non-immigrants when they go through the visa process. In the modern organization of the immigration system, asylees and refugees are granted a hybrid immigration status, which permits a faster transition to permanent residence after one year in American territory. Consequently,

¹⁴ Refugees and asylees are exempt from the PRWORA limitation. Nonetheless, this fact does not interfere with the understanding of an ineffectual regulation, since the humanitarian entries are not subject to the LPC test.

they are not subject to the LPC test, due to the fact that asylees and refugees are part of a smaller, but not less important, category of immigrants who enter the country under humanitarian reasons.

The LPCC, then, gains a lot more significance when it is considered an important component of the visa issuance process than a legitimate reason for deportation. Generally, the LPC test pre-entry occurs in the American consulates abroad. The LPC test is the first mechanism to determine eligibility. In order to pass this selective test, nonimmigrant visa applicants, usually, have the duty to prove that they have enough funds in their home countries to financially support themselves while in America. Most immigrant visa applicants have the duty to provide the immigration officer with the Affidavit of Support (mentioned above), and/or robust information about his/her solid financial condition (INS 1999). In any case, even if applicants for temporary or permanent visas furnish the immigration officer with all documentation needed, they may fail the LPC test (U.S. DOS 2002). This conclusion indicates that the LPCC might be either a mechanism to keep visa issuance numbers within the ceiling determined by the 1990 Act, or a more complex tool for qualitative scrutiny.

Legislators and immigration officers pay a lot of attention to quantitative limits, while the impact of qualitative restrictions is being ignored (Suro 1996, 16). In addition to the concerns to stimulate high-qualified workers and to preserve traditions of family reunification, few discussions have taken place about the necessity to establish a more qualitative system (also called multi-point system). Americans still rely on the vagueness of the Section 212 of the INA to define a trace of qualitative selection within the visa process. The U.S. continues to use a negative approach (refusing visas on the basis of what the country determines ineligible). However, nations like New Zealand adopt a more positive line, which rewards individual

attributes (Immigration New Zealand 2005). Perhaps the mistreatment of qualitative restrictions is the key for the failure of American immigration policy. If qualitative preferences were clearly established by law and regulations, the American immigration policy would have results that are closer to its original goals. If this is true, then the studies of institutional restrictions become critical, especially for the purposes of defining which characteristics have continuously been rejected by immigration officers, and which characteristics should be preferred in America today.

One could say the immigration system, after so many debates, studies, and congressional commissions, should be a lot different and a lot fairer than it was 184 years ago. Nonetheless, in terms of restrictions, the major similarity of both systems remains the great amount of discretion that an immigration officer is given to decide who gets a visa and who does not. In times when so many visa applications are being filled, what are the criteria that determine who should be chosen? It is not clear what the decisive criteria are in the immigration legislation and regulations. Nonetheless, if it is true that the visa process has to be strengthened to meet the demand of the War on Terror, as suggested by the Government Accountability Office (GAO 2002), should it be on the basis of bureaucratic empowerment or should it be on the basis of legislative action?

Since America extended Consular powers to control immigrant flows, the amount and the appropriateness of consular officers' decisions have been questioned. "Critics soon charged that the Consular and Visa Bureaus had established arbitrary and labyrinthine rules that demonstrated unmistakable prejudice against Jewish immigrants. ... The powers of the Chief of the Visa Office are almost unlimited and appeal against his decision is practically impossible" (Reuben Fink, as cited by Tichenor 2002, 155). Although certain administrative decisions are now subject to

revision through the Board of Immigration Appeals (BIA),¹⁵ the vast majority of visa issuance cases end with the final word of the Consular officers (USCIS 2004, Making Immigration Law). If consular officials had a great amount of discretionary power in the past, since 2002, they have been called counter-terrorism actors and are expected to exercise even greater control of immigration flows in their posts abroad (GAO, 2002, p.18).

The importance of terrorist attacks in September 11 of 2001 established an emergency tone within all American government agencies. The extreme measures taken against aliens applying for temporary visas and aliens already in the U.S. after that event indicate that the immigration system was also affected. Whether officers will intensify their use of discretionary power in the immigration processes is a key-question to the understanding of the visa issuance process. A simple investigation into the decreased numbers of total visas issued after September 11 may not tell us much, especially in terms of non-immigrant visas, due to the inclusion of the visa for pleasure under this category. However, one simple and meaningful mechanism to look for positive signs of this correlational relationship (terrorism against the U.S. and visa restrictionism), and all others suggested by this study, is to observe the use of the LPCC.

The pure investigation of the law and immigration regulations, as they are today, does not help society to completely understand the visa rejections on the grounds of the LPCC. Although immigration scholars advocate a more comprehensive legal reform, old selection mechanisms remain almost exclusively administrative. In order to comprehend what lies behind the legal reasons to grant or deny visa requests, which represents a strong expectation to enter America,¹⁶

¹⁵ The BIA has jurisdiction in most matters related to removal issues. However, in terms of immigrant applications, the BIA has partial jurisdiction over few of the categories established for preferential applicants. (USCIS 2004, Immigration Laws, Regulations, and Guides)

¹⁶ We refer here to the American visa as a document granting mere expectation of entry rather than right to entry. Immigration officers may not authorize an alien to enter the country, even if this alien provides appropriate consular documentation. This practice is commonly adopted worldwide for security purposes. Although these occurrences are

it is necessary to correlate the use of the LPCC with social, economic and national security circumstances. The adequacy and the relevance of these relationships are empirically assessed in the next chapter.

not frequent, they happen sporadically. Beyond that, the confusion between a visa and the right to enter in America causes interpretation problems that should be avoided. However, for the purposes of the LPC phenomenon, as explained in the first chapter, this differentiation is not so relevant, since the LPC test happens in the posts abroad as a component of the visa issuance process.

