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Victims of Natural Disasters in U.S. Refugee Law and Policy

Janet L. Parker*

INTRODUCTION

A major objective of the Refugee Act of 1980¹ was to add to the Immigration and Nationality Act (INA)² a new definition of "refugee" and establish an immigration procedure for persons meeting that definition.³ Prior to the 1980 Act, INA section 203(a)(7) provided a quota for persons fleeing persecution in certain countries or from natural calamities.⁴ The new definition of refugee provided by the Refugee Act of 1980 brought the United States into substantial conformity with the United Nations definition, which conditions refugee status on a showing of a well-founded fear of persecution,⁵ and eliminated the requirement in subsection 203(a)(7)(A) that the persecution fled from be inflicted by a Communist or Communist-dominated or Middle Eastern country.⁶ In the process of revising U.S. refugee law, however, Congress did away with INA subsection 203(a)(7)(B), the provision for victims of catastrophic natural calamities.⁷ These disaster victims, failing to qualify as refugees under the new definition and lacking the protection formerly provided by subsection 203(a)(7)(B), now stand before U.S. immigration law as any other prospective immigrants. No legal significance attaches to their dire circumstances.

This note reviews the history and antecedents of subsection 203(a)(7)(B), suggests explanations for its repeal, and explores alternative relief for the individuals who might formerly have benefited from it. It is presumed that some victims of natural disasters have a need for refuge equal to that of the refugee fleeing persecution. This is not to say that every "catastrophic natural calamity," as the now defunct statutory formulation put it, produces victims requiring the extraordinary relief of asylum. Yet, when the disaster constitutes a continuing threat to human life, and aid to the stricken area cannot restore an acceptable standard of living,⁸ then the distinction between natural disaster victims and refugees fearing persecu-

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tion becomes arbitrary and inhumane. The humanitarian underpinnings of a special provision for persons in life-threatening situations apply regardless of the source of that threat.

Admittedly, political factors may tend to produce greater concern for refugees from some sources of danger than from others. Also, political and practical restraints may combine to limit the number of refugees admitted. The purpose of this note, however, is not to debate the hard policy choices—the balancing of humanitarian concerns against political practicalities—the weighing of the relative needs and merits of various groups seeking to migrate to the United States. Congress once made the decision that natural calamity refugees *do* deserve a special provision when it enacted INA subsection 203(a)(7)(B); the legislative history of the 1980 Act fails to support the contention that the decision to repeal the provision was made with any real deliberation. The legislators may have neglected calamity victims in the Refugee Act, but they did not formulate a national policy of deliberately spurning such asylum seekers.

HISTORY OF THE NATURAL CALAMITIES PROVISION

The first United States immigration law to provide specifically for victims of natural calamities was the Refugee Relief Act of 1953.⁹ According to section 2(a) of that Act,

“Refugee” means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.¹⁰

The Act made 209,000 nonquota immigrant visas available to refugees, escapees, German expellees, orphans, and relatives of U.S. citizens.¹¹ Refugees who did not qualify for admission as relatives under INA subsections 203(a)(2)-(4)¹² were assigned 86,000 visas. Refugees meeting the INA criteria for relatives, but who did not qualify for admission because the quota assigned to their nation of origin was over-subscribed, were granted a total of 19,000 additional nonquota immigrant visas.¹³ It is unknown if any natural disaster victims were admitted to the United States under this Act. That the INS did not provide a category for disaster victims in its statistical analysis of admissions under the Refugee Relief Act of 1953 suggests that such admissions, if any, were considered insignificant.¹⁴ The Act expired by its own terms on December 31, 1956.¹⁵

In 1965 Congress passed extensive amendments to the Immigration and Nationality Act of 1952.¹⁶ One major reform introduced by the 1965 amendments was a new quota system. The 1952 Act had employed a national origins quota system for immigrants from outside the Western Hemisphere,¹⁷ with four preference categories.¹⁸ The national origins quota system was linked to the ethnicity of the U.S. population in 1924. The system weighed heavily in favor of British, Irish, and German immigration, and discriminated against Asian and African immigration, allowing most Asian or African states quotas of only one hundred persons a year. The preference categories gave priority to satisfying the employment needs of the United States and to reuniting families.¹⁹

The 1965 amendments abolished the national origins quota system,²⁰ and eliminated quotas altogether for immediate relatives of United States citizens.²¹ Aliens subject to the quota limits were allotted visas according to seven preference categories. The first six preferences dealt with family ties and occupational qualifications. The seventh preference, INA section 203(a)(7), created a new classification called "conditional entries" and dealt exclusively with refugees:

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) (ii) [i.e., 6% of 290,000 or 17,200 conditional entrants], 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. . . .²²

The legal status of conditional entrants differed from that of other preference categories. Although physically admitted into the United States, conditional entrants were not considered to have immigrated into the country: their sojourn was assumed to be temporary.²³ As nonimmigrants, conditional entrants were not afforded the basic guarantees of the United States Constitution, while members of the other six preference groups were accorded the status of permanent resident alien and the accompanying constitutional protections. After two years, a conditional entrant had to report to the Immigration and Naturalization Service (INS)

unless his or her conditional entry status had already been terminated by the attorney general. After examination under oath by an INS officer, the refugee would either be deported²⁵ or granted permanent resident alien status made retroactive to the date of the refugee's physical entry into the United States.²⁶

No victims of catastrophic natural calamities were ever able to avail themselves of subsection 203(a)(7)(B) before the provision was repealed by the Refugee Act of 1980.²⁷ Two obstacles prevented its use. First, under his authority to prescribe regulations governing the availability of conditional entrant visas,²⁸ the attorney general stipulated that application for conditional entrant status could only be made to INS officers within Austria, Belgium, France, Germany, Greece, Hong Kong, Italy, and Lebanon.²⁹ Thus, a refugee had to be outside his or her normal country of residence³⁰ and within one of the above listed countries to apply for and receive conditional entrant status.³¹ As a practical matter, compliance with this requirement was almost impossible, especially for a refugee outside Western Europe. The second obstacle inhibiting successful invocation of subsection 203(a)(7)(B) was the requirement that the president define "catastrophic natural calamity"³² and declare that the disaster from which the refugee sought to escape fell within the definition. No president ever defined a catastrophic natural calamity nor declared an event to be one.

