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FOR RELEASE AT 12:00 NOON EST
March 10, 1982

AFGHANISTAN DAY

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

In December 1979, the Soviet Union invaded Afghanistan without provocation and with overwhelming force. Since that time, the Soviet Union has sought through every available means, to assert its control over Afghanistan.

The Afghan people have defied the Soviet Union and have resisted with a vigor that has few parallels in modern history. The Afghan people have paid a terrible price in their fight for freedom. Their villages and homes have been destroyed; they have been murdered by bullets, bombs and chemical weapons. One-fifth of the Afghan people have been driven into exile. Yet their fight goes on. The international community, with the United States joining governments around the world, has condemned the invasion of Afghanistan as a violation of every standard of decency and international law and has called for a withdrawal of the Soviet troops from Afghanistan. Every country and every people has a stake in the Afghan resistance, for the freedom fighters of Afghanistan are defending principles of independence and freedom that form the basis of global security and stability.

It is therefore altogether fitting that the European Parliament, the Congress of the United States and parliaments elsewhere in the world have designated March 21, 1982, as Afghanistan Day, to commemorate the valor of the Afghan people and to condemn the continuing Soviet invasion of their country. Afghanistan Day will serve to recall not only these events, but also the principles involved when a people struggles for the freedom to determine its own future, the right to be free of foreign interference and the right to practice religion according to the dictates of conscience.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate March 21, 1982, as Afghanistan Day.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

RONALD REAGAN

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FOR IMMEDIATE RELEASE

March 10, 1982

REMARKS OF THE PRESIDENT
AT SIGNING CEREMONY FOR AFGHANISTAN DAY

The East Room

12:01 P.M. EST

THE PRESIDENT: I can't help but -- say thank you all very much -- but I can't help but recall that I was in Iran on the day that the first coup took place by the Soviet Union and their overthrow there of the government.

I take particular satisfaction in signing today, a Proclamation authorized by Joint Resolution No. 142, which calls for the commemoration of March 21st as Afghanistan Day throughout the United States.

This Resolution testifies to America's deep and continuing admiration for the Afghan people in the face of brutal and unprovoked aggression by the Soviet Union.

A distinguished former Secretary of State, William P. Rogers, is coordinating the observance of Afghan Day in the United States. He not only has my strong support but that of former Presidents Carter, Ford and Nixon and former Secretaries of State Muskie, Vance, Kissinger and Rusk.

The Afghans, like the Poles, wish nothing more, as you've just been so eloquently told, than to live their lives in peace, to practice their religion in freedom and to exercise their right to self-determination.

As a consequence, they now find themselves struggling for their very survival as a nation. Nowhere are basic human rights more brutally violated than in Afghanistan today.

I have spoken on occasion of the presence of unsung heroes in American life. Today, we recognize a nation of unsung heroes whose courageous struggle is one of the epics of our time. The Afghan people have matched their heroism against the most terrifying weapons of modern warfare in the Soviet arsenal.

Despite blanket bombing and chemical and biological weapons, the brave Afghan freedom fighters have prevented the nearly 100,000-strong Soviet occupation force from extending its control over a large portion of the countryside.

Their heroic struggle has carried a terrible cost. Many thousands of Afghans, often innocent civilians, women and children, have been killed and maimed. Entire villages and regions have been destroyed and depopulated. Some three million people have been driven into exile. That's one out of every five Afghans. The same proportion of Americans would produce a staggering 50 million refugees.

We cannot and will not turn our backs on this struggle. Few acts of international aggression have been so universally condemned. The United Nations has repeatedly called for the withdrawal of Soviet forces. The Islamic Conference, deeply troubled over this assault in Moslem religion, has four times condemned the Soviet occupation. The non-aligned movement has added its voice to the demands for withdrawal of foreign troops. Most recently, as you've been told, the European Parliament took the leadership in advancing the idea of a worldwide commemoration of Afghanistan Day.

On behalf of all Americans, I want to thank the members of the European Parliament for this action and welcome today the participation of Egon Klepsch, Vice President of the European Parliament and his distinguished colleagues.

MORE

I also want to express the hope that people the world over will respond with eagerness and determination. And in that connection, I want to express my particular appreciation that we're joined here today by members of the Parliaments of Japan, Kenya, Panama, Thailand and Austria.

We must go beyond public condemnation of the Soviet puppet regime in Kabul to bring relief and an early end to the Afghan tragedy.

We have a human responsibility to the Afghan refugees. The United States has given generous support to the U.N.'s refugee effort. And I'm pleased to announce today an additional commitment of \$21.3 million-worth of food. This contribution will bring the total U.S. support for the refugees to over \$200 million in the past two years. But I ask that all Americans supplement these funds with personal donations to organizations which work with Afghan refugees and the cause of a free Afghanistan. (Applause.)

Beyond this, the United States is determined to do everything politically possible

MORE

to bring the Soviet Union to the negotiating table. We and our allies have made clear that Afghanistan will remain a central issue in U.S. government and East-West relations as long as Soviet forces continue to occupy that nation.

We have used, and will continue to use, every available opportunity, including the last meeting between Secretary Haig and Soviet Foreign Minister Gromyko, to urge the Soviets to enter into genuine negotiations for a peaceful settlement of the Afghan crisis.

In that spirit I want to address the claim made by the Soviet Union -- that its troops entered Afghanistan and must remain there as a result of foreign intervention against the Kabul government. The world is well aware that this is nothing more than propaganda designed to divert international attention from the sordid reality. The foreign interference in Afghanistan comes from the nearly 100,000 Soviet armed invaders. (Applause.)

The United States has consistently followed a policy of noninterference in Afghanistan's internal affairs. We similarly supported the non-alliance character of the previous Afghanistan government.

The fire of resistance in Afghanistan is being kindled and sustained not by outside forces but by the determination of the Afghan people to defend their national independence.

We and most other members of the international community have repeatedly stressed to the Soviets both publicly and privately that we have no objectives in Afghanistan beyond those set forth in the U.N. General Assembly resolutions. These are the withdrawal of the Soviet forces, the free exercise of self-determination for the Afghan people, the restoration of Afghanistan's non-alliance status, and the safe and honorable return of Afghan refugees to their homes.

Unfortunately, the Soviet Union has to date rejected all attempts to move toward an internationally acceptable solution. In 1980 it refused to receive emissaries of the Islamic Conference, who was to travel to Moscow to discuss a political solution. In 1981 it was the British foreign minister who was rudely rebuffed when he presented a very sensible proposal of the European community for a two-tiered international conference which is still on the table.

Finally, the Soviets have evaded the issue, insisting that the U.N. Secretary General seek a solution in Kabul, Islamabad, and Tehran rather than at the source of the aggression in Moscow.

The Soviet Union bears a grave responsibility for the continuing suffering of the Afghan people, the massive violations of human rights and the international tension which has resulted from its unprovoked attack. The Soviet Union must understand that the world will not forget -- as it has not forgotten the peoples of the other captive nations from Eastern Europe to Southwest Asia -- (applause) -- who have suffered from Soviet aggression. (Applause.)

This is the meaning of Afghanistan Day, that the Afghan people will ultimately prevail.

Coincidentally, the day after Afghanistan Day, this country plans to launch the third Columbia space shuttle. Just as the Columbia, we think, represents man's finest aspirations in the field of science and technology, so too does the struggle of the Afghan people represent man's highest aspirations for freedom. The fact that freedom is the strongest force in the world is daily demonstrated by the people of Afghan.

Accordingly, I am dedicating on behalf of the American people the March 22nd launch of the Columbia to the people of Afghanistan. (Applause.)

And in that same spirit I call on all Americans to observe Afghanistan Day in their thoughts, their prayers, their activities, and in their own renewed dedication to freedom. With the help of those assembled here today, the unanimous backing of the Congress and the support of the American people, I'm confident that this day will mark a true celebration and not just for freedom in Afghanistan but for freedom wherever it is threatened or suppressed the world over. (Applause.) Now, I shall sign the proclamation. (Applause.)

END

12:11 P.M. EST



By Eric Luse

Twenty-six of the 29 Afghanistan refugees stood in front of their barracks at Hamilton Field in Marin County

'We Are Here or We Are Dead'

Afghans Face Ouster by U.S.

By Randy Shilts

A confused and angry group of 29 Afghanistan refugees huddled in barracks at Hamilton Air Force Base in Marin County yesterday, some weeping because the United States has refused to grant them political asylum.

The refugees — several of whom are professional people — have been detained at the decommissioned air base since January 7 when they arrived from New Delhi at San Francisco International Airport and were rounded up by immigration authorities for not having proper documents.

The refugees now face deportation if the government's decision is not changed.

