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Refugee Admissions and Resettlement Policy

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Summary

A refugee is a person fleeing his or her 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. Typically, the annual number of refugees admitted into the United States and the allocation of these numbers by region are set by the President after consultation with Congress by the start of each fiscal year. In the wake of the September 11 terrorist attacks, however, the usual process was not followed for FY2002. President Bush did not issue the Presidential Determination setting the FY2002 refugee numbers and allocations until November 21, 2001. In the absence of that Presidential Determination, no refugees could be admitted into the country after October 1, 2001. In addition, following a post-September 11 assessment of refugee-related security procedures, enhanced security procedures are now in place. Refugee admissions into the United States resumed the week of December 10, 2001.

The FY2002 refugee ceiling is 70,000, as compared to the FY2001 level of 80,000. The Administration maintains that the reduction is necessary in order to improve the quality of the refugee admissions program. For FY2002, the refugee numbers are allocated, as follows: Europe (26,000), Africa (22,000), Near East/South Asia (15,000), East Asia (4,000), and Latin America/Caribbean (3,000).

Overseas processing of refugees is conducted through a system of three priorities for admission. *Priority one* includes cases involving persons facing compelling security concerns in the countries of first asylum (i.e., foreign countries to which refugees have fled). *Priority two* includes cases involving persons from specific groups, e.g., certain Somali nationals. *Priority three* includes cases involving close relatives of persons who have already resettled in the United States and possess legal immigration status.

Special legislative provisions facilitate relief for certain former Soviet and Indochinese nationals. The "Lautenberg amendment" allows certain former Soviet and Indochinese nationals to qualify for refugee status based on their membership in a protected category with a credible, but not necessarily individual, fear of persecution. Another provision, initially proposed by Senator McCain and still referred to as the "McCain amendment," makes certain adult children of Vietnamese re-education camp survivors eligible for U.S. refugee resettlement. Both provisions expired at the end of FY2001. P.L. 107-116, enacted on January 10, 2002, extends the "Lautenberg amendment" through FY2002. Also in the 107th Congress, a bill (H.R. 1840) to revise and extend the "McCain amendment" through FY2003 has been passed by the House and reported by the Senate Judiciary Committee.

The Department of Health and Human Services's Office of Refugee Resettlement (HHS/ORR) administers an initial transitional assistance program for temporarily dependent refugees and Cuban/Haitian entrants. For FY2002, P.L. 107-116 provides \$460.2 million for HHS/ORR. The FY2001 appropriation was \$433.1 million. Special refugee cash assistance (RCA) and refugee medical assistance (RMA) typically account for over half the HHS/ORR annual budget.

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Refugee Admissions and Resettlement Policy

Background and Definitions

The admission of refugees to the United States and their resettlement here are authorized by the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980.¹ There have been very few changes in these procedures in the 20 years since their enactment. The 1980 Act had two basic purposes: (1) to provide a uniform procedure for refugee admissions; and (2) to authorize federal assistance to resettle refugees and promote their self-sufficiency. The intent of the legislation was to end an ad hoc approach to refugee admissions and resettlement that had characterized U.S. refugee policy since World War II.

Under the INA, a *refugee* is a person who is outside his or her country and who is unable or unwilling to return 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.² In special circumstances, a refugee also may be a person who is within his or her country and who is persecuted or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Excluded from the INA definition of refugee is any person who participated in the persecution of another.³

Refugees are processed and admitted to the United States from abroad. The State Department handles overseas processing of refugees and the Immigration and Naturalization Service (INS) of the Justice Department makes final determinations about eligibility for admission. Separate provision is made in the INA for the granting of *asylum* on a case-by-case basis to aliens who are physically present in the United States or at a land border or port of entry and who meet the definition of refugee. Once admitted to the United States, both refugees and asylees (those granted asylum) are eligible generally to adjust to lawful permanent resident status after 1 year.⁴

¹The INA is Act of June 27, 1952, ch. 477; 8 U.S.C. 1101 *et seq.* The Refugee Act is P.L. 96-212, March 17, 1980.

²This definition conforms with the definition used in the United Nations Convention and Protocol relating to the status of refugees.