CHAPTER 3: EMPIRICAL FRAMEWORK

The use of the LPCC is a measure of how different factors, like economic and national security situations, impact immigration targets. Therefore, the relationship between the current American immigration policy and *de facto* patterns of restriction are observed through the LPCC. Simple observation of the data suggests there are some external factors driving the rejection of visas, through the LPC device, especially when it comes to nonimmigrant visas. Given that the visa selection process is a hotly debated topic since September 11, 2001, an effort to define possible predictors, which drive a larger utilization of the LPC clause, becomes critical to understanding the real demands of a future reform in the American visa issuance system.

The definition of predictors behind the LPCC usage is not obvious. It is possible, through the analysis of immigration history, to anticipate the explanatory variables that are more likely to support the theory presented in the first two chapters. According to the literature review and the legal investigation provided, the LPC doctrine has often been connected with the necessity to lessen labor competition,¹⁷ and to enhance levels of national security.¹⁸ Secondary elements would be related to the politics of welfare abuse carried with the 1996 PRWORA, legislative and regulatory changes, and, finally, to the necessity of limiting immigration numbers.¹⁹ In order to empirically address these issues, I first discuss this study's variables, methodology, and results.²⁰

¹⁷ The assumption that immigrants displace natives from their jobs is highly questioned in the scholarship. For more information on immigration's impact on the labor market, see Borjas (1999) .

¹⁸ This assumption is also very controversial, and although many immigrants take advantage of welfare programs, state programs have absorbed most of immigrants in welfare rolls since the 1996 reform. See Borjas (1999).

¹⁹ The issue of racial bias within the visa issuance process could not be assessed by this study, because of data limitations in the time frame (1966-2002) of the analysis. Unfortunately, data broken down by race, such as unemployment rate or poverty levels, started to be collected only in the early 1970's.

²⁰ There are many obstacles in the data preparation and data analysis processes, especially those inherited from the Visa Office data reporting system. The difficulties with the data are related to the peculiarities between the population of immigrant and non-immigrant visas, the difficult access to (or unavailability of) old issues of the Report of the Visa Office (the 1982 report was not found,) the confusing layout of the tables presented with the LPCC numbers, the inclusion of visa applications denied or accepted from prior years, and the inconsistency with the reporting of the data over the years.

The data collected for the two dependent variables, LPCC use to reject immigrant visas and LPCC use to reject nonimmigrant visas, are derived from the Report of the Visa Office (1966-2002).²¹ The data provided include the number of applicants that first had fallen into the category of refused under the LPCC and also the applicants who had overcome the initial refusal. Properly, this nomination changed to “ineligibility” and “ineligibility overcome” in the 1990’s. The problem that arises here is that the same applicant who had his or her visa denied at first might not overcome the ineligibility in the same year and, therefore, be granted a visa in the following year (United States Department of State 1970). Although this problem is clear, this paper follows the recommendations and the percentage calculations of the Congressional Research Service to establish the actual number of visa denied and the percentages of the use of the LPCC (Wasem 2004, 10). According to Wasem’s analysis, the numbers offered by the Visa Office for “ineligibility overcome” can be simply subtracted from the number of “primary ineligibilities” under the same section, for the same year, in order to represent the number of total ineligibilities found in a given category, in this case, the LPCC.

Wasem’s report (2004) also shows that, in order to obtain the percentages on the use of the LPCC, it is important to deduct the number of ineligibilities that occurred based on objective grounds such as the failure to establish eligibility for certain visa status (applicable to non-immigrants only) or the lack of documentation. Since material errors are the major causes for visa denials, with numbers a lot larger than those achieved by subjective clauses, if the

²¹ Unfortunately, the data correspondent to the first years subjected to this analysis, were not presented in the same way as it has been presented since the 1970’s. In the Visa Reports of 1966, 1967, 1968 and 1969 it is not possible to distinguish which visas were actually denied and which visas only had their processing stopped for a period of time and, then, granted. To overcome this problem, the solution was to utilize the estimations of the Visa Office to account for the percentages of visas that were actually denied at those given years under the LPC clause.

percentages of LPCC in relation to total denials would be measured with the number of objective denials included, its power would be definitely underestimated.