"If I knew I would be in this situation when I came here, I would have stayed in Kabul and let myself be shot by the Russians like most of my friends were," lamented Shazi Saif, 28, a former geography teacher.

In an order issued Tuesday refusing the refugees' application, David Ilchert, district director of the Immigration and Naturalization Service, conceded that the Afghans could fall within the legal guidelines for political asylum because they could face persecution if returned to the communist regime in Afghanistan.

However, Ilchert wrote, he denied asylum status because the families used fraudulent documents to gain entry into the United

States. Ilchert said the State Department's Bureau of Human Rights and Humanitarian Affairs supported his refusal of political asylum.

At the Novato air base yesterday afternoon, the refugees talked to a reporter through a translator from Aid to Afghan Refugees, which, with the help of the 2000 Afghan nationals in the Bay Area, has been providing clothing and money to the group.

The refugees said yesterday they were dumbfounded by the decision because they had spent the last two years listening to Voice of America broadcasts indicating that the American government deplored the current Russian-installed Afghanistan government.

"Many members of my family were slaughtered by the Russians," said Azizullah Alemazay, a member of the medical faculty of Kabul University. "I came with the hope of starting a new life here and helping the other refugees in Pakistan."

Alemazay's story is similar to many detained at the base. In June, he said, he walked for 10 days across the mountainous Afghan-Pakistani border with his pregnant wife and 2-year-old son after many of his university colleagues were executed by Russian troops in Kabul. In the Pakistani refugee camps, which now hold an estimated 2 million Afghan refugees, Alemazay said he found only sickness and starvation.

"We knew we wouldn't stay alive there, so we went to India," he said.

Once in New Delhi, however, his family, like many other Afghan refugees, found themselves treated as pariahs.

"Even if we had money to rent a home, no one would rent to us," said Abdul Hakim, who said he fled Afghanistan after he saw Russian soldiers machine-gun down Moslems leaving a prayer session at his mosque.

Hakim also said that Indian Communists, fearful of the Afghans' fierce anti-Communism, spread anti-Afghan agitation and murdered one Afghan family which was living on the streets.

Many of the refugees had applied for passports to America, but waiting lists were long and, they say, they were running out of money. Fake passports, however, were available on the New Delhi black market for \$100, so the 29 refugees, who had come to know each other on the crowded New Delhi streets, purchased the necessary exit papers and bought tickets to San Francisco on Japan Air Lines.

"It was necessary for us to leave whether we had the right papers or not," said Khaweni Alamzal. "Were the Russians going to give me papers after they had murdered so many of my friends? It was impossible to wait the two years it took to get the right American papers."

Once on the flight to San Francisco, the 29 refugees destroyed their phony passports, they said. Immigration authorities rounded them up as the left the plane here.

No immigration officials were available for comment on the matter last night, but in his order refusing political asylum, district immigration director Ilchert said the fraudulent documents, obtained after the refugees had formally applied for American visas, were the major reason the group should be refused political asylum.

"Asylum in the United States is intended to provide a sanctuary for persons fleeing persecution," wrote Ilchert. "Asylum is not intended to be a substitute for nor an alternative to immigration laws and policies of the United States, and should not become a vehicle of convenience for applicants who may wish to circumvent the immigration laws."

Such formalities of American law, however, confused the Afghans who said yesterday they thought they would be welcomed by Americans.

"People must understand that we did not come here for a better life," said Dr. Jamal Gollaluddin, who said he fled after he saw government troops poisoning guerrilla fighters in his hospital in Herat. "We are here or we are dead."

The refugees will appeal the ruling before an immigration judge at an administrative hearing tomorrow in San Francisco.

It was unclear last night where the refugees could be sent if deported, although Ilchert's decision indicated they would not be returned to Afghanistan.

Afghan refugee's long journey into bureaucratic limbo

By Jim Wood

Examiner staff writer

Azizullah Alemzay was sitting in his administrative office at Kabul University at the beginning of 1981 when the men walked in. They were dressed in civilian clothes and one asked him to get outside, they would like a word.

Today, living in a stark barracks at Hamilton Field in Marin County, Alemzay still doesn't like to talk about what happened next. The men were from the secret police.

Alemzay says that outside they showed him identification, a car rolled up and he was taken to a secret concentration camp set up for political prisoners. Speaking through a translator at Hamilton, Alemzay said they put him through "a great deal of hardship in order to make me confess." He was beaten, he says, but he would not give up.

His crime? He was suspected of being a sympathizer with anti-Russian Afghans operating over the border in Pakistan.

The basis for the charge, according to Alemzay, was one of those nightmares that occurred after the Russians

arrived, when an entire nation found it difficult to separate the normal from the insane.

Alemzay's wife, Leila, is the first cousin of a former Afghan Cabinet minister prominent in anti-Russian activities across the border. And Alemzay had received a letter from the minister. Although it might strengthen his appeal for U.S. political asylum to say that he was working against the regime, Alemzay says that actually the letter was simply a routine note, that the Russian-backed secret police were mistaken. A civil servant, he had been staying clear of political activities. He says he was taken by surprise when he was hauled off to jail.

The arrest was to set off a chain of events that sent Alemzay, with his pregnant wife and 2-year-old daughter, halfway around the world.

After three weeks of prison, Alemzay was able to pay 20,000 afghanis — about \$500 — to one of the jailers in exchange for freedom. Supposedly the money was bail, but actually it was a bribe, he says.

Upon leaving jail, Alemzay went straight to his home in a residential



Examiner/Judith Carlson

Afghanistan refugee family at Hamilton Field barracks: Caught in a Catch-22 battle with U.S. officials

area of Kabul and stayed there, afraid to be seen on the streets or to go to work. The family decided to flee.

The roads outside Kabul were impassable, blocked by freedom fighters, but Alemzay obtained airline tickets for his family from Kabul to

Khost, the center of his native province of Paktia and a short distance from the Pakistan border. In Khost, they joined a procession headed on foot for Pakistan, a distance a healthy man could probably cover in 24 hours. It took Alemzay 10 days.

Leila, pregnant, was able to hitchhike occasionally on a donkey led by another family in the exodus. Occasionally their toddler daughter was able to ride on the animal, too. The rest

—See Page B7, Col. 1

Afghan refugees fight U.S. efforts to deport them

—From Page B1

of the time she was carried.

In the roadway, the Soviet soldiers had scattered combs, pens and children's toys. The refugees gave the trinkets wide berth, fearful that they might trigger boobytraps.

The family made its way to Pakistan, then to a refugee camp in India. There it encountered what Tim Power, one of the team of attorneys working on behalf of Alemzay and 28 other Afghans at Hamilton, calls a Catch-22 situation.

Some 3 million Afghans have fled the Russian invasion and become refugees. Yet the U.S. quota for refugees from the Middle East, including Iraq and Iran, is 5,000 a year. Realistically, says David Ilchert, district director of the U.S. Immigration and Naturalization Service, there was almost no chance that, going through normal channels, Alemzay and his family could enter the United States.

Instead the family joined a group of Afghans who flew to the United States and asked for political asylum. Ilchert says that there is no limit to those granted asylum but that because the group entered the United States illegally — the government maintains they used forged papers to get on a Japan Airlines flight to the United States — they are not eligible for asylum.

Denying the group entered the United States illegally, Power says that if the Afghans had

wanted to go through normal channels they almost surely would not have been able to enter at all. The political asylum provision of the 1980 immigration act was designed for people in the Afghans' position, he maintains.

Under the law, the Afghans' first hope for asylum was from Ilchert. He could, if he chose, grant asylum. He decided not to on grounds that they had entered the country illegally and that they were in no danger in India — that they could have stayed there if they wanted.

This decision, handed down Feb. 16, was not final. The Afghans could have a hearing before Immigration Judge Bernard Hornbach at which the case would be weighed *de novo*, as if it were a completely fresh case. Alemzay and his family are scheduled to be heard first. The hearing is scheduled April 12. The other cases will be heard over the succeeding several weeks. If the immigration judge rules in favor of the Afghans, then Ilchert could appeal the finding if he chose.

Meanwhile, the 29 have been paroled. Technically they are free to leave Hamilton and go where they choose, although Ilchert has rejected their pleas for work permits.

Tom Kelty, representing Aid for Afghan Refugees (AFAR), a volunteer committee composed primarily of former Peace Corps and State Department members who were stationed in Afghanistan, says that with no cars it is a two-

hour bus ride for the Afghans to come into San Francisco.

When the group first arrived, they were cared for by Japan Airlines, but that money is running out. Bill Anderson of Inter-Governmental Committee for Migration, which operates the refugee center at Hamilton, says he just plain doesn't know where the money will come from to continue feeding the Afghans at the base.

