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ARTICLE: The Right to Family Reunification in the Immigration Law of the Commonwealth Caribbean and the United States: A Comparative Study

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LEXISNEXIS SUMMARY:
... In countries with a large immigrant population, protection of family has acquired a new dimension, family reunification of immigrants. ... Under the Immigration and Nationality Act of 1990 ("the 1990 Act"), the principal source law of U.S. immigration law, and under laws of the Commonwealth Caribbean, grant of an immigrant visa amounts to grant of permanent residence, and the terms "immigrant" and "permanent resident," as used in the statutory language, are in essence interchangeable. ... Laws of the Commonwealth Caribbean set forth three main bases for obtaining permanent residence: (i) family reunification, or family-sponsored immigration; (ii) employment-related immigration; and (iii) absolute discretion of the government. ... Even The Bahamas, where family-sponsored immigration is extremely limited, recognizes the right of the alien spouse to obtain permanent residence. ... The right to join the permanent resident is restricted to the wife of the alien husband admitted for permanent residence on the third base for immigration, a discretion of the government. ... Unlike the Trinidadian immigration law, the law of Barbados provides that the child-parent relationship does not entitle the alien child to a status of permanent resident directly. ... As in the case of children, Barbadian law provides that the alien parent or grandparent may be admitted only in an intermediate category of immigrant. ...

TEXT:
[*177] INTRODUCTION

[*178] In the modern era of legal globalization, protection of family--traditionally, an area in the domain of national law--has become a matter of international law concern. This matter is directly addressed by the United Nations' Universal Declaration of Human Rights, n1 an authoritative source of customary international law, which proclaims:

"The family is the natural and fundamental group unit of society and is entitled to protection by the society and the State." n2 In countries with a large immigrant population, protection of family has acquired a new dimension, family reunification of immigrants.

The nations of the Americas have been historically characterized by numerous similarities, and the United States with its southern neighbor, the Commonwealth Caribbean, n3 are no exception. In addition to geographic proximity, the two nations share a lot of historical and social patterns. Thus both originally emerged as dependencies of the British crown; both are English-speaking; and both were formed as a result of intensive immigration process and ethnic fusion taking place throughout the last three hundred years of their history. An important element of this process was reunification of the new-comers with their families. The United States and the Commonwealth Caribbean jurisdictions have all enacted laws regulating immigration. But do these laws protect aliens' rights to family reunification, and do they conform with internationally recognized principles of protection of family?

This article examines immigration laws of the Commonwealth Caribbean and U.S. as they relate to each particular category of [*179] family members--spouses, children, parents and grandparents, and siblings; a similar comparison is made for various jurisdictions within the Commonwealth Caribbean. This article argues that in principle both legal systems afford immigrants the right to family reunification. Nonetheless, some deficiencies, such as unequal treatment of spouse in the Commonwealth Caribbean and lack of protection to grandparents in the United States, continue to persist. Further, the two systems differ in many respects. Thus with regard to spouses and--to some extent, children--these differences are determined by the greater impact of traditional English common law doctrines on Commonwealth Caribbean legal systems. Laws relating to parents, grandparents and siblings are influenced by particularities of the Caribbean and American family structures.

Novelty of the subject n4 always presents a challenge to the researcher, yet in the case of this subject, such a challenge is complicated by a conspicuous scarcity of source materials. Commonwealth Caribbean immigration case law is confined to some thirty cases, most of which involve deportation matters, n5 [*180] and family reunification questions have never been litigated in Commonwealth Caribbean jurisdictions. Because of the absence of case law and the unavailability of legislative materials, this study will be based mainly on statutory law.

As of 1995, all Commonwealth Caribbean legislatures have passed laws regulating immigration. n6 However, only three [*181] countries--The Bahamas, Barbados, and Trinidad and Tobago--have comprehensive laws governing family reunification. Accordingly, this study will focus on those jurisdictions, making limited references, as appropriate, to other jurisdictions.

I BASES FOR IMMIGRATION: GENERAL COMPARISON

Under the Immigration and Nationality Act of 1990 n7 ("the 1990 Act"), the principal source law of U.S. immigration law, and under laws of the Commonwealth Caribbean, grant of an immigrant visa amounts to grant of permanent residence, and the terms "immigrant" and "permanent resident," as used in the statutory language, are in essence interchangeable. n8 The only exception to this rule is Barbadian law, where an immigrant status is a pre-requisite to a status of permanent resident. n9

[*182] Laws of the Commonwealth Caribbean set forth three main bases for obtaining permanent residence: (i) family reunification, or family-sponsored immigration; n10 (ii) employment-related immigration; n11 and (iii) absolute discretion of the government. n12 The first two bases are present in the United States law, n13 being--as in the Commonwealth Caribbean--the traditional routes of obtaining permanent residence. Significant distinctions between immigration laws of the two regions arise with respect to nontraditional bases for obtaining permanent residence, reflecting historical particularities and the scope of immigration into these regions. Thus a third major immigration route under the 1990 [*183] Act--a diversity immigration program, n14 popularly known as a "green-card lottery"--is unique to the United States and nonexistent in the Commonwealth Caribbean. n15

Under the U.S. law of permanent residence, special rules apply to refugees and asylees. Although grant of a refugee status or asylum to an alien does not automatically assume grant of permanent residence, the law views such an alien as a potential permanent resident. n16 The Commonwealth Caribbean have not been in a position politically or economically to provide asylum to aliens persecuted in their home countries. Accordingly, no asylum laws have been enacted in the Commonwealth Caribbean jurisdictions. n17

Another feature distinguishing Commonwealth Caribbean immigration law from the U.S. immigration law is the discretionary grant of permanent residence, a third major base for immigrating into the Commonwealth Caribbean. Actively [*184] employed by the early U.S. immigration law, n18 this base is an archaic legal device allowing the alien to immigrate regardless of the alien's employment prospects or regardless of whether or not the alien has family in the receiving country. n19 The basic requirement for admission in this category is that the alien must not be an excludable, or prohibited, one. In addition, the law of The Bahamas, for instance, requires that the alien (i) be not less than eighteen years old, (ii) be "of good moral character," and (iii) intend to reside in the country permanently. n20

Unlike in the United States, where grant of permanent residence automatically affords the alien a right to work, n21 aliens granted permanent residence in that category are not necessarily entitled to employment authorization. n22

[*185] **II FAMILY-REUNIFICATION LAWS: GENERAL TRENDS**

As the receiving country is not economically capable of admitting all aliens willing to immigrate, the law inevitably has to face the unpleasant task of favoring some family members over others in family reunification matters. The 1990 Act affords the highest priority to citizens' "immediate relatives," the category exempt from numerical limitations on annual admission. n23 The category of immediate relative includes spouses, children, n24 parents, and certain widows and widowers. n25

Apart from these aliens, the following four preference categories are designated: (i) unmarried sons and daughters of citizens, (ii) spouses and unmarried sons and daughters of permanent residents, (iii) married sons and daughters of citizens, (iv) brothers and sisters of citizens. n26

While essentially the same categories of family members are eligible for permanent residence in Commonwealth Caribbean jurisdictions, laws of the Commonwealth Caribbean are characterized by several particularities. First, immigration law of some jurisdictions treats spouses unequally: citizen husbands may confer more rights on their alien spouses than citizen wives [*186] can; conversely, alien wives are afforded more protection than alien husbands are. n27 Second, unlike the U.S. law, law of the Commonwealth Caribbean allows grandparents to immigrate as family members. n28 Third, contrary to the U.S. law, law of the Commonwealth Caribbean does not deem siblings to be family members for family reunification purposes. n29

Under the 1990 Act, aliens who are relatives of permanent residents are somewhat disfavored over the U.S. citizens' familymembers. Only one preference category, including spouses and unmarried sons and daughters, has been designated for such aliens. n30 While immediate relatives of citizens are given the highest priority in immigration, three additional preference categories have been set aside for family members of citizens. n31

For the purpose of family reunification, some Commonwealth Caribbean countries have adopted a liberal policy of equating relatives of citizens with those of permanent residents. Thus in Trinidad and Tobago, spouses, minor children, parents, and grandparents of both citizens and permanent residents equally qualify for immigration. n32 Such an approach may be explained by the fact that, in the Commonwealth Caribbean, aliens' opportunities to acquire citizenship are extremely limited. The right to citizenship is guaranteed by a constitution, and the scope of individuals eligible for citizenship is essentially confined to those born in the country, n33 children of citizen parents, n34 citizens [*187] of the British Commonwealth, n35 and spouses of citizens. n36 Given this narrow availability of citizenship, constraining rights of permanent residents to reunify with certain family members would have absolutely prevented the reunification.

