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SUBJECT: Senior Interagency Group (SIG) Meeting on Refugee Policy (U)

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UNITED STATES COORDINATOR
FOR REFUGEE AFFAIRS
WASHINGTON, D.C. 20520

Executive Registry
85-2806

July 26, 1985

MEMORANDUM TO: Mr. Nicholas Platt
Department of State

Mr. Stephen Galebach
Department of Justice

Mr. Malcolm Butler
Agency for International Development

[ ] STAT
Central Intelligence Agency

Colonel David R. Brown
Department of Defense

Mr. Alton Keel
Office of Management and Budget

Mr. David A. Rust
Department of Health and Human Services

FROM: Ambassador H. Eugene Douglas

SUBJECT: Background Papers

Attached are background papers on several of the issues that will be considered at the July 29 Senior Interagency Group Meeting. Agencies should be prepared to discuss their views and recommendations on the issues outlined in these papers. Final recommendations on proposed policy changes will be developed following the SIG meeting and circulated to agencies for comment.

The following background papers are included for agency review:

1. Cuban Refugee Processing

2. Romanian TCP Processing

3. Implications of H.R. 1452 and S. 1262

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United States Department of State

Washington, D.C. 20520

MEETING OF THE SIG/RP
JULY 29, 1985

Department of State Position Paper
Cuban Refugee Processing

ISSUE FOR DISCUSSION:

Should there be changes in Cuban refugee processing?

CUBAN REFUGEES -- A HISTORY

Since the fall of the Batista regime on December 31, 1958, almost one million Cubans have entered the United States under a variety of circumstances and programs; however, most of these entrants could be regarded as refugees.

From January of 1959 until the missile crisis in October of 1962 there was a relatively free and direct flow of Cubans to the United States, and during this period about 300,000 Cubans entered this country. Prior to the break in diplomatic relations in January of 1961, this was generally accomplished through an extraordinarily liberal non-immigrant visa policy in Havana, followed by a pro-forma granting of political asylum in the United States. After the break in diplomatic relations Cubans entered with "visa waivers" obtained by relatives or friends in the United States through the Cuban Refugee Program Office in Miami.

From October 1962, the missile crisis, until late in 1965, the Freedom Flight Program (FFP), Cubans entered the United States via third countries. About 50,000 entered this way using "parole visas". About 10,000 others were allowed to come to the United States in the cargo ships returning from Cuba after having delivered the ransom for the Bay of Pigs invaders in May and June of 1963.

In September of 1965, the Cuban government announced that any Cuban could leave by sea or air, which lead to the FFP. However, before that program could be organized, about 5,000 Cubans came to the United States in small private boats during October and November of 1965 in a mini-Mariel through the Cuban

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port of Camarioca. Applications for the FFP were accepted between December 1965 and the end of 1972. Over 1,700,000 such applications were filed, and some 260,000 persons actually entered under the program. During the FFP, Cuba stopped issuing exit permits for third countries, and the U. S. phased out its third-country parole program--with the exception of Spain. About 10,000 Cubans per year entered the United States from Spain during this period under a parole program.

Late in 1972, Cuba terminated the FFP, as well as the granting of exit documents in general. There was practically no movement of Cubans to the United States until the initiation of a new parole program in 1979.

In the summer of 1978, the Cuban government announced that it would release political prisoners, if they could be resettled in the United States, and a willingness to allow more Cubans to leave. A parole program, limited to ex-political prisoners, was initiated in 1979 and converted to a refugee program with the passage of the Refugee Act of 1980. This program was terminated late in 1980, as a result of the Mariel crisis after the entry of about 9,000 refugees. During the Mariel boat lift over 125,000 undocumented Cubans entered the United States.

With the termination of the refugee program in Havana, the Department authorized in FY 1982, the processing of Cuban refugee applications in third countries. This program has been limited to ex-political prisoners, who are not considered to be resettled in the country in which they are located. Since that date, the following numbers of Cuban refugees have entered the United States: FY 1982 - 577, FY 1983 - 666, FY 1984 - 67, and FY 1985 (through May) - 52. Prior to the suspension of the December 14, 1984, migration agreement by the Cuban government, about 1,800 applicants had been approved in Havana, about 1,000 of whom had also been sponsored for refugee admission. However, only 28 had actually entered the United States and are included in the FY 1985 total of 52.