Placing the Afghans off-base has been difficult, Kelty says. Families willing to help are taking on a major responsibility because the Afghans are not allowed to work. It means that the sponsoring family must pay for food and care for the Afghans. Members of the Afghan community in the Bay Area, most of them recent arrivals, simply do not have the resources to take on such a major responsibility, he says.

In one case, a family learned of a home in Fremont occupied by another group of Afghans. But when an AFAR representative checked out the place, Kelty says, he found 14 other Afghans already there and unable to take on the expense of feeding another family.

Glen Lum, another of the attorneys representing the Afghans, says their situation is like the 1939 case of some 900 Jewish refugees from Nazi Germany who attempted to land in Florida and were turned away by the United States

government.

He and others sympathetic to the 29 Afghan at Hamilton say they hope it doesn't happen again.

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SIM

1 MELVIN K. NAJARIAN, ESQ.
2 GLENN Y. LUM, ESQ.
3 TIMOTHY H. POWER, ESQ.
4 Haas & Najarian
5 530 Jackson Street
6 Suite 303
7 San Francisco, CA 94133
8 Telephone: (415) 788-6330

9 Attorneys for Applicants

10
11 IMMIGRATION AND NATURALIZATION SERVICE
12 UNITED STATES DEPARTMENT OF JUSTICE
13 SAN FRANCISCO, CALIFORNIA

14 In the Matter of:) File No. A24 962 808
15)
16 AZIZULLAH ALEMZAY,) TRIAL BRIEF
17)
18 In Exclusion Proceedings)
19)
20)
21)
22)

23 I

24 INTRODUCTION

25 On January 8, 1982 Japan Airlines flight 002 arrived
26 in San Francisco, California. Aboard that flight were twenty-
27 nine Afghan nationals fleeing from their homes after the Soviet
28 invasion of Afghanistan. All had spent a relatively short time
in India and then proceeded to the United States to seek asylum.
These refugees came to the United States because they knew the
United States had publicly condemned the Soviet invasion of
their homeland and believed they would find a safe haven in this
country.

Upon arriving in San Francisco without any travel docu-
ments, but United Nations documentation of their refugee status,

1 they were detained by immigration officials and not allowed to
2 enter the country. Shortly thereafter the refugees submitted
3 applications for asylum on Form I-589, as required by the
4 regulations promulgated under The Refugee Act of 1980; Pub. Law
5 96-212 (hereafter "Refugee Act"), to the District Director of
6 the San Francisco office of the Immigration and Nationality
7 Service (hereafter "Service"). The applications were denied.

8 This trial brief will discuss the reasons why the Appli-
9 cants are "refugees" within the meaning of Section 101(a)(42)(A)
10 of the Immigration and Nationality Act of 1952, as amended
11 (hereinafter "the Act") and therefore entitled to the protection
12 available under Sections 208 and 243(h) of the Act. It will also
13 discuss the legal principles applicable to the present hearings.

14 II

15 STATEMENT OF THE CASE

16 Applicants face exclusion under the Act as an aliens not in
17 possession of a valid labor certification Section 212(a)(14) and
18 as aliens not in possession of a valid unexpired immigrant visa
19 Section 212(a)(20).

20 Although the District Director made a determination, based
21 upon a State Department finding, that all twenty-nine Afghans
22 were "refugees" within the meaning of Section 101(a)(42)(A) of
23 the Act, he denied their applications for asylum. The
24 determination not to grant asylum was based upon the
25 recommendation of the State Department which alleged the Afghans
26 had purchased documents abroad so they could travel to the
27 United States. All of the decisions denying relief were worded
28 identically without any regard given to differences among their

1 situations.

2 The decision to deny the requested relief was served upon
3 the refugees on February 16, 1982 and they were all ordered to
4 appear at exclusionary proceedings on February 19, 1982.

5 At the original hearing on February 19, 1982, Applicants
6 submitted to the Immigration Court a Request for Asylum pursuant
7 to Section 208 of the Act and, in the alternative, withholding
8 of deportation pursuant to Section 243(h) of the Act. The
9 hearing on this matter was continued until April 12, 1982.

10 III

11 STATEMENT OF FACTS

12 At the hearing on this matter, Applicants will prove the
13 following facts which establish that they are refugees within
14 the meaning of the Refugee Act and entitled to a grant of asylum
15 under Section 208 of the Immigration and Nationality Act.¹

16 A. General Conditions in Afghanistan

17 In February 1982 the State Department submitted a report²
18 to the Committee on Foreign Affairs of the House of
19 Representatives and the Committee on Foreign Affairs of the
20 Senate relating to the general conditions of repression and
21 persecution that exist at the present time and existed at the
22 time Applicants fled. This comprehensive report by the State
23 Department will be supplemented by the testimony of Dr. Nake M.
24 Kamrany, Professor of Economics at the University of Southern
25 California, who is an expert on the conditions existing in
26 Afghanistan and was recently invited to the White House to brief
27 President Reagan on those conditions. In addition, Applicants
28 will submit extensive documentary evidence from news sources as

1 well as organizations such as Amnesty International to show the
2 general religious and political repression and persecution that
3 exists against those Afghans who are opposed, or suspected of
4 being opposed, to the present government of Afghanistan and the
5 occupying Soviet troops. (See accompanying Exhibits)

6 B. Evidence of Persecution of the Applicants

7 Applicants do not intend to rely upon these general
8 conditions of repression and persecution that exist in
9 Afghanistan in asking this Court for asylum. They were
10 subjected not only to threats of persecution but endured actual
11 persecution prior to their flight from Afghanistan.

12 1. In Afghanistan

13 Azizullah and Laila Alemzay, were born in Afghanistan on
14 August 10, 1953 and April 7, 1960, respectively. They have two
15 children: Palwasha, born on May 6, 1979, in Afghanistan, and
16 Abdullah, born on October 15, 1981, in India. Mr. Alemzay was
17 working in the accounting department of the Medical Faculty of
18 the University of Kabul at the time they left. The family
19 enjoyed an "upper middle class" economic position and owned both
20 real and personal property of some value.

21 Mrs. Alemzay's family had been suspected of being
22 political opponents to the various governments in Afghanistan
23 since 1973, when the last royal family had been overthrown. The
24 family had been suspect because Mrs. Alemzay's cousin was
25 Minister of Information and Culture under the royal government.
26 Additionally, members of the family had fled from the country,
27 and, at the time of the Soviet invasion, were in India and
28 Pakistan and active in the resistance to the communist

1 government. Because Afghan society is based upon the concept of
2 a tribal or extended family, the communist government put all of
3 the members of the family under surveillance. Furthermore, no
4 passports thereafter were issued to any family member.

5 After the Soviet invasion of Afghanistan in December 1979,
6 Mr. Alemzay participated in the major anti-communist demon-
7 strations of 1980, for which he was arrested and incarcerated
8 for five days, and also arranged to have underground
9 organizations use his home for secret anti-communist meetings.

10 Although Mr. Alemzay was careful not to let his
11 anti-communist views be publicly known, in February 1981 the
12 Afghan secret police came to Mr. Alemzay's office located at the
13 University, accused him of distributing anti-government
14 literature, and took him to prison.

15 Initially, Mr. Alemzay was placed in a cell so small that
16 he could not stand up. During this time in solitary confine-
17 ment, Mr. Alemzay was given neither food nor water. After three
18 days he was moved to a larger cell with three other men. The
19 secret police attempted to force him to confess that he was a
20 traitor. When he refused, he was given electric shock treat-
21 ments and beaten on the kidneys with a rod.

22 Mr. Alemzay also heard from the other men in the cell that
23 other prisoners were being tortured. He heard stories that
24 prisoners had their nails pulled out with metal pliers, their
25 eyes gouged out, their lips turned inside out, and were jumped
26 upon by men wearing heavy, nailed boots.

27 Mr. Alemzay feared he would also be a victim of such
28 torture because he would not confess. However, Mr. Alemzay

1 refused to cooperate with the secret police or to confess that
2 he was a traitor. After a total of 21 days of imprisonment and
3 torture, Mr. Alemzay managed to leave the police facility alive.

4 Mr. Alemzay also had members of his immediate family killed
5 by the communist government. In 1979, one of his brothers was
6 apprehended, imprisoned, tortured, and killed by the Afghan
7 authorities and his mother and aunt died during an attempted
8 escape from Afghanistan.

9 2. Fleeing Afghanistan

10 Within a few weeks of Mr. Alemzay's release from prison, the
11 Applicants, with their young daughter, escaped from Afghanistan
12 into Pakistan and eventually went to India. At the time of their
13 flight, Mrs. Alemzay was pregnant and their second child was
14 born in India.

15 The Alemzays stayed in Pakistan and India for approximately
16 10 months. The family had fled Afghanistan without any travel
17 documents and they had to obtain a passport from the freedom
18 fighters in order to travel from Pakistan to India.