To say that no natural disaster victim ever made use of conditional entry is to suggest that no disaster victim ever sought haven in the United States. The suggestion may be misleading, in view of the administrative hurdles detailed above. Many victims of natural disasters would have been unable to travel from their home country to one of the designated countries of application, as required by the attorney general's regulations.³³ For those who could have reached one of the specified countries, successful application would still have been foreclosed by presidential failure to declare that the circumstances from which they fled constituted a natural disaster.³⁴

In passing the 1965 amendments to the Immigration and Nationality Act, Congress stated that its purpose

[I]n adding [aliens who had been uprooted from their place of usual abode by a catastrophic natural calamity] to the refugee category [was] to provide relief in those cases where aliens have been forced to flee their homes as a result of serious natural disasters, such as earthquakes, volcanic eruptions, tidal waves, and in any similar natural catastrophes.³⁵

The executive branch failed to execute this expressed congressional intent. Even if the president had not failed to define a catastrophic natural calamity, thus keeping subsection 203(a)(7)(B) inoperative,³⁶ the attorney general's regulations would have had the same practical effect for those intended

beneficiaries of subsection 203(a)(7)(B) who could not comply with the requirement that application for refugee status be made within one of the eight designated countries.³⁷ Moreover, the administrative regulations were invulnerable to attacks on their validity: an overseas applicant for conditional entrant status could not appeal a decision denying conferral of that status.³⁸ The only appeal brought under the provision was made from within the United States and was unsuccessful.³⁹

The vitiation of subsection 203(a)(7)(B) is not explained by any documented evidence. Attorneys general and four presidents erected barriers without any foundation in the language of the provision, and Congress remained quiescent in the face of it all. Perhaps the adage that "the squeaky wheel gets the oil" best summarizes the state of affairs: people and institutions tend to expend their limited energies on the most pressing problems and the most vocal concerns confronting them. The legislative workload may have kept Congress from amending the INA to overcome the administrative obstacles or the presidential neglect. The House and Senate Committees on the Judiciary were aware of these problems, but this awareness was never translated into action designed to make subsection 203(a)(7)(B) operable.⁴⁰ Possibly, the legislators may have applauded the fate of the subsection and chosen to close their eyes to the failure to implement it vigorously. While either suggestion is plausible, the legislative records are barren of evidence tending to support one or the other.

At least some members of Congress approved of the nonuse of the conditional entrant provision for natural calamity victims. A minority view attached to the Senate Report on the 1965 amendments expressed the opinion that the United States should render financial, technical, and material aid to areas struck by disasters, but should not encourage migration to the United States.⁴¹ The minority may well have approved of the INS implementing regulations because they had the effect of discouraging immigration.

This view may have been the forerunner of a policy shift which reached fruition in the repeal of subsection 203(a)(7)(B) by the Refugee Act of 1980.⁴² An early draft of the Senate bill did include victims of catastrophic natural calamities in the definition of refugee, but the provision was soon eliminated. Two reasons probably underlay this omission. First, for the legislators involved with reformulating U.S. refugee policy, the major concerns were providing for political refugees and establishing closer conformity to the United Nations definition of a refugee. Second, many felt strongly that victims of natural disasters should be helped to rebuild their old homes, rather than encouraged to start new homes in the United States.⁴³ For some, this conviction was based on a belief that a policy of encouraging relocation results in a "brain drain" on a disaster area because only the best and the brightest can hurdle the administrative barriers and

gain admission to the United States.⁴⁴ Others who prefer aid to immigration argue that emergency situations are usually short-lived, and therefore sustenance, not relocation, is really all that is needed.⁴⁵ In cases of extraordinary disasters having severe long-range effects, special legislation, such as that passed for the victims of the earthquakes and volcanic activity in the Azores,⁴⁶ can provide for the immigration of the victims.

The arguments against relocation may be plausible. However, for some policy makers, espousal of an aid policy rather than immigration may mask conscious or unconscious ethocentrism, since the policy has the effect of keeping foreigners out of the United States. This same bias, whether based on an active desire to exclude or not, may also help explain the executive actions and inaction and the congressional quiescence regarding INA subsection 203(a)(7)(B). Earthquakes, volcanoes, tidal waves, droughts, and crop failures are types of disasters that might warrant migration and permanent settlement in a country of refuge. Not only do these disasters cause huge initial death tolls and extensive physical damage, but the prolonged effect of the destruction of food and shelter creates a continued threat to life. Recovery from such events can take years. The areas most likely to suffer such disasters are generally remote from the countries—Austria, Belgium, France, Germany, Greece, Hong Kong, Italy, and Lebanon—where a victim of a natural calamity was required by the INS regulations to make application for conditional entry into the United States.⁴⁷ In fact, Africa, Asia, and Latin America have experienced approximately 90 percent of the natural disasters which have occurred since World War II.⁴⁸ Tidal waves occur in the Pacific islands. Earthquakes are relatively common in the mountainous spine of South America and the Mediterranean. Prolonged droughts are endemic to parts of Africa.⁴⁹ All of these places have one thing in common: they are inhabited by ethnic groups that the United States historically discriminated against in its immigration policy because of a preference for Western Europeans.