³INA §101(a)(42); 8 U.S.C. 1101(a)(42).

⁴There are no numerical limitations on refugee adjustments of status. Asylee adjustments of status are subject to an annual limit of 10,000.

Refugee Admissions

The United States admits about half the refugees identified by the United Nations High Commissioner for Refugees (UNHCR) as being in need of resettlement each year. Typically, the annual number of refugee admissions and the allocation of these numbers by region of the world are set by the President after consultation with Congress. Each year, the President submits a report to the House of Representatives and the Senate, known as the “consultation document,” which contains the Administration’s proposed refugee ceiling and allocations for the upcoming fiscal year. Following congressional consultations on the Administration’s proposal, the President issues a Presidential Determination by the start of the new fiscal year setting the refugee numbers for that year.⁵

The President submitted the FY2002 consultation document to the House and Senate in August 2001.⁶ In the aftermath of the September 11 terrorist attacks, however, the congressional consultations and the issuance of the FY2002 Presidential Determination did not take place in the usual time frame. Although the new fiscal year began on October 1, 2001, President Bush did not issue the Presidential Determination setting forth the refugee numbers for FY2002 until November 21, 2001.⁷ With the concurrence of the House and Senate, he did so without Administration officials first holding formal congressional consultations. In the absence of a Presidential Determination, no refugees could be admitted into the United States after October 1. In another consequence of the September 11 attacks, the Administration undertook a review of existing refugee-related security procedures. The review has been completed, and new enhanced security procedures are now in effect overseas and in the United States. Refugee admissions into the United States resumed the week of December 10, 2001.

Table 1 shows refugee admissions ceilings and regional allocations for FY1997-FY2002. For FY1997-FY2001 the table also contains data on actual admissions.⁸

⁵Asylees are not included in the refugee ceilings. There are no numerical limitations on the granting of asylum.

⁶U.S. Dept. of State, U.S. Dept of Justice, and U.S. Dept. of Health and Human Services, *Proposed Refugee Admissions for Fiscal Year 2002: Report to the Congress* (Washington: August 2001). (Hereinafter cited as FY2002 Consultation Document)

⁷U.S. President (Bush), “Presidential Determination on FY 2002 Refugee Admissions Numbers ...,” Presidential Determination No. 02-04, *Federal Register*, vol. 66, December 7, 2001, pp. 63487-63488.

⁸For annual data on refugee admissions by region since FY1987, see the appendix.

Table 1. Refugee Admissions Ceilings and Regional Allocations, FY1997 - FY2002

Region	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002
Africa	7,000	7,000	12,000	18,000	20,000	22,000
East Asia	10,000	14,000	9,000	8,000	6,000	4,000
Europe Former Yugoslavia	18,000	25,000	38,000 ^d	27,000	20,000	9,000
Former Soviet Union (FSU) ^a	30,000	26,000	23,000	20,000	17,000	17,000
Latin America/ Caribbean	4,000	4,000	3,000	3,000	3,000	3,000
Near East/South Asia	4,000	4,000	4,000	8,000	10,000	15,000
Unallocated	5,000	3,000	2,000	6,000	4,000	---
Total Ceilings	78,000	83,000^e	91,000^f	90,000	80,000	70,000
Actual Admissions ^b	70,488	77,080	85,525	73,147	68,426	NA

Sources: For ceiling and allocation data: PD 96-59, September 30, 1996; PD 97-37, September 30, 1997; PD 98-39, September 30, 1998; PD 99-33, August 12, 1999; PD 99-45, September 30, 1999; PD 2000-32, September 29, 2000; PD 02-04, November 21, 2001; U.S. Dept. of State, U.S. Dept. of Justice, and U.S. Dept. of Health and Human Services, *Proposed Refugee Admissions ...*, Fiscal Years 1997-2001. For actual admissions data: U.S. Dept. of State, Bureau of Population, Refugees and Migration.

^aIncludes the New Independent States and three Baltic Republics.

^bAs of September 30, 2001.

^cIncludes 5,000 unfunded numbers for the FSU to be used if necessary and if funding is available.