CURRENT STATUS

INS officers from offices in Panama, Mexico City, and Madrid continue to process a small number of Cuban ex-political prisoners for refugee admission. Most of the recent applicants have been Cubans in Costa Rica, Panama, and Spain. Cubans in Panama and Spain are generally not residents and are not allowed to legally work, meaning that they are not considered to be resettled.* Although some Cubans in Costa Rica are residents and, therefore, considered to be resettled, other are not residents and are allowed to apply for our refugee program. However, the INS officer from Mexico on his last

*See the Code of Federal Regulations, 207.1(b) and (c), Attachment A

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visit there found that all the claims to being ex-political prisoners were fraudulent and denied about 90 applicants. Caracas is not a refugee processing post, and the Department has generally refused to process refugee applicants in Venezuela, where apparently most Cubans are residents with the right to work.

About 400 Cubans of the thousands that took refuge in the Peruvian Embassy in Havana in 1980 were offered permanent asylum in Peru. Although these Cubans have been assisted by both the UNHCR and the government of Peru, some have stubbornly refused to cooperate. Some with qualifying relatives in the United States have since immigrated to the United States, and others have entered the United States fraudulently. Although a few of these Cubans are apparently ex-political prisoners, the Department has maintained that they are resettled and have refused to process them as refugees.

There are substantial Cuban communities in several countries. Certain Cuban-American organizations approach governments throughout the hemisphere requesting that Cubans be issued visas so that they can enter those countries to be processed as immigrants by the U. S. Embassy. Often such entrants have proven to be completely ineligible for immigrant visas or found to be facing long waiting periods for their petitions to become current. The fraudulent entry of Cubans into the United States from a variety of countries is widespread.

Mariel entrants are currently being converted to permanent residency status retroactive to the time of their entry, which means that they will be eligible for naturalization immediately after obtaining residency status. This will allow for the entry of the parents, spouses, and children of Mariel entrants in the very near future (except for those who are unable to get out of Cuba). They will also be able to file fifth preference petitions for their siblings, but because of the current backlog the siblings will not be able to obtain immigrant visas for a number of years.

CONCLUSIONS:

Any extention of precessing of Cuban refugees must be approached cautiously:

- o The USG must honor the INA provisions on firm resettlement.

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- o Any refugee applicant will have to meet the basic definition of being a refugee and establish that he/she fled persecution or has a well-founded fear of persecution. (Our laws no longer presume that persons migrating from Communist controlled countries automatically meet this criteria.)
- o Any extension of processing may create a magnet effect--creating more severe problems with which the USG would then have to contend.
- o The Cuban government may take advantage of any processing by allowing thousands to depart for third countries.
- o We do not want to undercut our position on Cuba's suspension of the of the U. S.-Cuban migration agreement by allowing Cuba to enjoy the benefits of normal migration without meeting its responsibility.
- o Reversal of prior policies may create difficult precedents.

However, the Department of State is currently examining populations of Cubans in first asylum and is prepared to accept some as refugees under limited conditions:

- o The Department will work with INS to insure that there would be no misunderstanding on the true meaning of "firmly resettled" among processing posts.
- o The Department will examine the possibility of approving some exceptions on the limitation of ARA processing to priorities one and two for those who have established a well-founded fear of persecution.

These steps would insure that any compelling humanitarian cases are addressed. Specific criteria for the determination of elibility of such cases would have to be developed. The Department could complete the preliminaries on these measures by the end of the fiscal year.

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United States Department of State

Washington, D.C. 20520

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MEETING OF THE SIG/RP
JULY 29, 1985

Department of State Position Paper
Romanian TCP Processing

ISSUE FOR DISCUSSION:

How should future Romanian TCP applications be processed?

PROGRAM HISTORY

Third Country Processing (TCP) for Romanians started in the early 1970's by the Department as an informal administrative mechanism to enable a small number of Romanians who were then able to obtain exit permission to proceed to Rome for refugee processing for entry into the United States. With our granting of Most Favored Nation status to Romania in 1975, the GOR allowed larger numbers of Romanians (primarily Jews) to leave, and there were increasing numbers registering for the TCP program. Prior to the passage of the Refugee Act of 1980, refugee numbers were readily available for this group, and there had been a tendency to admit nearly all refugee applicants from Communist-ruled countries.

