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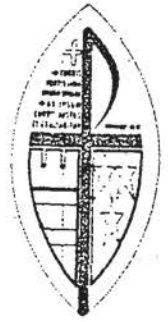
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LUTHERAN COUNCIL IN THE USA

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January 31, 1983

TO: Religious Advisory Committee

FROM: Rev. August Bernthal
Rev. Gerhardt W. Hyatt
Rev. John R. Houck

SUBJECT: Fact-finding Tour of Southeast Asia Refugee Situation,
January 19-23, 1983

U. S. refugee policy in Southeast Asia is in a sad state of disarray. This situation, unless remedied, will cause increasing friction between the United States and the countries of first asylum. It is also creating a human rights and humanitarian crisis of major significance. It also has serious implications for the voluntary agencies and sponsors in the United States involved in the resettlement of refugees.

The basic problem is the high rate of rejection of otherwise qualified refugees by the United States Immigration and Naturalization Service (INS) from the U.S. resettlement program. For example, out of 21,000 Cambodian refugees identified as meeting the "priorities" for admission to the United States, some 9,000 have been rejected by INS as not meeting the definition of a refugee under Section 101(a)42 of the Refugee Act of 1980 (see Exhibit 1 for explanation).

In Hong Kong over 65% of the Vietnamese boat people otherwise qualified for resettlement in the United States are being rejected, despite their unwillingness to return to Vietnam where they certainly would face persecution (See Exhibit 2 for statistics and charts).

For the refugees involved, the consequences are nothing short of devastating. Those rejected, more often than not, have family ties in the United States, often as close as parent or child and even spouse. Once they have been considered for the U.S. program and identified as being qualified under the priority system and then rejected as "not being refugees" they are in greater peril than before they started the process.

Other countries consider those rejected to be the responsibility of the United States. They have been stripped of whatever protection their claim to refugee status confers. In short, they have been broken in mind, body and spirit as the result of the application of official U.S. policy.

The countries of first asylum, especially Thailand, are well aware of the current disarray in U.S. policy, as are the United Nations High Commissioner for Refugees and other countries of resettlement. The leading role and the moral direction

which the United States has so well provided in meeting the Indochinese refugee crisis have been seriously compromised. Present U.S. policies almost certainly will lead to decisions on the part of countries of first asylum to repatriate their refugee populations in an involuntary way, as the U.S. resettlement program and those of its principal partners continue to decline.

The refugee admission figure for fiscal year 1983 as agreed upon between the Congress and the Reagan Administration was established at a ceiling of 64,000. Our best estimates are that, under present conditions, less than 35,000 Indochinese refugees will be admitted during the year.

The representatives of the Religious Advisory Council have examined the 1980 Refugee Act together with its legislative history, the administrative history concerning "case by case" review by INS, and recent INS operational and procedural guidelines. We have reviewed the statistics and have sat in on interviews by INS. We have interviewed families who have been rejected. And we have made every effort to become as familiar as possible with this complex issue.

We have concluded that the application of Section 101(a)42 as sanctioned by the INS District Director in Hong Kong and the Officer-in-Charge in Bangkok is not only unduly restrictive but contrary to Administration policy. This is an embarrassment to the United States.

The members of the fact-finding group propose that the Religious Advisory Committee and/or its representatives:

1. Meet at the earliest possible time.
2. Meet at the earliest possible date with INS Commissioner Nelson and key staff persons to present their concerns.
3. Meet with Refugee Coordinator Eugene Douglas to report their findings.
4. If necessary, and as appropriate, meet with the Department of State (Deputy Secretary Damm, Assistant Secretary Purcell), National Security Adviser Clark and Attorney General Smith.

Policy recommendations could include the following:

1. The INS District Director in Hong Kong and the OIC in Thailand should be recalled and replaced with a new team willing to carry out Administration policy.
2. The INS processing guidelines prepared last Fall should be reissued and identified clearly as INS policy.
3. The imposition of a policy of "collegiality" whereby officers in the field -- both INS and State Department -- would agree on a final 101(a)42 determination in concert. Where consensus could not be achieved, there would be an INS/State Department review panel at the OIC/Refugee Office level.

4. A request to the Administration that Indochinese refugees in countries of first asylum be considered just that - refugees - unless evidence clearly refutes this.
5. The INS should recognize that it presently does not have the capability to make valid 101(a)42 decisions in the field. These determinations should be the responsibility of State Department Consular or Refugee Officers in the field.

