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Lives in Limbo: Mismanagement of a Bad Policy Leaves Asylees in No Man's Land

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Victims of persecution who make it to the United States and are granted asylum from their persecutors must wait 12 years to become lawful permanent residents and 16 years to become U.S. citizens because of arbitrary numerical caps and federal mismanagement. This state of affairs not only is inhumane, but undermines the original intent of Congress to help those who have escaped persecution to integrate quickly into U.S. society.

Those victims of persecution fortunate enough to make it to the United States and successfully run the legal gauntlet required to prove they merit asylum from their persecutors find themselves in a Kafkaesque predicament. U.S. immigration law provides that individuals granted asylum must wait only one year to become lawful permanent residents. However, an arbitrary limit on the number of asylees who are in fact allowed to do so each year, combined with mismanagement of the entire process by federal immigration authorities, has created a situation in which asylees must wait at least 12 years to become permanent residents – and 4 more years to become U.S. citizens. As a result, asylees are denied the opportunity for a smooth and timely transition into U.S. society, left without a crucial identification document often demanded by employers (the "green card"), and forced to wait at least 16 years before they can begin the process of reuniting with parents or siblings who may face the same mortal danger they themselves escaped. It is with no small measure of irony that individuals who fled torture, rape or impending death for the promise of freedom in the United States are consigned to a legal limbo in which they must spend more than a decade as outsiders in their new homeland.

The Long Road to Asylum

According to the Immigration and Nationality Act, a refugee is someone who is unable or unwilling to return to their country of nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[1] U.S. immigration law mandates different procedures for dealing with those refugees who apply for protection while outside of the United States and those who apply after arriving in the country. Individuals belonging to the latter group apply for "asylum," which – if granted – earns them the designation "asylee."

Obtaining asylum is no easy matter. Asylum seekers, by the very nature of the conditions under which they fled their homelands, typically come to the United States deeply traumatized and with few, if any, possessions or identification documents. They often are imprisoned by federal immigration authorities upon their arrival. They must plead their case, usually without the assistance of an attorney or translator, before an asylum officer or Immigration Judge, depending on the circumstances. If, despite these obstacles, they succeed in

proving that they have a "credible fear" of persecution if returned to their home countries, and if they pass the requisite background checks to ensure they are not criminals or terrorists, they are granted asylum. Otherwise, they are deported. From April 1991 through September 2002, asylum officers granted only 30.7 percent, or 132,974, of the 433,663 requests for asylum that came before them. From Fiscal Year (FY) 1989 through FY 2002, Immigration Judges granted just 25.1 percent, or 65,600, of the 261,202 asylum cases they heard.[2]

Arbitrary Limits and Chronic Backlogs

Through the Refugee Act of 1980 (Public Law 96-212), Congress sought to impose order upon the previously chaotic process by which refugees and asylees were admitted and resettled in the United States. As the Act itself states, Congress intended "to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States [including asylees], and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted." The Act permitted refugees and asylees to become lawful permanent residents of the United States, and thus receive a "green card," one year after being granted asylum. The Act also authorized the President to reserve up to 5,000 "adjustment" numbers for eligible asylees already in the country who want to become permanent residents. The 5,000 cap quickly proved insufficient to keep pace with the number of people to whom the federal government actually granted asylum each year. As a result, a backlog grew of asylees who had applied for lawful permanent residence, but whose applications could not be approved because of the numerical limit.

Congress attempted to address the backlog and the inadequacy of the 5,000 cap through provisions of the Immigration Act of 1990 (Public Law 101-649). These provisions allowed asylees who had applied before June 1, 1990, to become lawful permanent residents irrespective of the cap, thereby eliminating the backlog. In addition, Congress raised the cap to 10,000 in the belief that this would be sufficient to account for all future demand. Since FY 1992, the President each year has authorized the use of all 10,000 adjustment numbers reserved for asylees wanting permanent residence. However, the cap again proved inadequate to cover the number of people granted asylum. Thus a backlog reappeared and now stands at more than 120,000, meaning that asylees who apply today must wait at least 12 years to become permanent residents, plus an additional 4 years to become U.S. citizens.

The Refugee Act of 1980 clearly expressed the intent of Congress to allow eligible asylees to become lawful permanent residents no more than one year after being granted asylum. When the original numerical limit on how many asylees could do so proved inadequate, Congress raised the cap in 1990, again with the intent of ensuring that asylees would not have to wait more than one year. Now that the waiting time has risen to 12 years, it is obvious that attempting to predict future demand for permanent residence among asylees, and to set caps based on those predictions, is a highly dubious and unreliable endeavor. Given that refugees admitted into the United States from abroad are not subject to such a cap, it is illogical – and inhumane – to penalize those who have been granted asylum after arriving in the United States by imposing upon them what, in practice, amount to entirely arbitrary limitations.