The 1965 amendments to the INA (enacted a year after the passage of the 1964 Civil Rights Act⁵⁰) were intended to excise racially discriminatory elements—exemplified by the national origins quota system—from the immigration laws. For conditional entrants (both political refugees and natural disaster victims), the administrative regulations implementing the provision rendered that effort unsuccessful by effectively reimposing nation-of-origin restrictions. When faced with an opportunity to rework its entire refugee policy and breathe life into subsection 203(a)(7)(B), Congress chose instead to delete the provision for natural disaster victims and limit the Refugee Act of 1980 to refugees fleeing persecution.

Although the Refugee Act of 1980 does contemplate immigration relief for “refugees of special humanitarian concern,”⁵¹ the legislative history makes it clear that the framers of the law did not have victims of natural

disasters in mind when drafting this language.⁵² The final version of the Refugee Act of 1980 bestows the status of refugee on persons who fall within the United Nations definition of refugee, and persons specified by the president who are within their own country and who either fear or experience persecution.⁵³ Refugees from natural disasters cannot meet this requirement, because they typically have no reason to fear persecution. United States refugee law is now concerned solely with political refugees. Victims of catastrophic natural calamities must turn to alternative routes to immigration relief.

ALTERNATIVE ENTRY ROUTES FOR NATURAL DISASTER REFUGEES

Despite the repeal of subsection 207(a)(7)(B), refugees from catastrophic natural calamities may still be able to acquire refuge within the United States. Three major alternative means of gaining admission exist: private bills, parole, and emergency legislation.

Private Bills

A private immigration bill enacted into law suspends the provisions of the INA, and usually grants permanent resident alien status to the person or persons named in the bill. The congressional sponsor of a private immigration bill must be convinced by the bill's beneficiary or an interested party (friend, relative, or lawyer engaged to promote the bill) that the case is meritorious⁵⁴ and that all administrative remedies have been exhausted.⁵⁵ Some members of Congress require attorney's affidavits that counsel's involvement is on a *pro bono* basis.⁵⁶ The beneficiary or the party promoting the bill must appear before an immigration official to have Form G-79A filled out when the bill is introduced.⁵⁷

If the private immigration bill is introduced in the Senate, it is referred to the Senate Judiciary Committee.⁵⁸ The INS has a customary policy of staying deportation upon the introduction of such a bill into the Senate.⁵⁹ If the bill is introduced in the House of Representatives, it is referred to Subcommittee No. 1 of the House Judiciary Committee. The INS does not stay deportation in response to a House bill until the sponsor of the bill has sent a written request for an agency report to the committee chairperson and the chairperson in turn makes the same request to the INS.⁶⁰ If the alien to be benefited by the bill is within the United States, a report from the Department of Justice must be submitted to the committee considering the bill. If the alien is outside the United States, the Department of State submits the report.⁶¹ The report states the grounds for exclusion

which have necessitated the alien's resort to a private bill for relief, enabling the committee to tailor the bill to fit the alien's needs.⁶²

During consideration of the bill by the appropriate committee or subcommittee, the sponsor of the bill or possibly the bill's beneficiary are given a chance to be heard.⁶³ When approved by the requisite subcommittee and committee, the bill is referred to the full body of the originating chamber, and passes on the consent calendar if no objections are raised. The bill must then be shepherded through the other house for its approval.⁶⁴ Upon passage in both houses, the bill is sent to the president to be signed into law. As in the case of any public bill, the president may veto the private bill, and Congress may override the veto. If not passed by the Congress in which it is introduced, the bill dies and the whole process must begin anew.⁶⁵ In deportation cases, the INS usually awaits possible action in the next session of Congress before actually effecting the deportation order.⁶⁶

As a means of obtaining relief for victims of catastrophic natural calamities, private bills are of severely limited usefulness. For most disaster victims overseas, with no personal contact in the United States to plead his or her cause, the need to find a sponsoring legislator constitutes an insurmountable barrier. The probabilities of finding a sponsor have most likely been impaired by the recent "Abscam" scandal.⁶⁷ Even when a bill is introduced, the chances of success are low. In some years, fewer than 2 percent of the private immigration and nationality bills introduced into Congress are passed. In the best of years, less than 30 percent are successful.⁶⁸ Furthermore, private bills are not suited for providing relief to a devastated population, since each bill normally deals with only one individual's case.⁶⁹

Private immigration bills may be useful in two situations. One arises when the victim of a disaster has a friend or relative in the United States. If the victim and the U.S. contact can reestablish or maintain communication after the onset of the disaster, they may decide that migration to the United States is the most appropriate response to the crisis. If the victim is for some reason inadmissible under the normal U.S. immigration procedures, most likely because of an oversubscribed quota, a private immigration bill is an alternative remedy if the victim's U.S. contact is willing to assume the burden of promoting the bill.

Private bills are also a means of staying deportation upon the expiration of the visa of an alien who is in the United States temporarily when disaster strikes his or her homeland. Instead of being forced to return to a devastated homeland, a successful private bill gives the visitor the right to remain in the United States for either a limited or an indefinite period of time, depending on which remedy Congress deems fit to administer.

Congress generally confers permanent resident alien status on the beneficiaries of private immigration bills.⁷⁰

The introduction of a plethora of private bills has a dramatic effect on the congressional workload. During the eighty-fifth Congress, for example, 20 percent of all legislation introduced consisted of private immigration bills.⁷¹ In response to this problem, Subcommittee No. 1 of the House Judiciary Committee has promulgated special rules designed to inhibit private immigration bills.⁷² One planning to introduce such a bill should be aware of these rules, and be alert for possible changes or the introduction of similar rules by the Senate.

