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Immigration and Naturalization Service v. Stevic: The Alien Facing Potential Persecution and the Clear Probability Standard for Relief from Deportation Under Immigration and Naturalization Act Section 243(h)

The United States expressed concern for the safety of aliens facing possible persecution in their homelands through its accession in 1968 to the United Nations Protocol Relating to the Status of Refugees.[1] The Protocol provides that the United States will not expel or return a refugee to a country where his life or freedom would be endangered.[2] At the time of its accession to the Protocol, the United States allowed relief from deportation under section 243(h) of the Immigration and Nationality Act[3] to aliens who could demonstrate a "clear probability" of persecution.[4] Since the accession, some applicants for section 243(h) relief have claimed that the Protocol allows a lesser standard of proof than the "clear probability" of persecution standard.[5] In *Immigration and Naturalization Service v. Stevic*[6] the

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[1] United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577 (1968) (hereinafter cited as "Protocol"). The United States was thereby bound to comply with Articles 2 through 34 of the United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (July 28, 1951) (hereinafter cited as "U.N. Convention"). Article 33 (1) of the Convention states:

> No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.

Id.

[2] Protocol, *supra* note 1 at art. 33 (1).

[3] Immigration and Nationality of Act of 1952, ch. 477, Pub. L. No. 82-414, § 243(h), 66 Stat. 164, 214, *amended by* Act of Oct. 3, 1965, Pub. L. No. 89-236, § 11, 79 Stat. 911, 918 reads:

> The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason.

Id.

[4] *See, e.g.*, Cheng Kai Fu v. INS, 386 F.2d 750, 753 (2d Cir. 1967), *cert. denied*, 390 U.S. 1003 (1968); Lena v. INS, 379 F.2d 536, 538 (7th Cir. 1967). *See generally* Note, *Those Who Stand at the Door: Assessing Immigration Claims Based on Fear of Persecution*, 18 NEW ENG. L. REV. 395, 408-13 (1983).

[5] *See, e.g.*, Kashani v. INS, 547 F.2d 376 (7th Cir. 1977); *In re* Dunar, 14 I. & N. Dec. 310 (1973).

[6] 104 S. Ct. 2489 (1984).

Supreme Court resolved the standard of proof issue, holding that the Protocol was not intended to alter the clear probability standard.[7]

Stevic, a Yugoslavian citizen, faced deportation in 1977.[8] He entered the United States in 1976 to visit his sister and subsequently married a United States citizen. His wife obtained a visa for him. Five days after the visa was issued, she died in an automobile accident. Her death caused the visa to be revoked automatically. The Immigration and Naturalization Service (INS) refused Stevic's petition to reinstate it on humanitarian grounds.[9] He failed to surrender for deportation, however, as ordered by the INS.

Stevic moved to reopen his deportation proceedings under section 243(h). He claimed to fear persecution in Yugoslavia because of his membership in an emigre anti-Communist organization. He stated that his father-in-law, also a member of the organization, had been imprisoned for three years while visiting Yugoslavia. The Board of Immigration Appeals (BIA) dismissed the appeal on the grounds that Stevic had failed to present evidence of a "clear probability" of persecution in Yugoslavia.[10]

When Stevic failed to surrender for deportation, the INS apprehended him. He then attempted to escape during transfer to a connecting flight for Yugoslavia. The INS detained Stevic, and he petitioned the district court for a writ of habeas corpus. Stevic again filed to reopen his deportation proceedings under section 243(h). Finding no change in Stevic's situation, the BIA again denied him section 243(h) relief due to his failure to show a clear probability of persecution.[11]

The United States Court of Appeals for the Second Circuit reversed, finding that the clear probability test no longer applied.[12] The court reasoned that a "well-founded fear" standard should supersede the clear probability test because the Refugee Act of 1980[13] had revised section 243(h) to conform to the Protocol.[14] This well-founded fear language is contained in the Protocol's definition of

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[7] *Id.* at 2501.

[8] *Id.* at 2490.

[9] *Id.* at 2491.

[10] *Id.*

[11] Stevic v. Sava, 678 F.2d 401, 405-06 (2d Cir. 1982).

[12] *Id.* at 409.

