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# DEVELOPMENTS

## The Refugee Act of 1980

Although the grand purposes of the Refugee Act of 1980<sup>1</sup> were to give statutory meaning to our "history of welcoming homeless refugees to our shores" and to signify our "national commitment to human rights and humanitarian concerns,"<sup>2</sup> the American public's reaction to this past summer's dramatic influx of Cuban refugees<sup>3</sup> coupled with the Carter Administration's decision to use traditional executive parole powers to admit Cuban and Haitian refugees<sup>4</sup> promise to compromise the Act's utility.

The Refugee Act, which became law in March of 1980,<sup>5</sup> was intended to provide a "permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern."<sup>6</sup> Prior to this enactment, immigration legislation contained no explicit procedures for the general admission of economic or political refugees. To the contrary, previous legislation was expedient in nature and reflected America's geo-

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1. Pub. L. No. 96-212, 94 Stat. 102 (to be codified in scattered sections of 8 U.S.C. (1976)).

2. See S. REP. No. 256, 96th Cong., 2d Sess. 1 (1979), reprinted in [1980] U.S. CODE CONG. & AD. NEWS 515.

3. Some immigration lawyers forecast that the resettlement difficulties of the Cuban refugees, such as the riots of 1 June 1980 at Fort Chaffee, Arkansas, will prompt Congress to reevaluate U.S. refugee policy. See Slonim, *Freedom Flotilla from Cuba: Will the Harbor Stay Open?*, 66 A.B.A.J. 823, 825 (1980). Although local resentment of those in Arkansas, Idaho, and other resettlement states primarily may be related to a fear of economic competition and the sentiment that "charity begins at home," racial opposition to the admission of Latin and Vietnamese refugees has been noted. Doris Meissner, Deputy Associate Attorney General, has expressed concern that the Cuban/Haitian refugee dilemma will reinforce negative racial attitudes toward U.S. immigration policy in the future: "I'm quite worried about a heavy-handed approach because of the political atmosphere. It think the long-range impact is going to be to add to the already strong fear that most Americans have about lots of new people of other colors being in the United States." *Id.* at 824.

4. On 19 June 1980, the administration announced that the 114,000 Cubans who arrived between 21 April and 19 June and those Haitians who arrived before 19 June would be classified as Cuban/Haitian Entrants (Status Pending). This allows them six months admission on a parole basis under the 1952 Immigration and Nationality Act, 8 U.S.C. § 212(d)(5) (1976). This admission route, however, is only a stopgap measure which requires that special legislation be passed to normalize the status of these immigrants. Senator Kennedy, chief architect of the 1980 Refugee Act, has argued that the administration's reluctance to use the admission procedures of the Act will compromise its future. See Slonim, *Cuban Refugee Crisis: Quick Test for New Law*, 66 A.B.A.J. 826 (1980).

5. *Id.*

6. Pub. L. No. 96-212, § 101(b), 94 Stat. 102.

political position rather than our humanitarian concerns. For example, prior to 1965, all refugees were admitted under such special legislation as the 1948 Displaced Persons Act (for a limited number of "eligible displaced persons"),<sup>7</sup> the Refugee Relief Act of 1953 (for three classes of displaced Eastern Europeans),<sup>8</sup> or the 1960 Fair Share Act (for "refugee-escapees").<sup>9</sup> In 1965, the Immigration and Nationality Act was revised so that, to be admitted, a refugee had to prove that he departed from a communist or communist-dominated country or that he came from a country in "the general area of the Middle East."<sup>10</sup> Because these sharp geographical and ideological limitations allowed limited political flexibility, the majority of refugees during these years were admitted through the Attorney General's special parole authority, *i.e.*, special admission "for emergent reasons or for reasons deemed in the public interest."<sup>11</sup>

The use of parole authority as the mainstay of the United States refugee policy, however, has been criticized as being ad hoc, discriminatory, and inefficient.<sup>12</sup> As was demonstrated by the case of Uganda in 1972, the requirements of U.S. immigration law often stymie executive desire for

7. Pub. L. No. 83-203, 67 Stat. 411 (1953)(expired in 1956). The act permitted the special admission of 205,000 displaced persons. *Id.* § 20.