^dIncludes 13,000 numbers for Kosovar refugees added by Emergency Presidential Determination (PD 99-33).

^eIncludes 3,000 unfunded numbers for the FSU to be used if necessary and if funding is available.

FY2002 Refugee Ceilings and Allocations

The FY2002 worldwide refugee ceiling is 70,000, a decrease from the FY2001 ceiling of 80,000. In the consultation document, the Administration maintained that a reduced FY2002 ceiling was necessary in order to focus on improving the quality of the refugee admissions program. It proposed to make FY2002 “a year of consolidation and capacity building, both in terms of overseas processing and domestic reception and placement of arriving refugees.”⁹ Caseloads, which were once dominated by refugees from a few regions of the world with family or ethnic ties in the United States, have become more diverse in recent years. According to the consultation document, identifying these new caseloads overseas and integrating them into the United States have posed myriad challenges for the refugee program.

The Former Yugoslavia and the Former Soviet Union (FSU), with a combined allocation for Europe of 26,000, account for 37% of the total ceiling. The FSU’s

⁹FY2002 Consultation Document, p. 4.

allocation of 17,000 is unchanged from FY2001. The allocation of 9,000 for the Former Yugoslavia is less than half the 20,000 ceiling for FY2001 due to the more stable political situation there.

Continuing the trend of recent years, the Bush Administration increased the ceiling for Africa. The FY2002 allocation of 22,000 slots (31% of the total) is a threefold increase since FY1998 and a historical high. The consultation document characterized the situation in Africa, as follows:

The very rapid expansion of the refugee admission program in Africa, a five-year period of increasingly complex regional strife in West, East, and Central Africa, and internal conflict in countries that had been relatively stable politically have created new refugee populations and new challenges for processing the already existing populations.¹⁰

As in FY2001, the program in Africa is expected to be diverse but dominated by refugees from five countries (Sudan, Somalia, Ethiopia, Liberia, and Sierra Leone).

The Near East/South Asia allocation of 15,000 numbers (21% of the total) is a significant increase from the FY2001 allocation of 10,000. In FY1999, the ceiling stood at 4,000. The Near East/South Asia program primarily resettles Iraqis, Iranians, and Afghans. According to the consultation document, the Administration particularly “welcome[s] referrals from UNHCR ... of refugees who are persecuted religious minorities or ‘Women-at-Risk’.”¹¹ The latter refers to women, often single heads of households, who are not safe in the countries of first asylum (i.e., foreign countries to which they have fled).

The East Asian allocation of 4,000 slots, down from 40,000 in FY1995, is the lowest for that region in more than 15 years. Direct resettlement from first asylum countries is not expected to exceed 500. Most of the East Asian numbers will likely be used for in-country processing in Vietnam of residual Resettlement Opportunity for Vietnamese Returnees (ROVR) applicants, Amerasian applicants,¹² sons and daughters of re-education camp survivors (McCain amendment cases, discussed below), and former U.S. government employees. As in the past, the 3,000 slots for Latin America/Caribbean are expected to be used primarily for in-country processing in Cuba.

Refugee Processing Priorities

The State Department conducts overseas processing of refugees through a system of three priorities for admission. These priorities are separate and distinct from whether such persons qualify for refugee status. Priority assignment, however,

¹⁰*Ibid.*, p. 17.

¹¹*Ibid.*, p. 27.

¹²Although Amerasians and their family members enter as immigrants under a special statutory provision (in P.L. 100-202), they receive the same benefits as refugees and are therefore included in the refugee admissions ceiling.

does reflect an assessment of the urgency with which such persons need to be resettled. *Priority one* includes cases identified by UNHCR or U.S. embassy personnel as involving “persons facing compelling security concerns in countries of first asylum.” Such persons may be in danger of attack or of being returned to the country they fled. They include women who are at risk of gender-related persecution, victims of torture, the mentally disabled, and persons in need of medical treatment unavailable in the country of first asylum. *Priority two* includes cases involving persons from specific groups, e.g., certain Somali nationals, Cuban dissidents, Iranian religious minorities, and certain former Soviet and Indochinese nationals. *Priority three* includes cases involving spouses, unmarried sons and daughters, and parents of persons who have already resettled in the United States and possess legal immigration status (lawful permanent residents, refugees, asylees, conditional residents, certain parolees, and naturalized citizens).

