

# America's Post-War Refugee Measures: A Sketch of Executive and Legislative Action†

Since World War II, approximately 1,200,000 refugees have legally entered the United States.<sup>1</sup> It is a debatable point, however, whether the United States has ever formulated a standard policy on admission of refugees and, if it has, when such a policy emerged.

The following brief tracing of significant executive and legislative action on admission of refugees between 1945 and 1966 may illustrate the degree, if any, to which the United States Government has developed any long-term policy on admission of refugees.

*Presidential Statement and Directive of December 22, 1945.*<sup>2</sup> The Presidential Statement and Directive, allocating extra funds and extra consular officers, re-establishing European consular facilities and to making available transportation to the United States, was intended to expedite immigration of displaced persons and refugees, within established immigration quotas.<sup>3</sup> Eligible refugees included some displaced persons in the United States who had previously fled from Europe, but were mostly persons then in Europe.<sup>4</sup> Unused quotas for the War years 1942 to 1945 did not accumulate.<sup>5</sup> Approximately 40,000 persons were admitted under this Directive.<sup>6</sup>

This Statement and Directive had the disadvantages of not using unused quotas for past years and of not affording any advantage to persons from

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†The views expressed in this article are those of the author and are not necessarily those of the Immigration and Naturalization Service or the Department of Justice.

<sup>1</sup>See Evans, *Political Refugees and The United States Immigration Laws: A Case Note*, 62 Am. J. Int'l. L. 921 (1968).

<sup>2</sup>For texts see *Pub. Papers of the Presidents of the U.S. Harry S. Truman. 1945, 572-78*; 13 Dep't. State Bull. 981-84 (1945). [Hereinafter cited as *1945 Pub. Papers*]

<sup>3</sup>*1945 Pub. Papers 574-78*; 13 Dep't. State Bull. 982-84 (1945).

<sup>4</sup>*1945 Pub. Papers 572-73, 574, 575*; 13 Dep't. State Bull. 981-82 (1945).

<sup>5</sup>*1945 Pub. Papers 573*; 13 Dep't. State Bull. 981 (1945).

<sup>6</sup>*Senate Comm. on the Judiciary, A Resolution to Make an Investigation of the Immigration System, S. Rep. pursuant to S. Res. 137, 80th Cong., 1st Sess., as amended, 66 (1950).*

Asia or the Middle East. Reasons given for the limitations were disruption of the function of United States consulates throughout the world—due to World War II, the resulting need to limit the scope of a refugee admission program, and the decision to concentrate on re-opening United States consulates in Europe first.<sup>7</sup>

*Act of June 25, 1948. Displaced Persons Act.*<sup>8</sup> The Act of June 25, 1948 permitted immigration of 205,000 displaced persons, principally from Germany and Austria, into the United States over a two-year period to June 30, 1950.<sup>9</sup> As amended, it ultimately brought 397,476 refugees into the United States over a period of three and a half years—to December 31, 1951.<sup>10</sup> Quotas then existing were mortgaged into the future.<sup>11</sup> 15,000 persons, defined as displaced persons, then living in the United States, were able to adjust their status to that of permanent residents under Section 4 (a) of this law.

This Act was meant, among other things, to provide an impetus for the acceptance by other countries of persons displaced from their native countries during World War II.<sup>12</sup>

*Immigration and Nationality Act, Sections 212 (a) (28) (I) (ii) and 212 (d) (5).*<sup>13</sup> The sections cited above, of the present law on immigration and naturalization, are the defector and parole statutes.

Refugees, who are former Communist Party members, coming to the United States on or after December 27, 1952, can enter only as former involuntary members or as “defectors” under Section 212 (a) (28) (I) (ii), that is, as active anti-Communists.<sup>14</sup> Defectors must have been definable as such abroad for at least five years prior to their entry into the United States.<sup>15</sup>

<sup>7</sup>See 1945 *Pub. Papers* 574; 13 Dep’t. State Bull. 982 (1945).

<sup>8</sup>62 Stat. 1009, as amended, 64 Stat. 219 (1950). For discussion of definition of persons of “German ethnic origin”, within Section 12 of this Act see *In the Matter of K-*, 3 I. & N. Dec. 838 (C.O. 1950).

