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Asylum Essentials: The U.S. Asylum Program Needs More Resources, Not Restrictions

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The efficiency of the asylum program depends in large part on a fully staffed and adequately funded Asylum Corps that evaluates asylum claims thoroughly and expeditiously.

The public debate surrounding passage of the REAL ID Act by the House of Representatives on February 10 has raised the question of whether or not the U.S. asylum system is vulnerable to infiltration by foreign terrorists. Sponsors of the legislation, which now moves to the Senate for consideration, claim the Act would enhance security by making it more difficult for asylum seekers to prove their cases. However, the realities of asylum processing and the impact of reforms to the asylum system over the past decade point to a need for more resources rather than new restrictions. Abuses of the asylum system, including the most notorious cases cited by supporters of the REAL ID Act, have resulted primarily from applicants getting lost in bureaucratic backlogs or from over-worked Asylum Officers not having sufficient time to closely scrutinize the stories and evidence presented by asylum seekers.

The integrity of the asylum system is enhanced by sufficient staffing and funding to allow the thorough and timely adjudication of asylum cases, and adequate training of the immigration inspectors who first come into contact with asylum seekers. Current law already denies asylum to individuals who have engaged in terrorist activity, committed serious crimes, or who may pose a danger to national security.¹ And asylum applicants already undergo extensive security checks. The critical issue is whether or not the Asylum Officers who are assigned to review asylum claims have the time and resources they need to efficiently and effectively determine who is a legitimate refugee. The provisions of the REAL ID Act that would raise the bar for all asylum applicants do nothing to enhance the ability of Asylum Officers to identify applicants who may pose a risk to national security.

The Asylum Corps²

A critical element in the U.S. asylum program is the Asylum Officer Corps, a professional cadre of officers, specially trained in refugee and human rights law, who are responsible for conducting in-depth interviews of individuals who apply for the particular form of refugee protection known as “asylum.” The modern concept of a “refugee” was incorporated into U.S. immigration law by the Refugee Act of 1980, which modified the Immigration and Nationality Act to define a refugee as 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.”³ 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.”

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There is broad recognition that “asylum adjudication may be the most difficult adjudication known to administrative law, owing both to the high stakes involved and the unique elusiveness of the facts.”⁴ Nevertheless, prior to the creation of the Asylum Corps, asylum applications were simply one of the many applications that INS examiners decided. The examiners were provided no special training in interviewing refugees and had little access to asylum-related legal or other information. After years of debate, the decision was made to create a specialized group of adjudicators, backed by a resource center that could collect detailed human rights information on the countries from which asylum applicants come. The goal was to create a stable of experts who would be able to gather the relevant facts and conduct the in-depth interviews necessary to make informed decisions in these unique cases.

The Asylum Corps was created in 1990 when the federal government issued final regulations implementing the Refugee Act in its entirety. These regulations took responsibility for asylum cases away from the District Offices of the Immigration and Naturalization Service (INS) and placed it in the hands of the INS Asylum Corps, which on March 1, 2003, became part of the Department of Homeland Security (DHS). Seven asylum offices became operational in 1991, followed by an eighth in 1994. Currently there are about 300 Asylum Officers working at eight offices in Arlington (Virginia), Chicago, Houston, Los Angeles, Miami, New York City, Newark (New Jersey), and San Francisco. The regulations implementing the Refugee Act also created a Resource Information Center to keep Asylum Officers informed of human rights conditions in countries around the world. The Center became operational in 1991.

“Gaming” the System

The creation of the Asylum Corps significantly improved the quality of decisions on asylum applications. Despite the benefits of the Asylum Corps, however, the asylum process was slow and cumbersome and the Corps itself inadequately staffed.⁵ It soon became apparent that the asylum program suffered from two major flaws which made it vulnerable to abuse. First of all, the relatively small Corps was quickly overwhelmed by far more asylum applications than expected and lengthy backlogs developed. As a result, individuals who had exhausted all other options for remaining in the United States could stay in the country for a prolonged period of time simply by filing an asylum application and becoming lost in the backlog, even if they had no valid claim to asylum. Secondly, employment authorization was granted to asylum applicants at the time they applied, meaning that any immigrant who wanted to work in the United States could immediately obtain permission to do so by filing an asylum application.