Contrarily, the 1990 Act offers the permanent resident a broad path of acquiring citizenship through naturalization. Generally, upon maintaining a lawful domicile in the United States for five years n37 (or, the in case of alien spouses of citizens, for three years), n38 the permanent resident may obtain citizenship and thereafter bring to the country his or her family members. Thus restrictions on the permanent resident's ability to reunify with the parent, married son or daughter, and brother or sister are viewed as temporary.

While the legislature of Trinidad and Tobago has adopted a fairly liberal approach to family reunification, some Commonwealth Caribbean countries significantly curtail the scope of family members--whether citizens' or permanent residents'--permitted to immigrate. Thus in The Bahamas the only category of aliens eligible for permanent residence is spouses of citizens. n39

An important difference between the immigration legislation of the United States and that of the Commonwealth Caribbean pertains to the extent of government's discretion in granting permanent residence to qualifying aliens. Under the 1990 Act, the alien who is an immediate relative of a U.S. citizen or who [*188] has obtained classification in one of four preference categories must be admitted, unless such alien is found excludable. In the Commonwealth Caribbean, the right of a qualifying family member to immigrate is not absolute; admission of such alien is in the discretion of the government. n40

Historically, the U.S. immigration law was not as favorable to family reunification as it is today. Under the Immigration Act of 1924 ("The 1924 Act"), alien husbands of citizens were not eligible for non-quota immigration; n41 no preference was designated for family members of permanent residents, for citizens' brothers or sisters, and for married children of citizens. n42

The lack of grounds for family-sponsored immigration was not as detrimental as it would have been today because the admission of immigrants was based on fundamentally different principles, which provided for an ample reciprocal immigration route, analogous to discretionary grant of permanent residence in some Commonwealth Caribbean jurisdictions. Prior to 1924, every alien who was not found excludable could be admitted into the United States. n43 Preserving this principle, the 1924 Act subjected admission of immigrants n44 to annual quotas prescribed on a pernationality basis. n45

[*189] As in the then United States, narrow limits of family reunification laws of some Commonwealth Caribbean jurisdictions do not necessarily preclude the alien from immigration. Thus in The Bahamas the want of grounds for family-sponsored immigration is counterbalanced by the provision authorizing discretional grant of permanent residence by the Board of Immigration. n46

A significant difference between the U.S. and Commonwealth Caribbean family reunification policies is that systems of visa selection in these two regions are based on completely different principles. Under the 1990 Act, family-sponsored immigrants, except for immediate relatives of U.S. citizens, are subject to an overall annual cap. Beginning October 1, 1994, n47 the number 480,000 is used as a base in the computation of this cap. n48 This number may be modified by some differentials, n49 but it may not be less than 260,000. n50 In addition to imposing an overall annual [*190] cap, the law imposes annual limitations on admission of each family-preference category. n51

These limitations are caused by the realities of United States, which probably accepts annually more immigrants than any other country in the world. Since only a portion of aliens qualified or willing to immigrate may be accepted, the imposition of numerical caps and designation of preferences are intended to restrict the in-flow of aliens, preventing immigration from becoming chaotic, and--with regard to employment-based immigrants--to apportion issuance of visas in accordance with demands of the domestic labor market.

Compared to the United States, the number of aliens granted permanent residence in the Commonwealth Caribbean is minuscule. Unlike the United States, the Commonwealth Caribbean countries may accept all individuals qualifying for admission, which precludes the need for visa allotment.

III SPOUSES

Spouses are the most favored category of family-sponsored immigrants both in the United States and the Commonwealth Caribbean. Even The Bahamas, where family-sponsored immigration is extremely limited, recognizes the right of the alien spouse to obtain permanent residence. n52 Comparison of the rules pertaining to this category exhibits cardinal differences between laws of family-sponsored immigration in the two regions. In many Commonwealth Caribbean jurisdictions, principles governing grant of permanent residence to the spouse are based [*191] on the traditional common-law doctrines favoring men over women. The result of this pro-male policy is that citizen husbands are afforded more rights--or subjected to less restrictions--to reunify with their spouses than citizen wives are.

The U.S. immigration law explicitly prohibits discrimination on account of sex. n53 A gender-neutral treatment of spouses was introduced by the 1924 Act, which provided that wives and husbands of citizens may be admitted for permanent residence within the established quotas if citizens are over the age of twenty-one. n54 The 1990 Act categorizes citizens' wives and husbands as immediate relatives, who are eligible to immigrate irrespective of annual numerical limitations. n55 Furthermore, spouses of U.S. permanent residents may qualify for admission in the second preference category and are thereby afforded a higher priority than certain relatives of citizens. n56

Under the law of The Bahamas, the citizen spouse may petition for a certificate of permanent residence on behalf of the alien spouse, provided that the spouses are not legally separated or do not live apart under a court decree. n57 Nonetheless, the citizen wife, unlike the citizen husband, is subjected to special restrictions: she may petition for such certificate for her husband only after they have lived together for a continuous period of five years. n58 Since no provisions entitling the alien husband to immigrate have been enacted, it is unclear how the spouses, [*192] unless they reside in a foreign country, may ever satisfy the five-year-living requirement.

The pro-male orientation of the Bahamian immigration legislation is also evidenced with regard to the rights of the alien spouse accompanying to join the permanent resident. The right to join the permanent resident is restricted to the wife of the alien husband admitted for permanent residence on the third base for immigration, a discretion of the government. n59 Under the 1990 Act, the wife and the husband of the alien permitted to immigrate have an equal right to accompany or follow to join such alien. n60

Unlike The Bahamas, for the purposes of family reunification, Trinidad & Tobago does not distinguish between the husband and wife, giving alien spouses of citizens and those of permanent residents equal rights to immigrate. n61 As in The Bahamas, the right of the alien spouse to be admitted for permanent residence is in the discretionary of the Board of Immigration, n62 while under the 1990 Act admission is guaranteed to such alien.

The legislature of Barbados allows for the alien wife, who under the constitution is entitled to citizenship, to be registered as a permanent resident. n63 Likewise, the citizen wife may confer permanent residence on the alien husband. n64 Nonetheless, the Barbadian immigration laws are not completely gender-neutral, and the pro-male approach does manifest itself in several instances.

[*193] First, while any citizen husband may petition for permanent residence on behalf of his alien wife, the citizen wife's right to confer permanent residence on the alien husband is restricted to a wife who has acquired citizenship at birth or by descent. n65 This limitation excludes citizen wives who have become citizens on other grounds, such as naturalization by virtue of being a citizen of the British Commonwealth. n66 Likewise, a woman who has obtained citizenship by virtue of being married to a citizen n67 and subsequently gets divorced and re-marries is implicitly precluded from conferring permanent residence on her new husband.

Second, while marriage to a Barbadian man entitles the alien wife to acquire citizenship n68 or permanent residence, n69 marriage to a Barbadian woman merely confers on the alien husband a conditional right to be registered as a permanent resident; n70 the citizen wife may not confer citizenship on her husband. n71

Third, the alien wife's right to obtain permanent residence or citizenship by virtue of being married to the citizen husband is constitutionally derived and practically unconditional. n72 However, the right to permanent residence, conferred on the alien husband by the citizen wife, is subjected to certain conditions and is at the discretion of the government. A minister responsible for immigration may refuse to admit the alien husband for permanent residency if, in the minister's opinion, the alien husband has been [*194] involved in activities "prejudicial to the safety of Barbados or the maintenance of law, public order and good government in Barbados." n73 Overly vague, this ground for refusal may significantly impair the citizen wife's right to reunify with the alien husband.

While U.S. immigration legislation has a long-standing tendency favoring immigration of husbands and wives, the 1990 Act broadened marriage-related immigration grounds. A new provision was introduced enabling alien widows and widowers of citizens to obtain permanent residence in the immediate-relative category. n74 To qualify, the alien must have been married to the citizen for at least two years at the time of the citizen's death. n75 Recognizing that it would be unfair to deny the alien spouse a right to which the alien would have been entitled had it not been for the death of the citizen spouse, the provision expands a Congressional policy giving spouses a priority in immigration.

No laws providing for immigration of widows or widowers have been enacted in the Commonwealth Caribbean. Given the pro-male orientation of the Commonwealth Caribbean immigration laws, such provisions would be inconceivable. As discussed above, the citizen wife may only confer lesser rights on the alien husband. As to the alien wife, her right to immigrate is viewed as benefiting primarily the husband; death of the husband nullifies that right, affording the widow no remedy.