<sup>9</sup>See note 6 *supra*. Among those admitted were 55,000 German expellees and 2,000 Italian refugees. See *Whom Shall We Welcome*, Pres. Comm’n. Immigration & Naturalization Rep. 58 (1953).

<sup>10</sup>See Auerbach, *The Refugee Relief Act of 1953*, 29 Dep’t. State Bull. 235 (1953). Note, however, that at the termination of the Act, there were still remaining, as likely eligibles under the Act, 32,000 German expellees, 1500 Italian refugees and about 7500 displaced persons in Europe. See *Whom Shall We Welcome*, *supra* note 9, at 56.

<sup>11</sup>Gordon & Rosenfield, *Immigration Law and Procedure* 1-12, 2-129, 2-130 (Rev. ed. 1967). Mortgages on quotas were expunged prospectively by Section 10 of the Act of September 11, 1957. See p. 8 *infra*.

<sup>12</sup>U.S. Code Cong. Serv. 2054 (1948).

<sup>13</sup>66 Stat. 182, 8 U.S.C. § 1182 (a) (28) (I) (ii) (1952) and 66 Stat. 182, 8 U.S.C. § 1182 (d) (5) (1952) respectively. See also Section 212 (a) (28) (I) (i), 66 Stat. 182, 8 U.S.C. § 1182 (a) (28) (I) (i), permitting admission of aliens who formerly were involuntary or youthful members of a subversive organization or whose prior membership in such an organization was necessary to gain essentials of living.

<sup>14</sup>66 Stat. 182, 8 U.S.C. § 1182 (a) (28) (I) (ii) (1952).

<sup>15</sup>*Ibid.*

Of the parole section, 212 (d) (5), it has been said that "the device . . . has been used in a variety of situations to permit the entry of aliens (a) whose admissibility is under consideration, (b) who are inadmissible, but who are permitted to enter for humanitarian or emergent reasons, (c) who are refugees".<sup>16</sup> Section 212 (d) (5) was used subsequently for parole of Hungarian,<sup>17</sup> Chinese<sup>18</sup> and Cuban<sup>19</sup> refugees into the United States.

*Act of August 7, 1953. Refugee Relief Act.*<sup>20</sup> A more comprehensive emergency relief measure than the Displaced Persons Act was the Refugee Relief Act, enacted on August 7, 1953 and amended August 31, 1954.<sup>21</sup> The purpose of this Act, which expired on December 31, 1956,<sup>22</sup> was to expedite admission to the United States of refugees escaping from "Iron Curtain" countries into free Europe.<sup>23</sup> Certain provisions were included in the Act to attempt to safeguard the security of the United States in admitting aliens under this legislation.<sup>24</sup> Admission, unlike the 1948 Act, was outside quota limitations.<sup>25</sup> 209,000 immigrants were able to take advantage of the provisions of this Act.<sup>26</sup> Out of 38,000 Hungarian refugees admitted to the United States under post-War legislation, 6,400 were admitted under the Refugee Relief Act.<sup>27</sup> A total of 190,235 visas out of a possible 209,000 were issued under this Act.<sup>28</sup> Defined beneficiaries placed within this Act included "German expellees", "escapees in the German Federal Republic, Berlin and Austria", "escapees in NATO and other countries", "Polish war veterans in the British Isles", "Italian refugees", "Italian relatives", "Greek relatives", "Netherlands refugees", "Nether-

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<sup>16</sup>*Staff of Sub-Comm. No. 1, House Comm. on the Judiciary, 89th Cong., 2d Sess., Immigration and Nationality Act, with Amendments and Notes on Related Laws and Summaries of Pertinent Judicial Decisions* 229 (Comm. Print 1969).

Section 212 (d) (5) provides that "[t]he Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

<sup>17</sup>See *infra* at p. 712.

<sup>18</sup>See *infra* at p. 715.

<sup>19</sup>See *infra* at p. 717.

<sup>20</sup>67 Stat. 400.

<sup>21</sup>Act of Aug. 31, 1954 (Graham Amendment).

<sup>22</sup>Refugee Relief Act § 20.

<sup>23</sup>See U.S. Code Cong. & Ad. News 2103 & 2104 (1953).