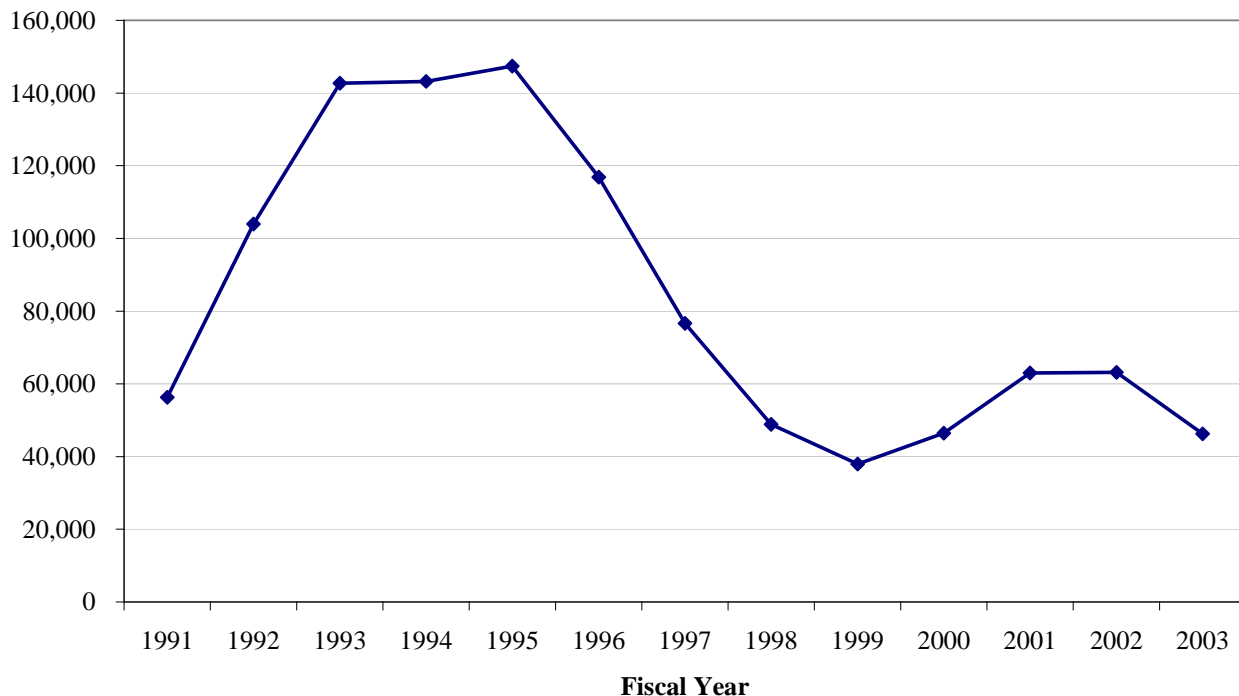
These two factors – enormous backlogs and the incentive of work authorization – resulted in a dramatic increase in the number of asylum applications filed, as more and more weak or fraudulent claims were submitted by individuals who wanted to stay in the United States or obtain work authorization while their cases were lost in the backlog. In 1993, political and public attention was focused on these flaws in the asylum program when it was widely reported that Mir Aimal Kansi, who killed two CIA agents in front of the agency’s headquarters, and Ramzi Yousef, who was involved in the first World Trade Center bombing, had been allowed to remain in the United States while their applications for asylum were pending.

Reforming the System⁶

By 1995, the federal government began implementing reforms to remedy the problems in the asylum system by reducing the backlogs through funding increases and improvements to the asylum process. The number of officers in the Asylum Corps was more than doubled to its current level and the number of Immigration Judges was increased as well. The reforms set a target of 180 days for the processing of asylum applications which has been largely met. In Fiscal Year (FY) 2003, Immigration Judges completed 91 percent of their asylum cases within 180 days.⁷ In addition, employment authorization was no longer issued at the time an asylum application was filed, and could only be applied for if asylum was granted or in the increasingly rare cases that had been pending for longer than 150 days.⁸ The asylum process itself was also streamlined so that a final

decision was reached in a far shorter period of time. Prior to 1995, an asylum officer who wished to deny an application would file a Notice of Intent to Deny, allow the applicant to rebut the proposed decision, and then issue a denial if not persuaded by the rebuttal. The applicant could then file a new asylum claim with an Immigration Judge. Under the new rules, if the asylum officer decides an applicant is ineligible for asylum, the case is automatically referred to an Immigration Judge. As a result of these reforms, not only did the backlog fall dramatically over the ensuing years, but so did the number of new asylum applications as fewer individuals filed frivolous claims. New cases declined from over 147,000 in FY 1995 to just over 46,000 in FY 2003.⁹

Asylum Applications Received by Immigration Service (USCIS/INS) District Directors & Asylum Officers, FY 1991-2003



Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004.

