# Striking a Balance: The 1995 Asylum Reforms
# "A Walk Down Another Street"

By: Gregg A. Beyer, former INS Director of Asylum, 1990-1994

Full text

Asylum processing around the world, not only in the United States, evokes both passion and controversy. Born of the compassionate desire to help people in need of the legal protection from persecution that their country cannot give them, asylum processing also requires the necessary but controversial suspension of certain immigration controls, especially for those who had to flee with no documents or even false documents.

The history of asylum reform in the United States is the search for consensus on the role, purposes and procedures of asylum, and the search for balance between refugee protection and compassion and immigration control.

According to one well-respected expert in international law,

> "Reaching [asylum] decisions quickly and removing those who are found not to require international protection are perceived by many [countries] as essential to reduce instances of abuse and to render the asylum process more manageable. In practice, few [governments] have succeeded in marrying an efficient and expeditious national process … to the fulfillment of international obligations."[1]

The intensity of this controversy often seems disproportionate to the numbers of people involved. But this intensity *is* commensurate with the stakes involved – obviously for asylum-seekers, but also for the advocates of compassion and for those of control. In the years since the passage of the Refugee Act of 1980, advocates of each of these perspectives as competing and not complementary, and worried about the other getting an upper hand: that abuse of compassion, or abuse of control, could paralyze a vulnerable immigration structure.

So, as we look at the history of asylum reform in particular, we also see a reflection of our own perspectives on the role, purposes and procedures of immigration in general.

**Introduction**

The history of asylum reform in the United States began with the 1968 U.S. accession to the 1967 United Nations Protocol relating to the Status of Refugees and the passage of the Refugee Act of 1980. It ended in January 1995 with implementation of a revised final asylum rule. During these years, asylum processing in the United States lacked consensus as to purposes and procedures. Without that consensus, developing and sustaining a balance in asylum processing proved elusive.

Instead, the years between 1980-1995, were a tug of war between those – mostly inside the Government -- who worried that a generous asylum program would permit too great a breach in immigration controls *versus* those – mostly outside the Government -- who felt that over-emphasis on such controls prevented genuine refugees from having their claims objectively considered. Over the years, it became obvious that only by establishing a balance between compassion and control could a consensus on asylum processing be established. Between 1980 and 1990, control had the upper hand. From 1990-1994, compassion was the prevailing perspective of the affirmative asylum program. Alone, neither worked.

[1]Guy S. Goodwin-Gill, *The Refugee in International Law,* Oxford University Press, Second Edition, 1996, at 328-329

With the reforms of 1995, and the very inclusive process that led to their development and adoption, that balance and consensus, previously so elusive, were achieved.

**The Long History of Asylum Reform -- in Many Short Chapters**

The history of asylum reform – from 1980 to 1995 – can be summarized by quoting from a poem by Portia Nelson: *Autobiography in Five Short Chapters*:[2] [link to poem]

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| Chapter 1 | I walk down the street.<br>There is a deep hole in the sidewalk.<br>I fall in. …<br>It takes forever to find a way out. |
| Chapter 2 | I walk down the same street.<br>There is a deep hole in the sidewalk.<br>I pretend I don't see it.<br>I fall in again. …<br>It … takes a long time to get out. |
| Chapter 3 | I walk down the same street.<br>There is a deep hole in the sidewalk.<br>I see it is there.<br>I still fall in; it's a habit. …<br>I get out … |
| Chapter 4 | I walk down the same street.<br>There is a deep hole in the sidewalk.<br>I walk around it. |
| Chapter 5 | I walk down another street. |

**Asylum Processing: The 1980 Reforms and Their Implementation**

With passage of the Refugee Act of 1980, asylum reform started its walk down "Asylum Street." To many, implementing this Act implied adherence to basic international principles and procedures. But also with the passage of the Refugee Act, the tug of war between compassion and control began in earnest.

While that 1980 Act contributed three pages of statutory guidance to refugee resettlement processing, it devoted but one scant paragraph – almost as an after thought – to asylum. In fact, asylum was added to the Act only at the last minute. The Act was signed but without much discussion about asylum. The development of a consensus was postponed to the regulatory phase. The Act shifted the focus to the Attorney General.

The Refugee Act (in what became section 208 of the Immigration and Nationality Act (INA)) said that the Attorney General would be responsible for adjudicating asylum claims, and then charged her with "… establish[ing] a procedure for an alien physically present in the United States, … *irrespective of such alien's status,* to apply for asylum …" (emphasis added).