The pro-male standards of immigration legislation are deeply rooted in the Caribbean legal tradition. On one hand, they are an inheritance from an outdated common-law view projecting husband as a "bread-winner"; n76 on the other hand, they reflect the reality of Caribbean societies, in which men have dominated [*195] economically and in which the man's ties with the family have been historically weak. n77

A gender-preferential treatment of citizen spouses has been a stage undergone by English and American early immigration laws. In England, only the citizen husband could confer citizenship on the alien spouse. n78 Likewise, early naturalization laws of the United States did not view a marriage to the naturalized wife as a relationship entitling the alien to obtain citizenship. n79 Moreover, an American woman marrying a foreign citizen was deemed a foreign subject and could resume her U.S. citizenship only upon termination of the marriage. n80

While Commonwealth Caribbean immigration laws discriminating against women are unfair on their face, they are premised on erroneous notions that fail to recognize changes in the woman's social status. As social realities have invalidated the traditional stereotype that confines a woman's role to that of a housewife, immigration laws of the United States and England have become gender-neutral. In the Caribbean, this stereotype has been historically stronger, and men have been assumed to be heads of households in all main types of Caribbean family unions--married, common-law, and visiting. n81 This assumption [*196] is partially explained by the fact that men remain the main source of income in the Caribbean family and Caribbean society in general; n82 contrarily, the most common employment status of women is housewife. n83 Nonetheless, male headship is not absolute, and female-head households play an important role in the Caribbean family structure. n84 Studies show that the number of women identified as the main source of income is only half as large as the number of men. n85 However unpersuasive these statistics may be for Commonwealth Caribbean legislatures, discrimination on the basis of gender explicitly contradicts a notion of a democratic state.

Recognizing this contradiction, some legislatures have taken steps to equalize men and women in immigration matters. Thus the new constitution of Guyana, adopted in 1980, conferred the right to acquire citizenship both on alien husbands and alien wives, n86 whereas in the old constitution such right was restricted [*197] to alien wives. n87 Similar constitutional amendments permitting the citizen wife to confer citizenship on the alien husband are being entertained by the Barbadian legislature. n88

While the revised immigration laws do proclaim that "all forms of discrimination against women on the basis of their sex are illegal," n89 the implementation of this principle is often ineffective. In immigration matters, legislatures and courts are still likely to treat spouses unequally, relying on traditional notions of male supremacy and "romantic paternalism."

This reliance is illustrated by the holding of the Court of Appeal of Guyana in *Nielsen v. Barker*. n90 In *Nielsen*, citing to Guyana's Immigration Act n91 , an alien husband claimed that he should be deemed "to belong to Guyana" by virtue of being a "dependent" of a Guyanese citizen. n92 Recognizing that Guyanese matrimonial legislation views the wife as the husband's dependent, the court, nonetheless, held that the term "dependent" may not be construed to include the husband and dismissed the alien's claim. n93

Apart from being inherently unfair, the pro-male immigration laws adversely affect the Caribbean family structure. n94 [*198] Restricting the ability of the citizen wife to reunify with the alien husband, these laws essentially discourage intermarriages and impair the intermarried family's potential to survive.

Familial problems of the Caribbean countries are notorious. An extremely high rate of illegitimate births, n95 which has been gradually growing, n96 a low percentage of marriages n97 , and the historically weak role of the father in the family n98 have been principal characteristics of the Caribbean family structure. Numerous theories have been offered suggesting that these characteristics may be attributed, *inter alia*, to the influence of [*199] the African family tradition, n99 slavery conditions of the past, n100 color attitude, n101 or economic factors. n102 None of the theories addressing the issue, however, has been completely satisfactory. Yet, whatever the cause of Caribbean family patterns is, in light of the realities of Caribbean family patterns, with almost 40% of women being not married n103 and the majority of children being born out of wedlock, the gender-preferential immigration policies of Commonwealth Caribbean legislatures appear irrational and detrimental to the family structure.

IV CHILDREN

Children are another major category of family members entitled to obtain permanent residence under the U.S. and Commonwealth Caribbean laws. In general, as in the case of spouses, the scope of qualifying alien children under the 1990 Act is broader than under Commonwealth Caribbean laws, and the principles governing immigration of alien children into the United States are less restrictive than corresponding principles in the Commonwealth Caribbean jurisdictions.

The 1990 Act includes children of the U.S. citizens into a category of immediate relatives eligible for non-quota immigration. n104 To qualify as a "child," the alien must be [*200] unmarried and under the age of twenty-one. n105 Furthermore, the child must fall into one of six subcategories set out in the 1990 Act: (i) legitimate children; (ii) legitimate or illegitimate stepchildren, provided that the step relationship is established before the child attains the age of eighteen; (iii) children legitimated under the law of the child's or father's residence, provided that the legitimation takes place before the child attains the age of eighteen; (iv) illegitimate children of natural parents; n106 (v) adopted children who were adopted before the age of sixteen; n107 (vi) certain orphans under the age of sixteen. n108

Laws of the Commonwealth Caribbean do not give a detailed definition of a "child" (an exception is The Bahamas, where--essentially as in the United States--a "child" has been interpreted to include legitimate children, stepchildren, and legitimated children n109), and it is unclear whether alien children other than legitimate children may be admitted for permanent residence. Given an extremely high illegitimacy rate, Commonwealth Caribbean jurisdictions tend to eliminate legal distinctions between citizens' legitimate and illegitimate children. n110 [*201] Arguably, this legal policy implies that the right of the citizen's "child" to immigrate applies equally to the child born out of wedlock. It is unclear, however, whether the same principle applies to illegitimate children born outside the country to noncitizens.

Under the 1990 Act, citizens' children or permanent residents' children who are not married but who are over twenty-one years old may be certified as "unmarried sons" or "unmarried daughters" in the first and second family

preference category, respectively. n111 Likewise, the citizen's married child over twenty-one may be certified in the third preference category as the "married son" or "married daughter." n112 The law treats children of citizens more favorably insofar it provides that married children of permanent residents do not qualify for admission.

In The Bahamas and Barbados, the age limit of qualifying children has been set at eighteen, not twenty-one as under the 1990 Act. n113 The permanent resident's child over eighteen is automatically precluded from immigrating. n114 The legislature of Trinidad and Tobago appears to relax the age requirement, providing that the child of the citizen or of the permanent resident may immigrate if "such child is a minor *or* is dependent on and living with his parents." n115 The use of "or" implies that in order [*202] to qualify for permanent residence, the child does not have to be a minor; rather, the child of any age qualifies so long as the child, being dependent on the parents, resides with them. Standing out among laws of other Commonwealth Caribbean jurisdictions, the eligibility standards of Trinidadian legislation are even broader than those under the 1990 Act, which limits immigration of permanent residents' children only to unmarried sons and daughters. n116

Compared to Trinidadian law, Barbadian immigration legislation is more restrictive and more conservative. As in the case of spouses, the rules governing immigration of citizen's children are based on traditional common-law pro-male principles. Thus, if the child is born outside Barbados to the citizen mother, the mother may confer only permanent residence on such a child. n117 Contrarily, the father has a constitutional right to confer citizenship on his child. n118

Unlike the Trinidadian immigration law, the law of Barbados provides that the child-parent relationship does not entitle the alien child to a status of permanent resident directly. Thus the child of permanent resident may obtain permanent residence only by going through a transitional immigrant-category path. n119 The child may be admitted as an immigrant under the condition that the parent will provide for the child's care and maintenance. n120 Only upon having resided in Barbados for five years as an immigrant, the child may be granted permanent residence. n121

[*203] **V PARENTS AND GRANDPARENTS**

In the Commonwealth Caribbean, this category of family members is much broader and plays a far more important role than under the 1990 Act. The laws pertaining to immigration of parents and grandparents display unique features of traditional Caribbean family patterns; hence significant differences between the Commonwealth Caribbean's and U.S. laws concerning this category.