From 1966 till 2002, the use of the LPCC varies considerably from one decade to another. In addition, the numbers vary significantly between the two usages of the LPCC pre-entry: to deny immigrant visas and to deny nonimmigrant visas. The association between the former and the latter with the total numbers of aliens accepted into the respective category is also discrepant. While the LPCC use to deny immigrants can reach more than 50% (as it happened in 1989), the same is not true in relation to the LPCC usage to reject nonimmigrants: the numbers are very small when inserted into the pool of total aliens who enter the country under temporary visas.²²

Another factor that has to be addressed in terms of the dependent variables is the difference between the total number of immigrants admitted and the number of immigrant visas issued abroad. The total number of immigrants accepted in a fiscal year, according to the Homeland Security statistics, includes all aliens who receive permanent resident status. This includes all aliens who received a visa abroad and also all aliens who received the same status through some type of humanitarian cause opening or adjustment of status. Therefore, the total number this analysis takes under consideration is only the number related to applications abroad, which is a lot smaller than the numbers presented for total immigration by the media and by historical reviews. The same concern happens towards nonimmigrant numbers in the sense that the number of nonimmigrant visas is much smaller than the number of nonimmigrants that enter the country

²² One of the reasons why the difference between the total number of nonimmigrant visas issued and the LPCC rejection number is enormous is that temporary visas include tourist visas (technically called “for pleasure”). In order to have a clear relationship between the aliens accepted and the number of LPCC denials, within the nonimmigrant category, the most representative measurement would not involve the issuance of visas for pleasure. It is reasonable to assume that these applicants are not subject to the LPC test. However, there are no data available divided by visa categories in terms of the restriction clauses. Therefore, the only recourse I have is to use the inclusive number, but attempt to not underestimate the clause, because of the presence of hundred thousands of tourists admitted within the number of total nonimmigrant visa issued.

in one fiscal year, given that many of the nonimmigrants enter the country repeatedly or with visas granted for a previous entrance.

Having explained the process of data collection in terms of the dependent variables, I present the explanatory variables and the measuring mechanisms used to test the correlation validity between the expansion in the LPCC usage to deny nonimmigrant visas, from 1966 to 2002, unemployment rate, employment available in thousands (1966-2002), major terrorist attacks against U.S. targets, legislative and regulatory changes, and total number of nonimmigrants visas issued (1966-2002). As a result, the hypothesis that the LPCC clause is more likely to be used in periods with economic and national security difficulties is tested with the following Equation (1):

$$Y = U + E + T + L + V$$

(1)

where Y represents the number of nonimmigrant visas denied on the basis of the LPCC, U is the unemployment rate, E is the employment available in thousands, T is the presence of a major terrorist attack against the U.S., L represents major legal and regulatory changes related to the LPC, and V is the number of visas issued.

The proposed correlation between immigrant visa denials on the basis of the LPCC controls for unemployment rate (1966-2002), employment available in thousands (1966-2002), major terrorist attacks against U.S. targets, legislative and regulatory changes, number of total immigrants visas issued (1966-2002), and presence of new regulations imposed by the 1996 welfare reform. In this case, the model follows the Equation (2):

$$Y^2 = U+E+T+L+V+W$$

(2)

where Y^2 represents the number of immigrant visas denied on the bases of the LPCC, and W represents the legislative enactment and effect of the PRWORA (1996). All other alphabetic symbols represent the same variables in the first equation.

The categorical variables, occurrence of major terrorist attacks in a given year against the United States, main legislative and regulatory changes that affected restriction clauses within the INA, and the enactment and effect of the PRWORA were treated as discrete categorical variables, through the assignment of dummy variables. Both the welfare and the terrorist-related variables received the number (0) or (1) to respectively indicate either absence or presence in a given year. Years counting with major terrorist attacks are defined based on the chronology provided by Quillen (2002), and using resources provided by the CIA Report (2005) and Mickolus, Sandler, Murdock, and Flemming (ITERATE 2004) to specifically define attacks that targeted the U.S. According to Quillen (2002, 280) mass casualties²³ attacks are those with a minimum casualty rate of 25 deaths. Since the CIA Report (2005) recognizes 1978 and 1979 as the years in which America has been considered as one of the main targets of International Terrorism, 1978 was the first year to be assigned the number (1).²⁴ Despite the fact that authors like Daniel S. Masters have a broader approach to the definition of mass casualties, including number of wounded and dead subjects into the calculation of total casualties, for the purpose of this study, Quillen's cutoff number (25 people dead) was adopted (Masters 2006). The choice of

²³ Although the author mentions that the most appropriate label for this criterion would be "mass fatality", since he deals with the number of people dead, he adopts the term casualties throughout his work, terminology that is kept by this study (Quillen 2002, 281)

²⁴ A list with the years and the respective terrorist events considered for the regression are listed in Appendix B. As mentioned early in this chapter, to every year included in such list, I assigned the number (1) (i.e. presence of major terrorist attack).

fatality rate (instead of total causality) helps to prevent and overestimation of the security variable.

The security variable is critical to establish the impact of terrorist attacks against the U.S. on the process of visa issuance. In this case, I was looking for signs of LPCC use peaks during periods of security-threat, since most terrorists who have tragically attacked the U.S. in recent years are foreigners. Many of the terrorists, when attacking domestically, were holding temporary visas. It is common knowledge that the visa processes have been strengthened since September 11, and that the rate of applications dropped right after the same event. Most of these restrictions were part of legislative and regulatory package included in the War on Terror.