The Act followed the UN Protocol and Convention. It gave official statutory blessing to asylum. It's definition of refugee was based on the international definition of refugee (as sec. 101(a)(42)(A) of the Immigration and Nationality Act (INA)). And, by the phrase " … *irrespective of such alien's status, …"* it gave statutory recognition to the special circumstances of refugees' flight from persecution that implied a temporary suspension of normal immigration controls in favor of humanitarian compassion while the claim was filed and decided.

[2]From the poem "Autobiography in Five Short Chapters," in Portia Nelson, *There's a Hole In My Sidewalk*, Beyond Words Publishing, Inc., Hillsboro, Oregon, 1993, at 2-3

In addition, according to a long-time observer of refugee law, writing in 1982,

> "Little thought was given during consideration of the Refugee Act … to the difficulty inherent in making the individualized and fine-grained determination of likely persecution which the UN definition seems to require."[3]

The determination of refugee status is one of the most complex and difficult adjudications any government official has to make. The adjudicator has to determine facts often based solely on the testimony of the asylum-seeker, about events in a far away land with laws and customs that may be quite different from her own, and all this in an interview often conducted through an interpreter. That difficulty is heightened by the stress on an adjudicator of daily hearing one tale after another of inhumanity and degradation and having to sort out genuine claims from those that are fraudulent.

The Refugee Act went into effect June 1, 1980, and *interim* regulations were promulgated on June 2, 1980. Because of time constraints, little attempt was made to develop a broad-based consensus on the roles, responsibilities and procedures to be followed to implement the Act. As *Interpreter Releases* observed, these new regulations were "… promulgated without advance notice of proposed rule-making and without delayed effective date. …[U]nless and until amended, they are binding as final regulations" (*IR*, June 2, 1980) at 267). The opportunity to develop a consensus was again postponed. It would take 10 years for final asylum regulations to be promulgated.

The interim rule placed asylum adjudications in the hands of Examiners in INS district offices. It was just one of the many applications that Examiners decided. Examiners adjudicating asylum claims were given no special training in international law, or in interviewing refugees, or in conditions in countries of origin. They had little direct or easy access to asylum-related law or information. In effect, despite the complexity of the task, they were left on their own to find out what they could as time permitted.

Shortly after the passage of the Refugee Act, tens of thousands of Cubans and Haitians left their homes (for various reasons) and claimed asylum on arriving in the United States. According to one observer of that time,

> "a substantial political asylum backlog, generated under the most hostile circumstances in the eyes of the government and the public, appeared virtually overnight. … [W]ithin six months after the passage of the Refugee Act, more than 100,000 [new] individual claims for asylum had been filed."[4]

In these circumstances, the prevailing perspective within the Executive Branch, including INS, was one of control. And many inside the Government felt the fix would come not from new final asylum regulations but from revisions to the 1980 Refugee Act. Changes were proposed but not enacted.

In the ensuing years, the control perspective prevailed and colored asylum processing. Some felt that control was needed to ensure that the temporary loopholes of asylum processing did not open floodgates of mass migrations. And others felt that control was needed to ensure that asylum decisions reflected U.S. foreign policy. This latter perspective led to charges that some nationalities were being disproportionately approved for asylum while other nationalities were being disproportionately rejected.

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[3] David A. Martin, "The Refugee Act of 1980: Its Past and Future," *Michigan Yearbook of International Legal Studies,* (1982), at 91, 101

[4] Doris M. Meissner, "Political Asylum, Sanctuary, and Humanitarian Policy," in *The Moral Nation: Humanitarianism and U.S. Foreign Policy Today,* (B. Nichols and G. Loescher, eds.), 1989, at 126.

Throughout 1980-1990, lawsuits brought by outside groups against INS processing were repeatedly filed, and were often successful. Some legal actions against INS concerned asylum standards, or treatment of asylum-seekers arriving at borders. Importantly, as we shall see, still others concerned the frequent inability of INS to provide timely work permits to asylum applicants filing "non-frivolous"[5] asylum claims – a standard so vague and interpreted by Court decisions so broadly that it soon came to mean that almost every asylum applicant would qualify for a work permit merely by evoking a couple of asylum-related words in their applications.