<sup>24</sup>See Sec. 11 of Refugee Relief Act of 1953; see also note 10 *supra* at 233.

<sup>25</sup>Refugee Relief Act § 17.

<sup>26</sup>*Senate Comm. on the Judiciary, 85th Cong., 1st Sess. Final Report of the Administrator of the Refugee Relief Act of 1953, as Amended* 13 (Comm. Print 1958).

<sup>27</sup>See also *infra* 713-714; see note 11 *supra* at 2-129; *supra* note 26 at xiv.

<sup>28</sup>See note 26 *supra* at xiii.

lands relatives", "Far East refugees (non-Asian)", "Far East refugees (Asian)", "Chinese refugees", "Palestinian refugees", "Orphans" and "Spouses and unmarried minor sons and daughters" of the afore-named beneficiaries.<sup>29</sup>

At this time there were said to be in the world 9,000,000 refugees from Communism.<sup>30</sup>

Section 6 of this Act provided that, under certain conditions, up to 5,000 aliens previously admitted to the United States as non-immigrants, might adjust their status to that of permanent resident.<sup>31</sup>

To this legislation was added the Graham Amendment, passed by Congress on August 31, 1954, permitting allotment of special non-quota visas, provided for Italy, Greece and the Netherlands, to be issued in either refugee or relative preference ground, according to demand. Visas were not to be issued in the relative preference category without evidence that suitable employment and housing awaited the applicant after arrival in the United States and that no one would thereby be displaced from present housing and employment.<sup>32</sup>

*Presidential Statement of December 1, 1956.*<sup>33</sup> This Statement signalled the beginning of the move to admit refugees from the Hungarian Revolution of October 1956 to the United States. Visas available under the Refugee Relief Act to meet this situation numbered about 6500.<sup>34</sup> The Presidential Statement provided for admission of 15,000 Hungarian refugees under the authority in Section 212 (d) (5) of the Immigration and Nationality Act.<sup>35</sup> This pronouncement called for a re-examination of the Hungarian situation when visa numbers and emergency admission numbers were exhausted, with an eye to providing for permanent re-settlement of the refugees.<sup>36</sup> It was suggested by the President, on January 31, 1957, that those Hungarians, admitted only temporarily, be given an opportunity later to acquire permanent residence.<sup>37</sup>

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<sup>29</sup>Refugee Relief Act § 4(a); see also note 26 *supra* at 112-15 and note 10 *supra* at 231-32.

<sup>30</sup>See note 26 *supra* at 3.

<sup>31</sup>See U.S. Code Cong. & Ad. News 2120 (1953); note 10 *supra* at 231. For adjustment of status under Section 6 of this Act the alien must have entered the United States as a "bona fide non-immigrant", *e.g.*, not as a visitor coming to the United States with the preconceived intention to adjust his or her status.

<sup>32</sup>Act of Aug. 31, 1954, 67 Stat. 400. See further 1954 U.S. Code Cong. & Ad. News, 3688 & 3693; note 26 *supra* at 12. *Cf.* later provision for labor clearance certificates, found in Immigration and Nationality Act § 212 (a)(14), as amended, 79 Stat. 917 (1965).

<sup>33</sup>For text, see *Pub. Papers of the Presidents of the U.S. Dwight D. Eisenhower. 1956, 1116-18.*

<sup>34</sup>See note 27 *supra*; 103 Cong. Rec. 1355 (1957); note 33 *supra* at 1116.

<sup>35</sup>See note 33 *supra* at 1116-17. For text of Section 212 (d)(5) see note 16 *supra*.

<sup>36</sup>See note 33 *supra* at 1117.

<sup>37</sup>See 103 Cong. Rec. 1355 (1957).

*Act of September 11, 1957, "Refugee-Escapee Act".*<sup>38</sup> The purpose of this law was said to be "to provide a non-quota status with specified limitations for . . . the remaining refugees and expellees who were not in a position to qualify for visas before the expiration of the Refugee Relief Act of 1953, as amended".<sup>39</sup> Some amendments were made, by this Act, to the Immigration and Nationality Act of 1952. Of particular interest are Sections 9, 10 and 15 of the Act of September 11, 1957.