Conclusion:

The refugee crisis is not over. While the numbers fleeing have been reduced, many still continue to risk their lives to escape oppression. There is a need for continuing support for the resettlement effort, both in terms of sponsorship and financial aid to the newly arriving refugees.

An informal review process is urgently needed to reconsider the mounting number of rejected cases. A special INS review team should be sent at once to Southeast Asia to review all decisions and to be empowered to overturn denials as they see fit.

Every effort should be made to process Laotian and Vietnamese refugees in Thailand held to date in "humane deterrent" camps where they have not been available to date for resettlement. There should be, as well, continued processing of eligible Cambodian refugees. In this regard, they should be considered at least on a par with other Indochinese refugees -- i.e. priorities 1 through 5.

Finally, close attention must be paid to the growing "denied" cases in Malaysia, Indonesia, Hong Kong and the Philippines as well. We must not overly try the patience of the countries which have granted them first asylum. Nor can the U.S. properly ask other countries to accept those refugees we ourselves have rejected as not being refugees.

The fact-finding committee visited the following places and people:

In Bangkok:

U.S. Embassy

The Honorable John Gunther Dean, U.S. Ambassador to Thailand
Colonel Michael Eiland, Refugee Coordinator for the U.S. Embassy in Thailand
Mr. Jack E. Fortner, INS Officer-in-Charge in Bangkok
Mr. Donald I. Colin, Chief, Orderly Departure Program

In Bangkok: (continued)Joint Voluntary Agency Staff

Mr. Dennis Grace, Joint Voluntary Agency Representative
Ms. Maggie Carpenter, Deputy Joint Voluntary Agency Representative
Mr. Robert Hearn, Chief, Lao Section, Joint Voluntary Agency
Mr. Steve Gavenas, Chief, Khmer Section, Joint Voluntary Agency
Mr. Chris Kiely, Chief, Vietnamese Section, Joint Volunteer Agency

UNHCR

Mr. Ian Simington, Senior Regional Coordinator, United Nations High
Commission for Refugees (UNHCR)
Mr. Jacques Terlin, Representative for Thailand, UNHCR
Mr. Robert van Loeuwen, Deputy Representative for Thailand, UNHCR

Royal Thai Government

General Rien Disthabanchong, Chief of Staff, Supreme Command

On the Thai-Kampuchean Border

Colonel Amphorn Putthiporn, Chief, Task Force 80
Mr. Sanam Suapa, Ministry of the Interior, Supreme Command

Northwest 82

Mr. David Edwards, Team Leader, N.W. 82, Joint Voluntary Agency
Mr. Edward Gilson, Ethnic Affairs Officer, Refugee Section, U.S. Embassy
Mr. Arthur Schoepfer, Ethnic Affairs Officer, Refugee Section, U.S. Embassy
Mr. Thomas Procopowicz, INS Officer
Ms. Sandra Coon, INS Officer
Mr. George Kirkpatrick, INS Officer

Kamput

Mr. Jay Privett, Team Leader, Joint Voluntary Agency (JVA), Kamput
Mr. Jonathan Rich, Caseworker, JVA, Kamput
Mrs. Erna Henriksen, Field Representative, Kamput, UNHCR
Mr. James Burns, INS Officer
Mr. John Gibson, INS Officer

