

Page Denied

Next 1 Page(s) In Document Denied

820

BUREAU OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS (HA)

821 ASSISTANT SECRETARY FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS (HA)

(TL-ORG-161 6-10-83)

a. Has principal responsibility in the Department for policy counsel at decision-making levels on matters relating to human rights and humanitarian affairs in the conduct of U.S. foreign policy, and the Department's review of asylum requests.

b. Is the focal point within the Department for continuous observation and review of all matters pertaining to human rights and humanitarian affairs in the conduct of foreign policy, including general oversight of the following:

(1) Information-gathering regarding human rights in each country for which the United States is proposing security or development assistance;

(2) Preparing the statements and reports required by Congress pertaining to human rights practices in foreign countries;

(3) Preparing reports for the President to submit to Congress on instances of discrimination against United States personnel performing authorized services under the provisions of the Foreign Military Sales Act; and

(4) Preparing, upon Congressional request, reports on specific countries regarding exclusionary policies and practices based on race, religion, national origin, or sex.

c. Makes recommendations to the Secretary and the Agency for International Development (AID) regarding compliance with the human rights provisions of the Foreign Assistance Act, as amended.

d. Performs such other responsibilities as may promote increased observance of internationally recognized human rights by all countries.

821.1 Senior Deputy Assistant Secretary for Human Rights and Humanitarian Affairs

a. Monitors human rights developments throughout the world, coordinating with human rights officers in the relevant geographic and functional bureaus and concerned officers in the Agency for International Development (AID); is responsible for developing human rights objectives and strategies, and for monitoring pursuit of those objectives.

b. Is responsible for assuring that human rights policy and legislative mandates are observed in decisions on security assistance and export control matters.

c. Monitors the human rights activities of the United Nations and other international organizations, and provides policy guidance on human rights matters to United States representatives accredited to these organizations, in close coordination with the Bureau of International Organization Affairs.

d. Is responsible for assuring that human rights policy and legislative mandates are observed in decisions on development assistance, including activities of international financial institutions.

e. Oversees administrative matters for the entire bureau.

821.2 Deputy Assistant Secretary for Human Rights and Humanitarian Affairs

a. Responsible for developing the policy carried out by the bureau, ensuring that bureau responses to human rights developments serve the U.S. Government's human rights interests and overall foreign policy, objectives, identifies new initiatives, and supervises policy studies.

b. Manages the bureau's relations with all nongovernmental groups concerned with human rights issues. Also supervises the public affairs, press, and congressional functions of the bureau.

c. Oversees the operation of the country reports unit, which coordinates preparation of the annual human rights country reports mandated by statute, and also works to refine and improve the Department's information-gathering capability on human rights matters.

d. Develops a role for the bureau in expounding United States ideals around the world and in improving the preconditions for good human rights practices.

821.3 Deputy Assistant Secretary for Humanitarian Affairs

a. Provides leadership in the formulation and execution of U.S. asylum policies in accord with domestic law and international obligations.

b. Manages the operation of the Asylum Division and exercises policy direction and operational control of the asylum process, assuring coordination with geographic and functional bureaus.

c. Maintains liaison with the Department of Justice and the Immigration and Naturalization Service regarding policy and operational aspects of the asylum process.

822 through 829 (Unassigned)

Notices

DEPARTMENT OF STATE

[Public Notice 851]

REQUESTS FOR ASYLUM

Policy and Procedures

The following procedures were transmitted by memorandum of January 7, 1972, to all U.S. Government departments and agencies. Copies were also sent to all American diplomatic and consular posts instructing them to coordinate implementation by U.S. Government units within the areas of their jurisdiction.

Dated: February 1, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

JANUARY 4, 1972.

PART I—GENERAL POLICY FOR DEALING WITH REQUESTS FOR ASYLUM BY FOREIGN NATIONALS

Policy. Both within the United States and abroad, foreign nationals who request asylum of the U.S. Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In cases of such requests occurring within foreign jurisdiction, the ability of the U.S. Government to give assistance will vary with location and circumstances of the request.