Section 9 permitted the adjustment of status to that of lawful permanent residents for certain non-immigrants, their wives and children, already present in the United States on July 1, 1957.

Section 10 expunged prospectively the mortgages on immigration quotas incurred through operation of the Displaced Persons Act.<sup>40</sup>

Section 15 (a) and (b) allotted 18,656 non-quota immigrant visas, unused under the Refugee Relief Act, to German expellees, persons of Dutch ethnic origin and "refugee-escapees".<sup>41</sup> The Refugee Relief Act had expired nearly one year before.<sup>42</sup>

Section 15 (c) (1) defined "refugee-escapees".<sup>43</sup> This definition was used in the Act of July 14, 1960 as well.<sup>44</sup>

Some criticism of this Act was aimed at the fact that "[i]t completely neglected the 28,000 Hungarian refugees who were admitted as parolees under President Eisenhower's directive."<sup>45</sup>

*Act of July 25, 1958.*<sup>46</sup> This Act afforded an opportunity for Hungarian refugees, paroled into the United States after October 23, 1956, to attain the status of permanent residents—retroactive to the date of arrival.<sup>47</sup> The

<sup>38</sup>71 Stat. 639.

<sup>39</sup>U.S. Code Cong. & Ad. News 2016 (1957).

<sup>40</sup>See note 11 *supra* at 2-129.

<sup>41</sup>See note 11 *supra* at 2-130 & 6-36. Section 15 was repealed by Section 24 (a) of the Act of Sept. 26, 1961, 75 Stat. 650. The figure 18,656 is composed from 15,960 visas unissued to German expellees, residing in the German Republic and in Austria; 1597 unissued to Dutch nationals; 1099 unissued to refugees in the Far East, not indigenous to that area—all categories as defined in Refugee Relief Act Regulations. For numerical break-down see U.S. Cong. & Ad. News 2026 (1957); for Regulations, see note 26 *supra* at 113-15.

<sup>42</sup>See note 22 *supra*.

<sup>43</sup>A "refugee-escapee" was defined as "any alien who, because of persecution or fear of persecution on account of race, religion, or political opinion has fled or shall flee (A) from any Communist, Communist-dominated or Communist-occupied area, or (B) from any country within the general area of the Middle East, and who cannot return to such area or to such country on account of race, religion, or political opinion." "General area of the Middle East" was defined in Section 15 (c)(2) of the Act of September 11, 1957.

<sup>44</sup>See p. 714 *infra*.

<sup>45</sup>See U.S. Code Cong. & Ad. News 2027 (1957).

<sup>46</sup>72 Stat. 419.

<sup>47</sup>See U.S. Code Cong. & Ad. News 3147 (1958). *Cf.* "White House Statement Concerning the Admission of Additional Hungarian Refugees", note 33 *supra* at 1116-18. See Sections 1 and 2 of the Act of July 25, 1958; U.S. Code Cong. & Ad. News 3154 (1958); H.R. Rep. No. 1661, 85th Cong., 2nd Sess. 1 (1958).

Presidential Statement of December 1, 1956 had brought most of these refugees within the ambit of Section 212 (d) (5) of the Immigration and Nationality Act.<sup>48</sup> 32,000 Hungarian refugees, admitted under parole, became eligible for processing for permanent residence.<sup>49</sup> The balance of the 38,000 Hungarian refugees coming to the United States, it has been seen, were admitted under the Refugee Relief Act.<sup>50</sup>

*Act of July 14, 1960. "Refugee Fair Share Law".*<sup>51</sup> By Sections 1 and 2 of this statute, the United States was authorized to receive, through parole procedure, 25% of the total number of refugee-escapees, falling under the mandate of the United Nations High Commissioner, which were to be accepted for re-settlement by other countries.<sup>52</sup> These refugee-escapees were admitted to the United States under a parole provision in the Act,<sup>53</sup> with permanent residence—as of the date of arrival—available to them at the expiration of a two-year waiting period of residence in the United States.<sup>54</sup> The procedure for adjustment of status under this Act was likened to the process under the Act of July 25, 1958 for Hungarian refugees.<sup>55</sup>

The term "refugee-escapee", as defined in Section 15 (c) (1) of the Act of September 11, 1957,<sup>56</sup> was carried forward into the 1960 Act. Under the latter, an alien "refugee-escapee" could apply for parole into the United States if he or she applied while physically present in a non-Communist country—as defined in the Act; was not a national of the area in which the application was made and was within the mandate of the United Nations High Commissioner for Refugees.<sup>57</sup>

<sup>48</sup>For text of Section 212 (d)(5) see note 16 *supra*, and for reference to Presidential Directive see note 33 *supra*.