[13] Refugee Act of 1980, Pub. L. No. 96-212, § 203(e), 94 Stat. 102, 107 (codified at 8 U.S.C. § 1253(h) (1982)). The amended version of § 243(h) reads:

> The Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group or political opinion.

[14] Protocol, *supra* note 1, at art. 1(2) by reference to U.N. Convention, *supra* note 1, at art. 1(a).

"refugee."[15] The court concluded that to fulfill Congress' intent that section 243(h) conform to the Protocol, the standard for determining refugee status should apply to the determination of whether the alien's life or freedom would be endangered under section 243(h).[16]

The United States Supreme Court reversed.[17] Writing for a unanimous Court, Justice Stevens declared that applicants for section 243(h) relief must still show a clear probability of persecution to escape deportation. The Court stated that the Senate believed United States law was already in accord with the Protocol when accession was approved. Therefore, no substantial change in the law resulted.[18] The Court determined that while the Refugee Act of 1980 was intended to bring section 243(h) into conformity with the Protocol, the changes in the provision were made simply for the "sake of clarity."[19] Failing to find evidence of Congressional intent to alter immigration law, the Court concluded that the clear probability test remains the standard of proof in section 243(h) cases.[20]

Section 23 of Internal Security Act of 1950 first afforded relief from deportation to refugees facing physical persecution.[21] The Attorney General was prohibited from deporting an alien if he found that the alien would be persecuted in the country of deportation.[22] The provision was superseded by section 243(h) of the Immigration and Nationality Act of 1952,[23] which placed withholding of deporta-

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15 The Protocol reads:

> [T]he term refugee shall apply to any person who: (A) owing to a *well founded fear* of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Id. (emphasis added).

16 *Sava*, 678 F.2d at 409.

17 *Stevic*, 104 S. Ct. at 2492.

18 *Id.* at 2500 n.5.

19 *Id.* at 2500 (*citing* H.R. REP. No. 265, 96th Cong., 2d Sess. 17, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 141, 157).

20 *Stevic*, 104 S.Ct. at 2492, 2498.

21 Internal Security Act of 1950, ch. 1024, § 23, 64 Stat. 987, 1010 (repealed 1952). The pertinent text of § 23 reads:

> No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subject to physical persecution.

Id.

22 *Id.*

23 Immigration and Nationality Act of 1952, ch. 477, § 243(h), 66 Stat. 163, 214 (amended 1965 and 1980). Section 243(h) reads in part:

> The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution.

Id.

tion because of possible persecution within the discretion of the Attorney General. Only an opinion from the Attorney General was required under section 243(h), while section 23 of the Internal Security Act had required a finding of fact that the alien would not be persecuted.[24]

A 1965 amendment broadened the scope of section 243(h) to include persecution on account of race, religion, or political belief.[25] This version of section 243(h) was operative when the Senate considered accession to the Protocol, including the Article 33 prohibition on expelling or returning refugees to a country where their safety would be threatened.[26] On its face, section 243(h) seems to offer essentially the same protection as the Protocol.[27]

Judicial application of the clear probability standard to section 243(h) requests, however, reflected a more conservative attitude toward granting withholding of deportation. The Seventh Circuit originated the "clear probability" phrase in 1967, stating: "It is clear that the Attorney General employs stringent tests and restricts favorable exercise of his discretion to cases of clear probability of persecution of the particular individual petitioner."[28] Critics have commented on the stringency with which the standard was applied.[29] The alien's difficulty in seeking relief was heightened by his disadvantage in obtaining evidence to support his case.[30] Furthermore, the anticipated persecution had to be particularized to the petitioner.[31] These factors, however, were not brought to the Senate's attention in its consideration of the Protocol in 1968. The Deputy Director of the Office of Refugee and Migration Affairs concluded in his report that refugees in the United States already enjoyed the protection the Protocol offered.[32]

The Protocol's effect on section 243(h) was first considered by the BIA in 1973 in *In re Dunar*.[33] Dunar sought section 243(h) relief,

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[24] *See* Note, *Protecting Deportable Aliens from Physical Persecution: Section 243(h) of the Immigration and Nationality Act of 1952*, 62 YALE L. J. 845, 846-47 (1953).

[25] Act of October 3, 1965, Pub. L. No. 39-236, § 11, 79 Stat. 911, 918.

