

# Changes to U.S. Law Threaten Refugees: An Illustration Based on WCL Clinic Cases

by Sarah Paoletti

On September 30, 1996, President Clinton signed into law the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996" (the Act), most of the provisions of which will take effect April 1, 1997. Despite a congressional decision to address only illegal immigration in this year's legislation, this Act amends several provisions of the Immigration and Naturalization Act (INA) that directly affect **legal** immigrants. The Immigration and Naturalization Service (INS) is currently drafting regula-

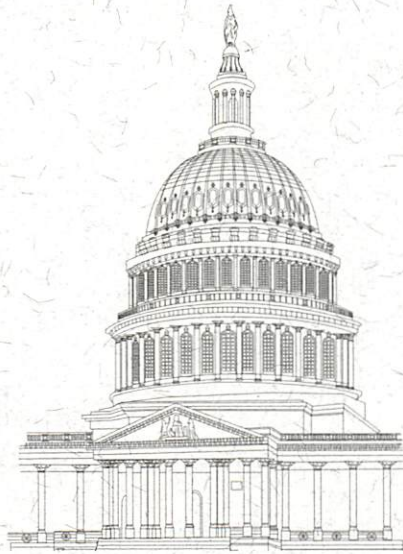
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tions to implement the new INA provisions, but until such regulations are implemented and the courts have an opportunity to interpret them, the full impact of the legislation will not be known. What is certain is that the legislation will have severe repercussions for refugees seeking asylum in the United States.

Included in the Act are several provisions that will keep refugees from obtaining the protection traditionally provided to them under both domestic and international law. The Act institutes for the first time in U.S. history a filing deadline for asylum applications of one year after arrival in the United States. While a year might sound like plenty of time, refugee advocates argue that this is too strict a deadline. Most refugees do not understand the asylum system and figuring it out is not their first priority upon arriving in the United States. Most are busy with more immediate concerns like finding work and a place to live, recovering from the trauma that prompted them to leave their home country, or trying to help family members they left behind.

The one year filing deadline applies only to those refugees who are able to

get into the United States in the first place. Under the new law, refugees who arrive without proper travel documents must make their claims for asylum immediately upon arrival at the airport or other port of entry. Summary exclusion, a new fast-track deportation procedure contained in the law, applies to all aliens who arrive in the United States without proper travel documents, and may be applied to those who have already entered the United States without inspection.



Under this new procedure, individuals who have suffered or fear persecution in their home countries must convince an asylum officer at the port-of-entry that they have a "credible

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fear" of persecution. Those who are not found by the asylum officer to have a credible fear are permitted to request a hearing before an immigration judge which, according to the INA, must be concluded within 24 hours where practicable, but in no case more than seven days. Legal counsel or other consultation is permissible so long as it is not at the

government's expense and does not "unreasonably" delay the process.

To understand the ramifications of summary exclusion on refugees, it is useful to consider the true story of a refugee who sought, and was ultimately granted, asylum in the United States.

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Fauziya Kasinga, aided by the International Human Rights Clinic at the Washington College of Law (WCL), won asylum before the Board of Immigration Appeals after a long, difficult, and highly publicized application and appeals process. She fled her home country of Togo because her relatives had tried to force her to undergo female genital mutilation (FGM) before an arranged marriage to a much older man.

She arrived in the United States without proper travel or entry documents. Under the new law, Ms. Kasinga would have had to convince an immigration inspector, most likely a male, in an interview conducted at the airport, that she had a credible fear of persecution. If the inspecting officer decided that Ms. Kasinga's story was either not credible or that FGM does not qualify as persecution, she would not have been permitted even to apply for asylum, and would have been forcibly returned to Togo.

If Ms. Kasinga understood her rights, she could have requested a review by an immigration judge, but that judge's decision would not be reviewable. This scenario is not far-fetched. In fact, the immigration judge who first heard Ms. Kasinga's case held that her story was not credible because he believed FGM is no longer performed.

Refugee advocates are concerned about several additional limits on asylum included in the Act, which amends the INA to prohibit a refugee from applying

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for asylum if the Attorney General determines that he might be sent to a third country where his "life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion," and where he could access a full and fair procedure to apply for asylum "or equivalent temporary protection."

The amended INA also prohibits a refugee who has passed through a "safe" third country from applying for asylum. The law had previously stated that an applicant who had been "firmly resettled" in a third country would not be accepted.

In addition, the 1996 INA also bars a refugee who has been previously denied asylum from reapplying, and also bars those aliens whom the Attorney General determines are "a danger to the community of the United States," because they have been convicted of an aggravated felony (the definition of which has expanded to include illegal gambling and fraud). An alien is also barred when "there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States."

While these provisions examined individually may appear to be reasonable, they are problematic because

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waivers previously permitted at the Attorney General's discretion have largely been eliminated and courts have been stripped of their power to review INS decisions and practices.

To illustrate the dramatic impact the new legislation will have on refugees

coming to the United States, it is helpful to consider the story of a young man from Angola who recently received asylum with the assistance of WCL's International Human Rights Clinic.

How the Act will be implemented in practice will not be known until the new provisions take effect next year.

Orphaned at fourteen when riot police arrested and killed his family, he fled Angola and went to Portugal, and later went to France and England to seek asylum. His application for asylum was rejected by both France and England, so he came to the United States. While in flight to the United States, he destroyed all of his documents except his Angolan identity card, and when he arrived at the airport, he immediately asked for political asylum. Immigration officials took him to a holding cell, where he was strip-searched and questioned.

Under the amended INA, he would have been put into expedited proceedings because he arrived without proper travel documents. Based on the cursory interview held at the airport, the asylum officer would probably have determined that this applicant was ineligible to apply for asylum. During his interrogation, he "admitted" to committing a crime in Angola. When he had applied for asylum in France and England he had told the truth about his family's disappearance and murders, and been rejected for asylum. So when he applied in the United States, he fabricated a story claiming that he had killed a police officer in Angola, hoping that this would convince the inspector that he would be killed if returned there. Under the 1996 INA, this statement alone would have made him ineligible even to apply for asylum.

Even if he had not fabricated the story about killing a police officer, the immigration inspector could have denied the asylum request and ordered the applicant deported because he had previously been denied asylum or because the officer found that the applicant did not have a credible fear of persecution.

If the applicant had understood that he had a right to appeal to an immi-

gration judge, which he did not have in either France or England, he would have been given a second chance to tell his story. Without an attorney and with no opportunity to gather documentation supporting his claim, however, it is unlikely the immigration judge would have found differently.

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representation. For the Angolan applicant, for example, it took nearly three months for him to locate an attorney, and his attorneys needed four weeks to prepare his asylum application and another week to prepare him for trial.

How the Act will be implemented in practice will not be known until the new provisions take effect next year. While it was designed to deal with illegal immigration, it will inevitably affect refugees seeking asylum in the United States. When we examine real asylum cases within the context of the old and new regulations, it seems clear the new legislation will result in denial of legitimate asylum applications, like that of the Angolan applicant. It is fortunate for him that these regulations were not already in effect, because under the new rules, he most likely would have been returned to Angola, where he could have met the same fate as his family — death at the hands of the police. 🐦