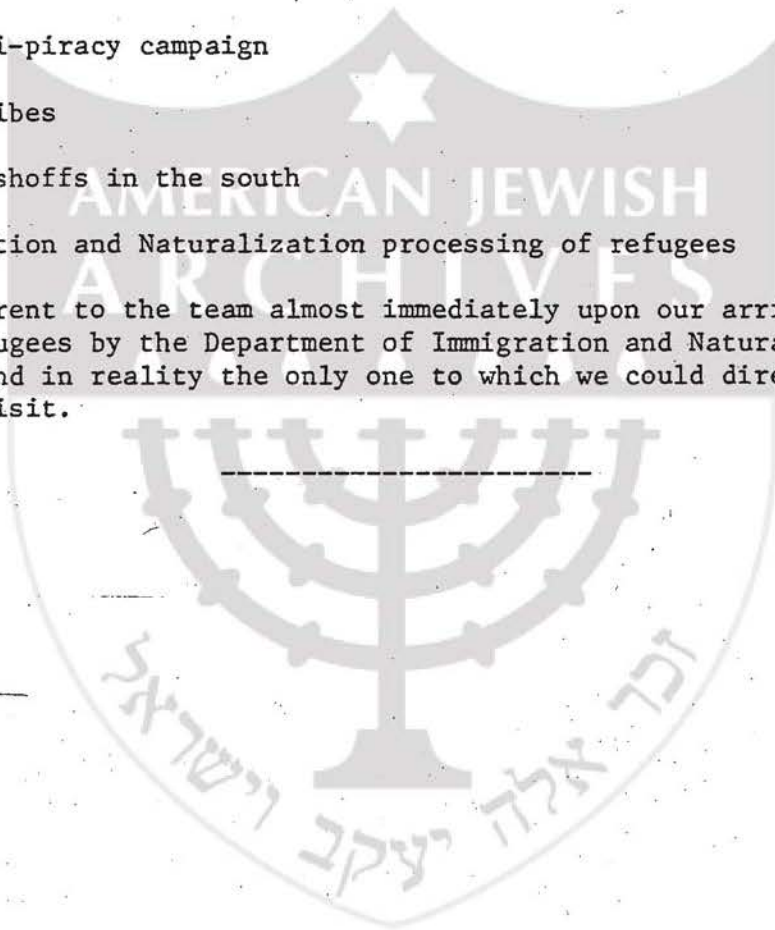
Hong Kong

Mr. Joseph Sureck, District Director, INS
Mr. Bruce Nicholl, INS Officer

Please note that the team understood its assignment to include:

- The health and hospital situation in the Thai-Cambodian Border area, particularly to those activities supported by the volags.
- Unaccompanied minors
- The Amerasian program within the Orderly Departure Program (ODP) operations
- The anti-piracy campaign
- Hill tribes
- Boat pushoffs in the south
- Immigration and Naturalization processing of refugees

It became apparent to the team almost immediately upon our arrival that the processing of refugees by the Department of Immigration and Naturalization was the major issue, and in reality the only one to which we could direct attention in such a short visit.



TO: Religious Advisory Committee

SUBJ: Indochinese Refugee Processing in Southeast Asia

With the passage of the Refugee Act of 1980, the United States adopted a world-wide definition for a refugee. It conforms in large measure to the definition incorporated in the United Nations Convention Relating to the Status of Refugees. The essential words of the definition as contained in Section 101(a)42 of the Refugee Act are:

"The term refugee means..... any person who is outside any country of such persons's nationality... and who is unable or unwilling to return...to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion..."

Until the Refugee Act was adopted, the United States had considered all who had fled Vietnam, Cambodia and Laos and were in countries of first asylum to be refugees. This did not, however, mean the United States had an obligation to accept them all for resettlement. The United States established categories (now called priorities) of refugees which it determined to be of special humanitarian concern. The numbers to be accepted within any given fiscal year were established through consultations between the legislative and executive branches. Refugees of special concern were identified and their eligibility under the U.S. criteria established by State Department personnel in collaboration with staff provided by American Voluntary Agencies. The Immigration and Naturalization

Service (INS) interviewed each applicant to determine whether or not they were excludable under law. If they were not and if they passed their medical examination, the refugees were ready for resettlement.

In early 1981, however, the INS began to implement a new policy. As part of their responsibilities, the INS claimed responsibility under the Refugee Act for making a case-by-case determination of whether or not a person met the definition of a refugee, irrespective of whether that person met the criteria of the U.S. program. While the Refugee Act of 1980 did not explicitly mandate this, it became a de facto policy which continued for several months. By the spring of 1981 the number of persons rejected under Section 101(a)42 had reached an alarming level. The process was halted in late summer only through the direct intervention of the Secretary of State. Nearly all the 101(a)42 rejections - late called deferrals - were overturned through an informal review process. A special commission was appointed by the Secretary of State to study the issues and make recommendations. Their report, issued in August of 1981, endorsed the position that those who had successfully fled Vietnam, Cambodia and Laos and were in first asylum countries should be presumed to be refugees. At the same time, the Office of the Legal Counsel of the Department of Justice issued an "Interpretation of The Refugee Act of 1980" which sustained the position that the INS had the responsibility to determine, on a case-by-case basis, whether a person met the definition of a refugee under Section 101(a)42 of the Act.