Priority three refugee applications are based upon *affidavits of relationship* (AORs) and are usually submitted by voluntary organizations that assist refugees in resettlement, rather than from representatives of UNHCR. The number of nationalities eligible for priority three processing has varied in recent years. A high point was reached in May 1999 during FY1999, when 21 nationalities were eligible for such processing.¹³ During the late 1990s, the State Department found that a large number of priority three applications were received from persons who did not qualify for refugee status and that there was a significant amount of fraud associated with these applications. To address these problems, the U.S. government reduced the number of nationalities eligible for such refugee slots. For FY2002, six nationalities are eligible for refugee status based on a familial relationship under priority three (Angolans, Burundians, Congolese (Brazzaville), Congolese (Democratic Republic of Congo), Sierra Leoneans, and Sudanese).

Lautenberg Amendment

The “Lautenberg amendment” is a provision of the FY1990 Foreign Operations Appropriations Act.¹⁴ It requires the Attorney General to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status (§599D of P.L. 101-167), and that provides adjustment to permanent resident status for certain Soviet and Indochinese nationals granted parole¹⁵ after being denied refugee status (§599E). Applicants for refugee status under the special provision are only required to prove that they are members of a protected category with a credible, but not necessarily individual, fear of persecution. By contrast, the INA requires prospective refugees to establish a well-founded fear of persecution on a case-by-case basis.

¹³U.S. Dept. of State, Bureau of Population, Refugees and Migration, “U.S. Refugee Admissions Program, Eligibility for Refugee Processing Priorities FY1999” (fact sheet), May 1999. Nationalities can be added or removed from the eligible list during a fiscal year.

¹⁴P.L. 101-167, November 21, 1989.

¹⁵Parole is a temporary authorization to enter the United States and is normally granted when the alien’s entry is determined to be in the public interest.

The Lautenberg amendment has been regularly extended. The FY2001 Consolidated Appropriations Act¹⁶ extended the amendment through FY2001. The FY2002 Labor-HHS-Ed Appropriations Act,¹⁷ enacted on January 10, 2002, extends the Lautenberg Amendment through FY2002.

Vietnamese Refugees

The “McCain amendment” was first enacted in the FY1997 Omnibus Consolidated Appropriations Act.¹⁸ It covered certain adult children, whose parents both were Vietnamese re-education camp survivors and had been accepted for U.S. refugee resettlement. The amendment made the adult children eligible for U.S. refugee resettlement. It was subsequently amended and extended through FY1999.

In November 1999, the McCain amendment was re-enacted in revised form for FY2000 and FY2001 in the FY2000 Consolidated Appropriations Act.¹⁹ As revised, it applied to the adult children of a re-education camp survivor who was residing in the United States or awaiting departure from Vietnam and who, after April 1995, was accepted for U.S. refugee resettlement or for admission as an immediate relative immigrant. The April 1995 date restriction did not apply to children who were previously denied refugee resettlement because their documents did not show continuous co-residency with their parent.

Legislation to amend and extend the provision through FY2003 (H.R. 1840) was passed by the House on October 30, 2001, and reported by the Senate Judiciary Committee on December 13, 2001. H.R. 1840 would eliminate the existing April 1995 date restriction. Thus, children who were previously denied refugee resettlement for reasons other than co-residency could also have their cases reconsidered. Another bill, the “Viet Nam Human Rights Act” (H.R. 2833), would offer U.S. refugee resettlement to Vietnamese nationals who were eligible for any U.S. refugee program, but who were deemed ineligible due to administrative error or who for reasons beyond their own control were unable to meet application deadlines. H.R. 2833 was passed by the House on September 6, 2001.

Admissibility of Refugees

In order to be admitted to the United States, a refugee must be *admissible* as an immigrant under immigration law. The INA sets forth various grounds of inadmissibility for immigrants, which include health-related grounds, security-related grounds, public charge (i.e. indigence), and lack of proper documentation. Some inadmissibility grounds (public charge, lack of proper documentation) are not applicable to refugees. Others can be waived by the Attorney General for

¹⁶P.L. 106-554, December 21, 2000.

