IMMIGRATION LAWS OF THE UNITED STATES. By Frank L. Auerbach. Indianapolis: The Bobbs-Merrill Company, Inc., 1955. Pp. vii, 372. $8.00.

IMMIGRATION law, which in difficulty and technicality vies with the Internal Revenue Code, has not attracted any Corbins, Pauls or Moores. It is only because of the virtual virginity of the field that the profession must welcome Mr. Auerbach's conscientious paraphrasing of the McCarran Act [1] and the Regulations under it,[2] and his deadpan restatements of positions taken by the Immigration and Naturalization Service as "the law." The Act and the Regulations constitute such an unspeakable quagmire, treacherous even for the expert, that the non-expert will be grateful for the small mercies of a usable index, sensible sub-headings set in legible type and the chance of being able to find in one place the tenor of the Act, the Regulations and a number of decisions of the Board of Immigration Appeals.

It is likely, however, that even this modest measure of gratitude will be of short duration, for the Immigration authorities are tireless in amending the Regulations. No pocket supplement, for which the book under review provides space, can hope to keep up with their pace. Indeed, the abundance of these often trivial amendments to the Regulations is one of the main reasons why looking up immigration law is such a time-consuming and thankless task.[3] If Mr. Auerbach and his publisher could be persuaded to transform their book into a loose-leaf service that would spare us the tedium of hunting amendments of amendments of amendments through dusty back copies of the Federal Register—or, at best, of fitting our clippings of them into each sentence as it should read today—then the profession would be given an indispensable tool.

The reason why we are without such a tool is probably economic. Most people in need of legal advice on immigration problems are poor; the fees they can afford to pay do not support the kind of expensive and elaborate research aids which are taken for granted in tax, estates or securities law. This lack of a workable reference system is one of the technical, non-political weaknesses of our immigration system which is usually overlooked in the more exciting

1. The immigration and Nationality Act, 66 STAT. 163, 8 U.S.C. § 1101 (1952). The book also covers the Refugee Relief Act of 1953, 67 STAT. 400, 50 U.S.C. § 1971 (Supp. I, 1954).

2. 8 C.F.R. (1952); 22 C.F.R. (1949).

3. For example, the volume containing the Regulations under Title 8 of the U.S. Code, 8 C.F.R., was published in 1953, revised as of December 31, 1952. Since then § 2.5, *Fees for service, documents* . . . etc., has been amended seven times, on June 19, 1953; September 30, 1953; October 2, 1953; February 18, 1954; September 25, 1954; October 28, 1954; and June 1, 1955; § 9.2, *Authority of Assistant Commissioner, Inspections and Examinations Division*, has been amended six times, on August 19, 1953; August 22, 1953; September 30, 1953; October 27, 1953; March 2, 1954; and December 8, 1954; § 211.2, *Immigrants not required to present visas or passports*, has been amended five times, on June 19, 1953; September 30, 1953; February 18, 1954; December 24, 1954; and March 31, 1955. And so it goes; there is hardly a page in that volume that has remained unchanged. To comprehend the reason for these changes would sometimes tax even the most talmudic mind.

climate of political combat. However objectionable parts of the law may be in substance, at least as much human suffering and injustice is caused by the inability of aliens to find out what rights an imperfect law gives them as by the imperfections of the law itself. Would-be immigrants typically can obtain information about a law whose complexities appall the expert [4] only from visa officers of the State Department who have had no legal training.[5] And the incidence of misinformation emanating from other presumably authoritative sources in this field is, in the experience of this reviewer, great enough to jeopardize the decent application of the law.

A reliable loose-leaf service could do much to cure this state of affairs. And if private publishers cannot afford to publish one, the United States Government, which publishes an enormous amount of books and pamphlets, should do so. The cost would be relatively small, since the Immigration and Naturalization Service must surely keep an up-to-date text of the Regulations, and some interpretations and elaborations of them, for its internal use. There is no reason why these could not be made available to the public. And there are many reasons, apart from charity, why the government should do its utmost to promote understanding of the law. "The number of people involved in the problem [of obtaining temporary visitors visas] is probably small. . . . The international repercussions, however, are disproportionate to the number for the simple reason that the persons affected generally occupy prominent places in the social, commercial or intellectual life of their countries. Their opinions carry more than ordinary weight and their prejudices are likely to be more widely reflected in the views of the country's press and official documents."[6]

It is true that at best a government publication could give us only a slightly improved and up-to-date Auerbach. To produce the work that the profession really needs would probably require the efforts of a law school, and financing by a Foundation.

Such a work should make it clear on what authority statements of law are made, and differentiate between statutes, regulations, opinions held by the Immigration and Naturalization Service, and opinions held by the author. This the book under review fails to do. For instance, it is often a difficult question to determine who can be deemed "members of the immediate family" of a foreign diplomat or of a foreign official of an international organization. Neither the law nor the regulations help us any further than to say that the

4. "Even immigration experts are appalled at the complexities of the act of 1952, but to the non-expert this legislation is all but incomprehensible. A professor of law at one of the leading universities testified before the Commission that he was compelled to read one of the sections thirteen times before he thought he understood it." REPORT OF THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION 176 (1953).