Even the Reagan Administration's Department of Justice got into the controversy by establishing the Asylum Policy and Review Unit (APRU) to oversee INS denials of asylum and ensure that a certain – mostly Cold War -- perspective was maintained.

*We walked down the street. There was a deep hole in the sidewalk. We fell in.*

In the years between 1980 and 1990, several attempts were made to develop and promulgate a final asylum rule. There were many proposals. In one of the first official recommendations for the establishment of an asylum officer corps, the March 1981 final report of the Select Commission on Immigration and Refugee Policy, recommended the establishment "of the position of asylum admissions officer … within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations." The Select Commission further recommended "that properly trained officials in charge of the initial [asylum] determinations should have the aid of area experts to provide information on conditions in the source country."

But the absence of a sense of shared commitment to achieving a balance in asylum processing led to the Government proposing rules that were quickly shot down by the process of public review – and some were killed even before they made it into proposed rule-making.[6] During those years, while the Government's emphasis on control over compassion prevailed, outside groups lobbied hard for a greater emphasis on compassion over control. But a compromise position – let alone a consensus -- remained elusive.

An August 1987 proposed asylum rule would have created a corps of specially trained INS Asylum Officers who would make final decisions on asylum claims. That would have changed the then-current system -- the so-called "two bites of the apple" – whereby asylum applicants could seek asylum from INS, and if unsuccessful, could raise their claim again in Immigration Court. In the existing system, final determinations (with a written record that could be appealed) that could lead to the deportation of denied asylum seekers were in the hands of Immigration Judges, not INS Examiners. The advocacy community, distrustful of INS' ability to train and support this proposed new corps, and opposed to the elimination of the role of the Immigration Judges in asylum processing, shot down the proposed regulation. By late October, the Attorney General pronounced these proposed regulations dead in the water.

[5]"Non-frivolous," meaning that the applicant cited some reason(s) that if substantiated during an interview with an Asylum Officer, could be the basis for approval of the application

[6]For a fuller description of these efforts, see Gregg A. Beyer, "Establishing the United States Asylum Officer Corps: A First Report," 4 *International Journal of Refugee Law,* Oxford University Press, 1992, at 457-467

In April 1988, another attempt was made to promulgate a final rule, one that would create a specialized, centrally administered corps of Asylum Officers, within INS, but outside the INS district offices. This proposed rule also retained the possibility of a second adjudication before an Immigration Judge. This proposal, generally well-received by non-governmental folks, was strongly opposed by INS.[7] The Reagan Administration's INS Commissioner and a couple of Acting Commissioners during the transition to the Bush Administration pledged to INS district directors that asylum processing would never ever be taken out of their districts. The impasse continued.

The Bush Administration took office in early 1989, inheriting a series of ongoing refugee and asylum-related controversies, including the continuing class action against the Government that was soon amended to name the new Attorney General.[8]

There was a huge controversy surrounding changes in the U.S. refugee processing of Soviet Jews exiting through Rome.[9] There were controversies involving the treatment of Central American migrants coming into South Texas.[10] And there continued the controversy over granting work permits to asylum applicants throughout the pendency of their entire asylum processing through INS, Immigration Judges, the Board of Immigration Appeals, and then the courts.[11]

And, after some controversial INS asylum training in December 1988 and the deployment of an asylum backlog reduction task force brought about a lawsuit, the District Court judge in the case ordered retraining of the task force and reinterviews for 23,000 asylum applicants in the Los Angeles area.[12] In a demonstration of the level of suspicion and hostility of the day, the judge ordered the videotaping of the retraining of the reinterview teams so he could personally verify that INS had carried out the court's orders on the improvements to be made.

Thus, the year 1989 became a low point in the history of INS asylum processing. INS was criticized for having too few people at too low levels with too little training assigned to asylum. It was criticized for administering asylum in INS district offices and of having a control and enforcement perspective over a humanitarian one. In addition, INS asylum adjudicators were charged with letting the advisory opinions of the U.S. Department of State concerning the relative merits of each asylum application sway its final decisions.

