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CANADA'S PERIODICAL ON REFUGEES

# REFUGEE

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SPECIAL ISSUE

## Asylum in North America: Crisis

### Displaced Salvadorans in New York

Arthur C. Helton

Several circumstances have combined recently to produce an outflow of Central American and other asylum seekers from areas in and around New York State, and their relocation across the Canadian border in Plattsburgh and Buffalo, New York. Similar relocations are reported in Detroit. Plattsburgh, a small town border town in the Adirondack Mountains, has become a place of refuge for over 270 "bus people" who stopped there on their way to Canada. Most are Salvadorans, but many are Guatemalans, Nicaraguans; Sri Lankans and Somalis are also found in this ever-expanding group.

Late last year, Salvadorans began leaving the United States for Canada in increasing numbers. This was due not only to the now well-documented restrictive asylum approach taken towards Salvadorans by U.S. authorities, but also through the enactment in November, 1986 of immigration control legislation which sanctions employers for hiring undocumented aliens. Previously, in somewhat of an anomaly, undocumented asylum seekers could work without their employers fearing the imposition of penalties for such employment. After the new law was enacted in November, many employers fired aliens in their workforce, even though many had been employed prior to the date of enactment, November 6, 1986, and were covered by a "grandfather clause" that immunized such employment from sanction. The firings

occurred even though many of the alien workers were eligible for legalization since they had, in fact, been present in the United States since January 1, 1982. Once fired, however, they were unable to obtain new employment and were started on a downward spiral; they could not even apply for legalization and receive formal authorization to work before May 5, 1987. Faced with destitution, many chose to leave and make their way to Canada.

The increased flight to Canada coincided with increasing concern by the Canadian authorities regarding their asylum policies. In 1985, over 6,000 asylum applications were filed in Canada. In 1986, that number increased to 12,000. During the last week of December that year, 220 Salvadorans and Guatemalans alone filed applications for asylum.

On February 20, 1987, in the face of in-

creasing numbers of arriving Central Americans, the Canadian authorities took several measures to stem the flow. Traditionally, asylum applicants in Canada were granted formal "refugee" status in about 25% of the cases. Now, in addition to ending nationality group safe-haven programs for 18 countries, including El Salvador and Guatemala, the Canadians determined that all asylum seekers arriving at the border would be required to remain in the United States until their cases had been reviewed for the admittance procedure — a six week process. No longer will members of specified nationality groups (such as Salvadorans, Guatemalans, Iranians, Afghans, etc.) be permitted to remain if they are not granted refugee status. According to Canadian authorities, the U.S. immigration authorities have agreed not to deport asylum

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## GUEST EDITORIAL

C. Daniel Levy

Pushed by the ravages of war and the activities of paramilitary units, and lured by the illusion of security, Salvadorans have migrated to the United States in large numbers in the recent years. Upon arrival in the United States they have been faced with a surprising official hostility. Hundreds, if not thousands, of Salvadorans have been detained for varying amounts of time at the different detention

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centers employed by the Immigration service throughout the United States. The conditions at these detention centers varied from unsavory to disastrous. In one detention center, these asylum seekers were forced to stay days on end under the scorching sun of the desert at temperatures exceeding 100 degrees Fahrenheit. In other detention centers they were forbidden to have writing and reading materials. In some processing centers they were not allowed to use telephones to contact relatives or attorneys. Furthermore, constant efforts were made by immigration agents to persuade and cajole refugees to forgo their right to apply for political asylum in the United States and to sign an agreement that they would leave this country voluntarily.

These procedures are intimately related to the legal structure of refugee processing in the United States. Based on the Refugee Act of 1980, the United States has established a twofold system to process refugees. First, there is the overseas processing system where people who satisfy the statutory definition of refugee are processed and given visas to enter the United States as refugees. Second, there is a process whereby people already in the United States can request the status of political asylees if they prove that they satisfy the definition of refugee. The possibility of overseas processing has been virtually nonexistent for Central Americans. In spite of years of civil wars, gross violations of human rights and serious population displacement, no overseas refugee processing program was established for the region.

Consequently, the alternative for Salvadorans has been to enter the United States and request political asylum from inside the country. In the United States, however, the immigration service has the power to arrest individuals who are accused of having violated the immigration laws of this country and detain them pending the deportation hearing unless the individual is able to post a bond to insure his/her appearance at the hearing. So many abuses were committed in the course of arresting and detaining Salvadorans that a nationwide class action was originally filed in 1981 and after massive testimony, closing oral argument was heard on August 31 of

this year. Paula Pearlman, one of the attorneys representing the Salvadoran asylum seekers, has contributed one article describing the reasons for this suit, its development and what its expected effect will be.

Refugee status in the United States involves an individual determination that the person asking for that relief fits the statutory definition of 'Refugee.' The method of individual determination is not very appropriate to confront large scale dislocation of populations. For those purposes, the United States Attorney General, under whose authority the Immigration and Naturalization Service runs, has traditionally used its discretion and offered certain nationalities an 'Extended Voluntary Departure' (EVD). Through this process members of those nationalities are allowed to remain in the country until circumstances in their home countries change and allow them to return safely. Efforts to secure EVD for Salvadorans through the Attorney General have failed. Advocates for refugees have then turned to Congress in an effort to influence the passing of legislation designed to achieve what the Attorney General has refused to implement through his discretion. Lauren McMahon details the story and present status of these efforts.

In November 1986, the United States passed legislation adding new provisions to the Immigration Act. These included employer sanctions, increased budget for enforcement and provisions for legalizing some undocumented immigrants. Fearing forced repatriation, many Central Americans sought refuge in Canada. In response to this increased demographic pressure, Canada changed its refugee acceptance practices. Arthur Helton evaluates the effects of these changes on the U.S./New York — Canadian border, while Kathy Alfred describes the reaction of the Central American community in the United States. Through these various articles we hope to provide Canadian readers with a glimpse of the legal structures that rule the lives of the large population of Central American asylum seekers in the United States.

*C. Daniel Levy, Esq. National Committee for Immigrants and Refugees*