97-978 A
Updated June 4, 1998

CRS Report for Congress

Received through the CRS Web

Immigration-Related Provisions of Selected Bills on Religious Persecution

Larry M. Eig
Legislative Attorney
American Law Division

Joyce C. Vialet
Specialist in Immigration Policy
Education and Public Welfare Division

Summary

On May 14, 1998, the House passed H.R. 2431, the "Freedom From Religious Persecution Act" by a vote of 375-41. As a result of amendments by the House Judiciary Committee, the immigration-related provisions of the House-passed bill are narrower than those in previous versions. The leading religious persecution bill in the Senate appears to be S. 1868, the "International Religious Freedom Act." A hearing was held on it by the Senate Foreign Relations Committee on May 12.

The asylum and training provisions of H.R. 2431 now more closely resemble those of S. 1868, but the refugee proposals in the two bills continue to differ significantly. Unlike earlier versions of H.R. 2431, the House-passed bill would not revise procedures for considering asylum claims made by aliens who allege membership in certain religious minorities. Instead, the asylum proposals now focus on enhanced training about religious persecution and on addressing potential biases and inaccuracies within the asylum process. Unlike S. 1868, however, H.R. 2431 retains provisions intended to ensure that members of persecuted religious groups are considered for admission as refugees on an equal basis with members of other groups of special humanitarian concern to the U.S. At the same time, the House-passed bill emphasizes its intent to give persecuted religious communities parity, rather than preference, in the refugee admission process.

Introduction. This report analyzes immigration-related provisions of H.R. 2431, the "Freedom from Religious Persecution Act," as passed by the House on May 14, 1998, and S. 1868, the "International Religious Freedom Act," as introduced in the Senate. Both these bills in part address asylum and refugee issues, but they do so somewhat differently. In general, H.R. 2431 would more directly affect refugee admission priorities, while S. 1868 more narrowly focuses on upgrading the training and impartiality

of officials who consider refugee and asylum claims. Before turning to the specific provisions of the respective bills, this report discusses pertinent principles under current law.

"Refugees" under the Immigration Law. The Immigration and Nationality Act (INA) (8 U.S.C. §§ 1101 *et seq.*), as amended, governs the entry and stay of aliens. The two basic types of relief under the INA for aliens who face persecution abroad are *refugee status*, which applies to aliens outside the U.S., and *asylum status*, which applies to aliens in the U.S. or arriving here. Eligibility for either status is premised upon an individual showing that he or she is a "refugee," as that term is defined in the INA:

> The term *refugee* means . . . any person who . . . is persecuted or has a well-founded fear of persecution [in the country of the person's nationality] on account of race, religion, nationality, membership in a particular social group, or political opinion.[1]

The standards for meeting the requisite elements of "refugee" have been established primarily in case decisions of the Board of Immigration Appeals and the federal courts. However, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208, Division C), Congress deemed as persecuted on the basis of membership in a social group those aliens who have been subjected to, have resisted, or fear certain coercive population control policies (but capped admissions on this basis at 1,000 annually). Also, a provision of P.L. 104-208, as amended and extended by P.L. 105-174, separately designates unmarried adult children of Vietnamese who had been interned in a reeducation camp as "refugee[s] of special humanitarian concern to the United States,"[2] effective through FY1999. This special provision, known as the McCain amendment, directs that covered Vietnamese aliens be admitted notwithstanding other provisions of law (*e.g.*, the restrictions on refugee admissions discussed below).

Other special provisions have addressed religious persecution. For example, temporary provisions known as the Lautenberg amendment[3] establish separate standards and procedures for screening members of certain religious minorities in successor states of the former Soviet Union (as well as certain East Asians).[4] The Lautenberg amendment applies only to aliens abroad who are seeking entry in *refugee status.* It does not apply to aliens in the U.S. who are seeking *asylum status*.

---

[1] INA, § 101(a)(42); 8 U.S.C. § 1101(a)(42).