The U.S. immigration law has never been deemed grandparents to be family members. n122 Parents, however, qualified for quota immigration in a family preference category under the 1924 Act and under the Immigration and Nationality Act of 1952 ("The 1952 Act"). n123 The 1990 Act treats parents of citizens as immediate relatives, who are not subject to numerical limitations on admission. n124 Alien parents may be admitted, however, only if citizen children are over twenty-one years old. n125 Parents whose citizen children are under twenty-one, and parents of permanent residents are not eligible to immigrate. n126

Two Commonwealth Caribbean jurisdictions--Barbados and Trinidad and Tobago--have laws relating to immigration of [*204] parents and grandparents, n127 the law of Barbados being more restrictive. In Trinidad and Tobago, parents and grandparents of citizens and those of permanent residents equally qualify as family members. n128 Contrarily, the law of Barbados restricts immigration in this category to parents and grandparents of citizens. n129

Unlike in the United States, in neither of these two jurisdictions, are the rights of parents or grandparents to immigrate conditioned upon the age of citizens; however such rights may be subject to reciprocal restrictions. Thus under the laws of Barbados and Trinidad and Tobago, the parent or grandparent may immigrate to reunify with the child or grandchild if such a child or grandchild (i) resides in the country and (ii) "is willing and able to provide for the care and maintenance of that parent or grandparent." n130

By limiting the support requirement, the residency requirement purports to emphasize that the sole purpose of the

provision is to ensure family reunification. Permitting parents or grandparents whose children or grandchildren reside outside the country to immigrate would defeat that purpose. The requirement of support is in essence reciprocal to the age requirement of the 1990 Act's corresponding provisions: only the adult child or grandchild, not the infant, may be physically and economically capable of providing care and maintenance for the adult family member.

The language of the provision gives rise to some ambiguity. The plain reading of the source-of-support clause, which [*205] prescribes that aliens be supported by their children or grandchildren, suggests that support from any other individuals, including parents or grandparents themselves, is banned. The rationale behind the support requirement is to ensure that aliens do not "become charges on public funds." n131 To deny admission to the alien who has means of support merely because the support is not provided by specific individuals designated by law is inconsistent with that rationale. It is the availability of support that should control; the source thereof is irrelevant. As in the case of children, Barbadian law provides that the alien parent or grandparent may be admitted only in an intermediate category of immigrant. n132 Upon residing in the country for five years as an immigrant, such alien may be granted a status of permanent resident. n133 Under Trinidadian law, which does not distinguish between a status of immigrant and status of permanent resident, the qualifying parent or grandparent may be admitted directly as a permanent resident. n134

Treating grandparents as family members for immigration purposes stems from particularities of Caribbean family life, in which grandparent households--namely, grandmother households--have historically played an especially important role. n135 In a sense, such households emerged in response to traditional deficiencies of the Caribbean family structure. Given an immensely high illegitimacy rate and the father's weak ties to the family, grandmother households have functioned as a substitute to two-parent families when one or both parents are absent. n136 As a result, a significant portion of infants (according [*206] to some studies, about one third) live with and are raised by their grandmothers. n137 In view of the traditional importance of the grandmother's role in the Caribbean family--a role which does not have a parallel in the American family structure--affording grandparents, along with spouses, children, and parents, the right to family reunification appears legitimate.

VI SIBLINGS

In the immigration law of the Commonwealth Caribbean and of the United States, categories of siblings and grandparents are somewhat dichotomous. Under the 1990 Act, brothers and sisters of citizens--unlike grandparents--may be admitted for permanent residence in the fourth preference category, provided that citizens are over the age of twenty-one; n138 no right to immigrate is afforded to brothers and sisters of permanent residents. Law of the Commonwealth Caribbean does not treat siblings as relatives eligible for family-sponsored immigration.

As in the case of grandparents, differences in the treatment of siblings are attributable to the significance placed on this category of family members in American and Caribbean societies. However pragmatic the argument may be, it appears that in the two regions such significance is determined merely by a quantitative factor. In the United States, the average number of births that a woman may give during the fertility period is more than half as much as in most of the Caribbean countries: 2.58 n139 [*207] children in the United States compared to 5.7 children in non-Indian families and 6.5 in non-Indian families in Trinidad and Tobago, n140 the figures being representative for other Commonwealth Caribbean countries. n141 These statistics determine differences in the number of siblings an individual may have during the lifetime: 1.58 in the United States as opposed to 4.7 or 5.5 in Trinidad and Tobago.

The number of siblings dictates the importance which society places on siblings as a family-member category and determines the level of protection afforded to alien siblings by the laws of the United States and the Commonwealth Caribbean: the former recognizes them as family-sponsored immigrants, the latter does not.

Interestingly, the 1924 Act excluded siblings from a category of alien family members entitled to the admission either as non-quota or quota immigrants. n142 The lesser importance placed on this category at that time was determined by the tradition of a [*208] multi-child family: in the pre-WWII period, the number of children ever born

to women between forty-five and forty-nine years old averaged at 8.9. n143 As the average number of births gradually declined, the society attached more significance to the sibling relationship, and the 1952 Act extended family reunification protection to brothers and sisters of citizens. n144

CONCLUSION

Although neither the United States' nor Commonwealth Caribbean courts have recognized that the alien has a constitutional right to family reunification, n145 the importance of this goal is evidenced by numerous provisions authorizing the immigration of family members.

The 1990 Act and Commonwealth Caribbean immigration acts vary as to what categories of alien family members qualify to immigrate under what conditions. Furthermore, certain differences in defining a "family member" arise within Commonwealth Caribbean jurisdictions.

Family-reunification laws of the Commonwealth Caribbean are characterized by a strong influence of traditional common-law [*209] doctrines and reveal peculiarities of the Caribbean family structure. While spouses are the most favored category of family members both in the Commonwealth Caribbean and the United States, Commonwealth Caribbean's laws regulating immigration of spouses are to a large extent pro-male and afford more rights to citizen husbands than to citizen wives. Such a policy has an adverse affect on Caribbean family life.

With regard to children, U.S. laws set forth broader grounds for immigration of alien children than laws of the Commonwealth Caribbean do. In principle, rules concerning parents are similar in the two regions.

Unlike in the United States, immigration law of the Commonwealth Caribbean jurisdictions afford grandparents the right to family reunification, thereby recognizing a significant role that grandparents have played in the Caribbean family structure.

Contrary to grandparents, siblings are not deemed to be family members under immigration law of the Commonwealth Caribbean, while under the U.S. law they have a right to family reunification. A different treatment of siblings in the two regions is explained by different degrees of importance attached to this family category in family structures of the United States and the Commonwealth Caribbean.

Unlike the United States, some Commonwealth Caribbean jurisdictions have adopted a policy of equating relatives of citizens and those of permanent residents. This equation compensates permanent residents for a narrow availability of legal paths to acquiring citizenship.

Commonwealth Caribbean jurisdictions vary as to a degree of protection afforded to alien family relatives. The approach of the legislature of Trinidad & Tobago most closely approximates that of the U.S. Congress. Barbadian immigration legislation is more restrictive and significantly affected by traditional common-law principles. In The Bahamas, bases for family reunification are even more scarce.

Under the U.S. law, the qualifying alien family member is entitled to immigration. In the Commonwealth Caribbean, this [*210] right is not absolute; admission of qualifying aliens is in the discretion of the government.

In general, the U.S. family reunification laws are more congruent with the present-day social realities and afford more protection to the aliens' families. Contrarily, while certain aspects of the Commonwealth Caribbean's corresponding laws are more liberal, the approach of the Commonwealth Caribbean jurisdictions to family reunification--arguably, with an exception of Trinidad and Tobago--is more restrictive.

In principle, immigration laws of the two systems protect aliens' right to family reunification, thereby conforming to the spirit of international customary law principles that protect the family. The law is a process, however, and the notion of perpetuity is incompatible with this process. Yet, in both the United States and the Commonwealth Caribbean,

immigration law is more susceptible to socio-economic and especially political changes than any other legal area. Further, aliens are protected less than other social groups from an obsolete maxim, "Legislature giveth, and the Legislature taketh away." To illustrate, in spring 1996, an earlier draft of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 n146 sought, *inter alia*, to reduce categories of aliens eligible for family-sponsored immigration. Thus the draft proposed to preclude aliens from reunifying with their U.S. citizen siblings. n147 Fortunately, the proposal has never become law, and the grounds for family reunification have remained intact under the new act. However, with strengthening of xenophobic tendencies in the U.S., as evidenced by the passage of Proposition 187 in California and an attempt to introduce a similar measure in Florida in 1996, sponsors of anti-immigrant legislation may be more successful next time.

[*211] Laws of the United States and Commonwealth Caribbean commendably afford aliens the right to family reunification. However, further safeguards are necessary to ensure that this right will be preserved. A firmer commitment of legislatures to international customary law and, ultimately, the constitutionalization of this right will provide such a safeguard.

APPENDIX

Selected Commonwealth Caribbean Laws Relating to Family Reunification

I BAHAMAS

Immigration Act, ch. 179 (Bah.).