19 During this time, Mr. Alemzay found that life was very
20 difficult for his family. His wife was soon to have a child and
21 it was almost impossible to obtain proper medical care for her.
22 In addition, when application was made at the American Embassy
23 in India for refugee status he was told that he would have to
24 wait until after the child was born because no application could
25 be given to a woman who was pregnant. The Alemzay family waited
26 in India for several months living on a subsistence provided by
27 the United Nations after it determined they were political
28 refugees.

1 Convinced that they would be welcomed in the United States
2 because of the United States Government's wide public and
3 international support of the Afghan freedom fighters and
4 refugees, Mr. Alemzay decided to proceed to the United States
5 and seek political asylum.

6 Through a person named Qadir, Mr. Alemzay obtained what he
7 believed to be valid travel documents with which the family
8 could travel to the United States. Qadir also arranged for the
9 Alemzay family to travel to Madras, India, where a ticket could
10 be purchased for a flight to America. The trip to Madras was by
11 train. Immediately prior to the departure of the train, Qadir
12 told them that the travel documents he provided the family were
13 in fact invalid.

14 During the trip to Madras, the Alemzays discovered that
15 there were several other Afghans on the train who were in the
16 same position. They all bought tickets on the same flight to
17 the United States. Qadir had told all of the Afghans that they
18 should destroy the travel documents he had provided them before
19 they reached the United States. In the belief that the only
20 document that was important for their asylum request was the
21 United Nations documentation and determination of their refugee
22 status, the Applicants destroyed the rest of their papers during
23 the flight from Japan to America.

24 Upon arriving in the United States, Mr. Alemzay applied for
25 asylum. Notwithstanding a finding by the State Department and
26 the District Director that Mr. Alemzay was a refugee and subject
27 to political persecution in Afghanistan, the District Director
28 denied the asylum request.

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IV.

DISCUSSION OF LEGAL PRINCIPLES

A. Refugees' Rights Prior to 1980

In 1968 the United States became a signatory to the United Nations Protocol Relating to the Status of Refugees of 1967. This Protocol readopted all of the substantive provisions of the 1951 United Nations Convention Relating to the Status of Refugees.

As one of the contracting states the United States recognized the principle embodied in the charter of the United Nations that human beings shall enjoy fundamental human rights and freedoms without discrimination.

1. Statutory and Treaty Protections

The three Articles of the Protocol which directly affect the issues before this Court are Articles 1, 32, and 33.

The Protocol in Article 1 defined a refugee as a person who:

" . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . ."

Article 32, relating to "expulsion" provides in pertinent part:

"1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order."

Article 33 states that:

1 "No contracting state shall expel or return
2 ("refouler") a refugee in any manner whatsoever to
3 the frontiers or territories where his life or
4 freedom would be threatened on account of his
5 race, religion, nationality, membership of a
6 particular social group or political opinion.

7 Prior to the signing of the Protocol, the Secretary of
8 State sent a letter to the President with respect to Article 33,
9 stating in pertinent part:

10 "As stated earlier, foremost among the rights
11 which the Protocol would guarantee to refugees is
12 the prohibition (under Article 33 of the Con-
13 vention) against their expulsion or return to any
14 country in which their life or freedom would be
15 threatened. This article is comparable to Section
16 243(h) of the Immigration and Nationality Act . .
17 . and it can be implemented within the admini-
18 strative discretion provided by existing
19 regulations. (Emphasis added) S. Exec. Comm.,
20 90th Cong., 2d Sess. at VIII.

21 Section 243(h) of the then existing Immigration and
22 Nationality Act provided:

23 "The Attorney General is authorized to
24 withhold deportation of any alien within the
25 United States to any country in which in his
26 opinion the alien would be subject to persecution
27 on account of race, religion, or political opinion
28 and for such period of time as he deems necessary
for such reason." (Emphasis added)

Thus, Section 243(h) of the Immigration Act in existence
prior to the enactment of the Refugee Act granted relief to
aliens who were subject to persecution. Under that section the
grant of relief was not mandatory but discretionary. Therefore,
it closely parallels the basis for, and grounds upon which,
asylum may be granted under Section 208 of the Refugee Act.

2. Limited Discretion to Deny Relief
Under Former Section 243(h).

In 1973 the Board of Immigration Appeals was called upon to
reconcile an apparent conflict between the wording of Article 33

1 of the United Nations Convention which seemingly spoke in
2 mandatory terms; "No Contracting state shall expel or return..."
3 and the discretionary granting of relief under Section 243(h).
4 The Board concluded: "[c]lose analysis reveals, however, that
5 there is no real conflict between the two provisions." Matter
6 of Dunar, 14 I&N 310,321 (1973). After reviewing the ancestor
7 provisions to the then existent 243(h) the Board stated:

8 "Section 243(h), on the other hand, is cast
9 in far different terms. Instead of directing that
10 no alien 'shall be deported,' section 243(h)
11 merely 'authorizes' the Attorney General to
12 withhold deportation. Instead of referring to a
13 'finding' by the Attorney General, section 243(h)
14 makes reference only to his 'opinion.' Under the
15 circumstances it is not surprising that the cases
16 have construed section 243(h) as giving the
17 Attorney General a 'broad discretion' to withhold
18 deportation. [Citations omitted]

19 "It seems clear that the humanitarian values
20 sought to be covered by section 243(h) distinguish
21 it from the Act's other provisions for discretion-
22 ary relief from deportation in which the Attorney
23 General is given power, in his discretion, to
24 grant relief to aliens who meet the prescribed
25 eligibility requirements. Those provisions
26 involve a two-stage proceeding: (1) the
27 establishment of statutory eligibility; (2) the
28 exercise of administrative discretion, favorably
or unfavorably to the alien, by the Attorney
General or his delegate. The cases are legion
that even where statutory eligibility is made out,
relief may still be denied in the exercise of
discretion. [Citations omitted]

"While the section 243(h) cases also speak in
terms of the Attorney General's discretion, we
know of none in which a finding has been made that
the alien has established a clear probability that
he will be persecuted and in which section 243(h)
withholding has nevertheless been denied in the
exercise of administrative discretion. We are
fortified in this view by the statement of the
Service's Appellate Trial Attorney in his brief
before us[set forth below]. It is highly probable
that in referring to the Attorney General's 'broad
discretion' under section 243(h), the cases
contemplate the manner in which the Attorney
General arrives at his opinion and the limited
scope of judicial review, rather than the

1 eligibility-discretion dichotomy." Matter of
2 Dunar, supra., 321-322.

3 The position of the Immigration Service as argued in its
4 brief before the Board in Dunar was set forth in a footnote in
5 the decision:

6 "'In actual practice there has been no case
7 under section 243(h) in which it has been held that
8 the Attorney General's discretion dictated the
9 deportation of an alien to a country where there
10 was a well-founded reason to believe that he would
11 be persecuted. If such a contingency were to
arise, it is inconceivable that it could arise in
anything other than the context permitted under
paragraph 2 of Article 33, namely, national
security or danger to the community.'" Matter of
Dunar, supra., 322, footnote 20. (Emphasis added)

12 This declaration of the Attorney General's limited
13 discretion under former Section 243(h) in Dunar, and the
14 Service's statement that the only conceivable basis for denying
15 relief to a person found to be a refugee was national security
16 or danger to the community, has never been challenged by the
17 Service. See, Matter of Chukumerije 15 I&N 520 (1975); and
18 Matter of Francois 15 I&N 534 (1975). Thus, for almost a
19 decade the Service has followed the position that Section 243(h)
20 did not contain an independent basis for the denial of relief
21 within the Attorney General's "broad discretion" embodied in
22 that section. Only a refugee who was found to be a security
23 risk or "a danger to the community because convicted of a
24 particularly serious crime" could be refused relief. Matter of
Dunar, supra., 323.

25
26 3. Restrictions Based Upon a Refugee's Being
"Within" the Country, or "Lawfully" Present

27 There were two restrictions contained in the United Nations
28 Convention and Section 243(h) which affected a refugee's

1 entitlement to relief: the requirement in Article 32 that a
2 refugee be "lawfully" present in the country and that found in
3 Section 243(h) that the refugee be "within" the country.

4 Again, it was the Dunar decision which settled the question
5 of what constituted a refugee "lawfully" in the country. In
6 that matter the alien had originally entered the country legally
7 on a valid non-immigrant visa. However, he overstayed the time
8 limitation on his legal entry. When he was faced with
9 deportation he claimed that Article 32 precluded his being
10 expelled. The Board rejected this claim on the basis that by
11 overstaying he was no longer "lawfully" in the country even if
12 his original entry had been legal. Dunar, supra. at 318

13 Under former Section 243(h) relief from deportation was
14 only available to those who would be subject to persecution and
15 were within the United States.