[26] *See supra* note 1 and accompanying text.

[27] *Compare* Protocol, *supra* note 1 *with* § 243(h), *supra* note 3.

[28] *Lena*, 379 F.2d at 538.

[29] *See* Wildes, *The Dilemma of the Refugee: His Standard for Relief*, 4 CARDOZO L. REV. 353, 362 (1983); *see also* Evans, *The Political Refugee in United States Immigration Law and Practice*, 3 INT'L LAW. 204, 242 (1968).

[30] *See* Note, *The Right of Asylum Under United States Law*, 80 COLUM. L. REV. 1125, 1138 (1980).

[31] *See Cheng Kai Fu*, 386 F.2d at 753; *see also* Fleurinor v. INS, 585 F.2d 129, 134 (5th Cir. 1978) (new evidence failed to meet test of materiality due to lack of particularization of anticipated persecution to petitioner).

[32] S. EXEC. REP. No. 14, 90th Cong., 2d Sess. 4 (1968).

[33] 14 I. & N. Dec. 310 (1973). Earlier, in Muskardin v. INS, 415 F.2d 865 (2d Cir. 1969), the court had determined that the Protocol may have been "a proper consideration in guiding the discretion of the Special Inquiry Officer" (no specific effect on § 243(h) standards had been suggested by applicant).

claiming to be immune from deportation under Article 33 of the Convention.[34] The Board rejected the argument that the well-founded fear language contained in the Protocol's definition of "refugee" altered the standard of proof. The BIA maintained that the legislative history concerning the accession to the Protocol showed that no radical change was intended in section 243(h).[35] The Board stated that Article 33 did not imply any meaningful change in section 243(h) because the Attorney General always withheld deportation of those who could show that they would "probably be persecuted."[36]

In 1977 the Seventh Circuit reached the same result in *Kashani v. INS.*[37] Rather than focusing on the Protocol's legislative history, as did the *Dunar* court, the *Kashani* court inquired whether there was any semantic difference between well-founded fear and clear probability. The court stated that since well-founded fear implies a requirement of objective evidence, the two standards would in practice converge. Addressing the concern that the two standards operate differently due to section 243(h)'s discretionary nature, the *Kashani* court cited *Dunar* to refer to "the Attorney General's policy of always withholding deportation when a clear probability of persecution is shown."[38] Thus two distinct but overlapping approaches upholding the clear probability standard had emerged when section 243(h) was amended in 1980.[39]

The Refugee Act of 1980 provided new grounds for asserting that well-founded fear was the proper standard for section 243(h) claims. The Refugee Act revised the language of section 243(h) to align it more closely with that of the Protocol.[40] In addition, section 243(h) relief was now mandatory upon a determination that the alien's life or freedom would be endangered.[41] The BIA recognized that in revising the language of section 243(h), Congress intended "to insure that withholding under the Act be construed consistently with the Protocol."[42] It continued to apply the clear probability standard, however, to section 243(h) cases.

In 1982 three court of appeals cases evaluated the Refugee Act's impact on the clear probability standard.[43] In *Stevic v. Sava*[44] the Second Circuit held that the well-founded fear standard should su-

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[34] *Dunar*, 14 I. & N. Dec. at 311.

[35] *Id.* at 319.

[36] *Id.* at 323.

[37] 547 F.2d 376 (7th Cir. 1977).

[38] *Id.* at 379.

[39] *See* Refugee Act of 1980, Pub. L. No. 96-212, § 203(3), 94 Stat. 102, 107 (codified at 8 U.S.C. § 1253(h) (1982)).

[40] *Compare* § 243(h), *supra* notes 3 & 13 *with* Protocol, *supra* note 1.

[41] 8 U.S.C. § 1253(h) (1982).

[42] Matter of McMullen, 17 I. & N. Dec. 542, 545 (1980).

[43] Stevic v. Sava, 678 F.2d 401 (2d Cir. 1982); Rejaie v. INS, 691 F.2d 139 (3d Cir. 1982); Reyes v. INS, 693 F.2d 597 (6th Cir. 1982).

