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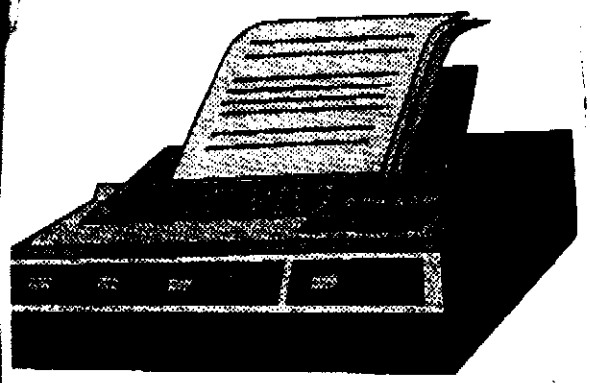

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SUBJ: Em gửi? cho chị ~~Bay~~ cái article
Kèm theo đây có liên hệ đến số người
tỵ nạn, đặc biệt là Việt Nam được nhận
vào Hoa Kỳ trong tài khoá 1996.

Thân mến,
TQ Toàn

Date: 9/06/96 Time: _____ #PGS: 05

Including cover sheet

district director or chief Border Patrol agent may issue a final administrative order of deportation in accordance with new INA § 242A(b).

The final rule requires the Service to perform certain functions to afford the alien procedural protection during the administrative process. Namely, the INS must ensure that: (1) an alien is given reasonable notice of the charges of deportability on new Form I–851, the "notice of intent to issue a final administrative deportation order"; (2) the charge of deportability is supported by clear, convincing and unequivocal evidence and a record is maintained for judicial review; (3) the alien has the opportunity to be represented by counsel in the deportation proceedings, at no expense to the government; (4) the alien has a reasonable opportunity to inspect the evidence and rebut the charges within 10 days, with an extension granted by the district director or chief patrol agent for good cause; and (5) the final order of deportation is not entered by the same person who issues the charges. In addition, the Attorney General must wait 30 days before executing an order of deportation, to give the alien the chance to apply for judicial review.

The rule also provides that if the Service determines that an alien's response to the charges presents a prima facie claim of statutory eligibility for relief, the deciding Service officer must terminate proceedings under the administrative deportation provisions and, where appropriate, must issue an order to show cause initiating proceedings under INA § 242(b).

The new rule allows an alien to seek judicial review of the administrative deportation order, but limits that review to challenging whether the alien: (1) is in fact the alien described in the deportation order; (2) is in fact covered by the new deportation procedures; (3) has been convicted of an aggravated felony, and that conviction has become final; and (4) was afforded the protections and procedures described above.

The regulation also provides that the district director or chief patrol agent will determine the alien's custody status during the administrative deportation process, pursuant to INA § 242. An IJ is not authorized to consider (or redetermine) custody issues under the rule. The alien may seek review of the bond determination in habeas corpus proceedings before the district court.

The final rule incorporates some minor changes based on the comments that the Service received in response to its March proposed rule, and differs from the latter in several respects. Specifically, the final rule requires the Service to provide the alien with a list of free legal aid services in conjunction with its notice of intent to issue a final administrative deportation order. In addition, the INS must either provide the alien a written translation of the notice of intent, or explain the contents of the notice in the alien's native language or in a language the alien understands.

The final rule also amends 8 CFR § 299.1 by adding the entries for Forms I–851 (notice of intent to issue a final administrative deportation order) and I–851A (final administrative deportation order) to the listing of forms, to ensure that Service personnel and the public are aware of these new forms and their edition dates. The final rule also makes non-substantive changes to clarify the provisions of the proposed rule.