16 According to the cases decided under Section 243(h),
17 "within" meant that the alien had to make an "entry" pursuant to
18 the Immigration and Nationality Act. Therefore, an alien was
19 not within the country unless he made an entry notwithstanding
20 his physical presence. Kaplan v. Tod, 267 U.S. 228 (1925); Leng
21 Ma v. Barber, 357 U.S. 185 (1958).

22 Consequently, if an alien, by whatever means, managed to
23 "slip by", then he was able to engineer an "entry" and he was
24 thus within the United States. This situation produced a
25 self-evident paradox: an alien who managed to gain "entry" by
26 illegal means could be rewarded while an alien who legally
27 presented himself for inspection could not. Even though the
28 former might be deportable as an undocumented alien, he was

1 still legally entitled to seek relief pursuant to Section
2 243(h). The latter, on the other hand, was "pleading at the
3 gate" and was not "within" the country. Hence, he was subject
4 to exclusion, thereby making him ineligible to even request
5 relief under section 243(h). Matter of Pierre, 14 I&N 467
6 (1973).

7 B. The Asylum Provisions of the Refugee Act of 1980

8 1. General Purpose of the Refugee Act

9 The Refugee Act was an attempt by Congress to enact a
10 "coherent and comprehensive U.S. refugee policy." House Report
11 96-608. This was a conscious attempt by Congress to organize an
12 area of the immigration law which had grown in an ad hoc basis
13 of attempting to meet one problem at a time as it arose without
14 overall direction.

15 "The Congress declares that it is the
16 historic policy of the United States to respond to
17 the urgent needs of persons subject to persecution
18 in their homelands, including, where appropriate,
19 humanitarian assistance for their care and
20 maintenance in asylum areas, efforts to promote
21 opportunities for resettlement or voluntary
22 repatriation, aid for necessary transportation and
23 processing, admission to this country of refugees
24 of special humanitarian concern to the United
25 States, and transitional assistance to refugees in
26 the United States. The Congress further declares
27 that it is the policy of the United States to
28 encourage all nations to provide assistance and
resettlement opportunities to refugees to the
fullest extent possible." Section 101(a) of the
Refugee Act.

24 In the House of Representatives the study that went into
25 the drafting of the Refugee Act was stressed:

26 "This is not a simple piece of legislation.
27 It is a complicated response to an almost insoluble
28 problem. My Subcommittee on Immigration, Refugees,
and International Law held 5 long days of hearings
on the bill in May of this year, in addition to

1 numerous other hearings and briefings...

2 "From this voluminous hearing record and after
3 2 days of markup, the Judiciary Committee fashioned
4 the bill we bring before you today...." Comments
5 of Ms. Holtzman, 125 Cong. Rec. H 11966, December
6 13, 1979.

7 Prior to the enactment of the Act, the immigration laws of
8 this country contained no asylum procedure. One of the specific
9 purposes of the Refugee Act was to create, for the first time, a
10 statutory asylum procedure. Cong. Rec. H 11967, December 13,
11 1979.

12 "For the first time, Mr. President, this Act
13 establishes a clearly defined asylum provision in
14 the United States immigration law. It...can be
15 used to grant asylum to persons within the United
16 States or to person reaching our shores who can
17 claim to be refugees. This provision also conforms
18 to our international treaty obligations under the
19 United Nations Convention and Protocol Relating to
20 the Status of Refugees.

21 "It is the intention of the Congress that the
22 Attorney General should immediately create a
23 uniform procedure for the treatment of asylum
24 claims filed in the United States or at our ports
25 of entry. Present regulations and procedures now
26 used by the Immigration Service simply do not
27 conform to either the spirit or to the new
28 provisions of this Act." Statement by Sen.
Kennedy, 126 Cong. Rec. S 1755, February 26, 1980.

19 2. Asylum

20 Section 208 of the Refugee Act provides:

21 "The Attorney General shall establish a
22 procedure for an alien physically present in the
23 United States or at a land border or port of
24 entry, irrespective of such alien's status, to
25 apply for asylum, and the alien may be granted
26 asylum in the discretion of the Attorney General
27 if the Attorney General determines that such alien
28 is a refugee within the meaning of section
101(a)(42)(A)." (Emphasis added)

26 A refugee, for purposes of the asylum provision is:

27 "[A]ny person who is outside any country of
28 such person's nationality, or in the case of a

1 person having no nationality, is outside any
2 country in which such person last habitually
3 resided, and who is unable or unwilling to return
4 to, and is unable or unwilling to avail himself or
5 herself of the protection of, that country because
6 of persecution or a well-founded fear of per-
7 secution on account of race, religion, nation-
8 ality, membership in a particular social group, or
9 political opinion...

10 "The term 'refugee' does not include any
11 person who ordered, incited, assisted, or other-
12 wise participated in the persecution of any person
13 on account of race, religion, nationality, member-
14 ship in a particular social group, or political
15 opinion." Section 101(a)(42)(A) Immigration and
16 Nationality Act.

17 Therefore, in order to be eligible to request asylum under
18 Section 208 of the Refugee Act, an alien must show he is: (1)
19 physically present in the United States and, (2) within the
20 definition of refugee as set out above. No more than this is
21 required.

22 3. Withholding of Deportation

23 Section 243(h) of the Refugee Act provides:

24 "(1) The Attorney General shall not deport or
25 return any alien (other than an alien described in
26 section 241(a)(19) [Nazi provisions]) to a country
27 if the Attorney General determines that such
28 alien's life or freedom would be threatened in such
country on account of race, religion, nationality,
membership in a particular social group, or
political opinion.

(2) Paragraph (1) shall not apply to any
alien if the Attorney General determines that--

(A) the alien ordered, incited, assisted,
or otherwise participated in the per-
secution of any person on account of
race, religion, nationality, membership
in a particular social group, or poli-
tical opinion;

(B) the alien, having been convicted by a
final judgment of a particularly serious
crime, constitutes a danger to the
community of the United States;

1 (C) there are serious reasons for con-
2 sidering that the alien has committed a
3 serious nonpolitical crime outside the
4 United States prior to the arrival of the
5 alien in the United States; or

6 (D) there are reasonable grounds for
7 considering the alien as a danger to the
8 security of the United States."

9 Under this section the withholding of deportation is
10 mandatory once an alien shows his life or freedom would be
11 threatened. McMullen v. Immigration and Naturalization Service,
12 658 F.2d 1312 (9th Cir. 1981).

13 4. Sections 208 and 243(h) of The Refugee Act
14 Extend Broader Relief to Refugees than
15 Was Previously Available.

16 In addition to adding an asylum provision for the first
17 time to the Immigration and Nationality Act and making
18 withholding of deportation mandatory, the Refugee Act also
19 removed any requirement that a refugee establish "lawful"
20 presence or that he be "within" the United States in order to
21 seek relief under the asylum or withholding of deportation
22 procedures. As noted above, both of these requirements could
23 result in an otherwise meritorious refugee claim being denied.

24 Section 208 merely requires "physical presence" in the
25 United States or a "port of entry." Thus, the asylum provision
26 in the Refugee Act abandoned the concept of "lawfully in" a
27 country under Article 32 of the United Nations Protocol. This
28 was no mere accident. It was enacted specifically with the
knowledge of Congress that bona fide refugees often are forced
to travel without any legal travel documents. Congressman
Fascell addressed the foregoing on the House floor:

"It was felt by the international community that an

1 individual who was in such fear of persecution as to be
2 willing to leave his country of nationality, had gone a
3 long way toward proving his case for refugee status, for
4 people do not generally flee their home countries, often
without documentation, absent strong reasons." 125 Cong.
Rec. H 12369, December 20, 1979.

5 The question of whether aliens who entered illegally would
6 be eligible for asylum status was again raised just prior to the
7 final vote of the House adopting the Refugee Act.

8 "Mr. Pepper:

9 What I wanted to say is what is going to
10 be the law of the future relative to the Haitians
11 that come in illegally, that is without permission
of anybody, and are just there? Are they going to
be given asylum and, if so, how many are going to
be permitted to come in and how many will be
permitted asylum?"

12 "Ms. Holtzman:

13 With respect to the problem of the
14 Haitians, this bill sets up for the first time in
15 this country's history a statutory procedure for
16 asylum. Whether any particular Haitian will
qualify under the law for asylum is a matter to be
determined by the Attorney General under
appropriate regulations." 126 Cong. Rec. H 1528,
March 4, 1980.