[2] The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, §584 (*contained in* P.L. 104-208; 110 Stat. 3009-171), as amended by the 1998 Supplemental Appropriations and Rescissions Act (P.L. 105-174, §10005).

[3] The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (P.L. 101-167), §599D, as amended most recently by P.L. 105-118 which extended it until September 30, 1998. The Administration supports a 1-year extension.

[4] The classes of aliens covered by the Lautenberg amendment include: (1) nationals and residents of a component of the former Soviet Union who are Jews, Evangelical Christians, or active members of the Ukrainian Catholic Church or the Ukrainian Orthodox Church; (2) other classes of nationals and residents of a component of the former Soviet Union that are designated by the Attorney General as targets of persecution; and (3) certain classes of residents and nationals of Vietnam, Laos, or Cambodia designated by the Attorney General as targets of persecution.

Admission in "refugee" status. The number of aliens who may be admitted with *refugee status* is set annually by the President after consultation with Congress. Within this limit, the President (also after appropriate consultation) allocates admissions among "refugees" of "special humanitarian concern to the United States," an undefined term that permits consideration a range of humanitarian and foreign policy factors.

Clearly, the ceiling and allocation processes prevent the immediate admission of all aliens who qualify as "refugees." But even though being a "refugee" is not sufficient to assure admission, it remains necessary. Applications for *refugee status* may be made to overseas offices of the Immigration and Naturalization Service (INS). Alternatively, applicants may apply to U.S. consuls in designated foreign cities, who may accept and screen applicants in preparation for INS interviews. Entities known as joint voluntary agencies also may assist aliens with their refugee applications. With few exceptions, processing is limited to aliens who are in third countries, outside their homelands.

The Attorney General implements the admission limits and allocations set by the President by establishing waiting lists and admission priority groups.[5] *Priority One* refugees include refugees — that is, aliens already found to be facing persecution on racial, religious, ethnic, social, or political grounds — who also have been identified by the UN High Commissioner for Refugees or a U.S. Embassy as (1) facing compelling security concerns, (2) former political prisoners, (3) women-at-risk, (4) victims of torture or other violence, (5) disabled, (6) in urgent need of treatment, or (7) not having any alternative feasible durable solution. *Priority Two* refugees primarily include groups that have been designated by the Administration as being of special concern. Certain religious minorities are now included among *Priority Two* refugees, including religious minorities in Iran and Cuba and religious minorities covered by the Lautenberg amendment.[6]

Asylum under the INA. Section 208 of the INA[7] establishes procedures under which aliens who are physically present in the U.S. or arriving at its borders may apply for asylum. As is the case with *refugee status*, eligibility for *asylum status* is premised upon an alien proving that he or she is a "refugee," though relief remains discretionary.

An alien may apply for asylum in one of two contexts. An alien who is not the subject of a formal removal proceeding may affirmatively come forward and seek asylum with the INS. Alternatively, an alien against whom the INS has initiated removal proceedings may apply for asylum with an immigration judge during the course of the proceedings as a defense against expulsion. As a result of IIRIRA, arriving aliens who do not have proper documents may be removed on an expedited basis without an opportunity for full consideration of a claim for asylum by an immigration judge, unless

---

[5] The groups of refugees who are to receive priority in processing are set forth in, among other places, the Administration's annual Report to Congress on Proposed Refugee Admissions.

[6] Aliens covered by the Lautenberg Amendment also have their refugee applications considered under special evidentiary rules that allow the "well-founded fear of persecution" test for qualifying as a *refugee* to be met by asserting a "credible basis" for "concern about the possibility" of persecution. Also, each decision to deny *refugee status* to a covered alien must be in writing and state, to the maximum extent feasible, the basis for the denial.

[7] 8 U.S.C. §1158.

the alien voices a fear of persecution or a desire to apply for asylum and can show within a brief period after arrival that his or her fear of persecution is credible.