INS Mismanagement Adds Insult to Injury

In addition to the paucity of the annual cap, the former Immigration and Naturalization Service (INS) – now the Bureau of Citizenship and Immigration Services (BCIS) of the Department of Homeland Security – mismanaged the process of assigning scarce adjustment numbers to asylees wanting permanent residence. This mismanagement took two principal forms. First, the INS failed to assign asylee adjustment numbers on a "first come, first serve" basis, meaning that those asylees "first in line" for permanent residence were not necessarily the first to receive it. Until recently, asylee applications for permanent residence were processed by each INS district office under its own particular system (or lack thereof) with practically no central coordination. As a result, the length of time it took to be granted lawful permanent residence had as much to do with which INS office processed the application as with the date on which the asylee actually filed the application.

Second, due to the lack of a system to track how many asylee adjustment numbers were in fact used, the INS failed to allocate all of the 10,000 available numbers in at least six fiscal years despite a growing backlog of applications. All told, about 22,000 available asylee adjustment numbers have not been used since FY 1994, amounting to nearly one-quarter of the 90,000 numbers reserved for asylees to become permanent residents during this time. If these available numbers were used right now, the waiting time for asylees trapped in the backlog would be reduced by more than 2 years.

Recently, processing of asylee applications for permanent residence has been centralized at the Nebraska Service Center. This has greatly reduced both of the aforementioned problems, although some cases from the previous period of anarchy are lost or remain "stuck" in district offices pending interviews or for other reasons. However, the damage already has been done for the 22,000 asylees who now would be permanent residents of the United States if not for INS mismanagement.

Federal immigration authorities thus far have refused to redress the inequities caused by their own mismanagement. The INS – and now the BCIS – has failed to grant to asylees even the limited adjustment numbers mandated by the President. In addition, the agency has far exceeded its authority by continuing to withhold those numbers from eligible asylees on the basis of a mistaken belief - nowhere to be found in existing law - that the numbers "expire" if not used during the fiscal year in which they are authorized. On March 4, 2002, the American Immigration Law Foundation, Massachusetts Law Reform Institute, and law firm of Dorsey & Whitney, LLP, filed a class action lawsuit in Minnesota federal district court seeking relief for asylees harmed by this ongoing mismanagement.[3]

Needless Hardship

The massive delays created by the congressionally imposed cap and INS/BCIS mismanagement produce a number of hardships for asylees. Perhaps the greatest, and most intangible, is perpetuating the sense that they are people without a country. Asylees, forced to flee their homelands under the most horrific of conditions, want nothing more than to put down roots and rebuild their lives. But the U.S. government is sending them a mixed message: you can make a new life for yourself here, but – for no particular reason – you'll have to wait 16 years to fully become part of our society.

This is a cruel and utterly pointless hurdle to place in the path of individuals already traumatized by having to leave behind their families, friends and homes.

The delays also cause numerous practical problems that stem from not having the "green card" which comes with lawful permanent residence. Asylees applying for jobs or loans often find the door closed to them by employers and bank officers who have little, if any, idea what an "asylee" is, let alone what legal rights are associated with that status. Most employers – not to mention some BCIS offices – are unaware that asylees do not need an Employment Authorization Document (EAD) in order to work. Although the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173) required that EADs be issued to asylees immediately upon the granting of asylum, those who entered prior to the law's enactment are not included. In any case, asylees who want an EAD must apply for a new one every year and pay the accompanying $120 fee. Furthermore, BCIS often neglects to give asylees an I-94 (Arrival-Departure Record), which also serves as evidence of eligibility for employment, or provides I-94s that include spurious restrictions not required by law. Similarly, the Social Security Administration frequently fails to give asylees the unrestricted social security cards to which they are legally entitled.

Conclusion

It has become abundantly clear that the annual cap on the number of asylees who may receive lawful permanent residence is seriously undermining the original intent of Congress as expressed in the asylum provisions of the Refugee Act of 1980 and the Immigration Act of 1990. Lawmakers intended to make it easier for those who have been granted asylum to become part of U.S. society, not banish them to a legal No Man's Land for more than a decade. The caps serve no other purpose than to inflict hardship upon people who fled to this country to escape hardship and should be repealed. Independent of this, the BCIS must make available to asylees wanting permanent residence the 22,000 adjustment numbers that already would have been available if not for federal mismanagement of the entire process. Forcing asylees to pay the price for bureaucratic bungling violates the most basic principles of fairness and accountability.

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Endnotes

[1] INA § 101(a)(42)(a); 8 USC § 1101(a)(42)(a).
[2] Immigration and Refugee Services of America, *Refugee Reports, 2002 Statistical Issue*, Vol. 23, No. 9, December 31, 2002.
[3] *Ngwanyia v. Ashcroft*, No. 02-CV-502 RHK/JMM (D.Minn., filed Mar. 4, 2002).