A bill passed by the House of Representatives early this year modified the Crime Bill's provisions substantially, and, if passed by the Senate, would further extend the reach of the new administrative deportation procedures. The Senate has not yet taken action on the bill.[1]

For more on the administrative deportation procedures, see Rosenberg, "Administrative Deportation Proceedings: Accomplishment or Abomination?," 72 Interpreter Releases 721 (May 25, 1995). ❑

3. Clinton Administration to Admit 90,000 Refugees in FY 1996

In 72 Interpreter Releases 1051 (Aug. 7, 1995), we discussed briefly the Clinton administration's refugee admission proposals for fiscal year (FY) 1996. As we noted in that report, the administration plans to admit about 90,000 refugees in FY 1996—an 18 percent reduction from the current year's ceiling of 110,000.[2] Much of the reduction will result from a decline in the admissions numbers for the East Asia region.

1 See 72 Interpreter Releases 275 (Feb. 27, 1995); 199 (Feb. 6, 1995).

2 For last year's refugee allocations, see 71 Interpreter Releases 1417 (Oct. 24, 1994).

The August 1 hearing during which the administration presented its proposals was the first step in the annual refugee consultation process for FY 1996. Testifying at the hearing were Under-Secretary of State Peter Tarnoff, and Phyllis E. Oakley, Assistant Secretary of State for the Bureau of Population, Refugees and Migration. In addition to the refugee numbers for FY 1996, the panel members discussed a broad range of refugee issues.

The proposed 90,000 total admissions for FY 1996, which begins on October 1, 1995, are divided into the following regional allocations: Africa (7,000); East Asia (25,000)[1]; the former Soviet Union and Eastern Europe (45,000); Latin America and the Caribbean (6,000); and the Near East and South Asia (4,000). There is also an unallocated reserve of 3,000 numbers that the President may target for needy regions throughout FY 1996.

For FY 1996, certain persons are to be treated as refugees of "special humanitarian concern" to the U.S. if they otherwise qualify for admission and even though they are still in their countries of nationality. These include nationals of Cuba, Vietnam, and the former Soviet Union.

The allocations are discussed in more detail below, with information taken from a 36-page report submitted by the Clinton administration to Congress.

Africa. The 7,000 refugee numbers for Africa are the same as last year. The administration's report notes that while this figure represents about 2,000 more Africans than the U.S. anticipates will be admitted in FY 1995, it is expected that by next year, United Nations High Commissioner for Refugees (UNHCR) protection officers will be more aware of U.S. resettlement as an option in resolving protection problems for small groups, and that there will be more referrals of small groups in countries not usually included in the U.S. refugee admissions program.

The administration's report estimates that there are approximately six million refugees in sub-Saharan Africa—about one quarter of the world's refugee population. In FY 1995, the African refugee landscape continued to be dominated by refugees in the "Great Lakes Region"—Rwanda, Burundi, Tanzania, and Zaire. In addition, the report notes, continued unrest in Liberia has uprooted nearly two million Liberians, some 800,000 of whom are refugees. The list of "designated nationalities" for Africa for FY 1996 includes Somalis, Sudanese, Liberians, Burundis, Rwandans, and Zairians.

East Asia. As in past years, the Clinton administration plans to combine the FY 1996 ceilings for first asylum and the orderly departure program (ODP) into a single East Asian ceiling of 25,000. This figure represents nearly a 40 percent decrease in refugee numbers from last year's ceiling, a result of the continuing phase-out of several massive refugee programs that were established in the wake of the Vietnam War.

The designated nationalities for FY 1996 include Vietnamese, Burmese and Lao. Priority this year will continue to be given to meeting the resettlement commitments of the U.S. under the Comprehensive Plan of Action (CPA) for Indochinese refugees. First asylum refugee admissions are not expected to exceed 3,000, and would consist almost entirely of Hmong and Burmese from camps in Thailand.

The total FY 1996 admissions under the ODP are expected to be 22,000, including former reeducation camp detainees, former U.S. government employees in Vietnam, Amerasians, and others from special groups.

Phyllis Coven, Director of the INS' Office of International Affairs, offered written testimony in which she discussed passage by the House of Representatives of a recent amendment that seeks direct U.S. resettlement of screened-out Vietnamese from first asylum countries. She noted the administration's concern that this provision undermines the CPA, might be resisted by concerned Asian governments, and could encourage those in refugee camps in the region to continue to resist repatriation, perhaps even spurring additional boat departures from Vietnam.[2]

1 This figure includes Amerasians and their family members who enter as immigrants under a special statutory provision but receive the same benefits as refugees.