Parole

Section 212(d)(5)⁷³ of the INA authorizes the attorney general to grant entry to aliens ineligible for any of the six immigration preference categories.⁷⁴ This authority—the “parole power”—is not to be exercised to admit aliens who qualify as refugees under the 1980 Act. According to the conference committee that finalized the provisions of the Refugee Act of 1980,

[t]he Conferees agreed to write into the new law the clear legislative intent of both Houses that the parole authority in Section 212(d)(5) should no longer be used to admit groups of refugees . . . However, Section 212(d)(5) of the [Immigration and Nationality] Act remains intact, and while the Conferees accepted the limitation in the House bill we clearly recognize that they do not limit the Attorney General's parole authority to admit individuals or groups of aliens who are not deemed to be refugees under the terms of this Act.⁷⁵

Since victims of catastrophic natural calamities are no longer defined as refugees,⁷⁶ they stand to benefit from section 212(d)(5).⁷⁷ The attorney general is authorized to grant parole to groups of nonrefugees, but prohibited from using the power to benefit refugees.⁷⁸

The parole power obviously is useless as a tool to aid natural disaster victims unless the attorney general is willing to employ it. The attorney general's decision regarding use of the parole power may be influenced more by political and foreign policy considerations than by concern for disaster victims.⁷⁹ Those concerned for victims abroad would do well to apply political pressure on both Congress and the executive. In this way, the attorney general might be prompted to act.⁸⁰ Until the attorney general can be persuaded to exercise the parole power, section 212(d)(5) will be as ineffectual in aiding disaster victims as was subsection 203(a)(7)(B) prior to repeal.

Emergency Legislation

In 1958, prior to the enactment of subsection 203(a)(7)(B), Congress passed "An Act for the Relief of Certain Distressed Aliens."⁸¹ Though in effect for only ten months,⁸² one of the Act's functions was to provide nonquota visas for victims of a natural calamity—an earthquake in the Azores Islands. Such a response to severe natural calamities may be preferable to the use of private immigration bills, because special legislation is more time-efficient for both Congress and the disaster victims. Emergency bills also have an advantage over use of the parole power, because congressional discretion in the area of foreign policy is greater than that delegated to the attorney general. An attorney general may want to use the parole power, but feel constrained by foreign policy considerations and by a sense that the use of parole to benefit large groups violates the intent of Congress in creating that remedy.⁸³ Congress acts free from such inhibitions.

A major problem with situation-specific use of the legislative process as a means of relieving disaster victims is that, regardless of the type of aid an enactment affords—private relief, special nonquota visas, or material sustenance shipped to the stricken site—it is often slow in reaching its intended beneficiaries. Delay costs lives. A permanent framework for rendering appropriate aid to natural disaster victims, including immigration visas when necessary, would reduce this tragic cost. Special legislation and the parole power have nevertheless been the major means of dealing with massive population dislocations in the past and will probably continue to be preferred in the future. Since parole is faster than the legislative process, it is likely to remain the best source of help for natural calamity victims seeking refuge in the United States.

CONCLUSIONS

As acknowledged at the outset of this discussion, the desirability of a special immigration provision for victims of natural calamities is a proposition on which opinions vary. Those opposed to such immigration argue that a temporary crisis should not be used as an excuse to grant entry to aliens who will stay in the United States after the situation in their homeland returns to normal. While this criticism is valid, it is also applicable to many political refugees: a change in regime can transform a political refugee into a hero overnight. To say that disaster victims should stay and rebuild their homeland, however devastated, seems unjustifiably harsh, particularly when refugees from persecution are not barred from entry by an insistence that they stay in their countries to struggle against a repressive regime. A Polish dissident who has food, water, housing, and a job,

but who fears persecution (even without experiencing it) can obtain special succor from U.S. immigration law, while an African whose very life is endangered by a prolonged drought encounters barrier after barrier.

Nature can be every bit as devastating as the persecution that some humans inflict on others. Victims of natural or economic disasters really are of no less "grave humanitarian concern"—a touchstone of U.S. refugee policy⁸⁴—than victims of persecution. Just as a broken arm needs to be set, regardless of the source of injury, so also must those who flee their homelands in realistic fear for their lives be offered refuge, regardless of the source of that fear. "Refugee" should be redefined in terms of those persons deprived of an existence meeting a minimally acceptable standard of living including both the means of subsistence and basic human rights. Rather than distinguishing between various causes of a refugee movement, refugee entry law and policy should base qualification for immigration on a realistic assessment of the circumstances from which the refugee flees.⁸⁵ Demonstrating conformity to this new definition should impose a burden on the applicant for refugee status comparable to that of establishing "a well-founded fear of persecution." As a practical matter, it is assumed that people fleeing a country known to countenance widespread persecution are *per se* refugees. The U.S. response to Soviet Jews is a case in point. A similar *per se* rule can be applied to persons fleeing disaster areas, for disasters are at least as readily verifiable as incidents of persecution. Once it is known that conditions in a disaster area are sufficiently substandard, then people from that area should be considered refugees. The result will be that similarly situated people (*i.e.*, people in life-threatening circumstances, regardless of the source of the threat) will be treated similarly.

As a practical matter, Congress is unlikely to act soon to bring victims of natural calamities under the protective mantle of U.S. refugee law. For the present, these individuals are not covered by the Refugee Act of 1980 and will have to rely on the regular immigration process, private immigration bills, parole, or emergency legislation.⁸⁶ For many present and future refugees, the success of these measures may be the difference between life and death.