U.S. objectives. A basic objective of the United States is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

Background. A primary consideration in U.S. asylum policy is the "Protocol Relating to the Status of Refugees," to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

U.S. participation in assistance programs for the relief of refugees outside U.S. jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

President Nixon has reemphasized the U.S. commitment to the provision of asylum for refugees and directed appropriate depart-

ments and agencies of the U.S. Government, under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

PART II—HANDLING ASYLUM REQUESTS BY PERSONS IN THE UNITED STATES OR IN OTHER AREAS OUTSIDE ANY FOREIGN JURISDICTION

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States, or aboard a U.S. vessel or aircraft in or over U.S. territorial waters or on or over the high seas, should become thoroughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

Procedures. A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (Telephone area code 202, 632-1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an immediate precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means of resistance are available, taking into account the safety of U.S. personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been

referred to headquarters for instructions. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. For INS only: Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.

PART III—HANDLING ASYLUM REQUESTS BY PERSONS WITHIN FOREIGN JURISDICTIONS

This instruction sets forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels, or aircraft in foreign jurisdictions.

I. GRANTING ASYLUM

While it is the policy of the United States not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

II. GRANTING TEMPORARY REFUGE

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the American Embassy or consular office having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of American personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

III. NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should notify immediately the nearest American diplomatic or consular office in the country in which the

NOTICES

request is made. Embassies or Consulates will forward this information to the Department of State by an immediate precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the United States may notify those headquarters, with information copies to the nearest Embassy or Consular office and the Department of State, by immediate precedence message.

IV. INFORMATION TO BE TRANSMITTED

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party, any government office now held or previously occupied.

V. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. *Requests for asylum.* Requests for asylum made at U.S. diplomatic and consular establishments will continue to be dealt with in accordance with the provisions of Volume 2, section 225.2 of the Foreign Affairs Manual, except that, should temporary refuge be granted, the authority of the Department of State must be obtained before such refuge is terminated.

B. *Routine requests.* Requests of third country nationals for asylum made to diplomatic and consular offices need not be reported immediately to the Department of State when all of the following conditions exist:

- (a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.
- (b) There is no evidence of danger of forcible repatriation.
- (c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. *Coordination with host country authorities.* Action with regard to third country nationals seeking asylum should normally be taken within the overall policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic and social rights within asylum countries.

D. *Available U.S. assistance.* The United States is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the Embassy or Consular Office has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

[FR Doc. 72-2327 Filed 2-15-72; 8:52 am]

[Public Notice 252]

ENVIRONMENTAL IMPACT STATEMENTS

Issuance of Departmental Procedures for Preparation and Coordination

Notice is hereby given of the publication of proposed procedures of the Department of State, after consultation with the Council on Environmental Quality, in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4332(2)(C)); section 7 of Executive Order 11514 of March 5, 1970; and section 3 of the guidelines for statements of proposed Federal action affecting the environment promulgated by the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) hereby incorporated by reference and hereafter referred to as the CEQ Guidelines. The procedures, when established, will be published in the Foreign Affairs Manual of the Department of State. The proposed procedures are as follows:

1. *General.* Attention is called to the National Environmental Policy Act of 1969 and to the Guidelines for Federal Agencies under the National Environmental Policy Act (NEPA) issued by the Council on Environmental Quality (CEQ) April 23, 1971. Except as modified by the present policy guides, the CEQ Guidelines will be deemed applicable to actions of the Department in complying with policies and provisions of the NEPA. These procedures do not apply to the Agency for International Development, the Arms Control and Disarmament Agency, and the U.S. Information Agency. These procedures likewise do not apply to the United States section of the International Boundary and Water Commission, which operates under compatible and more specialized procedures.

2. *Determining the need for environmental impact statements.* (a) Whether or not an environmental impact statement is required under section 102(2)(C) and filed for any Department action, the policies and provisions of the act require that the environmental effects of proposed actions be considered. The process of deciding on the need for the environmental impact statement on any Department action will itself require an extensive analysis of the effects that the

proposed action will have on the human environment. The inquiry into environmental effects is mandated independent of the requirement to file environmental impact statements, by section 102(2)(B) of the act, which requires procedures to insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations. CEQ Guideline No. 1 underscores this by recognizing that the purpose of section 102(2)(C) is to build into the agency decisionmaking process an appropriate and careful consideration of the environmental aspects of proposed action, and to assist agencies in implementing not only the letter, but the spirit, of the act. While the requirement for strict compliance with the procedural requirements of section 102(2)(C) is not to be taken lightly, it must be emphasized that the essence of the act is the need for real consideration of environmental effects.