<sup>49</sup>See further U.S. Code Cong. & Ad. News 3147 (1958) and note 11 *supra*.

<sup>50</sup>See p. 711 *supra* and note 33 *supra* at 1116.

<sup>51</sup>74 Stat. 504. It may be noted that the United States, at this time, was participating in the World Refugee Year, with the goal of clearing European refugee camps through resettlement of refugees in the nine nations participating in the World Refugee Year. See further U.S. Code Cong. & Ad. News 3125, 3127 (1960); Read, *The United Nations and Refugees—Changing Concepts*, 537 Int'l. Conc. 35-38 (1962) and note 11 *supra* at 2-129.

<sup>52</sup>Sections 2 (a) and 2 (b) of the Act of July 14, 1960. For definition of the mandate see U.S. Code Cong. & Ad. News 3143-44 (1960).

<sup>53</sup>Sections 3 and 4 of the Act of July 14, 1960. See U.S. Code Cong. & Ad. News 3124-25, 3144, 3145 (1960).

<sup>54</sup>See *id.* at 3145. For reference to adjustment of status under the Act of July 25, 1958, see p. 713-714 *supra*.

<sup>55</sup>See note 43 *supra*.

<sup>56</sup>Section 1 of the Act of July 14, 1960. See U.S. Code Cong. & Ad. News 3142-43 (1960).

<sup>57</sup>See Read, *supra* note 51, at 38. About 19,700 refugees arrived in the United States under this Act. See Smith, *Refugees*, 367 Annals 47 (1966). See further Bennett, *The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965*, 367 Annals 135 (1966).

Of minor importance at this point, in a review of refugee measures is the Act of Sept. 2, 1958, 72 Stat. 1712, containing provisions for relief of certain Portuguese refugees from the Azores Islands and certain Dutch refugees from Indonesia.

This Act has been considered as possibly the beginning of a comprehensive refugee admission program.<sup>58</sup>

*Presidential Statement of May 23, 1962.*<sup>59</sup> From the advent of the Communist Government in mainland China through April 1962 over 1,000,000 refugees from the mainland entered Hong Kong.<sup>60</sup> Only about 55,000 of these were sent back to China by British authorities. However, in the first three weeks of May 1962, 70,000 additional Chinese refugees entered Hong Kong.<sup>61</sup>

A statement by the President of the United States, on May 23, 1962, indicated that arrangements were being commenced to permit several thousand Chinese refugees, in Hong Kong, to enter the United States.<sup>62</sup>

Chinese refugees were paroled into the United States under the authority in Section 212 (d) (5) of the Immigration and Nationality Act.<sup>63</sup>

The administration of this program has been criticized as affording admission primarily to professional and managerial classes rather than to agricultural refugees who were largely the ones overburdening the Crown Colony of Hong Kong.<sup>64</sup>

*Act of June 28, 1962. Migration and Refugee Assistance Act of 1962.*<sup>65</sup> The purpose of this legislation was to continue financial programs of assistance for refugees, escapees and migrants and to consolidate and clarify several foreign aid programs.<sup>66</sup> From our view, Section 6 of this Act is noteworthy. It extended—beyond July 1, 1962—the period for parole of “refugee-escapees” into the United States. This use of the parole provision was inaugurated in the Act of July 14, 1960.

*Act of October 3, 1965.*<sup>67</sup> Section 203 (a) (7)<sup>68</sup> was added to the Immigration and Nationality Act of 1952 by the Act of October 3, 1965. This section established a seventh preference of 6% for a “conditional entry” of aliens.<sup>69</sup> The preference has a fixed ceiling of 10,200 per year, within a world-wide quota of 170,000 per year for the United States.<sup>70</sup> No visas are

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<sup>58</sup>For text see *Pub. Papers of the Presidents of the U.S. John F. Kennedy. 1962*, 431. With regard to this Statement, see also 46 Dep't. State Bull. 994 (1962).