NOTES

¹ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (to be codified in scattered sections of 8, 22 U.S.C.).

² Immigration and Nationality Act, Pub. L. No. 414, ch. 477, 66 Stat. 163 (1952) (codified in 8 U.S.C. § 1101-1503 and scattered sections of 18, 22, 50 U.S.C.) [hereinafter cited as INA].

³ S. REP. NO. 96-256, 96th Cong., 2d Sess. 4 (1979), *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 515, 518-9.

⁴ INA § 203(a)(7), 8 U.S.C. § 453(a)(7) (1976), *as amended by* Act of October 3, 1965, Pub. L. No. 89-236, § 3(7), 79 Stat. 911 (repealed by Refugee Act of 1980, § 203(c)(3)).

⁵ "[T]he term 'refugee' shall apply to any person who owing to well-founded fear of persecution 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 is unable or, owing to such fear, is unwilling to return to it." Convention relating to the Status of Refugees of July 28, 1951, art. 1(A)(2), 189 U.N.T.S. 137. *See also* Protocol relating to the Status of Refugees, art. I(2), *done* January 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

⁶ INA § 203(a)(7)(B), 8 U.S.C. § 1153(a)(7)(B) (1976) (repealed 1980).

⁷ Refugee Act of 1980, § 203(c)(3).

⁸ For support of the proposition that this circumstance is conceivable, and that a special immigration provision is an appropriate remedy, *see Refugees from Sicily: Hearings on H.R. 14806, H.R. 14807, and H.R. 14808 and similar bills Before Subcomm. No. 1 of the House Comm. on the Judiciary, 90th Cong., 2d Sess. 5 (1968) (statement of Hon. Emanuel Celler, Chairman, House Committee on the Judiciary) and id. at 7 (statement of Hon. Peter W. Rodino, Jr.).*

⁹ Refugee Relief Act of 1953, Pub. L. No. 203, ch. 336, 67 Stat. 400 (expired 1956). The original (1952) version of the INA made no provision for refugees of any kind.

¹⁰ Refugee Relief Act of 1953, § 2(a) (expired 1956).

¹¹ Refugee Relief Act of 1953, §§ 3, 5(a) (expired 1956).

¹² 66 Stat. 163 (1952) (prior to 1965 amendment).

¹³ Refugee Relief Act of 1953, § 4(a) (expired 1956). This section of the Refugee Relief Act of 1953 also specified the nationality of those who could qualify for visas and often also the countries where application could be made. No mention of Africans or residents of the Western Hemisphere was made in the Act.

¹⁴ No statistics on admission of disaster victims under the Refugee Relief Act of 1953 are available from the INS.

¹⁵ Refugee Relief Act of 1953, § 20 (expired 1956).

¹⁶ Act of October 3, 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

¹⁷ CONGRESSIONAL RESEARCH SERVICE, 96TH CONG., 1ST SESS., U.S. IMMIGRATION LAW AND POLICY: 1952-1979 (Senate Judiciary Comm. Print 1979) at 7-8. [hereinafter cited as U.S. IMMIGRATION LAW AND POLICY].

In fiscal year 1965, a total of 158,503 immigration visas were made available. Of that total, Great Britain and Ireland were allotted (collectively) 65,361 visas; Germany was allotted 25,814; and the Republic of Ireland was allotted 17,756 visas. The remaining countries of Europe together received 40,483, while the allotments for all of Asia, Africa, and Oceania totaled 9,089. Those figures illustrate the effect of the national origins quota system on the availability of visas. 21 CONG. Q. ALMANAC 459 (1965).

¹⁸ INA § 203(a) (amended 1965, 1980). Applicants who could not qualify for one of these preferences could not obtain immigration visas unless the quota assigned to a preference category had not been completely filled. *See* text of preference category provision, *infra* note 19.

¹⁹ Sec. 203. (a) Immigrant visas to quota immigrants shall be allotted in each fiscal year as follows:

(1) The first 50 per centum of the quota of each quota area for such year, plus any portion of such quota not required for the issuance of immigrant visas to the classes specified in paragraphs (2) and (3), shall be made available for the issuance of immigrant visas (A) to qualified quota immigrants whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such

immigrants and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States, and (B) to qualified quota immigrants who are the spouse or children of any immigrant described in clause (A) if accompanying him.

(2) The next 30 per centum of the quota for each quota area for such year, plus any portion of such quota not required for the issuance of immigrant visas to the classes specified in paragraphs (1) and (3), shall be made available for the issuance of immigrant visas to qualified quota immigrants who are the parents of citizens of the United States, such citizens being at least twenty-one years of age.

(3) The remaining 20 per centum of the quota for each quota area for such year, plus any portion of such quota not required for the issuance of immigrant visas to the classes specified in paragraphs (1) and (2), shall be made available for the issuance of immigrant visas to qualified quota immigrants who are the spouses or the children of aliens lawfully admitted for permanent residence.

(4) Any portion of the quota for each quota area for such year not required for the issuance of immigrant visas to the classes specified in paragraphs (1), (2), and (3) shall be made available for the issuance of immigrant visas to other qualified quota immigrants chargeable to such quota. Qualified quota immigrants of each quota area who are the brothers, sisters, sons, or daughters of citizens of the United States shall be entitled to a preference of not exceeding 25 per centum of the immigrant visas available for issuance for each quota area under this paragraph.

Id.

²⁰ Act of October 3, 1965, § 2(a).

²¹ *Id.* § 2(b).

²² INA § 203(a)(7), as amended by Act of October 3, 1965, § 3 (repealed 1980).