With the limited refugee admission numbers available under the 1980 Refugee Act and a continued high level of registration, a backlog of over 8,000 registrants had developed by mid-1982. Having received no instructions from the Department concerning the program, the Embassy ceased registration for the program on August 27, 1982. This abrupt stopping of registration was considered arbitrary by many, and public concern and Congressional interest in the program increased.

Late in 1983, it was decided within the Department that the United States government was obligated to process for refugee admission all those applicants who had been allowed to register for the program prior to August 27, 1982, (about 8,500) and all those who had obtained exit documents

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prior to January 1, 1984, expecting to be processed under the program (estimated at about 1,300). This determination was widely publicized through the Embassy in Bucharest and through broadcasts by the Voice of America and Radio Free Europe. Romanians, who lose practically all rights and privileges upon obtaining exit documentation, were warned not to take any action without verification by the Embassy that they were eligible for entry into the United States. Since that time the GOR has been repeatedly requested not to issue exit documentation without verification of the individual's eligibility to enter the U. S.

The Department had planned to process these cases at a rate of 2,000 per year under the regular EUR refugee ceiling. Unfortunately the number of applicants receiving passports prior to January 1, 1984, proved greater than originally estimated and backlogs of such individuals developed. Responding to the acute situation of such applicants, RP allocated additional numbers to the program in both FY 1984 and 1985.

CURRENT SITUATION

The recent reallocation of 750 additional refugee admission numbers to this program will reduce the number of potential TCP applicants to 3,700 by the end of the fiscal year, of whom fewer than 100 will have exit documents. This remaining caseload can be processed in an orderly manner using the originally anticipated ceiling of 2,000 per year over the next two years. The recent agreement of the GOR, as a part of the package arranged during your June 17-18 visit to Bucharest, to issue exit documents only to persons with letters from the Embassy indicating their eligibility for the program should mean that there will no longer be a large number of applicants suffering from having lost their rights and privileges for having obtained exit documents, while awaiting the availibility of a refugee admission number.

With the restriction of the regular Romanian TCP program to those who had registered for the program before August 27, 1982 and to those who obtained exit documentation prior to January 1, 1984, a "revised" Romanian TCP program was initiated. Under this program the Embassy may recommend for registration those special cases currently suffering from severe persecution. Since early 1984, the Embassy has recommended only 18 cases for registration, of which the Department approved 16.

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A recommendation has been made to establish the presence of ICM and/or UNHCR in Bucharest to process Romanian TCP applicants and to allow INS visits to the post on a regular basis to approve refugees there for direct travel to the United States. Eastern bloc countries do not generally accept the activities of either ICM or UNHCR within their borders. INS has not in the past interviewed in any Eastern bloc country. The GOR has recently agreed to limit the issuance of exit documents to those with appropriate Embassy letters and to restore rights and privileges to those Romanians who obtained exit documents after January 1, 1984, and are not eligible for entry into the United States. We have sought both of these actions since early 1984. It appears not only inappropriate, but possibly counter-productive, to seek further changes until there has been sufficient time to evaluate the effectiveness of the new system.

Applicants under both the regular and revised Romanian TCP programs are processed through INS in Rome and receive cultural orientation there. There have been no processing problems involving these cases. In addition, the expected flow of refugees under the revised Romanian TCP is not sufficient to justify the presence of ICM or UNHCR in Bucharest. The Romanian TCP programs (both regular and revised) appear to be in a healthy condition for the first time since 1980; and, therefore, there appears to be no need for changes at this time.

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MEETING OF THE SIG/R

JULY 29, 1985

Department of State Position Paper

Implications of H.R. 1452 and S. 1262

ISSUE

The implications of H.R. 1452 and S. 1262 for FY 1986 admissions and for FY 1986 and FY 1987 budgets.

ESSENTIAL FACTORS

The basic legislative authority for funding refugee resettlement expired on September 30, 1983. Since that date, the funding authority has been established by continuing resolution. The authorizing committees of both houses have confirmed their desire to enact new legislation effective for FY 1986, including several substantive amendments.