<sup>59</sup>See *Issues Before the Seventeenth General Assembly*, 539 Int'l. Conc. 156 (1962).

<sup>60</sup>*Ibid.*

<sup>61</sup>*Ibid.*

<sup>62</sup>See note 58 *supra* at *id.*; 46 Dep't. State Bull. 993-94 (1962).

<sup>63</sup>See note 58 *supra* at *id.* For text of Section 212 (d)(5) see note 16 *supra*. Chinese parolees admitted under this Statement numbered 14,620. See Smith, *Refugees, supra* note 57, at 48.

<sup>64</sup>See note 59 *supra* at 157.

<sup>65</sup>76 Stat. 121.

<sup>66</sup>See U.S. Code Cong. & Ad. News 1791, 1976 (1962).

<sup>67</sup>79 Stat. 912-915, 8 U.S.C.A. § 1153 (1965).

<sup>68</sup>79 Stat. 912.

<sup>69</sup>*Ibid.*

<sup>70</sup>*Ibid.* Section 201 (a)(ii) of the Immigration and Nationality Act, as amended, 8 U.S.C.

needed for conditional entry.<sup>71</sup> Up to the number of 10,200 aliens may thus be admitted to the United States, upon approval of the Attorney-General, as conditional entrants rather than as immigrants.<sup>72</sup>

It is also specified in Section 203 (a) (7) that "immigrant visas in a number not exceeding one-half of the [10,200] specified in [that section] may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously present in the United States for a period of at least two years prior to application for adjustment of status."<sup>73</sup>

Authorization for granting to refugees adjustment of status to that of permanent residents, was made a part of the Immigration and Nationality Act at this time.<sup>74</sup>

The seventh preference falls in back of the other six preferences granted for so-called special immigrants or to relatives of either United States citizens or permanent resident aliens.

There is no provision for the spouse or child, accompanying or following to join an alien, arriving in the United States by conditional entry, to gain advantage of the seventh preference, if a quota immigration visa or a seventh preference immigration visa does not happen to be available.<sup>75</sup>

Conditional entry into the United States, under Section 203 (a) (7) will not ordinarily be granted to a person inadmissible to the United States on substantive grounds for which there would not be a waiver of excludability.<sup>76</sup>

The definition of those potentially eligible as conditional entrants followed closely the definition of "refugee-escapees" in the Act of September 11, 1957.<sup>77</sup>

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§ 1151 (a)(ii) (1965), sets the yearly immigration total at 170,000. Note also Section 202 (a) of the same Act, 8 U.S.C. § 1152 (a) (1965), which provided, in pertinent part, "[t]hat the total number of immigrant visas and the number of conditional entries made available to natives of any single foreign state under paragraphs (1) through (8) of Section 203 (a) shall not exceed 20,000 in any fiscal year. . . ."

<sup>71</sup>Note 11 *supra*, at 2-133.

<sup>72</sup>For the distinction intended by the lawmakers, between conditional entry and parole see *S. Rep. No. 748, Amending the Immigration and Nationality Act and for Other Purposes*, 89th Cong., 1st Sess. 16-17 (1965); *Hearings Before Sub-Comm. No. 1 of House Comm. on Judiciary*, 89th Cong., 1st Sess., ser. 7, at 215 (1965) and U.S. Code Cong. & Ad. News 3334-35 (1965). It was intended that parole under Section 212 (d)(5) of the Immigration and Nationality Act, *supra* at note 16, no longer be used to admit whole classes or groups but only used in isolated situations. *Id.* at 3335 (1965). It was stated that "[t]his new section of the law will permit the President to act immediately, if the situation so requires, to come to the aid of refugees as defined in this bill." *S. Rep. No. 748, supra* at 16.

<sup>73</sup>See note 11 *supra*, at 2-133. For earlier statutes with provision for adjustment of status after two years of temporary residence in the United States see Act of Aug. 7, 1953, *supra* note 20 at § 6; Act of July 25, 1958, *supra* note 46 at §§ 1 & 2; Act of July 14, 1960, *supra* note 51 at §§ 3 & 4.

