

OGC 77-4483
13 July 1977

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Use of the CIA Act of 1949, As Amended, to Improve
Access to the U.S. for Refugees and Dissidents
from Countries with Repressive Human Rights Policies

REFERENCE: Your Memo to Gen. Counsel, dtd 26 May 77

16 JUL 1977

1. Action Requested: None; information per your request.

2. Background: You asked that I review section 7 (formerly section 8) of the CIA Act of 1949, as amended (Tab A), with an eye toward using the provisions of that section to bring into the U.S. refugees and dissidents from countries with repressive human rights policies. That section provides that when the permanent residence in the U.S. of an alien is "...in the interest of national security or essential to the furtherance of the national intelligence mission..." the alien and his immediate family may be admitted with the concurrence of the DCI, the Attorney General, and the Commissioner of Immigration. The legislative history of this section states that it shall allow admission of "...aliens whose intelligence potential has proven of the highest value to the national security...." (Tab B) This requirement has been narrowly construed on at least one occasion, by the Immigration and Naturalization Service. In November 1975, a former I&NS Commissioner, General Chapman, indicated to former DCI Colby that, while the Agency's requests often emphasize the excellent past services of an alien, the law stresses the future benefits to be derived, and that those benefits should be established whenever possible (Tab C). Their position carries substantial weight, for without the concurrence of the Commissioner of Immigration this section may not be invoked at all.

[REDACTED]

[REDACTED]

3. Recommendation:

[REDACTED]

the proper exercise of the authority is confined to situations in which the admission of an alien not only recognizes past services, but wherever possible promises future benefits to the national security or intelligence mission.

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Attachments
Tabs A thru E

[REDACTED]

EB
34-3

performance of the Agency's functions or to the security of its activities.³⁵

³⁰
U.S.C.A.
403g.

SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title³⁰ that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 554 of Title 5,⁴¹ and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.³⁶

³⁰
U.S.C.A.
403h.

SEC. 7. Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations,³⁹ or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.⁴²

APPROPRIATIONS

³⁰
U.S.C.A.
403j.

SEC. 8. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions,⁴¹ including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service programs as authorized by section 150 [now section 7901] of Title 5;⁴² rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-send-

LEGISLATIVE HISTORY

Subsection 5 (a) (6) provides for the cost of preparing and transporting to their former homes in the United States the remains of an officer or employee and of the members of his family who may die abroad, and for the ordinary costs of interment. (Section 911 (8), Foreign Service Act.)

Subsection 5 (a) (7) provides for the costs of travel of new appointees and their dependents from their place of actual residence abroad to their place of employment by the Agency, and safeguards are added to provide for reimbursement to the United States if the employee does not remain with the Government for a minimum period of 12 months. This provision is included to permit the Agency to recruit foreign nationals abroad where American personnel is not available (particularly in the field of translation), and only experienced foreign national language experts are qualified to perform the required duties.

Subsection 5 (b) provides for allowances similar to those given to Foreign Service officers and employees, including living quarters allowance, cost-of-living allowances, extraordinary expenses and others. These allowances are controlled by regulations prescribed by the President. (Secs. 901 (1) and 901 (2), Foreign Service Act.)

Subsection 6 (a) provides for the annual financing of Agency operations without impairing security.

Subsection 6 (b) exempts the Agency from the provisions of existing law which prohibit exchange of funds by any disbursing officer other than exchange of gold, silver, United States notes, and national bank notes. This will permit Agency disbursing officers to exchange foreign funds for other foreign funds.

Subsection 6 (c) provides for the assignment of personnel of other Government agencies to the Agency and the reimbursement of these agencies for such services.

Subsection 6 (d) authorizes official Agency couriers to carry firearms when engaged in the transportation of documents and materials which affect the national security.

Subsection 6 (e) exempts the Agency from limitations which, under existing law, permit no more than 25 percent of the first year's rental for leased property to be spent on permanent improvements, and also further imposes a limitation of 15 percent of the fair market value of the properties a rental which may be paid. This will enable the Agency to spend funds for special installations in leased premises.

Section 7 exempts the Agency from the provisions of 5 United States Code 654, which require publication of personnel data in the Official Register of the United States. Section 7 also exempts the Bureau of the Budget from including in its public report to the Congress the Agency's personnel strength.

Section 8 provides that whenever the Director and the Attorney General determine that the entry of an alien for permanent residence into the United States is essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States without regard to such admissibility under existing laws and

CENTRAL INTELLIGENCE AGENCY ACT OF 1949

regulations. The section limits this authority to 100 persons in any one year. This section will permit the Director of the Agency, acting jointly with the Attorney General, to admit into this country aliens whose intelligence potential has proven of the highest value to the national security. The Committee on Armed Services considers that the purpose for which this section was drafted is of sufficient importance to the national intelligence mission to justify the granting of this authority.

In order to eliminate any question which might arise as to the authority of the Attorney General to deport such persons who might at a later date prove undesirable, words "pertaining to admissibility" are inserted after the word "regulations," as it appears in this section. This assures that the only provisions of law affected by this section are those regarding the admissibility of aliens. It does not apply to any provisions of law regarding the conduct of such individuals once they have gained entry into the United States. In addition, the word "persons" after the word "hundred" clarifies the intent that this figure includes not only the particular aliens, but also members of their immediate families.

Section 9 provides authorization for the establishment of three positions in the scientific and the professional service of the Agency. These three positions are established for the employment of outstanding men in the scientific field of foreign scientific intelligence. Similar legislation was passed by the Eightieth Congress for comparable positions in the National Military Establishment. The section establishes a salary minimum of \$10,000 and a maximum of \$15,000 per annum.

Subsection 10 (a) establishes a point of reference to which the administrative and fiscal officers of the Agency and other appropriate officers of the Government may look to determine what expenditures are authorized for the activities of the Agency. It permits sums made available to the Agency to be expended for the purposes set forth in the section. This section is necessary in view of the requirements of existing law or Comptroller General's decisions, which specify that such expenditures are not permissible unless authorized by law.

Subsection 10 (b) permits the Agency to expend sums made available to it without regard to provisions of law. It also permits the expenditure of funds for confidential purposes, to be accounted for solely by certification of the Director.

Sections 11 and 12 are the usual separability and short-title sections. By letter to the chairman, Committee on Armed Services, the Director, Central Intelligence Agency, requested legislation similar to H. R. 2663, and later, on March 10, 1949, in an executive session of the committee, he concurred with this bill in its present form. His letter, dated February 11, 1949, in which this legislation was requested, is appended hereto, and is made a part of this report.