5. "Thus, the Department of State has reported to the Commission that only 3 percent of visa officers have had legal training despite the fact that the visa issuing officer is required to deal with 'a great body of complex laws and regulations.' It is important to note that the consul's negative decision on a visa application is final and unreviewable." *Id.* at 132.

6. *Id.* at 66.

term "immediate" family means close relatives who are members of the same family by blood, marriage or adoption, and who are residing regularly in the household of the principal alien from whom they derive their subsidiary status.[7] Mr. Auerbach gives a neat list of relatives [8] which he introduces by the statement that "the following persons are held to be 'close relatives' of the principal alien and to reside regularly in the household of the principal alien." Presumably the "holding" he refers to is the unpublished opinion of the Visa Office of the Department of State, but there is nothing in the book that tells us so.

Far more important, the work we need should be analytical; unlike Auerbach it should not just mirror the many riddles of the Act but should, whenever possible, suggest solutions to them, or if the riddles are by their very nature unsolvable, should offer technical criticism and suggest amendments. To give one of many examples: One of the supposed improvements of the McCarran Act is that it contains a procedure for the adjustment of the status of non-immigrants to that of persons lawfully admitted for permanent residence as quota immigrants, without forcing the applicant for such a change to leave the country.[9] However, section 245 of the Act in which this purported reform has found its legislative expression subjects the would-be beneficiary of this legislative largesse to the following hazards:

(1) The quota or non-quota immigrant visa must be "immediately available . . . at the time of his application for adjustment";
(2) The applicant loses his non-immigrant status upon the filing of his application;
(3) The approval of his application is subject to the "discretion" of the Attorney General; and
(4) "A quota or non-quota immigrant visa [must be] . . . immediately available to him at the time his application is approved."[10]

Auerbach, as is his wont, faithfully repeats these provisions of the statute. He fails to give us any indication of how much time an applicant can expect to stay in the limbo of being without any status under the immigration law; *i.e.*, how much time he can expect the administrative trek from immigration officer to district director to, eventually, the regional commissioner will take. Nor does he tell us how often it may happen that a quota visa that was "immediately available at the time of application" may have ceased to be "immediately available" at the time the application may otherwise be ready for approval. Mr. Auerbach limits himself to stating the facts of life: "If the application for adjustment of status is finally denied, the Immigration & Naturalization Service has to take action required by law to effect the alien's departure from the United States since he is considered to be a non-immigrant who has failed to maintain his status."[11]

7. 22 C.F.R. § 41.30(d) (Supp. 1954).
8. P. 121.
9. See H.R. REP. No. 1365, 82d Cong., 2d Sess. 63 (1952).
10. 66 STAT. 217, 8 U.S.C. § 1255 (1952).
11. P. 210.

We need a non-political book that questions reforms such as these; that questions for what earthly reason the law should terminate the non-immigrant status of a harmless visitor before his application for a change of status is approved. Surely the Republic could survive the risk of having such a visitor stay out his allotted six months even if he has had the bad luck of finding his quota oversubscribed at the instant when the Attorney General exercises his discretion.

Finally, the work we need should relate the statute and the regulations to the existing body of case law. The bulk of the case law, it is true, deals with the law as it existed before December 1952. However, the McCarran Act has not changed the fundamental frame of discourse of our immigration laws, and court decisions under the old law remain enlightening for many purposes. Yet Mr. Auerbach's nod to the judiciary consists of nine Supreme Court citations in his 372 pages.[12]

This review has already referred to the damage flowing from the inability of ordinary people to obtain accurate information about the immigration laws. Equal damage is done by the many purely technical irrationalities of the Act.[13] Substantial improvements in our immigration laws and procedures could be achieved with less emphasis on the great policy issues they raise, such as the maintenance or abolishment of the national quota system, and greater efforts to do a conscientious job of technical, legal criticism and reform. For better or for worse, there seems to be passionate feeling on both sides of the political issues, and hence major reform must be preceded by education. Criticism of the technical weaknesses of the law should not arouse any passions and should be certain to be welcomed by dispassionate minds.

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PREPARING FOR THE UTILITY RATE CASE. By Francis X. Welch. Washington, D.C.: Public Utilities Reports, Inc., 1954. Pp. xi, 323. $10.00.

NOBODY, but nobody, whether lawyer, responsible executive, or expert witness, should allow his client, his company, or himself to become involved in a utility rate controversy without first reading Francis X. Welch's *Preparing for the Utility Rate Case.* This scholarly, provocative and eminently practical

12. In discussing deportation precedure Mr. Auerbach mentions the Administrative Procedure Act, but he does not mention the case of Wong Yang Sung v. McGrath, 339 U.S. 33 (1950). He limits himself to informing us that both the Board of Immigration Appeals and the Conference Report on the Act consider the Immigration and Nationality Act "within the pattern" and meeting "the standards of the Administrative Procedure Act." Pp. 239, 240. *Cf.* the recent case Shaughnessy v. Pedreiro, 349 U.S. 48 (1955), holding § 10 of the Administrative Procedure Act applicable to deportation orders, and quoting the late Senator McCarran as authority for the holding. *Id.* at 52.

13. "It is well that we should be free to rid ourselves of those who abuse our hospitality; but it is more important that the continued enjoyment of that hospitality once granted, shall not be subject to meaningless and irrational hazards." L. Hand, J., in Di Pasquale v. Karnuth, 158 F.2d 878, 879 (2d Cir. 1947).

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