17 Consequently, Section 208 expands the scope of protection
18 afforded refugees. Now, the alien need only be physically
19 present in the United States irrespective of immigration status.
20 It is now irrelevant how a refugee arrived in the United
21 States.³

22 C. Proposed Legislation Supports Applicants

23 The intent of Congress in making asylum available to a
24 refugee irrespective of his status or how a prospective asylee
25 arrived in the United States is amplified by "Immigration Reform
26 and Control Act of 1982" presently pending before Congress.
27 This Bill was introduced in the House of Representatives and in
28 the Senate on March 17, 1982 by Representative Mazzoli and

1 Senator Simpson.

2 Representative Mazzoli is the Chairman of the Subcommittee
3 on Immigration, Refugees and International Law of the House
4 Committee on the Judiciary. Senator Simpson is Chairman of the
5 Subcommittee on Immigration and Refugee Policy of the Senate
6 Committee on the Judiciary. This Bill, introduced by the
7 Chairmen of the House and Senate Subcommittees on Immigration,
8 in Title 1, Part C, §124 (a copy of the Bill is attached hereto
9 in Exhibit) makes several important amendments to Sections 208
10 and 243(h).⁴

11 A comparison of the proposed new Section 208(a)(1)(A) of
12 the Bill with the current Section 208(a) shows the elimination
13 of all references to the language that caused the District
14 Director in denying relief to these Applicants to erroneously
15 rely upon the "discretion" language. The Bill conforms the
16 language to what the cases made clear, and to what the intent of
17 the law is under the current Section 208, that is, the District
18 Director has no "discretion" to refuse to grant asylum after he
19 has determined that the Applicant is a refugee.

20 The intent of the new Section 208(a)(1)(A) of the Bill
21 (again it is emphasized that it was submitted by the Chairmen of
22 the Immigration Subcommittees of both Houses of Congress) is to
23 remove any doubt as to the intent of the current Subsection (a)
24 of Section 208 to conform to the clear principle that "any alien
25 physically present in the United States or at a land border or
26 port of entry may apply for asylum" and that the inquiry under
27 the new procedure and Section 208(a)(4) of the Bill is limited
28 to only whether the alien is a refugee. (See Declaration of

1 Melvin K. Najarian attached as an Exhibit.)
2

3 D. Basis for Determining Whether Applicant has been
4 Subject to Persecution or has a Well-founded Fear
5 of Persecution

6 Persecution has been defined as "the infliction of
7 suffering or harm...in a way regarded as offensive", Kovac v.
8 Immigration and Naturalization Service , 407 F.2d 102, at 104
9 (9th Cir. 1969). The Immigration and Naturalization Service
10 refused to acquiesce to the Kovac decision. Moghanian v. U.S.
11 Dept. of Justice, 577 F.2d 141, 142 (9th Cir. 1978). Rather,
12 the Service adopted the position that the language of the
13 Protocol, which speaks of threats to "life or freedom" serves as
14 the test for persecution. In Re Dunar, 14 I&N 310 (1973).

15 However, any distinction between the "persecution" test
16 applied by the federal courts or the Board of Immigration
17 Appeals is immaterial as, under either test, Applicants qualify
18 as having been subjected to persecution or having a well-founded
19 fear of persecution.

20 In the matter of In Re Joseph, 19 I&N 70 (1968), the Board
21 of Immigration Appeals cited Lena v. Immigration and
22 Naturalization Service, 379 F.2d 536, 538 (7th Cir. 1967) where
23 the court stated a policy restricting the favorable exercise of
24 discretion to cases of clear probability of persecution of the
25 particular individual. The Board also cited Cheng Kai Fu v.
26 Immigration and Naturalization Service, 386 F.2d 750 (2nd Cir.
27 1967), Cert. denied 390 U.S. 1003, which held that an alien must
28 show that he would be singled out as an individual by the
government authorities and suffer persecution therefrom in order

1 to establish a clear probability of persecution.

2 In Joseph, the Board found that as a result of being a
3 political opponent of the Duvalier regime in Haiti, the
4 respondent was arrested, beaten up, and taken to jail for no
5 reason. The Board also found that if respondent were to return
6 to Haiti that he would be apprehended at the airport and killed
7 without any ceremony. These facts showed met the burden of
8 showing "singling out" for persecution under the above test.

9 The Board of Immigration Appeals In Re Janus and Janek, 12
10 I&N 866 (1968) held that where the alien's departure was
11 politically motivated and then any consequences he faced upon
12 return were political in nature and were very important factors
13 in determining whether the respondent would be subject to
14 persecution upon return.

15 Congress has expressed a desire to protect aliens who would
16 face punishment for illegal departure if they returned to their
17 homeland.⁵ However, this concern was tempered by a fear that if
18 all illegal escapees from countries with strict travel
19 restrictions must be given asylum, the United States would be
20 forced to grant refugee status to countless aliens, many of whom
21 may be apolitical seeking the economic benefits of living in
22 this country.

23 Consequently, case law has developed two requirements that
24 an alien must comply with in order to obtain asylum based on
25 threatened punishment for illegal departure: (1) he must show
26 that the travel restriction is political, and (2) he must show
27 that his own flight was politically motivated.⁶

28 Although these cases dealt with situations where there was

1 a specific status or law making unauthorized departure illegal,
2 the same principles should apply to a situation where there will
3 be actual punishment or persecution for the unauthorized
4 departure.

5 It is clear that Afghanistan has restrictions on travelling
6 abroad.

7 "There are many restrictions on foreign
8 travel. Legal permission to go abroad has been
9 curtailed. Professionals such as doctors or
10 engineers generally are denied passports for fear
11 that they will not return. Businessmen can still
12 obtain passports, but it is reported that many
13 Afghans are forced to pay bribes, sometimes in
14 excess of \$1,000 to have a passport issued to
15 them. In addition, bank or property deposits as
16 high as \$1,000 are often asked of Afghans applying
17 to leave the country temporarily. Afghan pilgrims
18 to Mecca have been issued travel documents valid
19 only for the pilgrimage, in an effort to require
20 their return to Afghanistan.

21 While legal emigration is thus vitually
22 impossible, large numbers of Afghans continue to
23 depart the country, more or less clandestinely,
24 and to seek refuge abroad. Most estimates place
25 the number of Afghans who have sought refuge
26 aboard at almost three million. (This represents
27 about 20 percent of Afghanistan's population.)

28 Because of the nature and political reasons for Applicants
departure, clearly upon return to Afghanistan, Applicants will
be subject to actual persecution.

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V.

CONCLUSION

For all of the above reasons, Applicants request that this Court determine, under the legal principles as set forth above, that they are refugees within the meaning of the Section 208 of the Immigration and Naturalization Act and that they are entitled to asylum within the United States.

Respectfully submitted,



Melvin K. Najarian,
Timothy H. Power,
Glenn Y. Lum,
Attorneys for Applicants

1 FOOTNOTES TO TRIAL BRIEF

2 1. Although the United Nations has determined that
3 Applicants are refugees and the District Director in the
4 original decision denying asylum made a factual determination
5 that the Applicants were subject to political persecution, the
6 Service has refused to stipulate in these hearings that the
7 Applicants are refugees.

8 2. Country Reports on Human Rights Practices for 1981:
9 Report Submitted to the Committee on Foreign Affairs, U.S. House
10 of Representatives and the Committee on Foreign Relations, U.S.
11 Senate 97th Cong., 2nd session, 926 (1982).

12 3. This position was recently adopted by an Immigration
13 Judge in a case which is strikingly similar to these matters.
14 His decision is not strictly a precedent-setting matter.
15 However, it is so closely related factually to the situation of
16 these twenty-nine Afghans that it should be considered. The
17 judge's decision is discussed in Matter of McMullen, 17 I&N ____
18 (October 1, 1980; ID No. 2831).

19 Like Dunar, McMullen was also a matter which initially
20 arose in the San Francisco District. McMullen entered the
21 United States as a nonimmigrant visitor using a false passport
22 bearing the name of Kevin O'Shaughnessy. An Order to Show Cause
23 was issued against him charging him with deportability as an
24 alien excludable at the time of entry for having procured a visa
25 by fraud or willful misrepresentation under Section 212(a)(19)
26 of the Act and as a nonimmigrant not in possession of a valid
27 nonimmigrant visa, Section 212(a)(26) of the Act.

28 At the deportation hearing the Immigration Judge found
McMullen eligible for asylum and withholding, and, determined
that he could not, under Matter of Dunar, supra, deny the
applications on discretionary grounds.

 On Appeal to the Board of Immigration Appeals the only
issue discussed was whether McMullen had shown eligibility for
asylum or withholding. Apparently no argument was made by the
Service that his entry using fraud or willful misrepresentation
barred him from the grant of relief. The only conclusion that
can be made is that the Service did not consider the entry using
fraud or willful misrepresentation as relevant to the issue of
granting asylum or withholding of deportation. In light of the
McMullen decision it is difficult to see how the Service can now
claim that any issue relating to documentation can properly be
raised in an asylum application where there is not even the
allegation that false documents were used to gain illegal entry.

