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THE CLINTON ADMINISTRATION'S HUMANITARIAN IMMIGRATION POLICY: A CRITICAL ANALYSIS

Rosemary Jenks*

Statistics reveal an extensive problem in the refugee/immigration arena. The United Nations High Commissioner for Refugees (UNHCR) estimated in January 1994 that there are 19.7 million refugees worldwide and an additional 25 million internally displaced persons. The UNHCR says that in 1993, 10,000 people were forced into flight every day. The Freedom House reported last year that 2.2 billion people, 41% of the world's 5.4 billion population, live under conditions that are "not free," while an additional 40% live under conditions that are only "partially free." There is simply no way that the industrialized world can resettle all of these people. Developed countries must begin looking for other more effective and cost-efficient ways to help refugees.

In fiscal year 1993, the United States admitted almost 119,500 refugees for permanent resettlement. In the same year, the Immigration and Naturalization Service (INS) received 150,386 affirmative applications for asylum. An additional 13,594 defensive asylum claims were filed with the Executive Office of Immigration Review. There are now some 400,000 asylum applications pending. It is clear that the U.S. asylum system cannot deal with these numbers.

One way to address some of these problems is to return to the original intent of the 1980 Refugee Act. A primary goal of the Refugee Act was to remove Cold War politics from the refugee program and ensure that all claimants for refugee status were given an equal opportunity to have their claims examined on a case-by-case basis. This has not happened. Cold War politics continue to distort the refugee program, even after the end of the Cold War.

Currently the Lautenberg Amendment establishes presumptive categories for Jews and Evangelical, Catholic, and Orthodox Christians residing

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in any independent state of the former Soviet Union, Estonia, Latvia, or Lithuania, and for nationals of Vietnam, Laos, and Cambodia. These applicants are not required to show a "well-founded fear of persecution." They simply have to demonstrate the possibility of persecution or discrimination, for example, by showing that their government has discriminated against any member of their particular religious or ethnic group at any time in their locale.

Second, there is the Amerasian program. Although this program is not technically a refugee program, Amerasians are included in the refugee admissions ceiling and they are entitled to federally-funded refugee transitional support services. The U.S. Department of State and other agencies involved in the program have acknowledged that it has led to massive fraud. People are falsely claiming to be Amerasians or the relatives of Amerasians. In 1992, 37% of the Amerasians the United States admitted--exclusive of family members--were born more than nine months after the last active-duty American soldier left Vietnam.

The result of such presumptive categories is that, since 1990, more than 41% of U.S. refugee admissions are from the former Soviet Union and almost 36% are from Vietnam. Close to 100% of those from the former Soviet Union and 80% of the Vietnamese have family members in the United States. Rather than being resettled under the publicly-funded refugee program, those who are eligible should be applying for family-sponsored immigrant visas. Resettlement under the U.S. refugee program should be available only to those who have no other suitable option, and then only if they meet the United Nations definition of a refugee.

The 1980 Refugee Act also recommended a target level of 50,000 refugee admissions annually under normal circumstances. The refugee ceiling has exceeded 100,000 every year since 1989, and has never been set lower than 67,000, which was in 1986. Federal funding of the refugee resettlement program has declined dramatically relative to the increasing number of admissions. Refugees were originally entitled to three years of federally-funded transitional support services. Now they are entitled to only eight months of federal assistance, so state and local governments are being forced to foot the bill for ongoing social services, health care, and language and job training.

The asylum provisions in the 1980 Refugee Act were designed to provide temporary protection to aliens already in the United States on non-immigrant visas in cases where the situation in the home country deteriorated to the extent that they could not return home safely. Because the number of such aliens was expected to remain small—between

2,500 and 5,000—a limit of 5,000 was placed on the number of asylees who could adjust to permanent resident status each year. The Immigration Act of 1990 increased that ceiling to 10,000 because the number of asylum claimants had risen considerably over the past decade.

The asylum system has also been a victim of politics. The Cuban Adjustment Act—a relic of Cold War politics—still virtually guarantees that any Cuban who reaches the United States will be granted permanent residence. The Executive Order on “enhanced consideration” for asylum seekers claiming persecution on the basis of one-child-per-family population policies—an expression of Reagan-Bush abortion politics—is an invitation to the millions of Chinese men and women of child-bearing age. Because of the politics involved, the Clinton administration has tried to duck the issue. Attorney General Janet Reno recently declined to review two Chinese cases referred to her by the Board of Immigration Appeals, which sought a definitive decision on the “enhanced consideration” policy.