¹⁷P.L. 107-116, January 10, 2002.

¹⁸P.L. 104-208, September 30, 1996.

¹⁹P.L. 106-113, November 29, 1999.

humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.²⁰

Waivers for HIV-positive Refugees. The health-related grounds of inadmissibility include infection with the human immunodeficiency virus (HIV). Prior to June 1999, HIV-infected refugees could qualify for a waiver by showing the following: (1) the danger they posed to the public health was minimal; (2) the possibility that they would spread the disease was minimal; and (3) they would not create additional costs for government agencies at any level, unless they had the consent of the relevant agencies. On June 16, 1999, INS revised this policy, easing the waiver requirements for HIV-infected refugees. Under the new policy, HIV-positive refugees are no longer required to show that they would not create additional costs for government-funded programs. The rationale for this change is that there are federally-funded programs and services available to such refugees, e.g., Refugee Medical Assistance, Medicaid, and other services supported through the Ryan White CARE Act. This eligibility, according to INS, serves as the U.S. government's consent to incur costs for HIV-positive refugees. The new regulations still require that such refugees have counseling and agree to take precautions to prevent the spread of HIV.

Refugee Resettlement Assistance

The Department of Health and Human Service's Office of Refugee Resettlement (HHS/ORR), within the Administration for Children and Families, administers an initial transitional assistance program for temporarily dependent refugees and Cuban/Haitian entrants. Since its establishment in 1980, the refugee resettlement program has been justified on the grounds that the admission of refugees is a federal decision, entailing some federal responsibility. Unlike immigrants who usually enter through family or employment ties, refugees are admitted on humanitarian grounds, and there is no requirement that they demonstrate economic self-sufficiency. P.L. 106-104 extended the authorization for HHS/ORR through FY2002.

For FY2002, the Administration requested \$445.2 million for HHS/ORR. The FY2002 Labor-HHS-Ed Appropriations Act provides \$460.2 for these programs. For FY2001, Congress appropriated \$433.1 million for refugee assistance in the FY2001 Consolidated Appropriations Act. **Table 2** details refugee resettlement funding for fiscal years 1997 through 2002.

²⁰Specified grounds of inadmissibility, including most security-related grounds, cannot be waived.

Table 2. Refugee Resettlement Funding, FY1997- FY2002
(budget authority in millions)

Programs	FY1997 actual	FY1998 actual	FY1999 actual	FY2000 actual	FY2001 enacted ^a	FY2002 enacted
Transitional/Cash and Medical Services	\$254.1	\$234.0	\$220.5	\$220.7	\$220.2	\$227.3
Victims of Trafficking ^b					5.0	10.0
Social Services	110.9	130.0	205.7	143.9	143.6	158.6
Victims of Torture ^c	—	—	—	7.3	10.0	10.0
Preventive Health	4.8	4.8	4.8	4.8	4.8	4.8
Targeted Assistance	54.9	54.5	49.5	49.5	49.5	49.5
Total	\$424.7	\$423.3	\$480.5	\$426.2	\$433.1	\$460.2

Source: U.S. Dept. of Health and Human Services, Administration for Children and Families, *Justifications of Estimates for Appropriations Committees*, Fiscal Years 1999-2002.

^aFY2001 amounts reflect final congressional action, but are anticipatory due to carryover and other budget uncertainties.

^bFunding used primarily for administrative cost of certifying that an alien is a trafficking victim for purposes of receiving benefits and services.

^cFunding used for rehabilitation services, social services, and legal services for torture victims and for provision of research and training to health care providers.