Part IV. Certificate of Permanent Residence.

§ 13(1) The Board [of Immigration] may, in its absolute discretion upon application being made in the prescribed form and on payment of the prescribed fee, grant a permanent residence to any person who--

[*212] (a) is not less than eighteen years of age;

(b) is of good moral character; and

(c) in his application has stated his intention of residing permanently in The Bahamas.

(2) A certificate granted under subsection (1) of this section may be made subject to such conditions as the Board may impose, including, without prejudice to the generality of the foregoing, a condition that the applicant shall not engage in any gainful occupation without a permit issued in respect of this employment under section 29.

§ 14(1) Notwithstanding section 13 where the person applies under that section for a permanent residence certificate and that person, at the date of the application--

(a) is married to a citizen of The Bahamas;

(b) is not a citizen of The Bahamas or a permanent resident;

(c) is not living apart from the other party to the marriage under a decree of a court or under a deed of separation;

(d) being a husband, has so lived continuously with the other party to the marriage for a period of no less than five years, the Board may, in its absolute discretion, grant a certificate under section 13 to the applicant and where a certificate is granted it shall not contain any condition restricting the right of the holder to engage in gainful employment.

(2) A person may be granted a certificate of permanent residence under this section notwithstanding that he has not

attained the age of eighteen years.

(3) The making of an application by a person who comes within the provisions of this section for a certificate of permanent residence under section 13 shall not prejudice any application previously made by that person for registration as a citizen of The Bahamas.

§ 15(1) When a permanent residence certificate is granted under section 13, the Board may, in its absolute discretion, then, or on a subsequent application in the prescribed form, endorse the [*213] certificate to apply to the wife or any dependent child of that person ordinarily resident with him

(2) Any endorsement under subsection (1) of this may be made subject to such conditions as the Board may impose, including, without prejudice to the generality of the foregoing, a condition that the wife or dependent child, as the case may be shall not engage in any gainful occupation without a permit issued in respect of that employment under section 29.

II BARBADOS

Immigration Act, ch. 190 (Barb.).

Part II. Entry into Barbados.

§ 5(1) A person to whom section 3 or 6 of the Constitution applies is entitled upon application in the prescribed form, to be registered as a permanent resident.

(2) Subject to section 5(A), the following persons, not being citizens or persons to whom section 3 or 6 of the Constitution applies, are entitled, upon application in the prescribed form, to be registered as permanent residents, namely,

(a) a permitted entrant who

(i) applies for and is granted by the Minister the status of immigrant in accordance with section 6, and, after becoming an immigrant, resides in Barbados for a period of not less than 5 years, or

(ii) is the husband of a person who is a citizen by birth or by descent;

(c) any person born outside Barbados

(i) to a woman who is a citizen of Barbados by birth, and to whom section 2(2) or 5 of the Constitution does not apply.

§ 5A. The Minister [responsible for Immigration] may refuse to grant the status of permanent resident to an applicant referred to in section 5 upon being satisfied that the applicant is [*214] or has been engaged in activities, whether within or outside Barbados that, in the opinion of the Minister, are prejudicial to the safety of Barbados or the maintenance of law, public order and good government in Barbados.

§ 6(1) Subject to this Act and the regulations, a permitted entrant who,

(b) is a child under the age of 18 years whose father or mother

(i) is a permanent resident or a citizen of Barbados residing in Barbados,

(ii) establishes parenthood of that child to the satisfaction of the Minister, and

(iii) is willing and able to provide for that child's care and maintenance;

(c) not being a citizen, is the parent or grandparent of a citizen who resides in Barbados and is willing and able to provide for the care and maintenance of that parent or grandparent . . . , may, on application to the Minister in the prescribed form, be granted by the Minister permission to become an immigrant.

(2) A child under 18 years of age whose father or mother has been granted permission to become an immigrant under subsection (1) may, on application to the Minister in the prescribed form, be granted by the Minister permission to become an immigrant.

III TRINIDAD AND TOBAGO

Immigration Act, ch. 18:01 (1976) (Trin. & Tobago).

Part I. Admission of Persons into Trinidad and Tobago.

§ 5(1) The following persons not being citizens of Trinidad and Tobago are residents of Trinidad and Tobago: . . .

(e) the child of a person who is citizen of Trinidad and Tobago or who by virtue of this section is a resident provided [*215] that such child is a minor or is dependent on and living with his parents.

§ 6(1) Subject to this Act and the regulations, persons who come within the following classes may on application in the prescribed form, be granted permission by the Minister if he thinks fit, to become resident, that is to say . . .

(b) a person who is the parent or grandparent of either a citizen or resident of Trinidad and Tobago, residing in Trinidad and Tobago, if such citizen or resident is willing and able to provide care and maintenance for that person;

(c) the spouse of a citizen or resident of Trinidad and Tobago . . . .

(2) In determining the suitability of an applicant for the grant of resident status under this section, the Minister shall be satisfied, *inter alia*, that the applicant--

(a) had entered the country legally;

(b) is not in a prohibited class; and

(c) is of good moral character as evidenced by a police certificate of good character.

Legal Topics:

For related research and practice materials, see the following legal topics:
Immigration LawAdmissionSelection SystemPreferences & PrioritiesImmigration LawAdmissionVisasIssuanceImmigration LawImmigrantsDiversity Immigrants

FOOTNOTES:

n1 G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt.1, U.N. Doc. A/810 (1948).

n2 *Id.* art. 16(3).

n3 The term "Commonwealth Caribbean" refers to the following countries: Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Monteserrat, St. Christopher and Nevis,

St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

n4 To author's knowledge, in North America, there have been no scholarly publications on the Commonwealth Caribbean immigration law.

n5 *See, e.g., In re* Elder, No. 307 (June 17, 1985) (Bah.) (holding that a supreme court may not review decisions which are strictly in the authority of immigration officers); *see also* Mais II v. Bd. of Immigration, No. 883 (Feb. 10, 1985) (Bah.) (holding that the alien's failure to inform the Board of Immigration of the alien's conviction, which took place after the application for permanent residence had been filed, does not amount to a ground for a revocation of permanent residence); Da Costa v. Minister of Nat'l Sec., 38 WIR 1 (1986) (Bah. H.C.) (holding that the Board of Immigration's refusal to extend time of the alien's stay was not *intra vires* the Board's powers); Biggs v. Commissioner of Police, 16 Barb. L.Rep. 85 (1981) (holding that the alien may be examined and detained by the immigration officer, regardless of whether or not the alien entered into the country willingly); *In re* McDonald (No. 2), 23 WIR 332 (1975) (Jam. C.A.) (holding that the alien who has resided in the Cayman Islands and had an intention to reside therein permanently was entitled to a declaration of domicile); England v. AG of St. Lucia, 35 WIR 171 (1985) (E. Carib. States C.A.) (holding that the government's order authorizing deportation of the aliens on state-security grounds was a purely executive act and that the aliens were not entitled to a hearing before the order was made); Smith v. L.J. Wiliams, Ltd., 32 WIR 395 (1980) (Trin. & Tobago) (holding that the company is entitled to make applications to the immigration officer to allow third parties to enter into and to remain in the country); Cedeno v. O'Brien, 7 WIR 192 (1964) (Trin. & Tobago C.A.) (holding that the immigration officer has authority to question and to arrest the alien who is suspected to be a prohibited immigrant, only if the officer has reasonable grounds for so suspecting).

n6 Immigration legislation has been enacted in the following Commonwealth Caribbean jurisdictions:

Anguilla: Alien Bankers Act, ch. 101 (1982); Immigration and Passport Ordinance, No. 14 (1980);

Antigua and Barbuda: Aliens Restriction Ordinance, ch. 106 (1981); Immigration and Passport Act, ch. 150 (1982);

The Bahamas: The Bahamas Nationality Act, ch. 178 (1987); Immigration Act, ch. 179 (1987); Aliens Restriction Act, ch. 181 (1987);

Barbados: Barbados Citizenship Act, ch. 186 (1986); Expulsion of Undesirables Act, ch. 188 (1986); Extradition Act ch. 189 (1986); Immigration Act, ch. 190 (1986);

Belize: Immigration Act, ch. 121 (1992);

Dominica: Immigration and Passport Act, ch. 18:01 (1991); Undesirable Persons Expulsion Act, ch. 18:03 (1991); Deportation (Commonwealth Citizens) Act, ch. 18:04 (1991); Aliens Restriction Act, ch. 18:50 (1991); Aliens Land Holding Regulation Act, ch. 18:51 (1991); Alien Bankers Act, ch. 18:52 (1991);

