

Victims of China's Birth-Control Policy Are Entitled to Asylum, a U.S. Judge Says

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Body

A Federal **judge** ruled today that **victims** of **China's** coercive population **control policies** were eligible for **asylum** in the **United States**, despite the Clinton Administration's efforts to expel some of them.

The case involved a passenger on the Golden Venture, a vessel that ran aground on a sand bar in New York Harbor on June 6. The 28-year-old passenger, Guo Chundi (pronounced Gwo JUN-dee), **said** he had fled China because he and his wife were resisting sterilization orders. He also **said** they feared persecution because of their opposition to **China's policy** limiting them to only one child.

The Immigration and Naturalization Service **said** Mr. Guo had tried to enter the **United States** without valid documents in violation of Federal law. And the Justice Department **said** that opposition to coercive population **control policies** was not a form of political opinion **entitling** a person to protection under refugee laws.

But the **judge**, Thomas **S.** Ellis 3d of Federal District Court in Alexandria, Va., declared that "political opinion encompasses an individual's views regarding procreation" because the right to bear children is one of the basic human rights.

Involuntary sterilization as practiced in China is "an egregious infringement on the fundamental right to procreate," **Judge** Ellis **said**. Accordingly, Mr. Guo's opposition to **China's** population **control policies** "constitutes political opinion" and thus he is eligible for **asylum**, the **judge** ruled. Mr. Guo's wife remains in China.

Doris M. Meissner, the Commissioner of Immigration and Naturalization, **said** she had no comment on the ruling. David M. McConnell, a Justice Department lawyer who worked on the case, **said** the Government had not decided whether to appeal.

The ruling, though not binding on other **judges**, has potential significance for hundreds of cases in which Chinese are seeking **asylum** in the **United States**. In opposing Mr. Guo's plea for **asylum**, the Clinton Administration warned that its approval could increase the smuggling of Chinese citizens in inhuman conditions aboard cargo freighters like the Golden Venture, which resulted in the deaths of at least six people.

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In the Reagan and Bush Administrations, three Attorneys General -- Edwin Meese 3d, Dick Thornburgh and William P. Barr -- ordered favorable treatment for people fleeing China to avoid forced sterilization or abortion. Clinton Administration officials withdrew one such directive, signed by Mr. Barr last year. They now say they worry that they will encourage the smuggling of human cargo if they are too generous to Chinese refugees.

The United States recently sent 118 Chinese back to their homeland after finding that they had been smuggled into this country. Immigration officials said that none of the 118 had arrived on the Golden Venture, but that some of them had objected to China's restrictive birth-control policies.

In the last year, China has stepped up efforts to limit the growth of its population of 1.2 billion people. State Department officials and Western journalists have quoted peasants as saying that the Chinese authorities often order the sterilization of women who have filled their quota of births.

But the Justice Department has said Congress had never intended to "afford asylum eligibility to aliens who feared being subjected to their country's coercive population control policies." In a legal brief submitted to Judge Ellis last month, the Justice Department argued that involuntary sterilization was not a manifestation of Communist doctrine, a punishment for Chinese dissidents or a form of persecution on the basis of political opinion.

In the brief, the Clinton Administration and the Board of Immigration Appeals, a unit of the Justice Department, said that Mr. Guo had not been singled out for persecution; it said China's population control policies were applied equally to all citizens.

But Judge Ellis, who was appointed by President Ronald Reagan in 1987, wrote: "This argument is fallacious. Nothing in the Immigration and Nationality Act precludes asylum for aliens persecuted by a government because of political opposition to uniformly applied governmental policies."

Indeed, he said, the uniform policy of most totalitarian governments is to persecute those who challenge the government's legitimacy. At a hearing on Dec. 10, Judge Ellis scorned the Justice Department's position, saying: "How many people in Stalinist Russia could say, 'Hey, this is invidiously enforced against us'? It was enforced against everybody. If you didn't like what he did, you went to jail. He didn't play favorites."

Urged to Defer to Board

Since 1989, the Board of Immigration Appeals has repeatedly denied asylum claims by people expressing a fear of persecution under China's population control policies. The Clinton Administration urged Judge Ellis to defer to the board's expertise on this issue.

But Judge Ellis said that "deference is appropriate only where an agency's interpretation of its own statutes and regulations has been consistent." Courts need not defer to the Justice Department on this issue because there has been a "cacophony of administrative voices," he said.

Judge Ellis said that Mr. Guo and his wife showed their opposition to China's population policies by refusing to comply with sterilization orders and by fleeing from their home village in Fujian Province. The local government then confiscated their property and destroyed their home, he said.

"It simply defies logic to contend that these governmental actions do not amount to persecution," the judge said.

The ruling came from northern Virginia because the board has its headquarters in Falls Church, Va., and Mr. Guo had sought a writ of habeas corpus to gain his release from a jail in Winchester, Va.

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