²³ *In re Kotur*, 12 I. & N. Dec. 609 (1968).

²⁴ Comment, *Extending the Constitution to Refugee-Parolees*, 15 SAN DIEGO L. REV. 139 (1977).

²⁵ 8 C.F.R. § 235.9(e), (g) (1980). An alien would be deportable if he or she had been inadmissible under § 212(a) of the INA (except for § 212(a)(20) which requires the alien to have entry documents and a passport). Section 212(a) excludes aliens who are, for example, insane, drug addicts, criminals, and sexual deviants.

²⁶ INA § 203(g)-(h), as amended; Act of October 3, 1965, § 3(9)(g)-(h) (repealed 1980). An alien who is not deficient in any of the ways mentioned in note 25, *supra*, will be granted permanent resident alien status with retroactive effect to his or her date of arrival despite lack of the documentation required by § 212(a)(20) of the INA.

²⁷ CONGRESSIONAL RESEARCH SERVICE, 96TH CONG., 2D SESS., REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES (Comm. Print 1980) 12 [hereinafter cited as REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES].

²⁸ INA § 203(a)(7) (repealed 1980).

²⁹ 8 C.F.R. § 235.9(a) (1980).

³⁰ INA § 203(a)(7) (repealed 1980).

³¹ 8 C.F.R. § 235.9(a) (1980).

³² INA § 203(a)(7)(B) (repealed 1980).

³³ Aliens and Nationality, 8 C.F.R. § 235.9 was originally promulgated in 1966 without mention of Hong Kong, 8 C.F.R. § 235.9(a) (1966), which was added to the regulation in 1970. 35 Fed. Reg. 17,322 (1970). In 1977 Spain was also added to the regulation, 42 Fed. Reg. 36,499 (1977), but was limited in 1978 to deal only with Cuban applicants in Spain temporarily as visitors, 43 Fed. Reg. 35,260 (1978).

³⁴ See *In re Pasarikovski*, 12 I. & N. Dec. 526 (1967). The applicant was in the United States on a nonimmigrant visa when an earthquake destroyed his home in Yugoslavia. He was denied conditional entrant status because, "the District Director found that there is no

indication that the President has yet defined 'catastrophic natural calamity' for the purpose of this provision. It was thereupon concluded that the applicant does not come within the purview of section 203(a)(7)(B) of the Act." *Id.* at 527.

³⁵ S. REP. NO. 748, 89th Cong., 1st Sess., 16, reprinted in [1965] U.S. CODE CONG. & AD. NEWS 3328, 3335.

³⁶ *E.g.*, In re Pasarikovski, 12 I. & N. Dec. 526 (1967).

³⁷ Concern over the discriminatory appearance of this requirement was expressed by Senator Hiram L. Fong. *U.S. Apparatus of Assistance to Refugees Throughout the World: Hearings before the Subcomm. to Investigate Problems Connected with Refugees and Escapees of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. 203 (1966). The regulation was justified by saying that these were the countries of application under the Displaced Persons Act, and that more countries would be added "when the State Department recommended it." *Id.* at 203 (statement of Philip B. Heyman, Acting Administrator, Bureau of Security and Consular Affairs, Department of State). This explanation was apparently accepted, despite the fact that the Displaced Persons Act was passed for the limited purpose of admitting displaced Europeans. Displaced Persons Act of 1948, Pub. L. No. 774, ch. 647, 62 Stat. 1009; as amended by Act of June 16, 1950, Pub. L. No. 555, ch. 262, 64 Stat. 219; Act of June 28, 1951, Pub. L. No. 60, ch. 167, 65 Stat. 96; INA § 402(h). While the 1965 amendments to the INA theoretically made conditional entry available, within the limits of the quota, to natural disaster victims irrespective of nationality, this effect was never achieved. Only Hong Kong and, to a limited degree, Spain were added to the list of application countries originally used under the Displaced Persons Act over the fifteen year existence of section 203(a)(7)(B). Fed. Reg., *supra* note 33. The discriminatory effect of the regulation is evidenced by INS statistics on the nation of birth of conditional entrants admitted under section 203(a)(7) from 1965 to 1976: approximately 68.3 percent of the conditional entrants were European, 27.8 percent were Asian, 3.5 percent African, and 0.2 percent from all other areas combined. See [1977] INS ANN. REP. 52.

³⁸ "The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the officer in charge." 8 C.F.R. § 235.9(c) (1967).

The practice of insulating all consular rejections of visa applications from judicial review, a closely analogous situation, has been strongly but unsuccessfully criticized. *E.g.*, HOUSE COMM. ON THE JUDICIARY, HEARINGS BEFORE THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION, 82D CONG., 2D SESS. 1566-86 (1952) (statement of Louis J. Jaffee, Professor of Administrative Law, Harvard Law School and Chairman on Immigration of the Administrative Law Section, American Bar Association).

[T]he consul is not only immune from review but from any other kind of check, even of publicity. If there is such a thing as an axiom of law, it is that where there is power there must be safeguards against the abuse of power. . . . [I]t is indefensible to give any man, acting in secret in a remote land, autocratic power to grant or withhold a privilege of such enormous value as that of entrance to this country. *Id.* at 1578; Rosenfield, *Consular Non-Reviewability: A Case Study in Administrative Absolutism*, 41 A.B.A. J. 1109 (1955); Note, *Judicial Review of Visa Denials: Reexamining Consular Non-reviewability*, 52 N.Y.U. L. REV. 1137 (1977).

³⁹ In re Pasarikovski, 12 I. & N. Dec. 526 (1967).