The legislative-regulatory variable also received dummies, but they were treated differently, in order to comply with the regression technique adopted. This variable represents legislative or regulatory increments related to the restriction clauses in general, or to the LPCC, in particular. The period under the original legislative text (1965-1989), when the “Grounds for Refusal Section” was included in the INA, is assigned the binomial combination (0, 0). In 1990, the major immigration reform occurred and the “grounds for refusal” became “grounds for ineligibility.” In the 1990’s, new social concerns were inserted in the Immigration Act, such as the preoccupation with epidemic diseases. To this stage, the numbers (0, 1) are assigned. In 1999, the INS proposed an administrative regulation, which defined circumstances of LPC usage. This period received the numbers (1, 0). Finally, in 2001, legislation and regulations inherent to the War against Terror broadened the grounds of ineligibilities based on security-related factors and broadened the role of immigration officers, who were now considered counter-terrorism agents. This phase received the binomial combination (1, 1). Each number of the binomial combinations above was treated as a separate variable. Nonetheless, the results

were interpreted taking under consideration the effect of both numbers assigned to each binomial combination in relation to the use of the LPCC.

The welfare reform variable is measured solely against the dependent variable of LPCC use to refuse the granting of an immigrant visa. Temporary visa holders are not eligible for any federal welfare programs; on the other hand, permanent residents were eligible for many of the federal programs before the 1996 welfare reform and remain eligible for some of these programs, but only after five years of permanent residence status. Even though the welfare reform variable was not considered a major predictor, because of the extensive literature on the impact of the PRWORA and the 1999 INS LPC regulation, it was included in the regression. Specifically, I attempt to control for the fact that the PRWORA inserted a type of mobilization to prevent immigrants from becoming public charges that could stimulate bureaucracies to strengthen the LPC scrutiny. The period without welfare reform (from 1966 to 1996) receives the dummy variable (0), while the period from 1997 to 2002 is assigned the number (1).

The explanatory variables related to economics are unemployment rate, and the amount of employment available in thousands, both provided by the Foreign Labor Statistics on-line databases. The first variable was chosen because of its historical connection with the LPCC use during employment shortages (Edwards 2001). As most of the nonimmigrant populations have legal employment restrictions, the relationship between the economic variables and LPCC usage is cited by scholars to be more connected to the population of immigrants than nonimmigrants.

The question that arises is whether a high unemployment rate causes every immigrant to have a greater chance to become a public charge or if a high unemployment rate causes immigration officers to deny immigrants for the purposes of labor competition control; the two reasons, the likelihood of becoming a public charge, and the likelihood of being more labor

competitive, overlap. Therefore, the solution was to correlate a variable that offers the amount of employment available with the usage of the LPCC. Since the Foreign Labor Statistics glossary explains that the amount of employment available is measured through the number of jobs available on the last commercial day of a given period, these numbers reduce the problem of having a general predisposition to every job seeker, immigrant or not, to increase his or her chances of becoming a public charge.²⁵ The goal here is to determine whether the chance of becoming a public charge is increasing for everybody in a time of crisis, or if it suggests that crisis affects the foreign labor force on a larger scale.

Finally, the last variable used, the number of total visas issued, relies on the idea that we must establish an assessment to know how many of the rejections are due to factors other than the natural growth of the number of visas being issued. The source of this variable is also the Report of the Visa Office for the years of 1966 to 2002. Although, at first sight, this variable seems to incorporate a serious problem of multicollinearity, this actually does not happen. When the calculus for the use of the LPCC was conducted, only the number of visas that were in fact denied was accounted for.

While the data for the explanatory variables were easily collected and prepared, to provide an initial test for our hypotheses, the data on the use of LPCC underwent a Logistic Transformation.²⁶ This technique was necessary given the longitudinal nature of the data and the fact that the data were presented in percentages. After using the logistic function, probabilities may take any real value in a linear relationship with the explanatory variables. The Logistic function is represented by

²⁵ When one analyzes the numbers provided by the Foreign Labor Statistics (2005) for employment available it is easy to notice that these numbers keep a steady growth. However, the unemployment rate fluctuates in reasonably visible frequency over time.

²⁶ For more information on Logistic Transformation see the work of Scott M. Lynch (2003).

$$Y = N\text{Log}(P/1 - P)$$

where Y is the dependent variable and p is the percentage value of the LPCC each year. $N\text{log}$ represents the natural log, or the inverse of the exponential function for the LPCC percentage. This transformation enables the data to overcome the assumption that the predicted value for LPCC would fall between 0 and 1. After the logistic preparation of the data, *OLS* Regression analysis was performed. For the population of LPC ineligibilities concerning immigrant applicants, descriptive time-series techniques were also used.

After the first regression, the results indicated that some of the predictors were not statistically significant. In fact, at this point, I found no support for the hypothesis represented by Equation 2, which refers to the immigrant applicant population and the use of the LPCC. However, I found significant predictors for the use of LPCC to reject nonimmigrant visas, although there were some clear differences across the explanatory variables. For this reason, I conducted two other regressions, including only significant predictors. The final test included only the two significant variables remaining, terrorism, and employment available. The final equation (called Equation 3) is the result of *OLS* Regression Analysis of the data for the non-immigrant applicant population, after conducting two regressions and variable sifting exercises. Equation 3 represents the relationship between the LPCC (nonimmigrant applicants) and the two variables that remained significant throughout the analysis process. These explanatory variables are terrorism and employment available. The variable, number of total visas issued, was significant at first, but when included in the regression with the most significant predictors only, its relationship with the response variables was very weak.