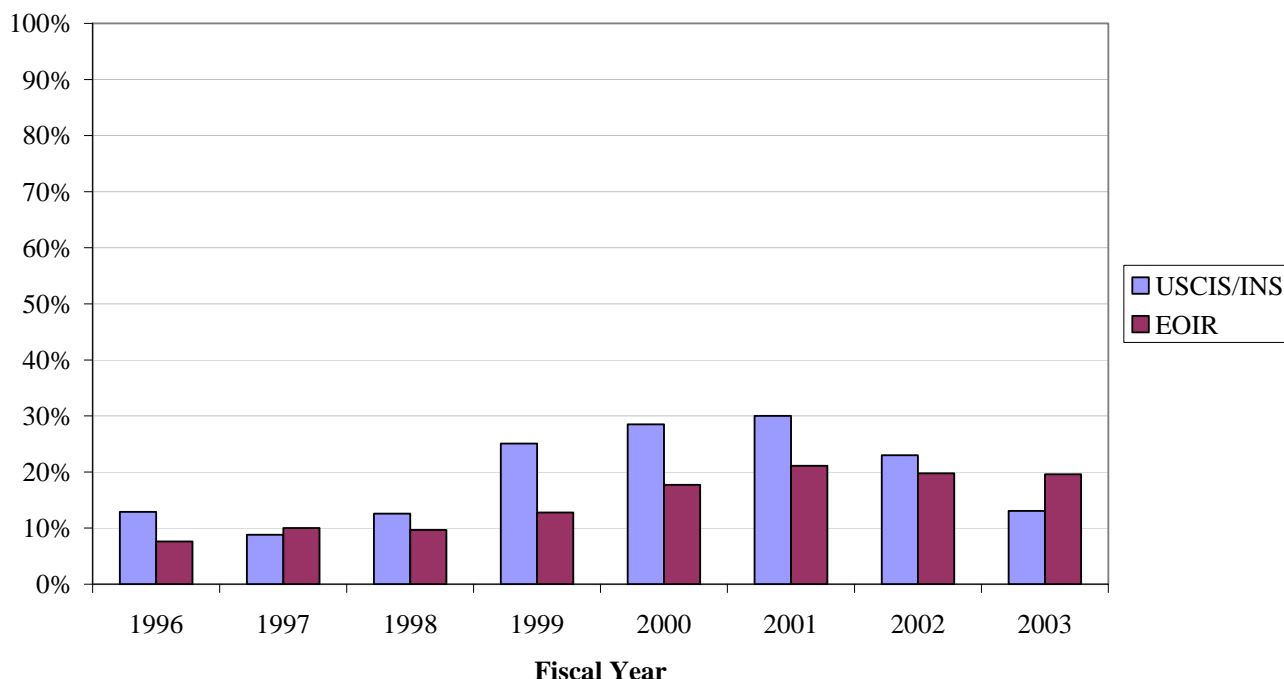
Beyond the reforms implemented in 1995, subsequent statutory changes heightened the security requirements of the asylum program as well. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 required that the identities of asylum applicants be checked against all databases maintained by the Attorney General and Secretary of State. Among the databases consulted in the screening of asylum applicants are the Central Index System (CIS), Deportable Alien Control System (DACS), National Automated Immigration Lookout System (NAIS), Interagency Border Inspection System (IBIS), Automated Biometric Identification System (IDENT), and FBIQuery. Moreover, the Act called for the screening of asylum applicants at ports of entry by immigration officers with some training in asylum procedures. The USA Patriot Act of 2001 expanded the definition of “terrorist activity” under which asylum can be denied to an applicant. Improved coordination and information sharing among law enforcement and intelligence agencies since the terrorist attacks of September 11, 2001, have also greatly improved the efficiency and scope of the background checks conducted on asylum applicants.

A Difficult Claim to Make

It has never been easy to receive asylum, even before the regulatory reforms of 1995 and the statutory changes of 1996. The very nature of the asylum process, in which an applicant is subjected to multiple security checks

and interviewed in depth, is highly effective in weeding out individuals and stories that are not credible. As a result, Asylum Officers and Immigration Judges grant asylum in very few of the cases that cross their desks. For instance, only 15.8 percent of the asylum applications filed with the immigration service in FY 1993 were successful. Similarly, 13.1 percent of applications were successful in FY 2003.¹⁰ The linchpin of security in the asylum program, therefore, is the presence of a fully staffed and adequately funded Asylum Corps that evaluates asylum claims thoroughly and expeditiously. The system breaks down when Asylum Officers are forced to handle too many cases in too short a span of time, or when there are so many cases pending that applications – and applicants – become lost in a backlog.

Percent of Asylum Applications Filed with the Immigration Service (USCIS/INS) & Executive Office for Immigration Review (EOIR) that Were Successful, FY 1996-2003



Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004 & Executive Office for Immigration Review, Department of Justice, *FY 2003 Statistical Year Book*, April 2004.

Note: Success rate equals cases approved as a percentage of cases completed. Unsuccessful cases include those that were denied, withdrawn, abandoned, otherwise closed, or – in the case of applications filed with USCIS/INS – referred to an Immigration Judge.