(b) Section 102(2)(C) of NEPA requires an environmental impact statement on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Therefore, an activity which requires a statement must both be a major Federal action and must significantly affect the environment. For a general elaboration of the terms, see the CEQ Guidelines, especially CEQ Guidelines 5(a) and 5(b).

3. *Responsibility within the Department.* The Office of Environmental Affairs (OE/A) has primary responsibility for the Department's compliance with the requirements of NEPA. Jointly with the Office of Environmental Affairs, the Bureau of the Department which has operational authority over any proposed action shares responsibility for determining whether an environmental impact statement will be needed, or in the case of the International Boundary Commission and the International Joint Commission, the United States section thereof. (Such section is hereinafter included in the term "Bureau.") In order to determine whether the proposed action will be a "major Federal action significantly affecting the quality of the human environment," the Office of Environmental Affairs, together with the Bureau, will investigate thoroughly the direct and indirect environmental effects of the proposed action. They will solicit information from other areas of the Department, from other Federal agencies with jurisdiction by law or special expertise, as determined by the CEQ, with respect to any environmental impact involved, and from private organizations, to the extent necessary to supplement work in evaluating the environmental impact of the proposed action. In assessing the need for impact statements regarding any particular action, the following guides will be considered:

(a) Not every Department activity will be considered a "major Federal action" for the purposes of the act. For example, the following general classes of ac-

DEPARTMENT OF STATE

Notice 728]

Requests for Asylum

The following guidelines are intended to implement and modify Public Notice 728 (FR 3447, February 16, 1972), with respect to notification to the Department of State of actual or imminent requests for asylum. Whereas Public Notice 351 (FR 3447, February 16, 1972) required immediate notification of all requests, the following guidelines establish criteria for distinguishing

requests which call for immediate notification and those requests which need only be brought to the attention of the Immigration and Naturalization Service.

Guidelines for Notification to the U.S. Department of State of Requests for Asylum

The Department of State wishes to be notified immediately of any request (or imminent request) for asylum which is politically sensitive or involves the possibility of forcible repatriation. In particular, the Department of State should be informed immediately of a request for asylum from:

- (1) Any national of the Soviet Union;
- (2) Any national of East Germany, Romania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of China, North Korea, Vietnam, Laos, or Kampuchea, who is present in the United States as part of an official visit, formal cultural or athletic exchange, exchange student program or state-owned business or enterprise activity, or who is in transit through the United States in such capacity;
- (3) Any foreign diplomat, foreign consular officer, or foreign official, regardless of the country;
- (4) Any other alien who asserts there is a serious threat of forcible repatriation to himself or to his family.

In addition, the Department of State should be informed immediately of any request for asylum which for other reasons presents special problems calling for the Department's prompt attention. Other requests, not calling for such attention by the Department of State, should be brought to the attention of the local district director of the Immigration and Naturalization Service.

United States agencies or other authorities receiving a request for asylum meriting the Department of State's prompt attention (or knowing that such a request is imminent) should immediately notify the Department of State's Operations Officer at the Department of State's Operations Center in Washington, D.C. (Telephone: 202-632-1512.)

Dated: October 1, 1980.

For the Secretary of State.

Ben H. Read,

Under Secretary for Management.

[FR Doc. 80-33193 Filed 10-23-80; 8:45 am]

BILLING CODE 4710-10-M

§ 207.5

from a denial of refugee status under this chapter.

§ 207.5 Waiting lists and priority of handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by the Immigration and Naturalization Service shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Attorney General may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as: Reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

§ 207.6 Control over approved refugee numbers.

Current numerical accounting of approved refugees is maintained for each special group designated by the President. As refugee status is authorized for each applicant, the total count is reduced correspondingly from the appropriate group so that information is readily available to indicate how many refugee numbers remain available for issuance.

§ 207.7 Physical presence in the United States.

For the purpose of adjustment of status under section 209(a)(1) of the Act, the required one year physical presence of the applicant in the United States is computed from the date the applicant entered the United States as a refugee.

§ 207.8 Termination of refugee status.