As a result, the final model is presented by Equation 3, represented below:

$$Y' = T + E$$

(3)

where Y' represents the usage of LPCC for nonimmigrant applicants; E represents employment available; T stands for the categorical variable of terrorism. Table 2 brings the summary statistics, from which the model was derived. The results for the tests conducted for Equations 1, 2, and 3 are presented in Table 2.

Table 2. OLS Regression: Results for Equations 1, 2, and 3

Dependent Variables Independent Variables	LPCC Nonimmigrant		LPCC Immigrant		LPCC Nonimmigrant	
	Equation 1/Y		Equation/Y ²		Equation 3/Y'	
	Coeff.	(SE)	Coeff.	(SE)	Coeff.	(SE)
Intercept	1.145	2.530	-2.99	2.801	-3.191	1.076
Unemployment Rate	0.198	0.127	0.273	0.238		
Employment	-7.6E-05*	3.35E-05	1.59E-05	4.48E-05	1.25E-05	1.04E-05
Terrorism	0.861*	0.394	0.030	0.843	0.980*	0.452
Legislation	0.721	1.079	1.040	1.878		
Legislation	2.269	0.836	1.794	2.047		
Visas	6.37E-07**	2.3E-07	0.047	1.264		
N=	35		36		35	
R-Squared	0.18		0.13		0.29	

Note. * $p < 0.05$, ** $p < 0.01$

Note. E = the number of decimal cases to the left.

Through the analysis of this final regression, terrorism is significant at the .038 level. It also has a strong coefficient. Nonetheless, because of two main factors, the analysis of these results cannot be interpreted only by the summary output of the regression. The terrorism variable was treated as discrete and categorical. The independent variable is being measured using its natural log. Therefore, the analysis requires that we understand what the predictor really means to the LPCC phenomenon in relation to both situations represented by the variable, either presence or absence of a major terrorist attack against the U.S.

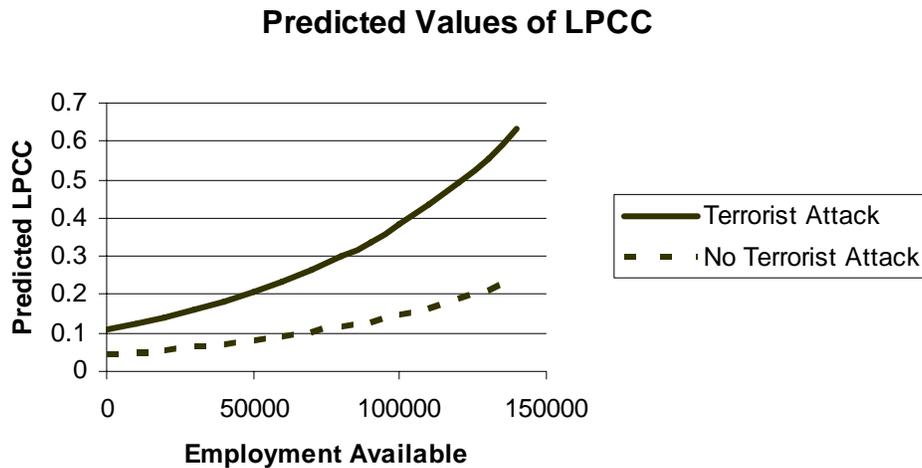
If we use the exponential function to reinterpret the data for the independent variable (since the natural log is the inverse of the exponential function), and if we assume that all other factors involved on the regression process (employment) remain equal, it is possible to see a very important influence of the presence of a terrorist attack upon the LPCC phenomenon.

Table 3. Effect of Terrorism (Absence or Presence) on the LPCC Phenomenon

<i>Slope</i>	<i>0.0000125</i>	<i>0.0000125</i>
Intercept	-3.19	-2.21
Predicted Probability of LPCC		
Employment		
Available	Without Terrorist Attack	With Terrorist Attack
0	0.041171871	0.109700649
10000	0.046653842	0.12430712
20000	0.052865729	0.140858421
30000	0.059904719	0.159613502
40000	0.067880939	0.180865793
50000	0.076919181	0.204947793
60000	0.087160851	0.232236275
70000	0.098766184	0.263158175
80000	0.111916749	0.298197279
90000	0.126818291	0.337901786
100000	0.14370395	0.382892886
110000	0.162837908	0.433874481
120000	0.184519524	0.491644197
130000	0.209088013	0.557105862
140000	0.236927759	0.631283646

The graphical representation of Table 3 is more meaningful.