Following the annual consultations between the Executive and Legislative branches on refugee admissions for Fiscal Year 1982 (October 1, 1981 to September 30, 1982) and extended discussions between the State Department, the Justice Department and the INS, revised "processing guidelines" for refugee admissions were issued. These guidelines affirmed that "final determination as to refugee status and definition compliance as well as overall admissibility is to be made by the Attorney General through his delegates in the INS." The guidelines also affirmed that decisions on whether or not an applicant met the definition of a refugee were to be made on a "case-by-case" basis.

The guidelines, however, provided considerable flexibility in their application. For example, "commonly known circumstances can be applied to people falling within particular groups." If it were shown that a particular country persecuted all persons with particular political views, it would not be necessary to prove the fact in each case, provided the individual was part of that group and had a "well-founded" fear of persecution. Political persecution "may take the form of economic reprisals, such as denying individuals the opportunity to work". If a country treats illegal departure as "a political act and punishes that act in a harsh and oppressive manner", the person could be considered a refugee. If a person would be "persecuted, as opposed to legitimately prosecuted, upon return for the act of leaving his country, he would still qualify as a refugee, notwithstanding the fact that he left for economic reasons". In addition the INS was instructed to be familiar with the UN Handbook on

Procedures and Criteria for Determining Refugee Status and to "accord substantial weight to the views of the Department of State" - in particular the annual "country reports" on conditions in the countries of Southeast Asia and other information available to them. In a subsequent letter from the Attorney General to the Acting Commissioner of INS dated September 8, 1981, The Attorney General stated, interalia, "although the Act (Refugee Act of 1980) does not in terms prescribe case-by-case determination, individual interviews would seem the most appropriate way to determine whether a fear of persecution is well-founded---".

The new "processing guidelines" were put into effect in the Spring of 1982. Their implementation in Southeast Asia has been devastating, both in terms of articulating a coherent, rational and decent United States refugee policy and in equitably determining the fate of thousands of refugees who otherwise qualify for admission under the present priority system. The "rejection rate" under 101(a)42 has been so erratic, arbitrary, and capricious between posts in Southeast Asia, ethnic groups of refugees, individual INS officers despatched to Southeast Asia on temporary assignment, and even individual officers on given days of the week, as to make a mockery of the system and the public policy it purports to be implementing on behalf of the administration, the Congress and the American people.

The gravity of the situation was highlighted in late 1982 when the INS was obliged to send a large team of inspectors on temporary duty from the United States to

Thailand to complete processing of some 21,000 Cambodians who earlier in the year had been identified as being potentially qualified for the U.S. program. During one week in October prior to the team's arrival, the INS determined that over 70% of the Cambodians they interviewed were not refugees. Once the enlarged team began to work and new guidelines were received from Washington, the rejection rate went down to 30%. At present, some 8,000 of the 21,000 Cambodians originally identified by the U.S. as being of special concern are now "rejected as not being refugees" by the very country which selected them in the first place. Their future is uncertain at best.

This situation is not unique to Cambodian refugees alone. For example, Vietnamese boat people in Hong Kong were subject to a rejection rate of under 20% from late 1981 to early 1982. The rate went up to 40% by the end of the fiscal year. From October 1, through the end of 1982, the rejection rate has been over 65%. Once again, it must be stressed that those being rejected have been previously screened and found to be eligible for resettlement in the United States under its priority system. The INS claims they have no "well-founded" fear of persecution if returned. However, to date Vietnam has not permitted any refugees to return. The State Department Country Report on Vietnam indicates that persons caught in the act of flight have been sent to prison for terms ranging from three to fifteen years at hard labor.

Most recently the INS began to process the most vulnerable and "at risk" refugees in Southeast Asia -