2 The House of Representatives approved H.R. 1561—a bill to consolidate the foreign affairs agencies of the U.S. and authorize appropriations for the Department of State and related agencies—on June 8, 1995. See 141 Cong. Rec. H5734 (daily ed. June 8, 1995). An amendment to H.R. 1561 sponsored by Rep. Christopher H. Smith (R-N.J.) would permit resettlement in the U.S. of refugees from Vietnam, Laos, and Cambodia who have fled to camps in Hong Kong, Thailand, Indonesia, Malaysia and the Philippines. Under

At the same time, Ms. Coven's testimony notes, the administration is sensitive to concerns that there may be screened-out asylum seekers of special humanitarian concern to the U.S. For this reason, the U.S. is discussing with its CPA partners a plan to provide opportunities for resettlement interviews upon return to those in the camps who agree to return to their homes voluntarily. Mr. Tarnoff also discussed this plan, calling it an effort to accelerate voluntary repatriation from first asylum camps in Southeast Asia and ensure the successful conclusion of the CPA.

According to the administration's report, a CPA steering committee meeting held last March reaffirmed December 1995 (early 1996 for Hong Kong) as a target date for the completion of processing for direct resettlement of Vietnamese refugees and the closing of existing first asylum camps in the region.

Latin American and the Caribbean. Cubans are the only designated nationality for this region in FY 1996, with a ceiling of 6,000 refugee admissions. This figure is 2,000 less than the 8,000 numbers allocated for FY 1995.

The administration's report notes that the in-country processing program in Haiti was ended in early spring 1995, with the restoration of the democratically elected government of President Jean-Bertrand Aristide. Ms. Coven cited the successful completion of the resettlement program, through which nearly 6,000 Haitians were resettled in the U.S.

Virtually all of the 6,000 Cuban admissions will be approved via in-country refugee processing in Havana, in accordance with the U.S.-Cuba bilateral migration agreement of September 1994, which provides for the approval of at least 20,000 Cubans annually for legal admission to the U.S.[1]

Ms. Coven's testimony noted that thus far, Cuban processing is "on track," adding that INS officers in Havana have approved more than 8,000 refugees, over 5,800 of whom have already traveled to the U.S. or are now ready to travel.[2]

The Near East and South Asia. The FY 1996 refugee ceiling for the Near East and South Asia is 4,000, down from the FY 1995 ceiling of 5,000. The designated nationalities for this year are Iranians and Iraqis. The UNHCR estimates that nine million refugees and displaced persons reside in the region, some 22,500 of whom are deemed to be in need of third-country resettlement. This includes about 17,000 Iraqis in the Rafha refugee camp in Saudi Arabia.

Former Soviet Union and Eastern Europe. The combined ceiling for the former Soviet Union and Eastern Europe for FY 1996 is 45,000, down 3,000 from the FY 1995 ceiling of 48,000. The FY 1996 admissions are expected to consist of approximately 30,000 persons from the former Soviet Union and as many as 15,000 Bosnians and other East Europeans.

The admission numbers for the former Soviet Union will continue to be used primarily by the groups identified in the Lautenberg Amendment[3] (Jews, Evangelical Christians, Ukrainian Catholics and Ukrainian Orthodox). Currently, about 50,000 refugee applicants meet the Soviet program's eligibility requirements and are awaiting further processing.

The administration's report notes that "if events require that we consider additional U.S. resettlement of Bosnians, we will consult with Congress on use of the unallocated reserve, other reallocations or further measures to respond appropriately."

Almost 750,000 refugees from Bosnia and other parts of the former Yugoslavia have fled that area in the past four years, with the vast majority resettling in Western Europe. Germany alone has sheltered at least 350,000 refugees.[4] That burden has prompted Germany to call on other countries to resettle more

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the amendment, no U.S. funds could be used to return any of the approximately 50,000 refugees to their homelands until all have been given an opportunity to go elsewhere and have been reinterviewed. See *Washington Post*, July 6, 1995, at A7, col. 1.