Figure 1. Effect of Terrorism (Presence or Absence) on the LPCC

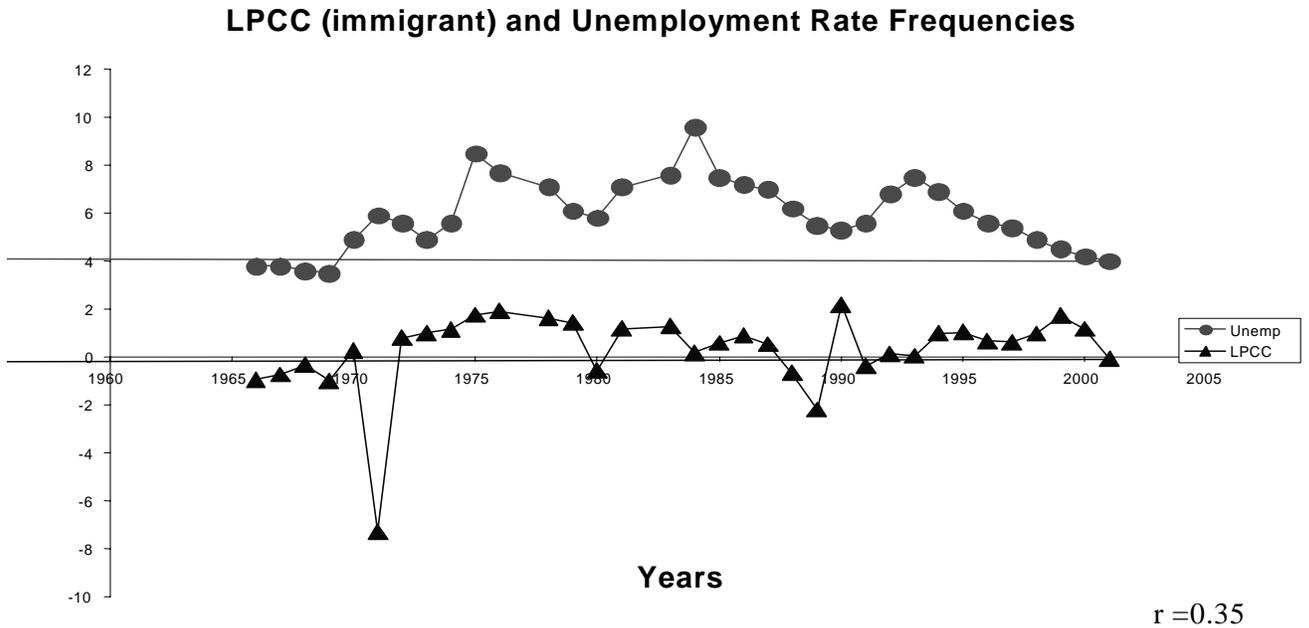


Whether the LPCC was used more after September 11, specifically, is a question that can not be adequately addressed in this study, since we count with official data of the Visa Office for the LPCC numbers up to the year of 2002. Data available for 2003, 2004, and 2005 are only preliminary and for this reason were not included in this study. Even with little variation for the years following September 11 of 2001, the correlation between major terrorist attacks against the U.S. and the LPCC usage for the population of non-immigrants was significant at the 0.037 level in the first regression and 0.038 level in the final regression.

While the terrorist predictor allows us to reject the null hypothesis and visualize a use of the LPCC other than the one established by law, the predictors for the immigrant applicant population failed to establish both linearity and nonlinearity in relation to the LPC phenomenon. After testing for the normality of the immigrant applicant sample, I decided to look for comparable frequencies between the LPCC and each predictor separately. Patterns of co-variance over time were assessed descriptively. During this exercise, a pattern of co-variance was found between the usage of LPCC for the immigrant applicants and unemployment rate, and, also, a

relationship between the use of the LPC clause and the 1990 Immigration Act. The frequencies for unemployment rate and the use of LPCC (immigrant applicant sample) are represented by Figure 2.

Figure 2. LPCC Immigrant and Unemployment Rate: Frequencies Over time



The simple exercise of plotting the data for LPCC usage and unemployment rate from 1966 till 2002²⁷ shows that the two factors covary over time, especially before the 1990 legislation. From 1965 till 1990 it is possible to see the co-variation, although counting with a significant lag in time. After 1990, the system of preferences of the INA was completely remodeled. The 1990 Immigration Act included some qualitative features in the text of the law and inaugurated a new era of coexistence of policy guided by the theme of reunification and the necessity of stimulating the importation of qualified workers. Perhaps this thematic coexistence has changed the pattern

²⁷ Except for 1982, due to unavailability of data.

of the LPCC usage in relation to the unemployment rate. After 1990, the different grounds for ineligibility were established, such as the lack of labor certification and ineligibilities related to unqualified health-care professions and to other sponsored workers, who now undertake a differentiated procedure. All these legislative changes may have enabled immigration officers to work more independently from other factors. For this, further research seems to be essential not only to define the relevance of the LPCC, but of each ground of ineligibility listed under the Section 212 of the INA.

Generalizing, these findings seem to shed light on the dynamics of the visa issuance process. The regressions point out a very different interpretation of the LPCC behavior among the two population groups: security concerns are significant predictors for LPCC usage to deny **nonimmigrant** visas. The LPCC usage to refuse **immigrant** visas indicates that the relationships between LPC clause applicability and its main predictors are neither linear nor non-linearly correlated, but present a correlation over time (at least in relation to the sample) with unemployment rate. The data support the generalization that external factors are driving the use of the LPCC for the nonimmigrant applicant sample. In addition, the data suggest that the visa issuance process (as established by law) is not consistent with the new demands derived from a mobile workforce and extreme measures taken to secure the American homeland.