Grenada: Immigration Act, ch. 145 (1990);

Guyana: Aliens (Immigration and Registration) Act, ch. 14:03 (1973); Immigration Act, ch. 14:02 (1973); Status of Aliens Act, ch. 14:04 (1973); Expulsion of Undesirables Act, Ch. 14:05 (1973);

Jamaica: Immigration Restriction (Commonwealth Citizens) Act, ch. 153 (1973);

Monteserrat: Immigration and Passport Act, ch. 137 (1965);

St. Christopher and Nevis: Aliens Land Holding Regulation Act, ch. 102 (1986); Immigration and Passport Act, ch. 145 (1984);

St. Lucia: Aliens Restriction Ordinance, ch. 228 (1967); Immigration Ordinance, ch. 76 (1983);

St. Vincent and the Grenadines: Deportation and Restriction of Commonwealth Citizens Act, ch. 76 (1990); Expulsion of Undesirable Act, ch. 77 (1990); Immigration (Restriction) Act, ch. 78 (1990); Residence Act, ch. 79 (1990); Saint Vincent and the Grenadines Citizenship Act, ch. 80 (1990);

Trinidad and Tobago: Aliens (Landholding) Act, ch. 58:02 (1990); Immigration Act; ch. 18:01 (1990).

n7 Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended at 8 U.S.C. §§ 1101-1524 (1994)) [hereinafter INA].

n8 *See* 8 U.S.C. § 1101(a)(20), INA § 101(a)(20) ("The term . . . 'permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant . . . ."); Immigration Act, ch. 18:01, § 2 (Trin. & Tobago) ("'Immigrant' means a person who seeks admission into Trinidad and Tobago for permanent residence or who is within Trinidad and Tobago as a permanent resident.").

n9 To obtain permanent residence, certain aliens must have resided in Barbados for five years, maintaining an immigrant status. *See* Immigration Act, ch. 190, § 5(2)(a)(i) (Barb.). Among the aliens, subject to that two-step process of obtaining permanent residence are minor children, parents and grandparents of citizens and minor children of permanent residents. *See id.*

n10 *See, e.g.*, Immigration Act, ch. 190, § 5(2)(a)(ii) (Barb.) (providing that the alien husband of the citizen is entitled to permanent residence).

n11 *See, e.g.*, Immigration Act, ch. 18:01, § 6(1)(a) (Trin. & Tobago). It is noteworthy, however, that while principles of family-sponsored immigration are essentially the same in both regions, securing employment does not amount to a separate base for immigration under Commonwealth Caribbean law. In Barbados and Trinidad and Tobago, securing employment is only a prerequisite for procuring an immigrant visa on a broader ground, through a permitted-entrant route. *See* Immigration Act, ch. 190, § 6(1)(a) (Barb.); Immigration Act, ch. 18:01, § 6(1)(a) (Trin. & Tobago).

The term "permitted entrant" includes, *inter alia*, the following categories of aliens: diplomatic officers; representatives of the United Nations; students; aliens who enter the country for the purpose of engaging in employment, trade, business, sport activities or cultural activities; vessels' crew members; transient passengers; visitors; and persons entering the country to seek medical treatment. Immigration act, ch. 190, sched. 2, p. 1 (Barb.).

To qualify for an immigrant status, the permitted entrant (i) must be employed in public service; (ii) must have "established himself successfully . . . in a profession, trade, business, or agricultural enterprise"; or (iii) must be "likely" to succeed in "a profession, trade, business, or agricultural enterprise" and have means of support. *Id.* § 6(1); Immigration Act, ch. 18:01, § 6(1)(a) (Trin. & Tobago).

n12 *See, e.g.*, Immigration Act, ch. 179, § 13(1) (Bah.).

n13 *See* 8 U.S.C. § 1153(a), INA § 203(a) (designating categories of aliens eligible for family-sponsored immigration); 8 U.S.C. § 1153(b), INA § 203(b) (designating categories of aliens eligible for employment-based immigration).

n14 *See* 8 U.S.C. § 1153(c), INA § 203(c).

n15 The purpose of the program is to enable aliens from "low-admission" countries, i.e. countries whose natives have been underrepresented among immigrants to the United States, to immigrate regardless of whether they have a family in the United States or possess job skills in short supply on the U.S. labor market. *See* 8 U.S.C. § 1153(c)(1)(B)(ii)(II). INA § 203(c)(1)(B)(ii)(II).

The reasons such a ground for immigration is not provided for in the Commonwealth Caribbean jurisdictions are obvious. First, Commonwealth Caribbean countries are concerned with preservation of their economies and, in light of a significant emigration caused by poor economic conditions, do not experience a need in a policy promoting immigration. Second, unlike the United States, which due to its immense economic opportunities has attracted probably more immigrants than any country in the 20th century, the Commonwealth Caribbean region is exposed to such a small stream of immigration that distinguishing between "low" and "high" admission countries would be impracticable.

n16 Any refugee or asylee whose status has not been revoked is eligible for permanent residence upon having been physically present in the United States for one year. *See* 8 U.S.C. § 1159(a)(1), INA § 209(a)(1).

n17 For limitations on this principle, see *infra* note 19.

n18 *See infra* notes 41-43 and accompanying text.

n19 Since this base for immigration confers on the government a practically unlimited authority to admit aliens, it may perform *de facto* the same role as asylum law in the United States. Thus the absence of asylum laws in the Commonwealth Caribbean does not absolutely preclude the refugee from obtaining permanent residence.

n20 *See* Immigration Act, ch. 179, § 13(1) (Bah.). Immigration law of Grenada sets forth only two qualifications for a discretionary grant of permanent residence: (i) being of good character and (ii) stating intention to reside in the country permanently. *See* Immigration Act, ch. 169, § 24(1) (Gren.).

n21 *See* 8 U.S.C. § 1324a(h)(3), INA § 274A(h)(3) (stating that a permanent resident may not be an "unauthorized alien" with respect to employment).

n22 *See* Immigration Act, ch. 179, § 13(2) (Bah.). Note that it is unclear to what extent the family-sponsored immigrant is advantaged over the alien admitted in the "discretionary" category because practically in all Commonwealth Caribbean jurisdictions admission of family-sponsored immigrants is still in the government's discretion. In The Bahamas, the unconditional granting of employment authorization to the family-sponsored immigrant does amount to such an advantage. *See id.* § 14(1). Another relaxation of admission regulations for a family-sponsored immigrant is that, unlike a "discretionary" alien, such immigrant may be under eighteen years of age. *See id.* § 14(2).

n23 *See* 8 U.S.C. § 1151(b)(2)(A)(i), INA § 201(b)(2)(A)(i).

n24 For definition of the term "child," see *infra* text *accompanying* notes 105-08.

n25 *See* 8 U.S.C. § 1151(b)(2)(A)(i), INA § 201(b)(2)(A)(i).

n26 *See* 8 U.S.C. § 1153(a)(1)-(4), INA § 203(a)(1)-(4). Neither the definition of immediate relative nor the four-category preference classification was affected by the recently enacted Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered sections of 8 U.S.C.), which has fundamentally--not necessarily reasonably, though--changed the U.S. immigration law at large.

n27 *See* discussion *infra* part IV.

n28 *See* discussion *infra* part VI.

n29 *See* discussion *infra* part VII.

n30 8 U.S.C. § 1153(a)(2), INA § 203(a)(2).

n31 8 U.S.C. § 1153(a)(1), (3), (4), INA § 203(a)(1), (3), (4).

n32 *See* Immigration Act, ch. 18:01, §§ 5(1)(e), 6(b),(c) (Trin. & Tobago).

n33 *See, e.g.*, BARB. CONST. arts. 2(1), 4.

n34 *See id.* art. 2(2), 5 (conferring citizenship on the individual born outside Barbados to the citizen father).

n35 *See id.* art. 2(3); *see also* Bahamas Nationality Act, ch. 178, § 5 (1973) (Bah.).

n36 *See, e.g.*, BARB. CONST. arts. 3(1),(3), 6(1).

n37 *See* 8 U.S.C. § 1427(a), INA § 316(a).

n38 *See* 8 U.S.C. § 1430(a), INA § 319(a).

n39 *See* Immigration Act, ch. 179, § 14 (Bah.).

n40 *See* Immigration Act, ch. 18:01, § 6(1) (Trin. & Tobago) ("[Qualified family-members] may . . . , be granted permission by the Minister if he thinks fit, to become residents."); Immigration Act, ch. 179, § 14(1)