The refugee status of any alien (and of the spouse or child of the alien) admitted to the United States under section 207 of the Act shall be terminated by any district director in whose district the alien is found if the alien was not a refugee within the meaning of section 101(a)(42) of the Act at the

8 CFR Ch. I (1-1-85 Edition)

time of admission. The district director shall notify the alien in writing of the Service's intent to terminate the alien's refugee status. The alien shall have 30 days from the date notice is served upon him/her or, delivered to his/her last known address, to present written or oral evidence to show why the alien's refugee status should not be terminated. There is no appeal under this chapter from the termination of refugee status by the district director. Upon termination of refugee status, the district director shall process the alien under sections 235, 236, and 237 of the Act.

PART 208—ASYLUM PROCEDURES**Sec.**

- 208.1 Jurisdiction.
- 208.2 Application.
- 208.3 Filing application.
- 208.4 Employment authorization.
- 208.5 Burden of proof.
- 208.6 Appearance.
- 208.7 Advisory opinions from BHRHA.
- 208.8 Decision by district director.
- 208.9 Renewal of asylum request.
- 208.10 Asylum request in exclusion or deportation proceedings.
- 208.11 Asylum requests after completion of exclusion or deportation hearing.
- 208.12 Legal liability of asylees.
- 208.13 Definition of country of habitual residence.
- 208.14 Definition of firm resettlement.
- 208.15 Termination of asylum status.
- 208.16 Expulsion of former asylees.

AUTHORITY: Secs. 101, 208, 94 Stat. 105; 8 U.S.C. 1101, 1158.

SOURCE: 45 FR 37394, June 2, 1980, unless otherwise noted.

§ 208.1 Jurisdiction.

(a) Jurisdiction over any application for asylum made by an applicant for admission at a port of entry lies with the district director having jurisdiction over that port of entry. Initial jurisdiction over any application for asylum made by an alien in the United States lies with the district director having jurisdiction over the application's place of residence.

(b) Exclusive jurisdiction over an asylum application filed but an alien who has been served a notice of referral to exclusion proceedings under

Immigration and Naturalization Service, Justice**§ 208.8**

§ 236.3 of this chapter, or served an order to show cause under § 242.1 of this chapter, lies with the immigration judge. Except upon the motion of the district director, an immigration judge shall not remand an application or terminate a proceeding on the ground that the district director has failed to adjudicate an asylum application filed, or allegedly filed, prior to the issuance of the order to show cause or the notice to appear for exclusion proceedings. Any previously filed but unadjudicated asylum application must be resubmitted by the alien to the immigration judge.

[48 FR 5885, Feb. 9, 1983]

§ 208.2 Application.

Application for political asylum shall be made on Form I-589, "Request for Asylum in the United States." The applicant's spouse and children as defined in sections 101(b)(1) (A), (B), (C), (D) and (E) of the Act, may be included in the application. Each application shall be accompanied by a completed Form G-325A and an FD-258 fingerprint chart for every individual included in the application who is fourteen years of age or older.

§ 208.3 Filing the application.

(a) *With the district director.* The asylum application shall be filed in triplicate with the district director when the applicant:

(1) Is seeking admission to the United States, or;

(2) Is in the United States, regardless of status, and has not been served either with a notice to applicant for admission detained for hearing before an immigration judge or with an order to show cause.

(b) *With the immigration judge.* Asylum requests made after the institution of exclusion or deportation proceedings shall be filed in quadruplicate with the docket clerk of the immigration court. Such asylum requests shall also be considered as requests for withholding exclusion or deportation pursuant to section 243(h) of the Act.

[45 FR 37394, June 2, 1980, as amended at 48 FR 5885, Feb. 9, 1983]

§ 208.4 Employment authorization.

Upon the filing of a non-frivolous I-589, the district director may, in his discretion, grant a request by the applicant for employment authorization.

§ 208.5 Burden of proof.

The burden is on the asylum applicant to establish that he/she is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of the country of such person's nationality or, in the case of a person having no nationality, the country in which such person habitually resided, 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.

§ 208.6 Appearance.

The applicant shall be examined in person by an immigration officer or judge prior to adjudication of the asylum application. The personal appearance of any children included in the application may be waived by the district director or immigration judge.

§ 208.7 Advisory opinions from the Bureau of Human Rights and Humanitarian Affairs.

Upon receipt of Form I-589, the district director shall in all cases request an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State. The immigration judge shall request BHRHA advisory opinions as prescribed in § 208.10(b) of this part.

§ 208.8 Decision by the district director.

(a) *Discretion.* The district director may approve or deny the asylum application in the exercise of discretion.

(b) *Writing.* The decision of the district director shall be in writing.