Proposals under H.R. 2431. H.R. 2431 would assure that members of persecuted religious communities are considered for admission in *refugee status*. However, as the result of amendments by the House Judiciary Committee, special *asylum* rules for members of those communities, which had been contained in earlier versions, are not contained in the House-passed H.R. 2431.[8] Instead, the Judiciary Committee provisions included in the House-passed bill broaden training and oversight proposals related to the consideration of persecution claims. Proposed authority to exclude participants in religious persecution from admission is retained. Unlike earlier versions of H.R. 2431, which would have made the proposed Director of the Office of Religious Persecution Monitoring responsible for identifying inadmissible persecutors, the House-passed bill conforms to the current practice of entrusting consular officers with sole responsibility for ruling on visa petitions.

Refugees under H.R. 2431. H.R. 2431 requires the Secretary of State to designate at least annually those religious communities abroad that have been subject to *category 1* or *category 2* persecution, as those terms are defined in the bill.[9] *Category 1* persecution is religious persecution conducted with direct government involvement or support. *Category 2* persecution is religious persecution not undertaken under official policy but which the government fails to make its best efforts to eliminate. *Religious persecution* includes "widespread and ongoing persecution of persons because of their membership in or affiliation with a religion or religious denomination . . . when such persecution includes abduction, enslavement, killing, imprisonment, forced mass relocation, rape or crucifixion or other forms of torture, or the systematic imposition of fines and penalties [that destroy] the economic existence of persons on whom they are imposed." Christians in Sudan, Tibetan Buddhists, and religious minorities in Islamic countries are among groups cited in the bill's findings.

The Secretary is to designate *category 1* and *category 2* groups after receiving recommendations from the Office of Religious Persecution Monitoring, a new entity to be established within the State Department. Under some earlier religious persecution proposals, the designation of persecuted communities was to have been the direct responsibility of the Director of the Office of Religious Persecution Monitoring, and not the Secretary. The designation of persecuted communities by the Secretary under H.R. 2431 is separate and apart from the usual refugee consultation process and affects trade practice and foreign policy, as well as refugee admissions.

---

[8] H.R. 2431 was reported by the Committee on International Relations on April 1, 1998 (H.Rept. 105-480, Part I), the Committee on Ways and Means on May 8, 1998 (H.Rept. 105-480, Part II), and the Committee on the Judiciary, also on May 8, 1998 (H.Rept. 105-480, Part III). The version of the bill that went to the House floor included the Judiciary Committee's immigration -related provisions.

[9] The new categories of *persecution* defined under H.R. 2431 are distinct from *persecution* as defined in the INA. Enactment of the bill would not preclude an alien from making a religious persecution claim under current standards even if the alien is not a member of a group that is being subjected to *category 1* or *category 2* persecution (*e.g.,* an alien may be imprisoned because of religious beliefs, but the persecution may not be part of a widespread pattern.)

Many factors can enhance the prospect of a “refugee” being allowed entry in *refugee status*. Among them are: (1) statutory presumptions that members of certain groups are “refugees” and (2) priorities set for admission among classes of “refugees.” Designation of a group by the Secretary of State as a persecuted religious community would, under H.R. 2431, directly give its members certain admission priority status, while possibly indirectly influencing the ability of its members to show they are “refugees.”

As stated above, section 207 of the INA calls for allocating admissions numbers to “refugees of special humanitarian concern to the United States.” Though the President generally determines which groups of refugee meet this standard, H.R. 2431 would, by statute, deem members of protected religious communities to be “of special humanitarian concern” and require that they be given “priority status [for admission] equal to” that given to members of any other “specific group of special concern.”

“Specific group of special concern” is not now a statutory term, but rather is used in refugee consultation documents to refer to *Priority Two* groups. Among the refugees who are currently designated as *Priority Two* groups in the Administration’s consultation documents are ethnic minorities and former religious or political detainees in Bosnia, pro-democracy dissidents and certain ethnic minorities in Burma, and former political prisoners and human rights activists in Cuba. “Lautenberg” religious minorities in the former Soviet Union and Iranian religious minorities also are *Priority Two* groups.