The massive increase in the number of asylum applications, combined with the shortage of INS asylum personnel, immigration judges, and detention facilities, the extensive appeals process, the lack of an adequate identification or tracking system for asylum seekers, the routine issuance of work permits during adjudication, and an equally cumbersome deportation process have created a wholly ineffective asylum system. The United States cannot handle the numbers of applicants that it is receiving.

Both the U.S. refugee program and asylum system are in need of major reform. First, the United States needs to pare the refugee resettlement program back down to the 50,000 annual admissions ceiling recommended by the Refugee Act. Second, the United States should repeal the Lautenberg Amendment and return to the case-by-case determinations which were the intent of the law. Finally, the Amerasian program is due to expire in 1994, but Congress is considering legislation to establish a similar program for children of Filipinos and American servicemen, which is likely to encourage as much or more fraud as the Amerasian program for Vietnamese. This legislation should not be passed. Eligible family members of U.S. citizens and legal residents should enter the United States as family-sponsored immigrants—not as refugees. If they have family members here who are able to support them, those family members should be supporting them; it should not be the burden of the taxpayer. Taxpayers are willing to be generous with refugees, but only with genuine refugees.

The Clinton administration has proposed limited measures to address the abuse of the U.S. asylum system. These measures represent a step in the right direction, but they do not go far enough. It is clear to all parties that the United States needs increased resources for asylum personnel, immigration judges, and detention facilities. Expedited asylum screening provisions will be crucial in any effort to stay current with new applications, as will summary exclusion provisions, which are not included in the Clinton proposal. Under the Clinton plan, applications denied by asylum officers would be automatically referred to immigration judges to begin the deportation or exclusion proceedings. Manifestly unfounded asylum applications would be referred immediately to an immigration judge without an interview by an asylum officer. The appeals process would be limited by restricting judicial review to petitions for habeas corpus. Another very important reform in the administration proposal would be the withholding of a work permit for 180 days after the application is filed, or until a decision is made. The decoupling of the work permit from the initial asylum application process is essential, as work is a major magnet for aliens entering the United States primarily for economic reasons. Presently, once one has a work permit, one can get a driver's license and a social security card--the documentation necessary to remain in the United States indefinitely, whether asylum is granted or not.

The major drawbacks of the Clinton administration's proposal are two-fold. First, it delays for at least a year attempts to deal with the huge backlog of pending asylum claims, and this is based on an overly optimistic assumption that, with additional personnel and the new regulations, the INS will be current in processing new applicants in about a year, at which point it could begin processing those in the backlog. The plan also fails to recognize the possibility that by shifting more responsibility from the INS Asylum Corps to immigration judges, the effect may simply be to shift the backlog of cases from the Asylum Corps to the Executive Office of Immigration Review. Second, the Clinton plan does not address the obvious need to facilitate the exclusion or deportation of rejected asylum seekers. An expedited adjudication process will not serve as a deterrent to fraudulent or unfounded asylum claims unless those who are denied asylum are actually removed from the United States.

Other needed reforms that have not yet been proposed include the repeal of the Cuban Adjustment Act and the rescission of the Executive Order on "enhanced consideration" for Chinese. The United States should ensure that class actions never become the substitute for the

burden of proof being on the alien, who may be using the asylum process as a "back door" means to immigrate to the United States. Finally, the United States needs to establish a computerized finger-printing system for all asylum seekers so that they can be identified and located.

In the end, if the United States hopes to maintain public support for its humanitarian immigration program, which has been very generous through its history, it has to be a fair and nondiscriminatory system. It has to be adequately funded by the federal government so as to avoid placing citizens and legal residents in competition with refugees or asylum seekers for limited public monies at the state and local levels. The United States has to curb the large-scale abuse of the asylum system that has been so publicized recently. The United States should return to the original intent of the 1980 Refugee Act, which was to establish a manageable, orderly, cost-effective and nondiscriminatory humanitarian immigration program.