> Asylum is being abused – not by individual applicants, but by the federal immigration authorities who have neglected and misapplied the asylum provisions of the Refugee Act of 1980 … The whole process of asylum, from defining its purpose to administering its paperwork, has become so twisted and defective that basic reforms are needed. Chief among them is removing the administration of asylum from the Immigration and Naturalization Service.[13]

Also in 1989, the Administrative Conference of the United States (ACUS) met in June to consider recommendations on proposed asylum adjudication procedures. The underlying report, based on work by Professor David A. Martin,[14] recommended creation

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[7]E.g., "INS Pushes Major Changes to (April 1988) Proposed Asylum Rule," *Interpreter Releases,* January 2, 1989, at 3-4
[8]*American Baptist Churches v. Thornburgh*
[9]For a fuller discussion, see Gregg A. Beyer, "The Evolving United States Response to Soviet Jewish Emigration," 3 *International Journal of Refugee Law,* Oxford University Press, 1991, at 31-60
[10]*Morazan v. Thornburgh,* January 31, 1989, reported in *Interpreter Releases*, February 6, 1989, at 151
[11]*Alfaro-Orellana v. Illchert,* February 1, 1989, reported in *Ibid.,* at 151-152
[12]*Mendez v. Thornburgh,* January 30, 1989, reported in *Ibid.,* at 152
[13]Arthur C. Helton, "The INS is the One That's Abusing Political Asylum," *Houston Chronicle,* February 22, 1989, at 3
[14]Published in 1990: David A. Martin, "Reforming Asylum Adjudication in the United States: On Navigating the Coast of Bohemia," *138 University of Pennsylvania Law Review,* (1990)

of a separate corps of Immigration Judge-level asylum officers within the Executive Office for Immigration Review (EOIR) but outside INS. At an immigration breakfast meeting previewing the ACUS report on asylum reform, the prevailing sentiment was that INS would never -- and could never -- get asylum processing right and that therefore, the most logical choice would be the creation of an independent asylum system as in Canada or at least, leaving asylum adjudication mostly to Immigration Judges and the Board of Immigration Appeals – and outside INS.

In this atmosphere, the Bush Justice Department, reportedly wanting to complete something the Reagan Administration was unable to complete, started moving toward promulgation of a final asylum rule. Those discussions, first about resurrecting the August 1987 regulations, soon turned to resurrecting the April 1988 proposed final rule. Public comments had already been received. With minor adjustments, the Bush Administration's first Attorney General, Richard Thornburgh, promulgated a final asylum rule on July 27, 1990, to be effective October 1, 1990. But again, there was little attempt to develop a consensus among those inside and outside the Government about what would become the final asylum processing procedures.

**The 1990 Reforms**

With the 1990 final asylum rule and its implementation, an emphasis on refugee protection and compassion now took the upper hand over immigration control. The final asylum rule mandated the establishment of a "corps of professional asylum officers," centrally administered from INS Headquarters, operating outside the INS district offices, and supported by its own documentation center. The introductory paragraphs of the new regulations noted that the establishment of this separate corps recognized that "the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process…."

While the new Asylum Officer Corps was being recruited, policies and procedures were debated and established. It was a time of considerable collaboration among previously suspicious parties inside and outside the Government. Working together, these disparate groups managed to reach a consensus on what became the Asylum Corps' Basic Law Manual (BLM). The BLM collated the perspectives and legal interpretations that asylum officers were to use in their adjudications, and the new asylum program made this document widely available to the public.

Various outside groups were asked to help develop and implement the specialized training program that asylum officers would go through. Procedures were developed to ensure a non-adversarial interview process, full and open explanation of the reasons for a denial, and several layers of quality assurance to monitor compliance with these new directions.

One of the central features of the new asylum program was the obligation placed on asylum officers to explore with applicants *all facts and avenues* that might lead to an approval – whether these were brought up by the applicant or developed during the interview.[15]

[15]Interestingly, this obligation mirrored the advice of a former INS Commissioner who, in a lecture given to INS staff, noted that INS was more than just a law enforcement agency. He spoke of INS adjudications as "judicial in character." To him, this meant that INS officers had a duty not only "to develop all the facts favorable to the contention of the Government, ... [but also to] use every effort to develop all the facts favorable to the contention of the alien concerned" (from: *The Spirit of Service,* Lecture No. 1, Commissioner D.W. McCormack, INS, U.S. Department of Labor, February 12, 1934, at 2).

After a visit to the Canadian refugee board, the new asylum program requested and received technical assistance from them in establishing the INS documentation center.[16] And the UNHCR was active in giving advice on asylum procedures and on the development of various modules incorporated into what became the 3-week specialized training of new asylum officers.