 4. The proposed legislation deletes Subsection (a) of the
current Section 208 (8 U.S.C. 1158) and substitutes the
following:

 "\$208(a)(1)(A) Except as provided in
subparagraph (B), any alien physically present in
the United States or at a land border or port of
entry may apply for asylum in accordance with
this section.

1 "§208(a)(1)(B)(i) An alien against whom
2 exclusion or deportation proceedings have been
3 instituted may not apply for asylum more than 14
4 days after the date of the services of notice
5 instituting such proceedings unless the alien can
6 make a clear showing, to the satisfaction of the
7 administrative law judge conducting the
8 proceeding, that changed circumstances in the
9 country of the alien's nationality (or, in the
10 case of an alien having no nationality, the
11 country of the alien's last habitual residence),
12 between the date of notice instituting the
13 proceeding and the date of application for
14 asylum, have resulted in a change in the alien's
15 eligibility for asylum.

9 "§208(a)(1)(B)(ii) An alien who has
10 previously applied for asylum and had such
11 application denied may not again apply for asylum
12 unless the alien can make a clear showing that
13 changed circumstances in the country of the
14 alien's nationality (or, in the case of an alien
15 having no nationality, the country of the alien's
16 last habitual residence), between the date of the
17 previous denial of asylum and the date of the
18 subsequent application for have resulted in a
19 change in the alien's eligibility for asylum.

15 "§208(a)(2) Applications for asylum shall be
16 considered before administrative law judges who are
17 specially designated by the United States Immigration
18 Board as having special training in international
19 relations and international law. An individual who
20 has served as a special inquiry officer under this
21 title before the date of the enactment of the
22 Immigration Reform and Control Act of 1982 may not be
23 designated to hear applications under this section.

20 "§208(a)(3) A hearing on the asylum application
21 shall be open to the public, unless the Applicants
22 requests that it be closed to the public. The
23 Applicants is entitled to be represented by counsel
24 (in accordance with section 292), to present evidence,
25 and to examine and cross-examine witnesses. A
26 complete record of the proceedings and of all
27 testimony and evidence produced at the hearing shall
28 be kept. The determination of the administrative law
29 judge shall be based only on the evidence produced at
30 the hearing.

26 "§208(a)(4) An alien may be granted asylum only
27 if the administrative law judge determines that the
28 alien (A) is a refugee within the meaning of section
29 101(a)(42)(A), and (B) does not meet a condition
30

1 described in one of the paragraphs of section
2 243(h)(2).

3 "§208(a)(5) The burden of proof shall be upon an
4 alien applying for asylum to establish the alien's
5 eligibility for asylum.

6 "§208(a)(6) After making a determination on an
7 application for asylum under this section, an
8 administrative law judge may not reopen the proceeding
9 at the request of the Applicants except upon a clear
10 showing that, since the date of such determination,
11 changed circumstances in the country of the alien's
12 nationality (or, in the case of an alien having no
13 nationality, the country of the alien's last habitual
14 residence) have resulted in a change in the alien's
15 eligibility for asylum."

16 The Bill amends Subsection (b) of the current Section
17 208 to read as follows:

18 "§208(b) Asylum granted under section (a) may be
19 terminated if the Attorney General, pursuant to such
20 regulations as the Attorney General may prescribe,
21 determines that the alien (1) is no longer a refugee
22 within the meaning of section 101(a)(42)(A) owing to a
23 change in the circumstances in the alien's country of
24 nationality or, in the case of an alien having no
25 nationality, in the country in which the alien last
26 habitually resided, or (2) meets a condition described
27 in one of the subparagraphs of section 243(h)(2)."

28 The Bill adds a new Subsection (d) to the current
Section 208:

"208(d) The procedures set forth in this section
shall be the sole and exclusive procedure for
determining asylum."

Finally, the Bill amends Section 243(h) (8 U.S.C.
1253(h)) by adding, at the end, the following paragraph:

"(3) An application for relief under this
subsection shall be considered to be an application
for asylum under section 208 and shall be considered
in accordance with the procedures set forth in that
section."

5. Hearings to amend the Immigration and Nationality
Act, H.R. 7770 Before Subcomm No. 1 of the House Comm. on
the Judiciary, 88th Cong, 2nd session, 107-108 (1964).

1 6. Matter of Janus & Janek, 12 I&N Dec. 866, 873
2 (1968); Paul v. United States Immigration and
3 Naturalization Service, 521, F.2d 194, 196-97 (5th Cir.
4 1975).

5 7. Country Reports on Human Rights Practices for
6 1981: Report Submitted to the Committee on Foreign
7 Affairs, U.S. House of Representatives and the Committee on
8 Foreign Relations, U.S. Senate 97th Cong., 2nd session, 921
9 (1982).

AFFK

Afghan Gets Reagan Hug

Washington

President Reagan, gently hugging a young Afghan refugee, pledged yesterday that "the world will not forget" the rebels fighting Soviet troops who have occupied Afghanistan for the past two years.

Reagan signed a proclamation designating March 21 — the first day of spring and the start of the new year for Afghans — as Afghanistan Day. He also dedicated the third launch of the space shuttle Columbia on March 22 to the Afghan people.

Nahid Mojadidi, an Afghan teenager now studying in the United States, told an international audience gathered in the East Room of the White House that she had "witnessed the killing of my friends . . . and we will continue our war." After she unrolled and gave to Reagan a red, green and black Afghanistan flag, the president hugged her.

White House officials said the girl is now living on the West Coast, but they declined to say exactly where or to give any other information about her because her parents are still in Afghanistan.

Reagan was asked the difference between U.S. involvement in El Salvador and Soviet involvement in Afghanistan.

"They have a different standard of morality than we do," he replied. "We tell the truth."

In testimony before the Senate Foreign Relations Committee Monday, Deputy Secretary of State Walter Stoessel charged that, according to "very reliable information," Soviet chemical warfare killed at least 3042 people in Afghanistan between the summer of 1979 and the summer of 1981.

United Press



UPI Telephoto

**PRESIDENT REAGAN, NAHID MOJADIDI
A touching White House ceremony**

Asylum Sought

Judge Blasts U.S. In Afghans' Case

By Randy Shiltz

Immigration Judge Bernard Hornbach exploded angrily yesterday at government attorneys opposing political asylum for a family of Afghans. He accused them of making a shambles of the hearings and of keeping the Afghans in a "psychological prison."

The display of judicial temper was over the choice of an interpreter for the second day of hearings for Azizullah Alemazay, his wife and their two children, four of the 29 Afghan nationals who arrived in San Francisco in January in hopes of obtaining political asylum.

The 29 are appealing the decision of the local district director of the Immigration and Naturalization Service to deny them asylum.

At the beginning of the hearing, INS attorney Ron LeFevre refused to permit the interpreter used in past hearings to translate for the Afghans.

The interpreter INS provided said he could speak the Afghan dialect that Alemazay speaks, but the Afghans' attorneys quickly objected that the INS interpreter was grossly misinterpreting their questions, translating a query about what tribe Alemazay belonged to into a question about what crime he had committed.

When Hornbach pressed for the INS to clarify its position on the interpreter, LeFevre said, "It's hard to clarify."

"I know it is because it doesn't have any validity, that's why," Hornbach snapped. "I've never heard the government raise this objection before in any other case."

"This is a very embarrassing case for the government," said Melvin Najarian, one of the volunteer lawyers for the refugees. "On one hand, President Reagan has

Brown Seeks U.S. Funds For Refugees

Sacramento

Governor Brown asked the federal government yesterday to provide \$103 million for 136,000 refugees who have settled in California.

In letters to Congress and Department of Health and Human Services Secretary Richard Schweiker, Brown said refugee programs in California will run out of money by June unless the federal government changes its plans to "drastically reduce" its support.

Similar pleas were made by state Senate President Pro Tem David Roberti on April 2.

Brown's letter to Schweiker said, in part:

"Refugees are being flown to the United States at government expense and one-third are settling in California. It is estimated that 225,000 refugees now live in our state and 136,000 of them receive welfare and free medical care."

Brown said that federal aid reductions would cost California state and county governments \$103 million in projected assistance costs between June and September 30.

United Press

ton Air Force Base in Marin County for 14 weeks.

"They're in a psychological prison. That's what it boils down to," the judge said.

After an hour recess, LeFevre returned to court and said the nearest interpreter he could find lived in Monterey. The attorneys

Afghan Fighting Deportation Tells of Communist Torture

By Randy Shiltz

An Afghan refugee stared solemnly across an immigration courtroom yesterday and described how for weeks on end he was beaten, kicked and tortured with an electric cattle prod by the Soviet-supported regime.