(c) *Appeal.* No appeal shall lie from the decision of the district director.

(d) *Decision based on BHRHA opinion.* If the decision is based in whole or in part on a BHRHA opinion, the opinion will be made part of the record of proceeding unless it is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982). If the BHRHA opinion is included in the

record, he/she shall be expeditiously placed under exclusion proceedings, unless the applicant elects to withdraw the application for admission.

(e) *Approval.* When an I-589 is approved, asylum status shall be granted for a period of one year from the date of approval.

(1) *Annual interview of asylee.* Every asylee shall be interviewed annually to determine continuing eligibility for asylum and eligibility for adjustment of status.

(2) *Extension of asylum status.* If after the annual interview it is determined that an alien is still eligible for asylum, but does not wish or is ineligible to adjust status under any section of the Act, his/her asylum status may be extended for one year.

(f) *Denial—(1) General.* The district director shall deny a request for asylum or extension of asylum status if it is determined that the alien:

(i) Is not a refugee within the meaning of section 101(a)(42) of the Act;

(ii) Has been firmly resettled in a foreign country;

(iii) That the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion;

(iv) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(v) There are serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States; or

(vi) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(2) *Discretion.* Among other grounds, the district director may deny a request for asylum or extension of asylum status in the exercise of discretion if it is determined that there is an outstanding offer of resettlement by a third nation where the applicant will not be subject to persecution and the applicant's resettlement in a third nation is in the public interest.

(3) *Applicant for admission.* If an asylum request by an applicant for ad-

mission is denied, he/she shall be expeditiously placed under exclusion proceedings, unless the applicant elects to withdraw the application for admission.

(4) *Applicant in the United States.* If a request for asylum or extension of asylum by an alien in the United States is denied, the district director may in his discretion, grant voluntary departure pursuant to O.I. 242.10, or commence deportation proceedings pursuant to 8 CFR 242.1.

[45 FR 37394, June 2, 1980, as amended at 48 FR 20684, May 9, 1983]

§ 208.9 Renewal of asylum request.

Where an application for asylum is denied by the district director, the applicant may renew his/her request for asylum before an immigration judge in exclusion or deportation proceedings.

§ 208.10 Asylum requests in exclusion or deportation proceedings.

(a) *Application.* A request for asylum made in exclusion or deportation proceedings shall be made on Form I-589.

(b) *BHRHA advisory opinion.* When the asylum request is filed, the hearing will be adjourned for the purpose of requesting an advisory opinion from BHRHA. The immigration judge shall not request an opinion if it has been received in connection with an application under § 208.7 of this part unless circumstances have changed so substantially since the first opinion was provided that a second referral would materially aid in adjudicating the asylum request. The BHRHA opinion, unless classified under Executive Order No. 12356, will be made part of the record, and the applicant shall be given an opportunity to inspect, explain, and rebut it.

(c) *Record and non-record evidence.* Both the applicant and the Service may present evidence for the record in the exclusion or deportation proceedings. Additionally, the Service may present non-record evidence to be considered by the immigration judge, provided the information is classified under Executive Order No. 12356. When the immigration judge receives non-record evidence, the applicant

shall be informed as to whether the character of the evidence concerns political, social or other conditions in a specified country, or personally related to the applicant.

(d) *Disclosure of non-record evidence.* The immigration judge may disclose to the asylum applicant the non-record evidence, or any part thereof, to the extent that he believes he can do so and still safeguard the information and its source. The applicant shall be provided opportunity to rebut any evidence so disclosed. A decision based in whole or in part on non-record evidence shall state that such evidence is material to the decision.

(e) *Approval.* When the immigration judge grants asylum, it shall be for a period of one year.

(f) *Denial.* When the immigration judge denies asylum, the exclusion or deportation proceedings shall be reinstated.

(45 FR 37394, June 2, 1980, as amended at 48 FR 20684, May 9, 1983)

§ 208.11 Asylum requests after completion of exclusion or deportation hearing.

An alien may request that an exclusion or deportation proceeding be reopened pursuant to 8 CFR 103.5 or 8 CFR 242.22 respectively, on the basis of a request for asylum. Such request must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding. If the alien fails to do so, the asylum claim shall be considered frivolous, absent any evidence to the contrary. Nothing in this part, however, shall be construed to prevent an alien from requesting relief under section 243(h) during exclusion or deportation proceedings.