Activities funded by HHS/ORR include cash and medical assistance, social services intended to assist refugees in becoming socially and economically self-sufficient, and targeted assistance for impacted areas. Special refugee cash assistance (RCA) and refugee medical assistance (RMA) are the heart of the refugee program, accounting for over half the HHS/ORR annual budget in most years (see **Table 2**). RCA and RMA, which are administered by the states, are intended to help needy refugees who are ineligible to receive benefits from mainstream federal assistance programs. RCA and RMA are currently available to refugees for 8 months after entry.²¹ RMA benefits are based on the state's Medicaid program. Similarly, RCA payments are now based on the state's Temporary Assistance for Needy Families (TANF) payment to a family unit of the same size. For example, an able-bodied couple below age 65 would receive an RCA benefit equal to that of a two-person TANF family.

²¹INA §412(e)(1) authorizes HHS/ORR to reimburse states for RCA and RMA for 36 months. Initially, beginning in April 1980, RCA and RMA were available for the full 36 months. As appropriations levels decreased in subsequent years, however, the period of coverage was reduced. Since October 1991, RCA and RMA have been available to refugees for 8 months after entry.

HHS/ORR published a final rule in March 2000 to amend its regulations to reflect changes resulting from the replacement of AFDC by TANF.²² Most of the amendments became effective on April 21, 2000. The rule gives states the option to establish RCA programs that are a “public/private partnership” between states and private volunteer agencies, or to maintain state administration of RCA programs. In addition, the HHS/ORR program was significantly affected by the 1996 welfare reform act and subsequent amendments.²³ Prior to this legislation, refugees who otherwise met the requirements of federal public assistance programs were immediately and indefinitely eligible to participate in them just like U.S. citizens. Now, refugees and other specified humanitarian entrants are time-limited. **Table 3** summarizes the time limits on refugee eligibility for four major public assistance programs.

Table 3. Refugee Eligibility for Major Federal Public Assistance Programs

Program	Eligibility
Supplemental Security Income (SSI) for the Aged, Blind and Disabled	Eligible for 7 years after entry.
Medicaid (non-emergency care)	Eligible for 7 years after entry, then state option.
TANF	Eligible for 5 years after entry, then state option.
Food Stamps	Eligible for 7 years after entry.

²²U.S. Dept. of Health and Human Services, Office of Refugee Resettlement, “Refugee Resettlement Program; Requirements for Refugee Cash Assistance; and Refugee Medical Assistance,” *Federal Register*, vol. 65, no. 56, March 22, 2000, pp. 15409-15450.

²³The 1996 welfare reform law is the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, August 22, 1996. For additional information, see CRS Report RL31114, *Noncitizen Eligibility for Selected Major Public Assistance Programs: Policies and Legislation*.

Appendix. Refugee Admissions by Region, FY1987-FY2001

Fiscal Year	Africa	East Asia	Eastern Europe	Former Soviet Union	Latin America/ Caribbean	Near East/ South Asia	Total
1987	1,990	40,099	8,396	3,699	323	10,021	64,528
1988	1,593	35,371	7,510	20,411	3,230 ^a	8,368	76,483
1989	1,902	45,722	8,752	39,602	4,116 ^a	6,976 ^a	107,070
1990	3,453	51,604 ^a	6,094	50,628	5,308 ^a	4,979	122,066
1991	4,420	53,522	6,837	39,226	4,042 ^a	5,342	113,389
1992	5,470	51,899	2,915	61,397	3,947 ^a	6,903	132,531
1993	6,967	49,817	2,582	48,773	4,322 ^a	6,987	119,448
1994	5,860	43,564	7,707	43,854	6,156	5,840	112,981
1995	4,827	36,987	10,070	35,951	7,629	4,510	99,974
1996	7,604	19,321	12,145	29,816	3,550	3,967	76,403
1997	6,065	8,594	21,401	27,331	2,996	4,101	70,488
1998	6,887	10,854	30,842	23,557	1,627	3,313	77,080
1999	13,043	10,206	38,658	17,410	2,110	4,098	85,525
2000	17,561	4,561	22,561	15,103	3,232	10,129	73,147
2001	18,979	3,725	15,776	14,888	2,972	12,086	68,426

Source: U.S. Dept. of State, Bureau of Population, Refugees and Migration.

Note: All data are as of September 30, 2001.

^aIncludes refugees admitted under the Private Sector Initiative (PSI). Most refugees admitted under PSI were Cuban.