FINAL CONSIDERATIONS

This paper represents a starting point for a broader study of decisions to grant or deny U.S. visas. The extenuated immigration bureaucratic empowerment may be evidence of Congressional lethargy in response to rapid changes in society, in this case, to the transformation of the American immigration profile and its implications. These days, facilitated communication and mobility connect more people to the possibility (at many times, a dream) to come to America than what America can take. Unfortunately, the demand for an American visa is so high that the question of “how many” changes to “who” deserves a visa. As demonstrated above, American immigration policy has few answers to this question. Qualitative requirements can be inferred from the preference of having an American employer as a sponsor and the exclusionist categories brought by the immigration restriction clauses, such as the LPCC.

The importance of this paper’s finding is more related to the nature of its relationships than to the number of visas being denied. The fact that terrorism was the most significant variable to define use of the LPCC for the nonimmigrant applicant population, and that unemployment rate covary with the percentages of the LPCC use (in relation to the immigrant applicant sample) from 1966 to 1990 is an indicator that the 1952 INA, and its 1990 amendment, approximated the reality of the bureaucratic practice to the text of the policy in what concerns the economic changes in the American workforce. However, the same does not happen with the reality brought to stricter scrutiny at American posts abroad since the United States became a consolidated terrorist target.

This study does reveal correlations between LPCC use and external factors. However, more testing is needed. Time-series lagged models, for example, were not tested here for many reasons, for instance, difficulty of accessing the data, lack of resources, and time constraints.

Further research may look for significant interactions among predictors and interactions between the LPCC and other restriction clauses, such as labor certification. In preliminary data released by the Visa Office for the years 2003, 2004, and 2005, it is possible to see that the relatively large number of immigrant visas refused on the basis of the Labor Certification clause (an applicant may be denied if he or she might compete with American workers in pre-defined professional fields) start to confirm a tendency over time. Therefore, the study of the relationship between the usage of the LPCC and the Labor Certification clause may contribute to a more accurate conclusion in relation to the usage of the LPCC as a mechanism to control labor competition.

The relationship between terrorism and the LPC doctrine is another topic that deserves a lot more attention. As said, the regression conducted in this paper counts with data from 1966 to 2002. It includes very little information on the use of the LPCC after September 11. Especially for the non-immigrant applicant population, the development of this relationship has to be followed. It is really fortunate to have found such a strong predictor in the terrorism-related variable for the nonimmigrant applicant population. After 2001, most of the academic attention has fallen back into the discussion about Civil Liberties and Terrorism, a subject that involves a lot more permanent residents than visa applicants. Therefore, the difficulties that terrorism has caused to visa applicants are, at many times, forgotten.

This study indicates that both theoretically and empirically, the visa issuance process is vulnerable to certain rapid economic and social changes in society. It is also possible to say that the dynamics of the LPCC phenomenon is dictated by the interpretations of the immigration officer. Further research, especially accessing qualitative data from immigrant and non-immigrant applications, may also explore the relationships of the bureaucratic power with more

specific characteristics, such as race and gender, in relation to visa rejections on the basis of LPCC.

Since the visa issuance process is the center of the immigration selection process, and the proportions of its relevance rose enormously after September 11, it is necessary to think about the American visa issuance process as a congressional matter, even if it is currently more centered in the bureaucratic work. This attitude is crucial for both sides, the applicant and American society. For the applicant, a visa process guided by a clear immigration policy assures transparency and fairness. For the American society, clearer policy (especially in terms of restrictions or rewards) may be the road to a more efficient immigration selection and a facilitated immigrant assimilation/acceptance process in the future.

APPENDIX A

Table A1. Provisions on Grounds for Ineligibility Conforming the 212 Section of the INA

<i>Grounds for Visa Ineligibility</i>	<i>Section of the INA</i>
Health Related Grounds	212 (a)(1)
Communicable grounds	(A)(i)
Immigrant lacking required vaccinations	(A)(ii)
Physical or mental disorder and behavior that may cause a threat	(A)(iii)
Drug abuser or addict	(A)(iv)
Criminal related grounds	212 (a)(2)
Crime involving moral turpitude	(A)(i)(I)
Controlled substance violators	(A)(i)(II)
Multiple Criminal convictions	(B)
Controlled substance traffickers	(C)(i)
Relative of substance trafficker who obtained benefit from illicit activity within past five years	(C)(ii)
Prostitution within 10 years	(D)(i)
Procuring within 10 years	(D)(ii)
Unlawful commercialized vice	(D)(iii)
Certain aliens involved in serious criminal activity who have acerted immunity from prosecution	(E)
Foreign government officials who have engaged in violations of religious freedom	(G)
Significant trafficker in persons as listed in yearly report to Congress by President	(H)(i)
Relative of trafficker on President’s list who obtained financial benefit from the activity within the past five years	(H)(ii)
Security-related Grounds	212(a)(3)
Espionage, sabotage, or technology transfer	(A)(i)
Other unlawful activity	(A)(ii)
Activity to overthrow the U.S. government	(A)(iii)
Terrorist Activities	(B)
Entry would have potentially serious adverse foreign policy consequences	(C)
Immigrant membership in totalitarian party	(D)
Participation in Nazi persecution	(E)(i)
Participation in genocide	(E)(ii)
Association with terrorist organizations	(F)
Applicant may become a public charge	212(a)(4)
Labor certification and qualifications of certain immigrants	212(a)(5)
Labor certification	(A)
Unqualified physicians	(B)
Uncertified foreign health care workers	(C)
Illegal entrants, immigration violators and misrepresentation	212(a)(6)
Aliens present without admission or parole	(A)
Failure to attend removal proceedings	(B)

