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DON'T GUT POLITICAL ASYLUM*

PHILIP G. SCHRAG**

For many years, the United States has granted political asylum to victims of persecution who come to our country and seek our protection. Now, however, Congress is on the verge of abolishing the right of political asylum.

Congress is not proposing to repeal the asylum provisions of the Refugee Act of 1980. An outright repeal would probably never pass, because many in Congress, recalling America's sorry treatment of refugees during the Holocaust, accept the humanitarian premises underlying asylum. Rather, the abolition is in the form of a new, apparently innocuous "procedural" requirement. The House Judiciary Committee recently adopted, as an amendment to this year's immigration reform act, a proviso that denies asylum to any person who applies for it more than thirty days after arriving in the United States. A Senate subcommittee has approved a similar proposal.

If this bill becomes law, the asylum process will shut down because, as a practical matter, it is impossible for an applicant to file that quickly. Most refugees fleeing persecution must give top priority to searching for their American relatives and acquaintances. In many cases, they do not speak English. They are not permitted to hold jobs in the United States. They must immediately find ways to feed themselves and their children. It takes weeks for them to find minimal housing and to achieve the most basic orientation to American culture. Months may pass before they even learn that if they want asylum, they have to file an application with the Immigration and Naturalization Service (INS) on Form I-589.

After refugees learn about asylum and obtain the form, they will discover the daunting task ahead of them. The form itself is quite complicated: seven pages, plus eight pages of fine-print instructions. It is only available in English and must be completed in English. It requires applicants to prove that they have a well-founded fear, should they be deported, that they will be "persecuted" because of their "race, religion, nationality, political opinion or membership in a particular social group"—all legal terms of art that have been interpreted by many courts. Because the legal standard has been embellished by judicial decisions and because a lawyer can help a refugee to argue the case effectively, an applicant is well advised to have an attorney help compile and organize the supporting documentation. Mistakes can literally be fatal, resulting in deportation into the hands of a persecutor.

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At present, most asylum applicants need weeks or months to find a lawyer, especially if they need one who will handle the application free of charge. Even now, only a few neighborhood offices that offer free legal help to the poor handle asylum cases, and Congress is slashing the budget of the Legal Services program.

Once the applicant finds a willing lawyer, however, more inevitable delays are in store. The instructions for the application form "strongly urge" applicants to "attach additional written statements and documents that support" their claims, including "newspaper articles, affidavits of witnesses or experts, periodicals, journals, books, photographs, official documents, other personal statements, or evidence regarding incidents that have occurred to others."

The law students who help prepare these applications under my supervision in an asylum law clinic at Georgetown University Law Center spend at least a month of nearly full-time work putting together just one application for a client. Obtaining supporting affidavits or even such elementary documentation as birth and death records typically includes, among other things, making repeated telephone calls to people in the country from which the applicant has fled (sometimes with interpreters on the line) and exchanging numerous faxes with witnesses and officials there. These communications are expensive as well as time-consuming.

Similarly, obtaining accounts of arbitrary imprisonment, torture, rape and other human rights violations from local newspapers in the applicant's country, often written in foreign languages, can take many weeks of investigative effort. Finding experts who know about human rights violations against the applicant's tribe or ethnic group is also an arduous and lengthy process.

The attachments to support an application can include several hundreds of pages of evidence, and the file can be several inches thick. It is not reasonable to expect a refugee to develop such a file within thirty days after arriving in the United States, with or without the help of a lawyer.

A few years ago, the asylum program was abused by large numbers of applicants who were not genuinely eligible for it, but the federal government closed this loophole by ceasing to issue work permits for people whose applications have not yet been approved. In July, Commissioner of Immigration Doris Meissner reported that "after years in which fraudulent asylum claims were routinely filed as a backdoor way to enter the U.S., INS finally has . . . stopped the abuse."

Congress should preserve the asylum program. At the very least, Congress should not abolish asylum by invisibly and irresponsibly imposing a procedural requirement that is impossible to satisfy. Fewer than one percent of the 900,000 people who immigrate into the United States each year are asylees. This small immigration program poses no serious problems and is worth keeping. When we give sanctuary to victims of oppression we demonstrate to everyone the most humanitarian impulses of the American spirit.