Asylum Seekers Need Only a Reasonable Fear

The New York Times

July 4, 1994, Monday, Late Edition - Final

Distribution: Editorial Desk

Section: Section 1; ; Section 1; Page 18; Column 4; Editorial Desk ; Column 4; ; Letter

Length: 600 words

Body

To the Editor:

The concern about the fairness of the procedure and the confusion about the criteria in the screening of Haitian boat people aboard United States ships described in June 17 and 18 articles from Kingston, Jamaica, are symptomatic of a political and not a legal dilemma. The law is well established. The controlling standard was laid down by the Supreme Court in Immigration and Naturalization Service v. Cardoza Fonseca.

The essence of this decision was that applicants for ***asylum*** in -- or refugee admission to -- the United States are not required to show that they would be singled out for punishment if sent back to the country from which they fled. Nor do applicants have to demonstrate the likelihood, let alone the clear probability, of such punishment. A ***reasonable*** possibility of persecution is, or should be, sufficient to support an ***asylum*** or admission request.

Since the refugee legislation of 1980 was meant to bring United States law in concordance with the United Nations Convention, the Court felt at ease in adopting criteria developed by the Office of the United Nations High Commissioner for Refugees. It quoted approvingly the refugee agency's explanation that an applicant's ***fear*** in general "should be considered well founded if he can establish, to a ***reasonable*** degree, that his continued stay in his country of origin has become intolerable for him for the reasons stated in the refugee definition, or would for the same reason be intolerable if he returned there."

And the Court, to make quite clear how it wanted the new standard implemented, stated in a memorable caveat: "There is simply no room . . . for concluding that because an applicant ***only*** has a 10 percent chance of being shot, tortured or otherwise persecuted, that he or she has no well-founded ***fear*** of the event happening."

Fear is a subjective reaction. And it was this aspect of the Court's decision, delivered by Associate Justice John P. Stevens, that Justice Harry
A. Blackmun addressed in his concurring opinion.

He pointed out that the term "well-founded ***fear***" demanded a particular type of analysis -- "an examination of the subjective feelings of an applicant for ***asylum***, coupled with an inquiry into the objective nature of the articulated reasons for ***fear***," the sort of analysis for which Justice Blackmun commended the "well-reasoned opinions of the courts of appeals that almost uniformly have rejected the I.N.S.'s misreading of statutory language and legislative history." And he ended with a stern admonition:

"The efforts of these courts stand in stark contrast to -- but, it is sad to say, alone cannot make up for -- the years of seemingly purposeful blindness by the Immigration and Naturalization Service, which ***only*** now begins its task of developing the standard entrusted to its care."

These words were written seven years ago. Alas, they are still apt in the Haitian context. It is as easy to impugn the motives of ***asylum seekers*** as basically economic as it is difficult for an outsider to comprehend fully and to untangle the components that lead people to conclude that life in Haiti has become intolerable. But as long as there is a possibility, and be it ***only*** a 10 percent possibility, that an individual upon return to Haiti will be exposed to the retaliatory vindictiveness of a murderous regime, that person is protected by a decision of the United States Supreme Court.

ROBERT P. DE VECCHI
CHARLES STERNBERG
New York, June 22, 1994

The writers are the present and former executive officer of the International Rescue Committee.

Graphic

Drawing

Classification

Language: ENGLISH

Subject: REFUGEES (92%); IMMIGRATION (89%); CITIZENSHIP (89%); EDITORIALS & OPINIONS (89%); DECISIONS & RULINGS (77%); LAW COURTS & TRIBUNALS (76%); APPEALS (76%); UNITED NATIONS (75%); LETTERS & COMMENTS (74%); UNITED NATIONS INSTITUTIONS (72%); SUPREME COURTS (71%); APPEALS COURTS (71%); TREATIES & AGREEMENTS (53%); RELIEF ORGANIZATIONS (52%)

Company: UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (92%); UNITED NATIONS (55%); UNITED NATIONS (55%)

Organization: UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (92%); UNITED NATIONS (55%); UNITED NATIONS (55%); UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (92%); UNITED NATIONS (55%); UNITED NATIONS (55%)

Geographic: KINGSTON, JAMAICA (79%); UNITED STATES (93%); JAMAICA (79%)

Load-Date: July 4, 1994