The requirement under the House-passed bill of “equal” priority status for persecuted religious groups designated by the Secretary of State differs from the priority status that was required under earlier versions of H.R. 2431. Those proposals required priority status “at least as high” as that given other groups of special concern. That standard led to concerns that protected religious minorities might in practice be elevated above other *Priority Two* refugees and that the “at least as high” requirement could limit the flexibility of the refugee process to accommodate other foreign policy concerns and humanitarian considerations.

An “equal to” priority status requirement also could possibly be construed as inhibiting the admission of other *Priority Two* groups before protected religious minorities are admitted. Apparently to meet such a concern, H.R. 2431 now states that the “equal to” priority requirement “shall not be construed to require that any particular individual or group be admitted [as refugees].” Furthermore, the bill states that refugees admitted as a result of the procedures set forth in it “shall not displace other refugees in need of resettlement who would otherwise have been admitted in accordance with existing law and procedures.”

According to a State Department spokesman, it is not possible to estimate the potential impact of H.R. 2431 on the number of applicants for refugee status. There is no way of knowing the numbers who would be potentially eligible under this legislation who are not already covered by existing law, nor is there any way of estimating the number of these who would access the program.

Asylum and Training under H.R. 2431. Unlike earlier versions of H.R. 2431, the House-passed bill would not modify existing asylum procedures to assure that members of protected religious communities would receive full consideration of their asylum claims, beyond that afforded other classes of asylum applicants. The bill focuses instead

on the integrity of the asylum process, and not on directly revising asylum procedures. For example, the Attorney General would be required to develop guidelines to identify and address improper biases that could affect the consideration of religious persecution claims by asylum officers.

H.R. 2431 also would require extensive studies and reports on the expedited removal process under § 235(b) of the INA. The Attorney General would be required to invite the UN High Commissioner on Refugees (UNHCR) to conduct one study, alone or in cooperation with the Comptroller General. If the UNHCR decides not to conduct a study with the Comptroller General, the Comptroller General would conduct a separate study. Among the potential problems with expedited removal that would be studied are coercion, improper detention, failure to refer potential asylum applicants for further screening, and removal to a place where an alien may be persecuted.

As a result of amendments by the House Judiciary Committee, the training requirements of the House-passed H.R. 2431 are more extensive than those under earlier versions, and they now more closely resemble those that would be required under S. 1868.

Proposals under S. 1868. S. 1868 addresses the knowledge and impartiality of individuals involved in the refugee and asylum processes without proposing to amend the applicable standards and procedures themselves. Like H.R. 2431, S. 1868 also requires the exclusion of certain participants in religious persecution.

S. 1868 sets forth requirements for training the following individuals on religious persecution: INS personnel who adjudicate refugee applications; individuals who are seeking to become consular officers; immigration judges; and asylum officers. The bill also directs the Attorney General and Secretary of State to develop guidelines to enhance and standardize the processing of refugee applications by joint voluntary agencies. Separately, S. 1868 states how findings of the State Department on religious persecution are to be used in training personnel and in consulting with Congress on refugee admissions. The bill would create within the Department an Office on International Religious Freedom, to be headed by an Ambassador at Large on International Religious Freedom. Among its duties, the Office would advise the Secretary on religious persecution issues.

To assure impartiality in the consideration of persecution claims (regardless of the claimed basis of the alleged persecution), S. 1868 would seek to eliminate the participation of personnel with potential hostile biases. Those specifically targeted are potentially biased personnel hired by INS abroad and potentially biased interpreters used in the inspection and asylum processes, including personnel of airlines that are owned by governments known to engage in persecution.

The provisions of S. 1868 on excluding participants in religious persecution from admission into the U.S. would bar individuals who engaged in gross violations of religious freedom while serving as a government officials. The spouses and children of these individuals also would be barred. Inadmissibility under this provision could be waived by the Secretary of State by making a finding that exclusion would jeopardize a compelling foreign policy interest.