The testimony came in the third day of deportation hearings for Azizullah Alemazay, his wife and two children, four of the 29 Afghans who are seeking political asylum in the United States.

The government is trying to

deport Alemazay and the other Afghans, most of whom are staying at Hamilton Air Force Base in Marin County while their attorneys try to overturn the decision by the local office of the Immigration and Naturalization Service that denied asylum.

After the INS attorney repeatedly objected to questions about Alemazay's persecution, Immigration Judge Bernard Hornbach took over much of the questioning of the 27-year-old former computer operator at Kabul University.

Through an interpreter, Ale-

mazay painted a dark picture of Afghan life under Soviet occupation. He said his problems started after his two brothers were jailed because of their opposition to the Communist regime and after the Afghan government learned his brother-in-law was a leader of anti-Soviet guerrilla forces.

He said his own first stay in jail came after he participated in an anti-government demonstration in Kabul. As often as every half hour, he said, he was beaten and kicked and had electric cattle prods applied to his feet, fingers and arms.

At later demonstrations, he said, he saw children shot down in the streets by Communist troops. His two brothers disappeared after similar protests, he testified, and he later learned they had been executed.

His most harrowing experience came when government secret agents plucked him from his office after he had given refuge to Islamic leaders. He said he was kept in a cramped cell without food or water for three days and then was taken to a larger cell where government soldiers again tortured him with cattle prods.

Alemazay said he saw soldiers tear out the fingernails of other prisoners in his cell. His torture continued for nearly three weeks, he testified, at random periods.

Shortly after his release from prison in August of 1981, he took his pregnant wife and year-old daughter and walked for 10 days over mountains to a refugee camp in Pakistan.

Along the way, he said, he saw heads of refugees who had been decapitated.

Faced with starvation in the

crowded refugee camps, Alemazay said, he took his family to New Delhi, where he bought air passage to San Francisco with the other refugees who now are at Hamilton.

At the conclusion of his testimony, his voice turned fierce with emotion when he said, "Afghanistan has been captured and destroyed by the foreign invaders. . . . I have not come here to seek wealth or better living. I have come to be safe here until I can help my country."

The hearing continues today.

AFIR

5.31.82

Bill

- See me + I'll
suggest how to handle

Bill -

I've been too tied up to act
on this. Please take a look at
it. I think we should find
out if INS is still taking a
hard line against Afghan
refugees, and help out if
possible.

Steve

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April 21, 1982

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TREASURER
Mary Buller

Mr. Michael Uhlmann
White House Office of Policy Development
Room 226, Old Executive Office Building
Washington, D.C. 20500

Re: Exclusion of Afghan Refugees

Dear Mr. Uhlmann:

This letter concerns the treatment of 29 individual Afghan refugees who are presently involved in exclusionary hearings in San Francisco, California. President Reagan publicly admired the courageous struggle of the refugees; the Columbia space shuttle has been dedicated to them; and Afghanistan Day, March 21, officially commemorated their plight. These 29 people have been engaged in the struggle to return self-determination to their homeland. Because of their activities and positions of responsibility, they are seeking political asylum. They are a group of professionals (doctor, lawyers, artists, teachers, engineering students) who will contribute to American society while they are here, and rebuild Afghan society when the Soviets leave. The Afghans entered this country thinking that they could obtain political asylum, or at least a fair hearing for their cases, yet somehow this is not happening. The judge who is hearing this case accused the Immigration and Naturalization Service of "making a shambles of the hearings and keeping the Afghans in a psychological prison."

We would like to inform you about the case to obtain your help in carrying out official Administration policy and Congressional intent in a humane way. First a brief note on who we are. AFAR is a volunteer organization formed in 1980 to aid Afghan refugees in Pakistan. We are composed of Americans and persons of Afghan heritage throughout the United States who are concerned with the plight of Afghanistan. We became involved with the 29 refugees in response to their immediate and critical need for legal representation and food and shelter while their cases are pending. The Immigration Service admitted that

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April 21, 1982

these individuals would be subject to persecution if returned to Afghanistan, however, it denied them asylum. The basis for the Immigration Service's decision was that these individuals purchased travel documents in order to come to America. AFAR obtained legal representation for them to appeal this decision: a corporate law firm working on a pro bono basis.

It has been the position of the attorneys from Haas & Najarian who are representing the individuals that the basis for refusing entry to these people is merely a policy decision which cannot legally be supported either by the literal reading of the Immigration Act or by the legislative history of its enactment. It is a policy position that not only is opposed to the enactment of the asylum provision in the Refugee Act of 1980, but also is opposed to the public pronouncements by the present Administration as well as the previous one.

Until the hearings began on April 12, 1982, it had been our belief, as well as that of the attorneys, that the hearings for these individuals would focus on their legal entitlement to asylum, that is, whether they were refugees present in the United States who had a well-founded fear of persecution should they return to Afghanistan. However, that has not proven to be the case and the Immigration Service has taken positions which we can only view as attempts to delay the hearings. Perhaps this should have been expected because the Immigration Service has treated these people differently than other asylum applicants from the beginning. However naive our original assumptions were, we now see that the Immigration Service views these hearings as a continuation of its political opposition and does not want the issues decided on their merits. Not only are the hearings being unreasonably protracted but the attorney representing the Immigration Service has privately told the attorneys for the refugees that he intends to take these cases through five levels of appeals should the Service lose - this even before the Service knows whether it will have a meritorious basis for appeal should it lose.

It is impossible to completely inform you on the issues involved in these hearings in this letter. We have enclosed some of the newspaper articles more fully setting out the matters which have transpired at the hearings so that you can better understand what is happening. Also, testimony has been provided by Dr. Nake Kamrany, the court-designated expert witness, who is a professor of economics at the University of Southern

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California, and who has served as an advisor on Afghanistan to the U.S. State Department. In this capacity he has visited Afghanistan, Pakistan and India twice in the past 18 months. He attested to the violations of human rights, repression and indiscriminate slaughter on the part of the Soviets against the Afghan people, as well as the desperate conditions of Afghan refugees in Pakistan and India. Judge Hornbach determined Dr. Kamrany's testimony to be essential to understanding the conditions in Afghanistan since the Soviet invasion, but the Immigration Service prosecutor repeatedly objects to the inclusion of his testimony.

Perhaps the most shocking aspect of these cases relates to the Service's apparent attempt to disprove the Afghans' fears that there were secret police agents in India trained by the Soviet Union. This is shown by the Service's attorney's extensive cross-examination of both the asylum applicants and the expert witness on that issue. It is appalling to us that the government should adopt a position of defending the Soviet Union in order to prolong these hearings.

In addition to the obvious conflict between the Administration's public position on Afghanistan and the treatment afforded these individual Afghans, it is also apparent that the position of needlessly prolonging the hearings does serious disservice to the Administration's encouragement of volunteer assistance as an alternative to the government's providing such services. We can see no other reason for the delaying tactics being used in these cases other than an attempt to "wear down" the volunteer attorneys who are providing legal service at no cost and with no promise of payment, and the volunteers and organizations working with AFAR which are providing food and shelter to the applicants. If the Service is successful it will be a clear message to others who might volunteer that such service will be made as difficult and costly to the volunteer as possible.

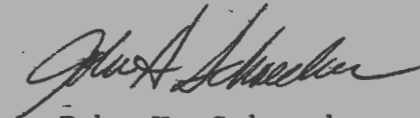
Meanwhile, the four-month period of uncertainty takes a heavy toll on the emotional and psychological well-being of people who had already witnessed atrocities, been imprisoned, lost close relatives, and sought safety in two other countries. These Afghans are among those President Reagan has referred to as "the unsung heroes of our time." (See March 10, 1982 White House Press Release enclosed.) Their heroic acts to restore an Afghanistan free from Soviet domination currently results in their living on handouts and literally asking for pocket money. The District Director has also denied

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the applicants' requests for work permits, robbing them of any attempt to help themselves and thus gain a measure of personal dignity. Is this the way we really wish to treat heroes? They are, after all, the people in today's world who are most aggressively resisting Soviet expansionism. President Reagan referred to their courageous struggle as one of the epics of our time.

We need your help in stopping the Immigration Service's attempts to undermine the Administration's publicly held positions on these two important areas. We also need your help in seeing that these Afghans who have been forced to flee from the Soviet invasion of their homeland receive the benefit of those "humanitarian concerns" which prompted Congress to enact the asylum provision. We feel that America, and the present Administration, must face both a private and public feeling of shame if the promises held out to these people in the recent past are denied so callously.

Very truly yours,



John H. Schaecher
President

JHSwc
Enclosures