8. Pub. L. No. 86-648, 74 Stat. 504, amended by Migration and Refugee Assistance Act of 1962, Pub. L. No. 87-510, § 6, 76 Stat. 124 (1962), repealed by Act of Oct. 3, 1965, Pub. L. No. 89-326, § 16, 79 Stat. 919.

9. 8 U.S.C. § 1153(a)(7) (1976).

10. Pub. L. No. 89-236, § 203(a)(7), 79 Stat. 913 (1965).

11. 8 U.S.C. § 1182(d)(5). Over one million refugees have been admitted under the Attorney General's parole authority:

#### HISTORICAL SUMMARY OF REFUGEE PAROLE ACTION

Year	Country and Class of people	Total
1956	Orphans from Eastern European countries	925
1957-57	Refugees from Hungary	38,045
1960-65	Refugee-escapees from Eastern European countries	19,754
1962	Chinese refugees from Hong Kong and Macao	14,741
1962-79	Refugees from Cuba	692,219
1973-79	Refugees from the Soviet Union	35,758
1975-79	Indochinese refugees	208,200
1975-77	Chilean detainees	1,310
1975-77	Chilean refugees from Peru	112
1976-77	Latin American refugees (Chileans, Bolivians, and Uruguayans)	343
1978-79	Lebanese refugees	1,000 (est.)
1979	Cuban prisoners and families	15,000 (est.)
Total:		1,027,407

S. REP. No. 256, 96th Cong., 2d Sess. 6 (1979). For an excellent survey of the role of parole authority under previous immigration legislation, see Evans, *The Political Refugee in United States Immigration Law and Practice*, 3 INT'L LAW. 204 (1968).

12. See, e.g., Mackler, *Fleeing Political Refugee's Final Hurdle—The Immigration and Nationality Act*, 5 N. KY. L. REV. 9 (1978); Note, *Immigration Law and the Refugees—A Recommendation to Harmonize the Statutes with the Treaties*, 6 CAL. W. INT'L L.J. 129 (1975); Note, *Refugees Under United States Immigration Law*, 24 CLEV. ST. L. REV. 528 (1975).

expeditious parole admission. Because Uganda was neither communist nor in the Middle East, the 1,550 Orientals who were expelled upon General Amin's threat of extermination were admitted only after great procedural difficulties and, upon entry, they enjoyed fewer resettlement privileges than they would have had they been refugees from such "preferred" countries as the Soviet Union or Lebanon.<sup>13</sup>

In an attempt to redirect this muddled policy, the Refugee Act seeks to accomplish five objectives. First, it repeals the current immigration law's discriminatory treatment of refugees by providing a new definition of refugees, drawn from the 1967 Protocol Relating to the Status of Refugees,<sup>14</sup> that recognizes the plight of homeless people all over the world regardless of their national, regional, or political origin. This definition is significant because it recognizes the obligations of the United States under the 1967 Protocol. Prior to the new act, the government's attitude had been that accession to the Protocol did not enlarge our immigration responsibilities toward refugees.<sup>15</sup> Second, the Act raises the annual limitation for admission of regular refugees ("normal-flow refugees") from 17,400 to 50,000.<sup>16</sup> Third, it provides an orderly procedure for meeting emergency refugee situations if the needs of displaced people cannot be met within the regular 50,000-person limit.<sup>17</sup> It is hoped that these last two revisions will add needed flexibility to the Immigration and Nationality Act and reduce the need for ad hoc parole admission. Fourth, to ensure congressional control over the admission and resettlement process, the Act requires that Congress be consulted before refugees are admitted.<sup>18</sup> Lastly, the Act provides for federal support for the resettlement of refugees - including cash and medical benefits for up to a two-year period following admission.<sup>19</sup>

The Refugee Act was designed to provide maximum flexibility to cope with both political asylum and "emergency refugee situations," which have been considered by the legislative committees as "an unforeseen combination of circumstances or the resulting state that calls for immediate action."<sup>20</sup> The unexpected arrival of more than 114,000 Cuban refugees during the three months following the bill's enactment severely tested the utility of the new law. Although the Act outlines admission

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13. For a general discussion of the treatment of expellees under international law, see 2 A. GRAHL-MADSEN, *THE STATUS OF REFUGEES IN INTERNATIONAL LAW* § 244 (1972).

