

AILA Issue

ELIMINATE THE ASYLEE ADJUSTMENT CAP

ISSUE: Under our immigration laws, an individual granted asylum in the United States may apply to adjust his or her status to that of a lawful permanent resident one year after the application for asylum has been approved. However, our laws also include a numerical cap of 10,000 annually that limits the number of asylees who each year may become permanent residents, *regardless of the number granted asylum each year*. As a result, more than 150,000 individuals *lawfully granted asylum in the United States* currently are waiting to have their applications for lawful permanent residence status processed. While they are waiting, these individuals are forced to remain in a legal limbo for many years.

BACKGROUND: Congress established the current asylee adjustment cap in the Immigration Act of 1990. Since 1995, when the INS reformed asylum procedures, more than 10,000 individuals each year have been granted asylum. All asylee adjustment applications over the statutory cap of 10,000 are carried over to the following year for adjudication, thereby creating a burgeoning backlog of pending applications. As a result, there is presently a backlog of over 150,000 asylee adjustment applications.

To compound the backlog problem, over the last decade the former INS failed to award the full number of statutorily available adjustments. The American Immigration Law Foundation (AILF), AILA's sister foundation, initiated litigation to force the government to recapture all unused adjustment slots. On February 12, 2004, in the case of *Ngwanya v. Ashcroft*, a U.S. District Judge ruled that this failure to utilize the full 10,000 adjustment slots was a violation of law and characterized the government's actions as "egregious" and a "national embarrassment." The practical effect of the ruling is that 22,000 unused slots for adjustment must now be used.

Despite this successful litigation, an individual granted asylum today will still be unable to become a permanent resident for at least thirteen years, and will be ineligible to naturalize for at least eighteen years. In contrast, individuals admitted into the U.S. as refugees are not subject to a cap on adjustments. Given that the standards for asylee and refugee status are the same (i.e., a well-founded fear of persecution), the difference in eligibility for permanent residence makes no sense. A refugee can adjust to permanent residence in less than two years, and is eligible to naturalize in five years. An asylee will have to wait at least three times as long as a refugee to become a citizen and be able to participate fully in our society.

Individuals granted asylum already have been screened through a rigorous process during which they must submit testimonial and/or documentary evidence supporting their claims and respond to questions by a trained asylum officer or an Immigration Judge. Applicants also must submit to a thorough criminal background investigation. Moreover, all of these individuals are already in the United States and have been admitted for an indefinite stay, and are already eligible to work based on their asylum status. More expeditious granting of permanent resident status and eligibility for naturalization for asylees would therefore not increase the level of immigration to the United States. Rather, it would hasten the integration into our society of deserving individuals to whom the U.S. already has extended its protection.

AILA'S POSITION: AILA strongly supports the elimination of the annual cap on the adjustment of status of asylees (found in Section 209(a) of the Immigration and Nationality Act).