1 See 71 Interpreter Releases 1213, 1236 (Sept. 12, 1994).

2 The Clinton administration recently announced that as of August 15, it had fulfilled its first-year commitment under the September 1994 Migration Accord by granting the required 20,000 entry visas. See *Washington Post*, Aug. 22, 1995, at A9, col. 1.

3 See 70 Interpreter Releases 527 (Apr. 19, 1993); 67 Interpreter Releases 18 (Jan. 22, 1990); 66 Interpreter Releases 1318 (Dec. 4, 1989).

4 *Washington Post*, Aug. 9, 1995, at A16, col. 1.

refugees. As of March 1995, the U.S. had resettled or granted asylum to 12,820 refugees from the former Yugoslavia.[1]

Refugee women and children. The administration's report to Congress also notes that approximately 80 percent of the world's refugees are women and young children, and states that the "U.S....recognizes the special needs of these vulnerable groups, particularly in the areas of protection and assistance." The report reiterates the administration's support of, among other things, the assigning of female officers to positions where they can have a positive impact on the protection and well-being of women and children refugees.

Resettlement issues. Lavinia Limon, Director of the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services, presented written testimony in which she stressed that flexibility remains the key to effective refugee resettlement. She stated that during the past two years, the agency has taken significant steps to ensure its continued ability to meet the programmatic needs of refugees, holding extensive discussions with state and local government officials, voluntary agencies, and others, and fostering the formation of partnerships "among all the partners in resettlement."

As an example of one such successful partnership, Ms. Limon noted that the ORR has been working with the Centers for Disease Control and various states in developing a national health screening protocol. The protocol seeks to ensure that refugees receive proper assessment and treatment when they arrive in the U.S., and that any health-related condition that would adversely affect a refugee's effective resettlement is addressed.

Ms. Limon also stated that increased demand for refugee services has made it necessary to sharpen the program's priorities. For example, she said, the agency has learned from experience that the greatest impact that such services can have on a refugee's social adjustment and economic well-being occurs during a refugee's initial years in the U.S. As a result, beginning in October, refugee services eligibility will be limited to a refugee's first five years in the U.S.[2]

The Clinton administration has requested slightly over $414 million for domestic refugee resettlement for FY 1996. □

4. General Counsel Discusses "Trade and Commerce" for Expedited Naturalization

The INS' General Counsel has held that the phrase "trade and commerce" in the expedited naturalization provisions of INA § 319(b) should be construed broadly to cover trade in services or technology. In a February 23, 1993 opinion, then-General Counsel Grover Joseph Rees held that a broad interpretation was consistent with Congressional intent.[3]

The legal opinion was issued in response to a request from the INS' Office of Adjudications. The opinion is reproduced in Appendix III.

The legal opinion was generated in response to a specific case concerning an alien spouse of a U.S. citizen who wished to depart from the U.S. with her husband, who was to relocate to the United Kingdom to engage in the acquisition of license rights to musical compositions. While abroad, the U.S. citizen was to be employed for the British sister company of his U.S. company.

The legal opinion began with a review of the statute, regulations and caselaw. The immigration laws normally require that an alien be a permanent resident for five years before he or she can naturalize, and that the alien meet certain physical presence requirements. INA § 319(b) provides an exemption from this requirement for spouses of U.S. citizens. Under that section, certain spouses of citizens regularly employed abroad who wish to be naturalized may be exempted from residence and physical presence requirements.

Section 319(b) provides in pertinent part that any person whose spouse is a U.S. citizen in the employment of an American firm or corporation engaged in whole or in part in "the development of foreign trade and commerce" of the U.S., or a subsidiary thereof, and who, in good faith, declares before the Attorney General an intent to take up residence within the U.S. immediately upon the

1 Id.
2 See 72 Interpreter Releases 1021 (July 31, 1995).
3 This legal opinion was recently obtained by Interpreter Releases. Despite the age of the opinion, we deem it worthwhile to publish because of the issues it presents.