<sup>74</sup>See Sections 203 (g) and (h), 79 Stat. 912, 8 U.S.C. 1153 (g) and (h) (1965), following substantially the language of Sections 3 and 4 of the Act of July 14, 1960, 74 Stat. 504.

<sup>75</sup>See Immigration and Nationality Act, § 203 (a)(9), 8 U.S.C. 1153 (a)(9) (1965).

<sup>76</sup>See note 11 *supra* at 2-133.

<sup>77</sup>See note 43 *supra*; also Act of Sept. 2, 1958, 72 Stat. 1712.



The conditional entry provisions, under Section 203 (a) (7), have proved or may prove useful for Chinese and for Czech refugees. It can cover such refugees from the Eastern Hemisphere under the 170,000 limitation of Section 201 (a) (ii).<sup>78</sup> Up to 5100—or half of the 6% of 170,000—Chinese refugees could be given visas if they are already in the United States.<sup>79</sup>

Cuban refugees—not qualified for conditional entry under Section 203 (a) (7)—may be admitted to the United States on parole or may be classified as special immigrants.<sup>80</sup> About 250,000 Cuban refugees had reached the United States by June 30, 1965, admitted as immigrants or parolees or under waiver of non-immigrant documentary requirements.<sup>81</sup>

*Act of November 2, 1966.*<sup>82</sup> The Inter-American Conference, at Rio de Janeiro, in November, 1965, called attention to the need of member states of the Organization of American States (O.A.S.) to provide travel documents for Cuban refugees.<sup>83</sup>

By the Act of November 2, 1966 the United States Government authorized the adjustment of status, from parolees to permanent residents, of Cuban refugees residing in the United States. Section 1 provided for adjustment of status to that of permanent resident for any alien who was a native or citizen of Cuba and already physically present for two years or more in the United States, if such alien applied for adjustment in the

<sup>78</sup>See note 70 *supra*. Preferences take up about 160,000 of the 170,000. However, many Czech refugees should be able to obtain visas under Section 203 (a)(6) of the Immigration and Nationality Act, 66 Stat. 178, as amended, 8 U.S.C. § 1153 (a)(6) (1965), as skilled laborers.

<sup>79</sup>See page 715 *supra*. For litigation on Section 203 (a)(7) 3 Int'l. Lawyer 225 (1969). See Evans, *supra* note 1 and Evans, *The Political Refugee in United States Immigration Law and Practice*.

<sup>80</sup>Cuban natives are classifiable as special immigrants and these are not within the world quota of 170,000 of which the seventh preference forms a part. See note 11 *supra* at 1-132. "Special immigrant", in this connection, is defined as "an immigrant who was born in any independent country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him. . . ." See Immigration and Nationality Act, § 101 (a)(27)(A), 66 Stat. 166, as amended, 8 U.S.C. § 1101 (a)(27)(A) (1965). See, however, *Matter of Drachman*, 11 I. & N. Dec. 518 (Dist. Dir. 1966), holding that a Cuban refugee, born in Poland, was subject to the world quota of 170,000 and thus qualified for conditional entry into the United States.

Note also, with regard to Cuban refugees, that "the number of special immigrants within the meaning of Section 101 (a)(27)(A) of the Immigration and Nationality Act, as amended, exclusive of special immigrants who are immediate relatives of United States citizens . . . shall not . . . in any fiscal year . . . exceed a total of 120,000." See Act of Oct. 3, 1965, § 21 (e), 79 Stat. 921.

<sup>81</sup>See note 11 *supra* at 6-37; Gordon, *Ameliorating Hardships under the Immigration Laws*, 367 Annals 87 (1966); *Hearings before Sub-Comm. No. 1 of House Comm. on Judiciary*, 90th Cong., 2d Sess., ser. 23, at 67 (1968). A waiver of non-immigrant documentary requirements, in the case of Cuban refugees, can amount to the employment of a legal fiction, in that it is known that the refugees would not be entering as students or visitors or other non-immigrants, but merely as refugees.

<sup>82</sup>80 Stat. 1161 (1966).