*We walked down the same street. For a while, it seemed good. But there were clouds overhead as we walked. And there was a deep hole in the sidewalk ahead.*

In general, INS still opposed the establishment of the Asylum Officer Corps outside the district offices. The main INS proponent of the new asylum regulations was Deputy Commissioner Ricardo Inzunza. Mr. Inzunza came to INS from a stint as Deputy Director of APRU. The Department of Justice's APRU – with the advice of some asylum advocates outside the Government -- had done most of the drafting of both the April 1988 proposed asylum rule and the 1990 final asylum rule. Because support for asylum within INS was high-placed but still relatively thin, little help was given to the program as it struggled to quickly establish seven independent asylum offices – separated from INS district offices -- around the country by the April 1991 official startup of the Corps.[17]

And, while most INS applications carried a fee, the asylum application carried no fee. To subsidize the new asylum program, Examinations fees on other INS applications were raised to bring is some $50 million, about $30 million of which would go to fund the Office of International Affairs, of which about $10 million would go to the new asylum program. But the prevailing view inside INS was that the asylum program was not carrying its own financial weight and would drain precious funds from other district level adjudications needs.

On top of this, the FY 1991 budget allocated funds for only 41 full-time full-year asylum officers. Because of the April 1991 startup of the new program, INS interpreted this authorization to be 82 officers for only half a year. OMB got word of this as the FY 1992 budget requested full-year funds for 82 asylum officers. INS was called to task, and ordered to reduce the number of proposed officers and not open two of the proposed seven asylum offices. INS had to appeal this directive above OMB.

And finally, although the number of asylum officers was still too few to handle even the projected workload of new cases and the then existing backlog, the December 1990 settlement agreement in the case of *American Baptist Churches v. Thornburgh*[18] added a potentially huge new workload to the new program. No additional staff was proposed to cover this workload.

In December 1990, the INS Deputy Commissioner warned the Commissioner that without additional staff (officers and support), backlogs would continue "to grow to perhaps politically unacceptable levels."

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[16]The rule-mandated INS documentation center -- as an alternative to the INS' almost exclusive reliance prior to 1990 on country conditions information provided by the U.S. Department of State, and as an independent collator of human rights information collected by a variety of governmental and non-governmental sources -- also proved controversial.

[17]The real heroes of this period are the men and women inside and outside the INS who made a commitment to the then unknown and untested asylum program. They committed their careers and their energy to hope over, at best, skepticism, at worst, hostility. Through all that followed, they always came through -- no matter what challenges came their way.

[18]See for example, Carolyn Patty Blum, "The Settlement of ABC v. Thornburgh: Landmark Victory for Central American Asylum-Seekers," 3 *International Journal of Refugee Law* (1991)

*We walked down the street, saw the deep hole in the sidewalk, but headed right for it.*

After a grand opening attended by the INS Commissioner, the Chairman of the Canadian Refugee Board, the UNHCR Director of International Protection from Geneva, Switzerland, and the many asylum advocates and practitioners who had worked long and hard for such new asylum system to be developed, the new asylum corps started work in early April 1991. Within a few short months, the program had a reputation for quality and fairness and for being the improvement envisaged by the final asylum rule.

Those were a heady few months, but they would not last. The problem of insufficient staff was exacerbated by the need to ensure timely delivery of work permits to qualified asylum-seekers and keep up with incoming new applications. Staff resources were insufficient to do both well.

The new asylum program had hoped to be able to interview asylum applicants fast enough so that – somehow, perhaps through additional regulatory changes -- work permits could be authorized only for those found eligible for asylum. However, because of continuing controversy and litigation concerning the timeliness of INS work permits for asylum applicants, INS decided in May 1991 to give the new asylum program to adjudicate and authorize work permits within two weeks of being filed. This adjudication would be done on the basis of the often scanty information contained in the written application, and done only by an asylum officer.

As mentioned earlier, Court decisions had lowered the eligibility threshold so that almost every applicant qualified for a work permit. No one would in the Government had the opportunity to look into their identify nor talk with them before authorizing these permits.

Once authorized to work, asylum applicants had to appear at a district office merely to pick up their permits. That was the first and only time most of these asylum applicants would be seen by a Government official until their asylum interview.

As the new asylum program became proficient at authorizing work permits, it was falling farther and farther behind in adjudicating the applications themselves. For people in the United States illegally, filing an asylum application and getting into the backlog was a convenient way to get an official identity paper and work permit from the Government. [Work permits had become more essential after the passage of the Immigration Reform and Control Act of 1986.] And this work permit would be renewed during the many years of the pendency of their ongoing asylum proceedings. That emphasis on work permits, however understandable at the time, became *a fatal blow* from which the understaffed asylum program would never recover.