§ 208.12 Legal liability of asylees.

A grant of asylum status in no way exempts an alien from any liability under civil or criminal proceedings by any department, bureau or agency of any Federal, State or local government.

§ 208.13 Definition of country of habitual residence.

The term "country of habitual residence" means the customary, usual, or regular place of abode.

§ 208.14 Definition of firm resettlement.

An alien is considered to be "firmly resettled" if he was offered resident status, citizenship, or some other type of permanent resettlement by another nation and travelled to and entered that nation as a consequence of his flight from persecution, unless the refugee establishes, to the satisfaction of the United States Government officer reviewing the case, that the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of asylum/refuge that he was not in fact resettled. In making this determination, the officer shall consider, in light of the conditions under which other residents of the country live, the type of housing, whether permanent or temporary, made available to the refugee, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges (such as travel documentation, education, public relief, or naturalization) available to others resident in the country.

§ 208.15 Termination of asylum status.

(a) *Ground.* (1) Changed circumstances in the asylee's country of nationality, or last habitual residence if he/she has no nationality, eliminates the need for asylum, or;

(2) The asylee poses a danger to the security of the United States, or because of conviction of a serious crime poses a danger to the community, as described in § 208.8(f)(iv) of this part, or;

(3) It appears that the alien was not in fact eligible for asylum for any reason specified in § 208.8(f).

(b) *By district director.* The district director may terminate asylum status granted under § 208.8(e). Prior to termination, the alien shall be given written notice of the intent to rescind asylum status, including the reason(s) therefor, and provided an opportunity to present evidence tending to establish that he/she is still a refugee within the meaning of section 101(a)(42), and/or does not pose a danger to either the security of the United States or the community. If it

§ 208.16

is subsequently determined, notwithstanding any evidence presented to the contrary, the alien is no longer a refugee, he/she shall be given written notice of termination of asylum status.

(c) *By immigration judge or Board of Immigration Appeals.* The immigration judge or Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 242.22 of this part for the purpose of terminating asylum status granted under § 208.10.

§ 208.16 Expulsion of former asylees.

Once an alien's asylum status is terminated as specified in § 208.15 of this part, the alien, unless eligible for other immigration benefits for which he/she makes application, shall be placed under:

(a) Deportation proceedings if he/she was in the United States at the time asylum status was granted, or;

(b) Exclusion proceedings if he/she was an applicant for admission to the United States at the time asylum status was granted.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Secs.

209.1 Admission for permanent residence after one year.

209.2 Adjustment of status of alien granted asylum.

§ 209.1 Admission for permanent residence after one year.

(a) *Eligibility.* (1) Every alien in the United States as a refugee under section 207 of this chapter whose status has not been terminated, is required to appear before an immigration officer one year after entry to determine his/her admissibility under sections 235, 236, and 237 of the Act. The applicant shall be examined under oath to determine admissibility. If the applicant is found to be admissible, he/she shall be inspected and admitted for lawful permanent residence as of the date of the alien's arrival in the United States. If the applicant is determined to be inadmissible, he/she shall be informed that he/she may renew the request for admission to the United States as an immigrant in exclusion proceedings

under section 236 of the Act. The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act, whose application is based on his/her refugee status.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980 shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Processing Application.* One year after arrival in the United States, every refugee entrant shall be notified to appear for examination before an immigration officer. Each applicant shall be examined under oath to determine eligibility for permanent residence. If the refugee entrant has been physically present in the United States for at least one year, forms FD-258 (Applicant Card) and G-325A (Biographical Information) will be processed. Unless there were medical grounds for exclusion at the time of arrival, a United States Public Health Service medical examination is not required. If the alien is found admissible after inspection under section 209(a) of the Act, he/she shall be processed for issuance of Form I-551 (Alien Registration Receipt Card).

(Secs. 101, 103, 207, and 209; 94 Stat. 105; (8 U.S.C. 1101, 1103, and 1159))

(46 FR 45119, Sept. 10, 1981)

§ 209.2 Adjustment of status of alien granted asylum.