[44] 678 F.2d 401 (2d Cir. 1982).

persede the clear probability test. The court concluded that Congress' intent that the Refugee Act conform immigration law to the Protocol indicated that the Protocol's more lenient standard should apply to section 243(h) cases.[45] The Sixth Circuit also rejected the clear probability test in *Reyes v. INS*[46] without substituting a specific standard in its place. The *Reyes* court referred succinctly to "substantial changes in the Immigration Act" since the inception of the clear probability standard to support its conclusion.[47] The court also noted the clear probability test's inconsistency with the "tenor and spirit, if not the language" of the amended section 243(h).[48]

In contrast, the Third Circuit in *Rejaie v. INS*[49] adhered to the view expressed in *Kashani v. INS*[50] that the two standards were synonymous.[51] The *Rejaie* court referred to the Refugee Act's amendment of section 243(h) to conform to the Protocol as "merely cosmetic surgery."[52] The court asserted that *Sava* "failed to appreciate the caselaw consensus . . . that the two standards were equivalent."[53]

The Supreme Court's upholding of the clear probability test in *Stevic* is based primarily on elements contained in the BIA's pre-Refugee Act decision in *Dunar* and the Third Circuit decision in *Rejaie*. As in *Dunar*, the Supreme Court examined the legislative history to the accession to the Protocol and concluded that Congress had not intended any change in immigration law.[54] *Stevic* accords with *Rejaie* in holding that the amendment to section 243(h) in the Refugee Act was merely for the "sake of clarity."[55] The *Stevic* Court, however, did not affirm *Rejaie*'s holding that the standards were equivalent, declaring the issue to be external to its analysis.[56]

To support its holding that the accession to the Protocol was not meant to affect immigration law, the Court relied on the Senate Executive Report[57] and letters submitted by the President and Secretary of State[58] concerning the Protocol. Statements in these documents, other than those cited in *Stevic*, strongly indicate that the

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[45] *Id.* at 408-09.
[46] 693 F.2d at 597.
[47] *Id.* at 599.
[48] *Id.*
[49] 691 F.2d 139 (3d Cir. 1982).
[50] 547 F.2d 376 (7th Cir. 1977). *See supra* notes 37-38 and accompanying text.
[51] *Rejaie*, 691 F.2d at 146.
[52] *Id.*
[53] *Id.*
[54] *Stevic*, 104 S. Ct. at 2500 n.22 ("The point is not, however, that the Senate was merely led to *believe* accession would work no substantial change in the law; the point is that it did not work a substantial change in the law.").
[55] *Id.* at 2500.
[56] *Id.* at 2498.
[57] *Id.* at 2494-95 (quoting S. EXEC. REP. No. 14, 90th Cong., 2d Sess., 4 (1968)).
[58] *Id.* at 2494-95 (quoting S. EXEC. K, 90th Cong., 2d Sess., III, VII, VIII (1968) (letters by President Lyndon Johnson and Secretary of State Dean Rusk)).

Executive Department presented the Protocol to the Senate as a token gesture.[59] The Court would have been understandably reluctant to label the accession as merely symbolic. To avoid suggesting the accession's token nature, the Court emphasized the belief that "the Protocol was largely consistent with existing law."[60] The Court then transmuted this belief in the Protocol's consistency with existing law into an intent that no change in the law would occur from the accession.[61]

The Court failed to recognize that while the Senate was concerned with the Protocol's effect on statutory law, little concern was expressed over its effect on administrative standards such as the clear probability test. Judicial interpretation indicates that a treaty's effect on the law depends on its status as executory or self-executing. A self-executing treaty, which operates without the aid of legislation, has the force and effect of a legislative enactment.[62] One author explained, "if the executive department has the power completely to carry out the provisions of a treaty it is self-executing."[63]

The Court noted the Senate's belief that "apparent differences between the Protocol and existing statutory law could be reconciled by the Attorney General in administration and did not require any modification of statutory language."[64] If no implementing legislation was required, the Protocol would seem to be self-executing. The Court, however, indicated in a footnote that the Protocol was executory.[65] Finding the Protocol to be self-executing would not necessarily have compelled a different result. An executive department's interpretation is entitled to great weight in interpreting trea-

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[59] *See, e.g.*, S. EXEC. REP. No. 14, 90th Cong., 2d Sess. 7, 10 (1968) ("Accession would convey . . . our continuing image of concern and solicitude for the homeless and persecuted." While the United States already meets Protocol standards, "formal accession would greatly facilitate our . . . efforts to promote . . . more generous practices on the part of countries whose approach to refugees is far less liberal than our own . . . . It has become important . . . to project abroad the image of our own liberal practices . . . ." We must "project our image, use our influence.") *In re* Dunar, 14 I. & N. Dec. 310 (1973), quoted similar passages from the S. EXEC. REP. No. 14 and S. EXEC. K, 90th Cong., 2d Sess. (1968).