Insufficient Resources and Inadequate Training

Despite the enormous benefits in terms of security and efficiency that come with investing in the Asylum Corps, at present the Corps is neither staffed nor funded at the levels needed to perform its job most effectively. Asylum Officers are required to conduct 18 asylum interviews each two-week pay period. Taking into account the officers’ other job responsibilities, this means that each asylum case must be completely adjudicated in about 3.5 hours, including review of the application, researching country conditions, interviewing the applicant, evaluating the applicant’s credibility, performing the necessary security checks, and writing a final decision. The impossibility of doing a thorough job in such a small span of time is illustrated by the results of an anonymous survey conducted in 2004 by the American Federation of Government Employees (AFGE), which represents Asylum Officers. The survey elicited responses from 177 Asylum Officers (47 percent of the Asylum Corps) at seven of the eight asylum offices. Among the respondents, 93 percent routinely worked unpaid overtime even though that is prohibited by agency

regulations. Among the reasons most commonly cited for doing so were that there is insufficient time to do quality work during a 40-hour week (100 percent of respondents), unpaid overtime is necessary to complete cases in compliance with timeliness standards (92 percent), and unpaid overtime is necessary to avoid creating a case backlog (91 percent). As a result of these time constraints, a number of Asylum Officers were not confident in some of their decisions, fearing they may have turned away a legitimate asylum seeker or granted asylum to someone who didn't deserve it. Complicating this situation even further, translation services are inadequate to meet the needs of asylum seekers from dozens of different countries. These strenuous working conditions have contributed to a high turnover rate in the Asylum Corps.

The efficiency of the asylum program is also undermined by the inadequate training of immigration inspectors outside of the Asylum Corps who first have contact with asylum seekers. According to the U.S. Commission on International Religious Freedom, the records kept by immigration inspectors of their initial interviews with asylum applicants are often incomplete, inaccurate, and not read back to and verified by the applicant, as is required. Moreover, the Inspector Field Manual instructs inspectors to not ask about the details of an applicant's claim for asylum, yet Immigration Judges sometimes deny a claim because the applicant has "added detail" not included in the initial interview.¹¹

Resources, Not Restrictions

The reforms to the asylum process instituted since the early 1990s ameliorated the most serious flaws and shortcomings that previously made the system vulnerable to misuse and abuse. Simply filing an application for asylum no longer guarantees permission to remain or work in the United States for any significant length of time. Most importantly from a national security standpoint, the identities of asylum applicants are checked against the databases of the Department of Homeland Security, Department of State, FBI, and CIA. Proposals such as the REAL ID Act, which place more bureaucratic hurdles in the path of asylum seekers and unnecessarily add to the workload of already over-worked Asylum Officers, represent a pointless diversion from those measures that actually would improve the security of the asylum system. To the extent that vulnerabilities still exist in the system, they lay with inadequate staffing and funding of the Asylum Corps and inadequate training of immigration inspectors. Raising the standards of evidence demanded of asylum applicants, or insisting that they tell their stories in a certain way, would do nothing to address these underlying problems, while needlessly placing victims of persecution in harm's way.

February 2005

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Endnotes

¹ INA § 208(b)(2)(A)(ii) – (iv).

² See U.S. Citizenship and Immigration Services, "History of the United States Asylum Officer Corp.," September 9, 2003 (<http://uscis.gov/graphics/services/asylum/history.htm>); U.S. Immigration and Naturalization Service, "Asylum Reform: 5 Years Later," 2000 (http://uscis.gov/graphics/services/asylum/asylum_brochure.pdf).

³ INA § 101(a)(42)(A).

⁴ David A. Martin (former INS General Counsel, 1995-1997), "Asylum Reform: A Global Perspective," Immigration and Naturalization Service symposium in celebration of the fifth anniversary of the 1995 asylum reforms, February 1, 2000. See also, Gregg A. Beyer (former Director of the INS Asylum Program, 1990-1994), "Striking a Balance: The 1995 Asylum Reforms," Immigration and Naturalization Service symposium in celebration of the fifth anniversary of the 1995 asylum reforms, February 1, 2000. These papers are available at <http://uscis.gov/graphics/services/asylum/symposia.htm>.

⁵ *ibid.*

⁶ U.S. Citizenship and Immigration Services 2003; U.S. Immigration and Naturalization Service 2000.

⁷ Executive Office for Immigration Review, Department of Justice, *FY 2003 Statistical Year Book*, April 2004.

⁸ The Enhanced Border Security and Visa Entry Reform Act of 2002 required that Employment Authorization Documents (EADs) be issued immediately upon the granting of asylum.

⁹ Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004.

¹⁰ *ibid.* Success rate equals cases approved as a percentage of cases completed. Unsuccessful cases include those that were denied, withdrawn, abandoned, otherwise closed, or referred to an Immigration Judge.

¹¹ U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal – Volume 1: Findings and Recommendations*, February 2005.