<sup>83</sup>*Resolution XXI (Asylum for Cuban Political Refugees) of the Second Special Inter-American Conference, Rio de Janeiro, Brazil, Nov. 17-30, 1965*, reprinted in 60 Am. J. Int'l. L. 457 (1966).

United States and was admissible for permanent residence.<sup>84</sup> This privilege was extended to the spouse and child of any such alien, provided the spouse and child were residing in the United States with the alien.<sup>85</sup>

Included also in the Act was a "roll-back provision" for the effective date of admission for permanent residence.<sup>86</sup> Where a Cuban alien was admitted to the United States for permanent residence, prior to November 2, 1966, he may apply to the Immigration and Naturalization Service to have the effective date of his admission recorded as (1) the date he originally arrived in the United States as a non-immigrant or parolee or (2) a date thirty months prior to the alien's filing the application for adjustment of status—whichever of the two dates is later in time.<sup>87</sup> This "roll-back provision" covers also a wife and children of an alien, residing with such alien, where they were admitted for permanent residence prior to November 2, 1966.<sup>88</sup> The "roll-back provision" might save an alien considerable time in obtaining naturalization in a case in which he later filed a petition for this under Section 319 (a) of the Immigration and Nationality Act.<sup>89</sup>

41,052 applications for adjustment of status were filed under the Act of November 2, 1966 for eight months of the fiscal year of 1967; 82,477 for the fiscal year of 1968.<sup>90</sup> Almost 95,000 applications for adjustment of status of Cuban refugees were approved for the fiscal year 1968.<sup>91</sup>

United States Consulates in Canada, being the nearest points outside the United States, will process visa applications of Cuban refugees, already in the United States, to avoid undue hardship in requiring such refugees to go elsewhere.<sup>92</sup>

This legislation was said to follow a consistent pattern of special refugee legislation, running from the Act of July 25, 1958, through the Act of July 14, 1961, to the Act of October 3, 1965.<sup>93</sup>

<sup>84</sup>See note 82 *supra*. An alien was "admissible" if he had previously been inspected and admitted as a non-immigrant or been paroled. For the parole provision see Section 212 (d)(5) of the Immigration and Nationality Act, quoted in note 16 *supra*. Note that parole may be a valuable means for Cubans to enter the United States as they come within the annual limitation of 120,000 special immigrants permitted yearly to enter the United States. See note 80 *supra*.

<sup>85</sup>See note 82 *supra*.

<sup>86</sup>*Id.* § 2.

<sup>87</sup>*Ibid.*

<sup>88</sup>*Id.* at § 1.

<sup>89</sup>For reference, Section 319 (a), 66 Stat. 244, 8 U.S.C. § 1430 (1952) reads, in pertinent part, as follows: "[a]ny person whose spouse is a citizen of the United States may be naturalized . . . if such a person has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years. . . ."

<sup>90</sup>See Lindsey, *The Act of October 3, 1965*, 17 I. and N. Reporter 32-33 (1969).

<sup>91</sup>*Id.* at 33.

<sup>92</sup>Gordon & Rosenfield, *op. cit. supra* note 11 at 7-25 & 7-26. One purpose of the Act of November 2, 1966 was held to have been to reduce the expense to refugees of having to leave the United States to obtain visas and the subsequent burden on United States Consulates abroad. U.S. Code Cong. & Ad. News 3794 (1966).

<sup>93</sup>*Id.* at 3794-95.

## **Conclusion**

The problem of refugee immigration to the United States would not seem to lend itself to solution by long-term legislative measures. Pressure for admission of refugees has been generated by turmoil at various places in the world, occurring at different times.

America's refugee measures, since World War II, have been of three types: (1) occasional long-term legislation, such as the defector and parole provisions, found in the Immigration and Nationality Act of 1952 and the provision for conditional entry, a part of the Act of October 3, 1965; (2) short-term legislative action, sometimes preceded by presidential directive, to deal with a problem in a particular area or a specific country, like Hungary, China or Cuba, and (3) short-term legislation, as in the Acts of August 7, 1953, September 11, 1957, July 14, 1960 and June 28, 1962, going beyond provision for assistance to specific areas. However, several years was as far ahead as it was possible to see in enacting this third type of legislation.