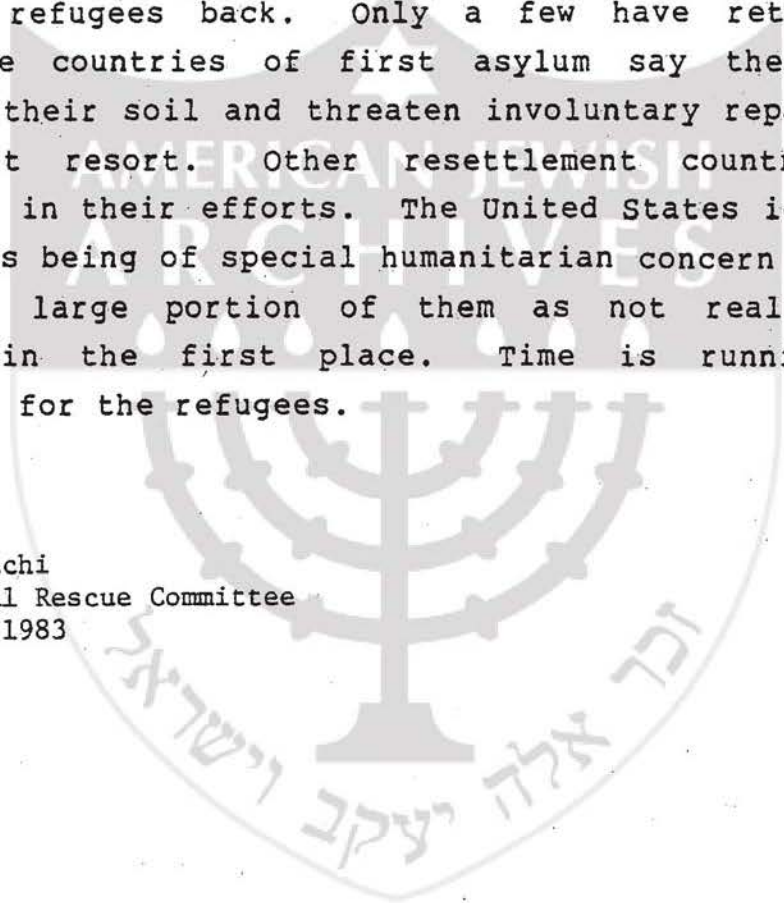
those Vietnamese who had crossed Cambodia overland, seeking asylum in Thailand. They have been held virtually as prisoners on the Thai-Cambodian border in a camp dominated by "Free Khmer" opponents of the Vietnamese occupation of their country. To the east are hostile Vietnamese military units. To the west are units of the Thai Army. Some have been in the camp over two years. From this group of 1,800 Vietnamese, the United States identified about 1,000 as meeting its priorities. Of those interviewed to date, some 27% have been found by the INS not to be refugees under 101(a)42.

The priority groups singled out for the harshest application of Section 101(a)42 are those with immediate or close relatives in the United States who were admitted earlier as refugees. Persons with a spouse; children, parents or siblings in the United States have been routinely found not to be refugees (the assumption being that they are "merely intending immigrants"). At one point recently, 80% of the close family reunion Cambodian cases were being rejected. These are the survivors of the Pol Pot holocaust. However, the INS has determined that persecution under Pol Pot is not germane.

United States refugee policy in Southeast Asia is in considerable disarray, primarily because of the arbitrary application of 101(a)42 by the INS. If they were to abide by their own policy directives, the problems would be largely solved. Unfortunately, there is little evidence that these policy directives are receiving much more than lip service in the field. The trend is toward a hardening of attitudes, which can not bode well for the refugees.

The disarray in U.S. policy is increasingly apparant to countries of first asylum, countries of resettlement, international agencies such as the UNHCR and to the refugees themselves and their relatives in the United States. Vietnam and Cambodia have, to date, refused to take any refugees back. Only a few have returned to Laos. The countries of first asylum say they cannot remain on their soil and threaten involuntary repatriation as a last resort. Other resettlement countries are slackening in their efforts. The United States identifies refugees as being of special humanitarian concern and then rejects a large portion of them as not really being refugees in the first place. Time is running out, especially for the refugees.

Robert DeVecchi
International Rescue Committee
January 19, 1983



BIBLIOGRAPHY

1. Refugee Act of 1980. Section 101(a)42
2. Interpretation of the Refugee Act of 1980 - by Theodore B. Olsen, Assistant Attorney General, Office of Legal Counsel - August 24, 1981.
3. Letter from Attorney General William French Smith to Acting INS Commissioner Doris Meissner - September 1981.
4. Revised INS Processing Guideline - February 26, 1982.
5. Indochinese Refugee Processing Priorities - March 17, 1982.
6. Extracts from UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.
7. Definition of a Refugee - An Informal Analysis by the International Rescue Committee - October 8, 1982.
8. Selected News Articles.