(Bah.) (stating that grant of a certificate of permanent residence to the spouse of a citizen is discretionary with the Board of Immigration).

n41 *See* Immigration Act of 1924, ch. 190, § 4(a), 43 Stat. 153, 155.

n42 *See id.* § 6(a), 43 Stat. 153 at 155.

n43 *See* Act of February 5, 1917, ch. 29, § 3, 39 Stat. 874, 875-78.

n44 The term "immigrant" was defined very broadly to include "any alien departing from any place outside the United States destined for the United States," unless such alien was a governmental official, temporary visitor traveling for business or pleasure, transient passenger, seaman on the vessel temporarily entering into the U.S. port, or trader conducting business pursuant to an international treaty of commerce and navigation. *See* Immigration Act of 1924, ch. 190, § 3, 43 Stat. at 154-55.

n45 For each nationality, the annual quota was set at "2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890." *Id.* § 11(a), 43 Stat. at 159.

n46 *See* Immigration Act, ch. 179, § 13 (Bah.).

n47 *See* AUSTIN T. FRAGOMEN, JR. & STEVEN C. BELL, IMMIGRATION FUNDAMENTALS: A GUIDE TO LAW AND PRACTICE (3d ed. 1992) P3-8.

n48 *See* U.S.C. § 1151(c)(1)(A)(i), INA § 201(c)(1)(A)(i).

n49 To compute a cap on admission for fiscal year, the number of visas unused in the previous fiscal year in the employment-based immigrant category is added to, and the number of visas issued in the previous year to immediate relatives of U.S. citizens is deducted from the base number 480,000. *See* 8 U.S.C. § 1151(c), INA § 201(c).

n50 *See* U.S.C. § 1151(c)(1), INA § 201(c)(1).

n51 *See* 8 U.S.C. § 1153(a)(1)-(4), INA § 203(a)(1)-(4). Similar numerical limitations apply to visa allotment for other immigrant categories: the annual cap for employment-based immigrants is 140,000, subject to certain increase, and the annual cap for diversity immigrants is 55,000. *See* 8 U.S.C. § 1151(c)(1)(A), (d)(1)(A), (e), INA § 201(c)(1)(A), (d)(1)(A), (e).

n52 *See* Immigration Act, ch. 179, § 14 (Bah.).

n53 *See* 8 U.S.C. § 1152(a)(1), INA § 202(a)(1).

n54 *See* Immigration Act of 1924, ch. 190, § 6(a)(1), 43 Stat. at 155. However, only the wife of the citizen qualified for admission as a non-quota immigrant. *See id.* § 4(a), 43 Stat. at 155.

n55 *See* 8 U.S.C. § 1151(b)(2)(A)(i), INA § 201(b)(2)(A)(i).

n56 *See* 8 U.S.C. § 1153(a)(2), INA § 203(a)(2).

n57 *See* Immigration Act, ch. 179, § 14(1)(a)-(c) (Bah.).

n58 *See id.* § 14(1)(d).

n59 *See id.* § 15(1).

n60 *See* 8 U.S.C. § 1153(d), INA § 203(d).

n61 *See* Immigration Act, ch. 18:01, § 6(1)(c) (Trin. & Tobago).

n62 *See* Immigration Act, ch. 179, § 14(1) (Bah.); Immigration Act, ch. 18:01, § 6(1)(c) (Trin. & Tobago).

n63 *See* Immigration Act, ch. 190, § 5(1) (Barb.)

n64 *See id.* § 5(2)(a)(ii).

n65 *See id.*

n66 *See* BARB. CONST. art. 2(3).

n67 *See id.* arts. 3(1), (3), 6.

n68 *See id.*

n69 *See* Immigration Act, ch. 190, § 5(1) (Barb.).

n70 *See id.* § 5(2)(a)(ii).

n71 *See* BARB. CONST. arts. 3(1), (3), 6.

n72 *See* Immigration Law, ch. 190, § 5(1) (Barb.).

n73 *See id.* § 5A.

n74 *See* 8 U.S.C. § 1151(b)(2)(i), INA § 201(b)(2)(i).

n75 *See id.*

n76 *See* Nielsen v. Barker, 32 WIR 254, 263 (1982) (Guy. C.A.).

n77 *See* EDITH CLARKE, MY MOTHER WHO FATHERED ME: A STUDY OF THE FAMILY IN THREE SELECTED COMMUNITIES IN JAMAICA 19 (2d ed. 1966).

n78 *See* 1 HALSBURY'S LAWS OF ENGLAND, Aliens, § 794 (1931) (citing British Nationality and Status of Aliens Act, 1914, 4 & 5 Geo. 5, ch. 17, § 10 (Eng.)).

n79 *See* Act of June 29, 1906, ch. 3592, § 33(a), 34 Stat. 596, *as amended* March 2, 1929, ch. 536, 45 Stat. 1512, 1515.

n80 *See* Act of March 2, 1907, ch. 2534, § 3, 34 Stat. 1228, 1228-29. A Supreme Court found this provision constitutional stating that this provision was not limited as to place and, therefore, applied to women who, having married to a foreign national, continued to reside in the United States. *See* McKenzie v. Hare, 239 U.S. 299, 299, 300 (1915). The Court reasoned that "marriage of an American woman with a foreigner may involve national complications of like physical expatriation may involve and therefore . . . [was] within the control of the Congress." *Id.* at 300.

n81 *See* Dorian Powell, *Caribbean Women and Their Response to Familial Experiences*, 35 SOC. & ECON. STUD. 83, 103 (No. 2, 1986). The studies conducted by Dorian Powell show that in married unions in Barbados, men were identified as heads of households by 76.6% of the women respondents, in common-law unions by 64.2%, and in visiting unions by 60%. *See id.* at 105 tbl. 1. In St. Vincent, these figures were 79.5%, 73.3%, and 61.6%, respectively. *See id.*

n82 *See id.* at 101 tbl. 7. For example, in Barbados, 56.4% of women living in married unions and 59.7% of those living in common-law unions identified their husbands as the main source of income. *See id.*

n83 *See id.* at 98, 101 tbl. 7.

n84 *See id.* at 103, 104. Female-head households constitute approximately one-third of Caribbean households. *See id.* at 194.

n85 *See id.* at 101 tbl. 7. Thus 26.4% of Barbadian women (compared to 56.4% of men) living in married family unions were identified as the main source of income. *See id.*

n86 *See* GUY. CONST. art. 45 (1980).

n87 *See* GUY. CONST. art. 22 (1966).

n88 Interview with Dean Albert Fiatjoe, the University of West Indias School of Law, in Tallahassee, Florida (Nov. 7, 1995).

n89 *See* Nielsen v. Barker, 32 WIR 254, 261 (1982) (Guy. C.A.).

n90 *Id.*

n91 Immigration Act, ch. 14:02, § 2(3) (1948) (Guy.).

n92 *See Nielsen*, 32 WIR at 262.

n93 *See id.* at 255, 263.

n94 *See* GLORIA CUMPER & STEPHANIE DALY, FAMILY LAW IN THE COMMONWEALTH CARIBBEAN 41 (1979) ("In these days when one's nationality is becoming an important requirement for full participation in a country's life, [the law conferring a citizenship only on the alien wife] has been known to have a deleterious affect on the stability of marriages and family life.").

n95 As of the late 80s, 78% of births in Barbados were illegitimate. BARBADOS 88 (Rachel Wilder ed., 1988). In 1987, in Antigua and Barbuda, 80% of children were born out of wedlock. *See* MINDIE LAZARUS-BLACK, LEGITIMATE ACTS AND ILLEGAL ENCOUNTERS: LAW AND SOCIETY IN ANTIGUA AND BARBUDA 150 tbl. 10 (1994). Among the Commonwealth Caribbean countries, Trinidad and Tobago has one of the lowest illegitimacy rates, 42% as of 1972. *See* CUMPER & DALY, *supra* note 94, at 179.

n96 Thus in 1955, the illegitimacy rate in Barbados was 61.5%; it rose to 73% in 1973. *See* CUMPER & DALY, *supra* note 94, at 31.

n97 In the study conducted by Powell, only 39.9% of respondent Barbadian women were married, 11.8% lived in common-law unions, 22% lived in visiting unions, and 23.3% were single. Powell, *supra* note 81, at 86 tbl. 1. The percentage of married women and the distribution of respondent women by types of family unions were essentially the same in Antigua and St. Vincent. *See id.*

n98 Explaining the weak familial role of the father by a strong influence of the slavery past, Clarke argues:

The residential unit in the plantation system was formed by the mother and her children with the responsibility for their maintenance resting with the slaveowner. The father's place in the family was never secure. He had no externally sanctioned authority over it and could at any time be physically removed from it. His role might, indeed, end with procreation.