⁴⁰ For proof of awareness regarding the barrier created by 8 C.F.R. § 235.9(a) (1966), see *U.S. Apparatus for Assistance to Refugees Throughout the World*, *supra* note 37, at 187-210 (1966) (statement of Philip B. Heyman). For statements showing knowledge of the presidential failure to define a disaster or declare any specific occurrence to be a natural disaster, as well as State Department failure to prompt the president to make the needed proclamations, see *Refugees from Sicily*, *supra* note 8, at 17-19 (statement of Barbara Watson, Acting Administrator, Bureau of Security and Consular Affairs, Department of State). For a proposal which would

have redefined "refugee" to eliminate the authority of the attorney general to make regulations regarding quota refugee admission and remove the need for presidential action to activate the natural calamity provision, *see* H.R. 13453, 90th Cong., 1st Sess. 8-9 (1968).

41 S. REP. No. 748, 89th Cong., 1st Sess. 54-55, *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS 3328, 3349.

42 Refugee Act of 1980, § 203(c)(3).

43 Telephone interview with David A. Martin, assistant professor of law at the University of Virginia Law School (January 20, 1981). Before joining the University of Virginia law faculty, Martin was with the Bureau of Human Rights and Humanitarian Affairs of the United States Department of State, where he worked on the Refugee Act of 1980.

44 *See* S. REP. No. 748, 89th Cong., 1st Sess. 52, 55, *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS 3328 at 3347, 3349.

45 *See id.* at 54-55, U.S. CODE CONG. & AD. NEWS at 3349.

46 Act of September 2, 1958, Pub. L. No. 85-892, 72 Stat. 1712 (1958) (expired 1960).

47 8 C.F.R. § 235.9(a) (1970).

48 Long, *The Impact of Natural Disasters on Third World Agriculture: An Exploratory Survey of the Need for Some New Dimensions in Development Planning*, 37 AM. J. ECON. & SOC. 149, 151-52 (1978); Ball, *The Myth of the Natural Disaster*, 5 ECOLOGIST 368, 369 (Dec. 1975). The 90 percent figure does not include disasters which occur in countries, such as the United States, which receive no international aid when a natural disaster strikes.

49 *See* THE TIMES ATLAS OF THE WORLD (comprehensive edition 1980).

50 Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h-6 (1976).

51 Refugee Act of 1980, § 201(b) (to be codified at 8 U.S.C. § 1157(b), (c)).

52 *See Refugee Act of 1979: Hearings on H.R. 2816 before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 96th Cong., 1st Sess. 25 (1979) (statement of Attorney General Griffin B. Bell).

53 Refugee Act of 1980, § 201(a).

54 E. HARPER, IMMIGRATION LAWS OF THE UNITED STATES 652 (3d ed. 1975) [hereinafter cited as HARPER].

55 J. WASSERMAN, IMMIGRATION LAW AND PRACTICE 301 (3d ed. 1979) [hereinafter cited as WASSERMAN].

56 *Id.* at 300.

57 United States Department of Justice, Immigration and Naturalization Service, Form G-79A, *reprinted in* WASSERMAN, *supra* note 55, at 303.

58 HARPER, *supra* note 54, at 652.

59 SENATE COMM. ON THE JUDICIARY, THE IMMIGRATION AND NATURALIZATION SYSTEMS OF THE UNITED STATES, S. REP. No. 1515, 81st Cong. 2d Sess. 608 (1950) [hereinafter cited as IMMIGRATION AND NATURALIZATION SYSTEMS]; C. GORDON & E. GORDON, IMMIGRATION AND NATIONALITY LAW § 7.10 (student ed. 1980); HARPER, *supra* note 54, at 656.

60 SUBCOMM. ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW, HOUSE COMM. ON THE JUDICIARY, RULES OF PROCEDURE (PRIVATE LEGISLATION), 96th Cong., Rule 3 (for the text of Rule 3, *see* note 72 *infra*) [hereinafter cited as RULES OF PROCEDURES]; IMMIGRATION AND NATURALIZATION SYSTEMS, *supra* note 59, at 608-09.

61 HARPER, *supra* note 54, at 652.

62 *Id.* at 657, IMMIGRATION AND NATURALIZATION SYSTEMS, *supra* note 59, at 608.

63 HARPER, *supra* note 54, at 653.

64 WASSERMAN, *supra* note 55, at 302.

65 HARPER, *supra* note 54, at 653.

66 *Id.* at 656.

67 *See generally* N.Y. Times, Oct. 8, 1980, at 1, col. 1.

68 *Private Immigration and Nationality Bills*

Year	Congress	Introduced	Enacted	Percent
1976-77	95th Congress (1st Sess.)	745	6	
1975-76	94th Congress	1,023	99	
1973-74	93rd Congress	1,085	63	
1971-72	92nd Congress	2,866	62	
1969-70	91st Congress	6,266	113	less than 2%
1967-68	90th Congress	7,293	218	
1965-66	89th Congress	5,285	279	
1963-64	88th Congress	3,647	196	
1961-62	87th Congress	3,592	544	
1959-60	86th Congress	3,069	488	
1957-58	85th Congress	4,364	927	
1955-56	84th Congress	4,474	1,227	less than 30%
1953-54	83rd Congress	4,797	755	
1951-52	82nd Congress	3,669	729	
1949-50	81st Congress	2,811	505	
1947-48	80th Congress	1,141	121	
1945-46	79th Congress	429	14	
1943-44	78th Congress	163	12	
1941-42	77th Congress	430	22	
1939-40	76th Congress	601	65	
1937-38	75th Congress	293	30	

Source: [1977] INS ANN. REP. 135. Percentages provided by author.