*We walked down the street, saw a deep hole in the sidewalk, and fell in. Some said: "We had no other choice."*

With asylum backlogs growing, and work permits available to almost everyone filing an asylum claim, even more applications started coming in. The hole got deeper and we stayed in it.

Then came *the final blow* to any chance that the new asylum program, strong on compassion but short on timeliness and control, would ever achieve the balance needed

to obtain the confidence of all perspectives. Its meager resources were spread even thinner and further diverted from asylum processing.

Within weeks following the September 1991 coup against Haitian President Aristide, Haitians started leaving in great numbers. In March 1991, this writer, as the new INS Director of Asylum, had also been charged with directing the Service's role in the Government's Alien Migration Interdiction Operation (AMIO). And in November 1991, these two responsibilities intersected, as the new asylum program was charged with screening the Haitian migrants picked up at sea and taken to the U.S. Naval Station at Guantanamo Bay, Cuba. [For a fuller discussion of this work, see *This Month in Immigration history: November 1991*]. Soon thereafter, at the height of that migration crisis, almost 50% of able-bodied INS Asylum Officers were being rotated through Guantanamo every month. Asylum processing at home ground to a near halt. In Los Angeles, for almost two months, all asylum interviews were canceled as the asylum officers left behind struggled just to open the mail and adjudicate work permits for the waves of new asylum applications being filed.

And as the number of new filings grew, substantial numbers of applications were being filed which were totally identical except for the names; invoking the requisite magic words, they qualified for a work permit. At one point, almost totally identical applications were received from over 2,000 different applicants purportedly living in the same small apartment in New York City. Under the regulations and procedures of the times, there was nothing we could do.

*We walked down the same street. We saw a deep hole in the sidewalk. And fell right in. "We had no choice."*

In February 1992, this writer attended an INS Executive Staff meeting and told the then Commissioner that the program was in desperate need of additional staff, especially clerical staff. Only through new staff could asylum officers get back to adjudicating asylum claims instead of opening mail. The Commissioner then authorized the filing of asylum applications at INS service centers instead of directly at INS asylum offices. Controversial at the time, that essential change began on May 15, 1992, and continues today.

For a while, although nothing worse happened, the program continued in a stasis of dysfunction. Few applicants got interviewed and fewer cases got decided. And in a keynote speech in Minneapolis in June 1992, this writer warned of the need to establish control in a program becoming known for its compassion, and ultimately wrote a law journal article detailing seven reforms needed to achieve that balance.[19] These recommendations never were discussed seriously either inside or outside the Government.

In a real tragedy with serious personal and psychological consequences, applicants in genuine need of asylum instead got into the limbo of the backlog,[20] with a work permit, but still unsure and unsettled about their future and unable to bring their families legally out of danger at home.

[19]See Gregg A. Beyer, "Affirmative Asylum Adjudication in the United States, *Georgetown Immigration Law Journal,* Vol. 6, No. 2, June 1992, at 277-282. Many of these recommendations were included in the 1993 proposed reforms.
[20]To ensure that any of those in the backlog wanting/needing a more timely adjudication of their asylum application could be heard, the Asylum Program scheduled almost immediate interviews anyone requesting them in writing.

Applicants filing mainly to obtain a work permit usually got the work permit and if they were lucky, got into the backlog where that permit would be renewed for years. And, for the few cases INS did complete, after laborious processes we followed to ensure quality and fairness that included mailing draft denials [called "Notices of Intent to Deny"] to the applicant for review and rebuttal before issuing the final denial, only the approvals mattered. Those denied by the INS had an opportunity to refile for asylum before an Immigration Judge, and start all over again. Others just dropped out of the system and remained in the U.S. illegally. And a few changed their name, and refiled with the INS at another asylum office, hoping to get a work permit and into the backlog.

While everyone agreed that program needed reform, there was no consensus on the shape of that reform. External supporters of the 1990 regulations said that only more staff was needed to make the regulations work. Government detractors from the 1990 regulations said that procedural duplications, bottlenecks, and loopholes had to be eliminated to make asylum processing work. There was little desire to talk together and work toward a common program of reform.