CLARKE, *supra* note 77, at 19.

n99 *See* MELVILLE & FRANCES HERSKOVITS, TRINIDAD VILLAGE 10-11, 16 (1947).

n100 *See* CLARKE, *supra* note 77, at 19.

n101 *See* Douglas Hall, *Slaves and Slavery in the British West Indies*, 11 SOC. & ECON. STUD. 305 (No. 4, 1962).

n102 *See* Raymond Smith, *The Family and the Modern World System: Some Observations from the Caribbean*, 3 J. FAM. HIST. 337, 339-40, 348 (No. 4, 1978).

n103 *See, e.g.*, Powell, *supra* note 81, at 86 tbl. 1.

n104 *See* 8 U.S.C. § 1151(b)(2)(A)(i), INA § 201(b)(2)(A)(i).

n105 *See* 8 U.S.C. § 1101(b)(1), INA § 101(b)(1).

n106 If the illegitimate child seeks to reunify with the natural father, a *bona fide* relationship must exist between the father and the child. *See* 8 U.S.C. § 1101(b)(1)(D), INA § 101(b)(1)(D).

n107 To qualify, the alien must have resided with the adopting parent for at least two years. *See* 8 U.S.C. § 1101(b)(1)(E), INA § 101(b)(1)(E). Upon immigrating, the adopted child may not confer any immigrant status on the natural parent. *See id.*

n108 *See* 8 U.S.C. § 1101(b)(1)(A)-(E), INA § 101(b)(1)(A)-(E).

n109 *See* Immigration Act, ch. 179, § 2 (Bah.).

n110 *See, e.g.*, Succession Act, 1975-46 (Barb.); *see also* Magistrate Code of Procedure Act, ch. 48 (defining "children of marriage" as to include both legitimate and illegitimate children); Status of Children Act, ch. 77 (according equal treatment to legitimate and illegitimate children) (1973) (Jam.). Interestingly, the U.S. courts have held that the alien illegitimate child from the Commonwealth Caribbean countries where illegitimate children have been equated with legitimate children may qualify as a "child" under INA § 101(b)(1). *See, e.g.*, Matter of Clahar, Interim Decision # 2852, 2-3 (BIA, March 24, 1981).

n111 *See* 8 U.S.C. § 1153(a)(1), (2)(B), INA § 203(a)(1), (2)(B).

n112 *See* 8 U.S.C. § 1153(a)(3), INA § 203(a)(3).

n113 *See id.*; Immigration Act, ch. 190, § 6(2) (Barb.).

n114 *See* Immigration Act, ch. 190, § 6(2) (Barb).

n115 *See* Immigration Act, ch. 18:01, § 5(e) (Trin. & Tobago) (emphasis added).

n116 *See* 8 U.S.C. § 1153(a)(2)(B), INA § 203(a)(2)(B).

n117 *See* Immigration Act, ch. 190, § 5(2)(c)(ii) (Barb.).

n118 *See* BARB. CONST. arts. 2(2), 5.

n119 For the qualifications for immigrant status in Barbados, see *supra* notes 9, 11.

n120 *See* Immigration Act, ch. 190, § 6(1)(b)(iii) (Barb.).

n121 *See id.* § 5(2)(a)(i).

n122 *See, e.g.*, ARTHUR E. COOK & JOHN J. HAGERTY, IMMIGRATION LAWS OF THE UNITED STATES: COMPILED AND EXPLAINED 38 (1929).

n123 *See* Immigration Act of 1924, ch. 190, § 4(a), 43 Stat. at 155; Act of June 27, 1952, ch. 477, § 205(b), 66 Stat. 163, 180.

n124 *See* 8 U.S.C. § 1151(b)(2)(A)(i), INA § 201(b)(2)(A)(i).

n125 *See id.*

n126 Courts have held that precluding alien parents of the minor citizens from immigration is constitutional and does not amount to denial of equal protection to the minor citizen. *See, e.g.*, Faustino v. INS, 432 F.2d 429, 429 (2d Cir. 1970), *cert. denied*, 401 U.S. 921 (1971).

n127 *See* Immigration Act, ch. 190, §§ 5(2)(a)(i), 6(1)(c) (Barb.); Immigration Act, ch. 18:01, § 6(1)(b) (Trin. & Tobago).

n128 *See* Immigration Act, ch. 18:01, § 6(1)(b) (Trin. & Tobago).

n129 *See* Immigration Act, ch. 190, §§ 5(2)(a)(i), 6(1)(c) (Barb.).

n130 *See id.* § 6(1)(c); *see also* Immigration Act, ch. 18:01, § 6(1)(b) (Trin. & Tobago).

n131 *See* Immigration Act, ch. 18:01, § 8(1)(h) (Trin. & Tobago).

n132 *See* Immigration Act ch. 190, § 6(1)(c) (Barb.).

n133 *See id.* § 5(2)(a)(i).

n134 *See* Immigration Act, ch. 18:01, § 6(1)(b) (Trin. & Tobago).

n135 *See, e.g.*, CLARKE, *supra* note 77, at 133-39, 178-81.

n136 *See id.* at 134.

n137 A percentage of grandmother households (and great-grandmother households) in the three Jamaican communities studied by Clarke ranged from 9% to 31%; a proportion of persons living in such households ranged from 17% to 39%. *See* CLARKE, *supra* note 77, at 212 app. 15.

n138 *See* 8 U.S.C. § 1153(a)(4), INA § 203(a)(4).

n139 This figure indicates an expected number of births for a duration of marriage of a woman who entered into a marriage after attaining the age of twenty-five. *See* JERZY BERENT, FAMILY SIZE PREFERENCES IN EUROPE AND USA: ULTIMATE NUMBER OF CHILDREN, 13 tbl.4. (1983). Such number is noticeably higher for a woman who entered into a marriage before the age of eighteen, 3.63. *See id.* Nonetheless, since the median age of American women at first marriage is 24.1, the first number--2.58 children--appears more representative. *See* THE 1993 INFORMATION PLEASE ALMANAC: ATLAS AND YEARBOOK 833 (1993).

n140 *See* SUSHEELA SINGH, GUYANA, JAMAICA, TRINIDAD AND TOBAGO: SOCIO-ECONOMIC DIFFERENTIALS IN CUMULATIVE FERTILITY 54 tbl.39 (1984). This figure indicates a number of children ever born to women who have lived in any type of a marital union for more than twenty years. It is noteworthy that during ten years preceding the release of this data, Trinidad and Tobago, as well as other Commonwealth Caribbean countries, had experienced a gradual decline in fertility rate, so that at the time Trinidad and Tobago enacted the Immigration Act of 1976, the average number of births was even higher. *See id.*

n141 As of the early eighties, the number of children ever born to a Jamaican woman who has lived in any type of a marital union for more than twenty years was 5.9. *See id.* at 37 tbl.22. For Guyanese non-Indian and Indian women, these numbers were 6.6 and 7.1, respectively. *See id.* at 18 tbl.4.

n142 *See* Immigration Act of 1924, ch. 190, §§ 4(a), 6(a)(1), 43 Stat. at 155; *see also* COOK & HAGERTY, *supra* note 122, at 38.

n143 *See* U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, 1 VITAL STATISTICS OF THE UNITED STATES: 1937 7, tbl.O (1939).

n144 *See* Act of June 27, 1952, ch. 477, § 205(b), 66 Stat. at 180.

n145 *See* John Guendelsberger, *The Right to Family Unification in French and United States Immigration Law*, 21 CORNELL INT'L L.J. 1, 3 (1988) (arguing that in the United States aliens must be constitutionally

entitled to the right to family reunification). Unlike courts of the United States and Commonwealth Caribbean, *Conseil d'Etat*, the highest administrative court in France, recognized that such right is a fundamental constitutional right protected by the Constitution. *See id.* (citing Groupe d'Information et de Soutien des Travailleurs Immigres et Autres, Conseil d'Etat, 1978 Recueil des Decisions du Conseil d'Etat [Lebon] 493).

n146 Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered sections of 8 U.S.C.).

n147 *See, e.g.*, Michael B. Rukin, *As You Were Saying*, BOSTON HERALD, April 14, 1996, *available in* WESTLAW, 1996 WL 5333582.