[60] *Stevic*, 104 S. Ct. at 2494.

[61] *Id.* at 2500 n.22.

[62] *E.g.*, Bacardi Corp. v. Domenech, 311 U.S. 150, 161 (1940); Valentine v. United States, 299 U.S. 5, 10 (1936). *See generally* Annot., 4 A.L.R. 1377, 1387 (1919) (supplemented in 134 A.L.R. 882, 886 (1941)).

[63] C. PERGLER, JUDICIAL INTERPRETATION OF INTERNATIONAL LAW IN THE UNITED STATES 165 (1928).

[64] *Stevic*, 104 S. Ct. at 2495 (citing S. EXEC. K., 90th Cong., 2d Sess., VIII (1968)).

[65] *Id.* at 2500 n.22 ("Article 34 merely called on nations to facilitate the admission of refugees *to the extent possible*; the language of Article 34 was precatory, and not self-executing." Article 34 deals with assimilation and naturalization, however, not admission.). *See also Dunar*, 14 I. & N. Dec. at 313-14 (discussing whether Protocol was self-executing, and concluding it was not, because Congress did not contemplate "radical changes in existing immigration law.").

ties,[66] and the INS plainly interpreted the clear probability test as consistent with the Protocol.

The Court, however, did not view the issue as one of administrative implementation of the Protocol. Instead, it concentrated on the statutory effect of the Protocol and the Refugee Act. By expanding the Senate's conclusion that United States immigration statutes were consistent with the Protocol and did not alter the clear probability standard, the Court effectively denied legal effect to the Protocol. Refusing to recognize that the clear probability standard is not statutorily imposed, the Court stated that since the Refugee Act's amendment to section 243(h) was merely for clarity's sake, Congress did not intend to change the standard.[67]

Despite the Court's emphasis on legislative intent, its holding centers on a point that is never clearly explained in the opinion: the two standards apply to different requirements in the Protocol and in section 243(h).[68] For withholding of deportation, Article 33 of the Protocol requires: 1) that the alien be a refugee as defined in the Convention and 2) that his life or freedom be threatened in his homeland on account of race, religion, or political views.[69] Section 243(h) contains only the second requirement.[70] Because section 243(h) lacks the first requirement, that the alien be a refugee, the well-founded fear language in the Convention's definition of refugee does not correspond to any element of section 243(h). This interpretation, though mechanical, is valid and obviates any need to determine the Protocol's status as law or construe the Refugee Act.

The Court's approach, however, does not consider the true problem behind the challenges to the clear probability standard: the standard places an undue burden on section 243(h) applicants.[71] Aliens seeking section 243(h) relief are isolated from their homelands. Their statements as to conditions in the prospective country

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[66] *See* Kolovrat v. Oregon, 366 U.S. 187, 194 (1961); Sullivan v. Kidd, 254 U.S. 433, 442 (1921).

[67] *Id.* at 2498-99.

[68] The Court thus states, "§ 243(h), both prior to and after amendment, makes no mention of the term "refugee;" rather any alien within the United States is entitled to withholding if he meets the standard set forth." *Id.* at 2497. "[T]here is no textual basis in the statute for concluding that the well-founded-fear-of-persecution standard is relevant to a withholding of deportation claim under § 243(h)." *Id.* at 2498. This point is embodied in a discussion of the asylum provision employing the well-founded fear language, 8 U.S.C. § 1101(a)(42)(A) (1982). 104 S. Ct. at 2497-98. The Court rejects the view expressed by one commentator that withholding of deportation and asylum were intended to be interchangeable and that their standards were intended to be substantially the same. Scanlan, *Regulating Refugee Flow: Legal Alternatives and Obligations Under the Refugee Act of 1980*, 56 NOTRE DAME LAW., 618, 625 (1981).

[69] *See* Protocol, *supra* note 1.