14. *Done* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577. The Protocol entered into force with respect to the United States on 1 November 1968.

15. See Letter of Transmittal From President Johnson to the Senate (Aug. 1, 1968), S. EXEC. K., 90th Cong., 2d Sess. 111 (1968). See also Note, *Political Asylum in the United States: A Failure of Human Rights Policy*, 9 RUT.-CAM. L.J. 133, 147-49 (1977).

16. Pub. L. No. 96-212, § 207(a)(1), 94 Stat. 103.

17. Pub. L. No. 96-212, § 207(b), 94 Stat. 103.

18. Pub. L. No. 96-212, § 203(f), 94 Stat. 104.

19. Pub. L. No. 96-212, Titles III-IV, 94 Stat. 109-18.

20. S. REP. No. 256, 96th Cong., 2d Sess. 10 (1979), reprinted in [1980] U.S. CODE CONG. & AD. NEWS 524.

procedures for refugees who are either of "special concern" or who seek admission because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion"<sup>21</sup> (which is a definition certainly broad enough to include the Cuban and Haitian refugees), President Carter chose to bypass these asylum provisions on the assumption that "[o]ur laws never contemplated and do not adequately provide for people coming directly to our shores the way the Cubans and the Haitians have done recently."<sup>22</sup> The administration instead chose to admit the refugees on a six-month parole basis which will require special legislation to be passed in the future to normalize the status of those immigrants.<sup>23</sup>

Although it is understandable that the administration would wish to delay use of the Refugee Act in an election year, especially considering its potential expense and probable conflict with current immigration sentiment, President Carter's interpretation of the Act runs contrary to the intention of the drafters. The Senate Judiciary Committee defines an emergency refugee situation in terms of a sudden exodus of people from a country where there had been no refugee flow before, a substantial increase in the number of people from an area where normal-flow refugees were never expected, or a flow of refugees resulting from any catastrophic circumstance.<sup>24</sup> Despite having flexible legislation tailored for such emergency situations, the Carter Administration refused to use the new law and has thus, in the eyes of its drafters, imperiled its usefulness for the coming years.

President Carter's indecisiveness is not the only factor endangering the bill, however. The hardening political atmosphere within the United States toward illegal immigration from Mexico and elsewhere promises to spawn a legislative movement to reevaluate our asylum policy. Senator Kennedy's euphoric rhetoric of 1977 that it is our "national commitment to welcome homeless refugees to our shores"<sup>25</sup> may not be shared in the 1980's by many of his fellow senators such as Arkansas Democrats Dale Bumpers and David Pryor who have had to cope with strong local resentment toward refugees in the wake of the riots at Fort Chaffee.<sup>26</sup> Moreover, the Presidential-Congressional Select Commission on Immigration and Refugee Policy, which will issue its report in March of 1981, has preliminarily indicated that it will propose various programs to inhibit the flow of immigrants—including stricter border enforcement, sanctions against those hiring illegal aliens, and an employee identification card to

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21. Pub. L. No. 96-212, § 202(a), 94 Stat. 102.

22. Statement of President Carter, May 14, 1980, *quoted in* Slonim, *supra* note 4, at 826.

23. *Id.*

24. S. REP. NO. 256, 96th Cong., 2d Sess. 10 (1979), *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 524.

25. S. REP. NO. 256, 96th Cong., 2d Sess. 1 (1979), *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 515.

26. Slonim, *supra* note 3, at 824.

be carried by all Americans.<sup>27</sup> Given this changing political situation and the Carter Administration's refusal to utilize the flexibility offered by the Refugee Act, it is probable that the new law is already antiquated and an inaccurate statement of our refugee policy.

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27. *Id.* In 1980 alone, an estimated two million people migrated to the United States. Although 800,000 of this number came legally as immigrants and refugees, at least 1,200,000 violated U.S. laws to enter. No country has ever absorbed as many new residents in one year during peacetime. Accordingly, it is understandable that many Americans feel threatened under a seeming barrage of legal and illegal immigration. The report of the Select Commission on Immigration and Refugee Policy is expected to reflect this hardened attitude. See Goldenberg, *Bursting through the Golden Door*, Rocky Mtn. News, Jan. 19, 1981, at 43, col. 1.