*We walked down the same street, fell in the same hole, made the same excuses.*

**1993, and the Need for Further Reform**

In 1993, the beginning of the new Administration brought some hope for relief. To capitalize on the advent of this new Administration, this writer received permission to make a concerted public campaign for asylum reform: to try to build support for change in the regulations and the addition of new staff.

During the Spring of 1993, this writer gave a series of speeches around the country describing the problems of the current program and asking for support for reform. At the same time, a government entity outside the INS was asked to conduct review of the problems of the asylum program. The goal was to try to obtain a consensus involving the Department of Justice, the INS, and external asylum advocates on the need to sit down and discuss reform.

The speeches went well, although usually to stunned and disappointed audiences, while the Justice Management Division of the Department of Justice did a thorough review of the program and provided a list of recommendations for change, including both rule changes and additional staff.

It would be nice to report that all this had the desired impact. It did not. Except for one positive development. In early May, someone outside the Executive Branch called the this writer to propose an idea for reform. Recognizing that a denial by INS was not a final denial in most cases, he suggested that INS concentrate only on timely approvals, and if they could not approve, then quickly refer to the Immigration Judges for fuller consideration and final decision. This idea would later become the central organizing concept of reform.

Back in the Spring of 1993, support for reform came slowly but increasingly shrilly when terrorist bombings of the World Trade Center and the killings by Mir Aimal Kansi outside the CIA Headquarters in Virginia were said to involve former or present asylum applicants. Then, the *Golden Venture* went aground on Long Island, and most of the boatload of smuggled Chinese claimed asylum on reaching U.S. shores. A segment on

the *60 Minutes* television program showed undocumented or fraudulently documented aliens arriving at JFK Airport, claiming asylum, and being let into the country to pursue their asylum claims. And a few INS district directors (now retired) began openly criticizing the INS asylum program in the press.

Asylum reform – reform of the affirmative asylum program -- became the order of the day. Never mind that some – but not all -- of the problems exposed had nothing to do with the *affirmative* asylum program nor contributed to the growing backlogs. The perception of abuse was there and it stuck.

Congressional hearings on the problems of asylum were called, first in the House on April 27, 1993, and then in the Senate on May 28. After the House hearing, the *Congressional Quarterly* published an article [dated May 15, 1993, at 1229] entitled "Immigration Distress Signals: Asylum System Under Siege," noting that "lawmakers and policy analysts are debating new approaches to combating … problems [in asylum processing], ranging from a comparatively limited fine-tuning of the existing procedures to a drastic overhaul." After the Senate hearing, *Refugee Reports* [on May 31, 1993, at 1-7] published a review entitled "Senate Hearing Reacts to Terrorist Incidents: Calls for Asylum Reform."

By July 1993, everyone was interested in asylum reform, including President Clinton, Attorney General Janet Reno, INS Commissioner-designate Doris Meissner, both houses of Congress and on both sides of the aisle, asylum advocates and immigration restrictionists, the general public and the public press.

On July 27, 1993, the President gave the Department of Justice and INS two months [to October 1, 1993] to develop a plan to *administratively* reform the U.S. affirmative asylum program. As noted above, legislative proposals were also being discussed and many of these would have drastically changed the statutory foundation of asylum in the U.S.

For better or worse, and regardless of the inauspicious circumstances for the interest in asylum reform, there now was an opportunity – perhaps the last and best opportunity – to work together, develop a consensus and establish a balance that would preserve asylum as a viable program and garner the public support needed to sustain it.

*We walked down the same street. There was still a deep hole in the sidewalk. But this time, we decided to walk around it.*

In this crucible of time and opportunity, all parties finally came to the same table, willing to talk, willing to compromise, willing to work out a program that preserved the improvements of the 1990 regulations while establishing the control that they had not.

On October 14, 1993, that program was announced. In March 1994, a proposed asylum rule was published, and, after comments were received, the revised final asylum rule was published on December 5, 1994, effective on January 4, 1995.

With that rule, finally a balance would be struck between compassion and control.

Redundant procedures were streamlined, loopholes closed, and additional resources made available.

After so many years since 1980, we would find that there are many roads to asylum and that one of these could be a program that could earn and keep the trust of the those worried about control *and* of those seeking to maintain our tradition of compassion for the persecuted. There was a way to get to *balanced asylum processing* in the United States. And we took it.

*In 1995, we began our walk down another street.*

And that made all the difference.