69 HARPER, *supra* note 54, at 650-51.

70 WASSERMAN, *supra* note 55, at 302.

71 U.S. IMMIGRATION LAW AND POLICY, *supra* note 17, at 24.

72

1. The regular meeting day of the Subcommittee will be Thursday or upon the call of the Chair. The regular meeting days of the Subcommittee on private bills will be the first and third Thursdays of each month or upon the call of the Chair.

2. A quorum of the Subcommittee shall consist of two members for the purpose of holding hearings on private bills.

3. The introduction of a private bill does not act as a stay of deportation until the Committee requests a departmental report. Requests for reports on private bills from the Departments shall be made only upon a written request addressed to the Chair by the author of such bill. That request shall contain the following information which shall be submitted to the Committee in triplicate.

(a) *In the case of an alien who is physically in the United States:*

The date and place of the alien's last entry into the United States; his or her immigration status at that time (visitor, student, exchange student, crewman, stowaway, illegal border crosser, etc.); his or her age; place of birth; address in the United States; and the location of the United States Consulate at which he or she obtained his or her visa, if any.

(b) *In the case of an alien who is residing outside of the United States:*

The alien's age; place of birth; address; and the location of the United States Consulate before which his or her application for a visa is pending; and the address of and relationship to the person primarily interested in the alien's admission to the United States.

(c) *In the case of an alien who is seeking expeditious naturalization:*

The date the alien was admitted to the United States for permanent residence; his or her age; place of birth; and address in the United States.

4. The Subcommittee shall not address to the Attorney General communications designed to defer deportation of beneficiaries of private bills who have entered the United States as nonimmigrants, stowaways, in transit, deserting crewmen, or by surreptitiously entering without inspection through the land or sea borders of the United States.

Exemption from this rule may be granted by the Subcommittee if the bill is designed to prevent unusual hardship to the beneficiary or to United States citizens. However, no such exemption may be granted unless the author of the bill has secured and filed with the Subcommittee full and complete documentary evidence in support of his request to waive this rule.

5. No private bill shall be considered if an administrative remedy exists, or where court proceedings are pending for the purpose of adjusting or changing the immigration status of the beneficiary.

6. No favorable consideration shall be given to any private bill until the proper Department has submitted a report.

7. Upon the receipt of reports from the Departments, private bills shall be scheduled for Subcommittee consideration in the chronological order of their introduction, except that priority shall be given to bills introduced earliest in any of the previous Congresses.

8. Consideration of private bills designed to adjust the status of aliens who are in the United States shall not be deferred due to nonappearance at Subcommittee hearings of the author of the bill or person authorized to represent him.

9. Bills previously tabled shall not be reconsidered unless new evidence is introduced showing a material change of the facts known to the Committee. In the event of a request for reconsideration the Subcommittee shall, insofar as practicable, dispose of such request at the first meeting of the Subcommittee following receipt of such request.

RULES OF PROCEDURE, *supra* note 60.

73 INA § 212(d)(5); as amended by Refugee Act of 1980, § 203(d), (f).

74 INA § 203(a)(1)-(6), 8 U.S.C. § 1153(a)(1)-(6) (1976).

75 REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES, *supra* note 27, at 86-87.

76 Refugee Act of 1980, § 203(c)(3).

77 Senator Edward Kennedy proposed that the Attorney General use the parole power to relieve victims of an earthquake which struck Italy on November 23, 1980. 126 CONG. REC. S15,277 (daily ed. Dec. 2, 1980) (remarks of Sen. Kennedy). No positive action has been taken on this proposal to date.

78 Refugee Act of 1980, § 203(f)(3).

79 On at least one occasion, a representative of the State Department has expressed concern that allowing disaster victims to migrate to the United States might insult these victims' government by implying that it could not meet the needs of its citizens. *Refugees from Sicily*, *supra* note 8, at 19 (statement of Barbara Watson). This argument would be even more forceful if applied to persons fleeing persecution, for giving asylum to such refugees necessarily implies that the refugee's government committed or countenanced persecution. Offering new homes to people victimized by natural forces beyond their government's control should be less insulting to a government than helping its nationals to escape its oppressive policies.

80 The political nature of a decision to use the parole power points to another advantage of "circumstance oriented" policy, or a special provision for disaster victims. A refugee policy

which concentrates on the refugee's situation, instead of the source of that situation, is less subject to political influence. A special provision for disaster victims should contain a legislatively predetermined set of standards to be applied neutrally by the INS and subject to administrative and judicial review.

⁸¹ Act of September 2, 1958, Pub. L. No. 85-892, 72 Stat. 1712 (expired 1960).

⁸² *Id.*, § 7.

⁸³

I am not comfortable about the use of the parole authority in . . . situations where I have exercised that authority in the past. Nor is this discomfort unique to me. Every Attorney General before me, faced with such a request [to parole large groups of people into the United States], has voiced similar reservations because the intent of the Congress, in establishing the parole authority, was to provide a safety valve for unusual, individual cases of compelling need that could not otherwise be met. It was not to provide the means to end-run the other provisions of the immigration law.

REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES, *supra* note 27, at 42 (statement of Attorney General Griffin B. Bell).

⁸⁴ *Refugees from Sicily*, *supra* note 8, at 8.

⁸⁵ Often, several factors combine to create refugees. A prime illustration of this phenomenon occurred between 1820 and 1840 when masses of Irish peasants came to North America. They were driven from their homelands when political and economic stresses coincided with a truly catastrophic natural disaster known as the potato famine. *See* O. HANDLIN, *BOSTON'S IMMIGRANTS* 39-53 (1959).

⁸⁶ Efforts to use these three methods will be more likely to succeed if the media help to raise public concern for any particular group.