[70] *See* § 243(h), *supra* note 3.

[71] *See* Evans, *The Political Refugee in United States Immigration Law and Practice*, 3 INT'L LAW. 204, 242 (1968); Wildes, *The Dilemma of the Refugee: His Standard for Relief*, 4 CARDOZO L. REV. 353, 362 (1983).

of deportation, letters from relatives and friends, and newspaper and magazine articles are usually insufficient to meet the clear probability standard.[72] The government, in contrast, may obtain a statement on conditions in the country from the the State Department.[73] While some courts have questioned the reliability of these statements,[74] the statements may make the alien's evidentiary burden almost insurmountable.

Changing the standard of proof alone would not alleviate the problem. Standards are not self-operating; they are administered by agencies and courts. The well-founded fear standard applied conservatively would produce the same results. Moreover, conservative application of the well-founded fear standard could be expected, since *Kashani* and *Rejaie* equate it with clear probability. Conversely, the clear probability standard might become diluted through association with the well-founded fear standard.

Despite the attractive economy of the *Rejaie* approach, concern that the clear probability standard would be liberalized may have influenced the *Stevic* Court's refusal to equate the standards. The political climate for refugees has grown conservative in recent years, largely in response to the huge influx of Cuban and Haitian refugees.[75] Public opinion opposes accommodating such a large number of refugees. Yet, the unfortunate fact is that nearly all aliens deported to certain countries will face conditions considered virtual persecution in the United States.[76] The requirement that section 243(h) applicants show a likelihood of individual persecution, however, provides a screening device that identifies the most serious cases.[77] The weakness of the *Stevic* decision is its failure to recognize that the paucity of evidence an alien presents may more reflect a lack of access to evidence than a lack of validity in the claim.

Stevic's holding represents the dissonance between the humani-

[72] Evans, *supra* note 71, at 239-40.

[73] *See* 1A GORDON AND ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 5.16(b) (1984).

[74] *See, e.g.*, Zamora v. INS, 534 F.2d 1055, 1061 (2d Cir. 1976); Kasravi v. INS, 400 F.2d 675, 677 (9th Cir. 1968); *cf.* Hotel & Restaurant Employees Union, Local 25 v. Smith, 563 F. Supp. 157 (D.D.C. 1983) (labor organization sought standing to challenge State Department's routine recommendations to deny Salvadoran nationals asylum).

[75] *See* Note, *U.S. Immigration Policy and Refugee Reform,* 22 VA. J. INT'L L. 805-06 (1982). *See generally* LeMaster & Zall, *Compassion Fatigue: The Expansion of Refugee Admissions in the United States,* 6 B.C. INT'L & COMP. L. REV. 447 (1983); Scanlan, *Regulating Refugee Flow: Legal Alternatives and Obligations Under the Refugee Act of 1980,* 56 NOTRE DAME LAW. 618 (1981).

[76] For example, the State Department reports that the Cuban government acknowledges holding prisoners convicted of political crimes and that freedom of speech, press, and assembly are not recognized in Cuba. HOUSE COMM. ON FOREIGN AFFAIRS AND SENATE COMMITTEE ON FOREIGN RELATIONS, 96th Cong., 2d Sess., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1979, 293, 295 (Joint Comm. Print 1980). "Haiti has a long history of . . . the most serious types of human rights abuses." *Id.* at 341.

[77] *See, e.g.*, *Cheng Kai Fu*, 386 F.2d at 753.

tarian ideals underlying the Protocol and the Refugee Act and the exclusionist attitude provoked by the arrival of thousands of Third World refugees. The clear probability standard largely takes away the protection that section 243(h) purports to give. Replacing the clear probability standard with a well-founded fear standard, however, would not ensure fairer adjudication of section 243(h) claims. Nor must the clear probability standard be an obstacle to fairness in granting relief from deportation. The United States accession to the Protocol Relating to the Status of Refugees created an obligation to withhold deportation of refugees to countries where their lives or freedom would be endangered. If an agency or court applies too strictly the standard to determine whether an alien's life or freedom would be endangered, the United States violates the spirit, if not the letter, of the Protocol. The United States' good faith in entering this agreement should be reflected in its interpretation of the laws implementing it.

—MARGARET A. ROOD