Misrepresentation/fraud	(C)(i)
False claim to U.S. citizenship	(C)(ii)
Stowaways	(D)
Smugglers of aliens	(E)
Subject of civil penalty for document fraud	(F)
Student visa abusers	(G)
Documentation requirements	212(a)(7)
No entry documentation (applies to immigrants at port of entry only)	(A)
Nonimmigrant not in possession of valid passport and nonimmigrant visa or border-crossing card	(B)
Ineligible for citizenship	212(a)(8)
Ineligible for citizenship in general	(A)
Draft evaders	(B)
Aliens previously removed and unlawfully present	212(a)(9)
Aliens previously removed	(A)
Aliens unlawfully present	(B)
Aliens unlawfully present after previous immigration violations	(C)
Miscellaneous	212(a)(10)
Practicing polygamists (applicable only to immigrants)	(A)
Guardian accompanying helpless alien (applicable only at port of entry)	(B)
International child abduction	(C)
Unlawful voters	(D)
Former citizens who renounced citizenship to avoid taxes	(E)
Foreign residence requirement for foreign exchange visitor	212(e)
Presidential proclamation suspending the entry of any class of aliens	212(f)
Failure to establish entitlement to nonimmigrant status	214(b)
Applications do not comply with the INA or related regulations	221(g)
Aliens in illegal status required to apply for new nonimmigrant visa in country of nationality	222(g)

Source: Appendix III, GAO -03-132NI Visa Process Should be Strengthened, 2001.

APPENDIX B

Selected Major Terrorist Attacks Against the U.S.

Sources: ITERATE Data Set (1968-2002), CIA International Terrorism Report (2005), and Quillen's (2002) "Mass Casualty Bombings Chronology"

1978/1979 – Series of political kidnappings and assassinations (Premier Aldo Moro, from Italy, and American Ambassador Adolph Dubs.) Iran Hostage Crisis takes place. CIA reports the year 1978 as the consolidation of America and Western Europe as main terrorism targets.

1983 – U.S. and French barracks, Beirut. Three Hundred people were killed. A powerful bomb destroys the U.S. embassy in Beirut. 63 people were killed.

1986 - TWA Flight 840.

1988 –Pam Am Flight 103 in Scotland with more than two hundred and fifty people killed.

1989 – UTA Flight 772 from Brazzaville to Paris. All one hundred and seventy people in the plane were killed.

1993- 13 bombs exploded in Bombay. Targeted were Bombay Stock Exchange, and other symbols of Westernized economic culture. 317 people died.

1995 – The largest terrorist attack in American soil up to this point, Timothy McVeigh and Terry Nichols, killing one hundred and sixty six people, conducted the Oklahoma Federal Building bombing. Hundreds of people were injured.

1996 – Attacks against U.S. increase in Colombia. Attack on Tel Aviv's largest shopping mall. Khobar Towers bombing outside U.S. Khobar military control base. Dozens of people were killed and hundreds were injured.

1998 – U.S. embassy bombings in East Africa. More than 200 people were killed. Osama bin Laden has been held responsible by the U.S.

2001 – World Trade Center and Pentagon incidents. Almost three thousand people were killed.

2002 – Kuta Beach, Bali. Bombings to nightclubs often packed with tourists from U.S., Australia and Europe. Two hundred and two people were killed.

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Professional Preparation:

Bacharel em Direito, University of Santa Cruz do Sul (UNISC), Rio Grande do Sul, Brazil, 2004

M.A., International Politics, Marshall University, WV, 2004 – present

Appointments:

Marshall University Equity Program Office Graduate Assistant, Marshall University, 2004 – present

Norberto Nardi Family Law Research Fellow, UNISC, 2003-2004

Internship Coordinator, Regional Prosecutor's Office, Rio Grande do Sul, Brazil, 1999-2001

Research Interest:

- Principle of social responsibility within the judicial process in different jurisdictions
- Comparative Law
- Immigration policy and Constitutionalism, immigration and terrorism, and immigration and Civil Liberties
- Public Charge clause and selection of immigrants
- Social sciences data analysis, data interpretation

Current Projects:

- Studying Correlations among Immigration Policy and economics and Immigration policy and terrorism
- Studying "The Likely to Become a Public Charge" clause and its power of restrictively select (M.A. thesis paper)

Publications:

- Morsch, C. (2005) *A Velha e a Nova Lei de Falencias sob o aspecto da responsabilidade social*, Vol.II. Serie Monografias Juridicas 10. Santa Cruz do Sul, RS, Brasil: Editora Padre Reus. [*The new and the old bankruptcy law under the aspect of the social responsibility principle*. Vol. II, Series Juridical Outstanding Monographs. Santa Cruz do Sul, RS, Brazil: Padre Reus Press.]

Other Activities:

- Executive Secretary, International Women Organization, Marshall University – MU, 2003 -- present
- Student Visitor, Lewis College of Business, Marshall University, 2002
- Business English Certificate, Bell Saffron Walden – England, 2000
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