(a) *Eligibility.* The status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for permanent residence, provided the alien: (1) Applies for such adjustment; (2) has been physically present in the United States for at least one year after having been granted asylum; (3) continues to be a refugee within the meaning of section 101(a)(42) of the Act, or the spouse or child of a refugee; (4) has not been firmly resettled in any foreign country; (5) is admissible to the United States as an immi-

gration and Nationality Act to reimburse State and local public agencies for expenses which those agencies incurred, at any time, in providing aliens described in subsection (c) of this section with social services of the types for which reimbursements were made with respect to refugees under paragraphs (3) through (6) of section 2(b) of the Migration and Refugee Assistance Act of 1962 (as in effect prior to the enactment of this Act) or under any other Federal law.

(b) The Attorney General is authorized to grant to an alien described in subsection (c) of this section permission to engage in employment in the United States and to provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) This section applies with respect to any alien in the United States (1) who has applied before November 1, 1979, for asylum in the United States, (2) who has not been granted asylum, and (3) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

7. FORMER SECTION 203 (a)(7), (as in effect before the Refugee Act of 1980)

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section 201(a), to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided*, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

Section 5 of Pub. L. 95-412 (Oct. 5, 1978, 92 Stat. 909) as amended, provides as follows:

Sec. 5. Notwithstanding any other provision of law, any refugee, not otherwise eligible for retroactive adjustment of status, who was or is paroled into the United States by the Attorney General pursuant to section 212(d)(5) of the Immigration and Nationality Act before 1980, shall have his status adjusted pursuant to the provisions of section 203(g) and (h) of the Act.

B. SPECIAL INVESTIGATOR AND COMMISSIONS

1. SPECIAL INVESTIGATOR

Section 22 of Public Law 96-132 (Nov. 30, 1979, 93 Stat. 1050) provides as follows:

Sec. 22. (a) In order to create an independent and objective unit—

- (1) to conduct and supervise audits and investigations relating to programs and operations of the Immigration and Naturalization Service,
- (2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in such programs and operations, and
- (3) to provide a means for keeping the Commissioner of the Immigration and Naturalization Service and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action,

there is hereby established in the Immigration and Naturalization Service of the Department of Justice an Office of Special Investigator (hereinafter in this section referred to as "the Office").



United States Department of State

Washington, D.C. 20520

OCT 16 1985

MEMORANDUM

TO: All HA/AS Staff

FROM: HA/AS - Edward H. Wilkinson *EHW*

SUBJECT: Immediate Action--Asylum Cases

This supercedes Mr. Johnsons' memorandum of March 19, 1985, on the same subject.

1. Occasionally this office will receive telephone calls to report IMMEDIATE ACTION asylum applications. An IMMEDIATE ACTION asylum application may involve a diplomat or military officer or either category from a communist country, but could pertain to any citizen of any country. Such calls usually come from the State Department's Operations Center, but may also come from other government entities, such as the INS, the FBI, or even local police departments. No matter where the calls come from, our actions must be the same. The purpose of this memorandum is to describe those actions. The procedures outlined here must be scrupulously followed. Safety of the individual is the first priority.

2. When an IMMEDIATE ACTION asylum call is received:

a) Accept the call, of course, but at this stage, do not make a judgement on the merits of the case;

b) Get as much information as you can about the application, including the name(s) of the applicant, nationality, place and date of birth, status in this country, and current whereabouts. Other pertinent information should be obtained, such as the name and telephone number of the caller (the individual calling or, if the information is coming from the Ops Center, the person who called the Center and from where).

c) If the call is direct from a person in an organization where the asylum seeker is located, try to ascertain whether the asylum-seeker and/or the caller believes the asylum-seeker to be in physical danger. If the answer is not a definite "no," you may suggest that they contact the FBI and/or local police to provide temporary protection. The INS will usually take charge of that.

- 2 -

3. Once all available information has been obtained, notify Deputy Assistant Secretary Laura Dietrich. If she is not available communicate with Mr. Edward Wilkinson. If the call comes in the morning before the above two officers have arrived at work, or at noontime, take all the available data and pass it immediately to the one who comes into the office first. If the call comes after both have left the office in the evening, it is imperative that one of the two be notified. Do not drop the matter until you have reached Mrs. Dietrich or Mr. Wilkinson. Mrs. Dietrich's home number is 543-2782 and her beeper is 542-6973. Mr. Wilkinson's home number is 455-7151.

4. Do not, repeat, not, take notes and leave them for the next work day. We are committed to attempting to deal with these "immediate action" asylum requests on a now basis.

cc:OPS Center
HA Duty Book

Clearance:  Dietrich

25X1

Page Denied