H.R. 1452, the Refugee Assistance Extension Act of 1985, with amendments, passed the House on June 13, 1985. The Senate bill, S. 1262, has completed full committee mark-up but has not yet been reported for floor action. Although similar in many respects, there are several specific issues to be resolved in conference once Senate action is completed. While the Administration position for the conference on the detailed provisions will be developed after Senate action is completed, it would be useful for the SIG to consider five items with broad policy implications:

-- Continued line item authorization for targeted assistance;

-- Line item dollar freeze for social services, for medical screening, and for reimbursement of state costs for the incarceration of Mariel Cubans;

-- Presumptive eligibility for medical assistance of all refugees for the first year after entry regardless of need;

-- Assistance to refugees without regard to their date of entry;

-- New requirements for voluntary agency initial resettlement services (the State Department's "Reception and Placement" program).

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DISCUSSION

Although the relationship between the provisions of either of the two bills and the consultations on FY 1986 admissions numbers is indirect, the SIG/R should be aware that the State Department's FY 1986 admissions program (i.e., actual arrivals) will be affected by final Congressional action on the State Department authorization bill and on the appropriations process. The Department will be taking appropriate action, in coordination with OMB, to attempt to obtain authorization and appropriations at the level of the Administration's original request for FY 1986.

Of the five broad issues identified above, only the latter two affect the Department of State.

Assistance to refugees without regard to their date of entry

This concept is incorporated in different ways in two provisions of H.R. 1452, neither of which was contained in the Administration's proposed reauthorization bill:

-- Section 8, authorizing targeted assistance project grants, states that "grants shall be made available...without regard to the date a refugee arrived in the United States;" and

-- Section 6, directing the allocation and use of social service funds, states that "the funds available for a fiscal year...shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States after March 31, 1975..."

Although both provisions aim at the genuine problem of states and counties impacted by refugees with special resettlement needs, they may have the unintended and deleterious side effect of further retarding the process of naturalization of Indochinese refugees. By sending the message that the federal government will continue to fund special programs for "refugees" who may have been in this country as far back as 1975, this legislation would create a strong disincentive to naturalization and, thus, would inhibit Administration efforts to redirect the Indochinese caseload into the channel of normal immigration. As is well known, there is also a strong Congressional interest (in particular Sen. Simpson) in maximizing the use of immigrant visas for Indochinese, with the greatest need being the category of fifth preference (siblings of U.S. citizens).

The Department of State believes that the policy objective of promoting naturalization and redirecting the Indochinese flow into normal immigration channels should take precedence

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over the objectives embodied in legislative provisions which add to the federal government's long-term responsibility for funding assistance to refugees as a special class. On this basis, and with the benefit of the views of the other members of the SIG/R, the Department of State will consider whether to recommend that the Administration adopt a position for the House-Senate conference opposing the inclusion of these two provisions.

New requirements for voluntary agency services

The legislative history of this provision (Section 5 of H.R. 1452, commonly referred to as the "Lungren Amendment") covers two years of hearings and public debate, with the current version greatly altered from that reported out by the House in the previous Congress, but not enacted, on the basis of which the Administration formulated its FY 1986 budget request. The essential element of the original Lungren concept, endorsed by the Administration, was a requirement that the voluntary agencies be responsible for the basic needs (income support) of refugees for their first 90 days in the United States, in order to prevent their early exposure to the welfare system.

Following the strong representations of the private voluntary agencies, who opposed both the degree of government direction of their activities and the exposure to litigation they saw in the original language, the House accepted a greatly altered description of the voluntary agencies responsibilities:

> "...to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled and to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan."

The Senate version duplicates this language, adding at the end the phrase: "...for one year after the date such refugee was admitted to the United States."

The difficulty with this outcome is that it adds responsibilities to the State Department Reception and Placement Program without reducing the initial income support costs which must be funded through the state welfare programs reimbursed from HHS/ORR. The end result is a set of new service requirements -- voluntary agency activities for one year instead of the present 90 days -- which will necessitate funding (considering both State and HHS) in excess of the Administration's request level. Consequently, the Department of State will consider, taking into account the views of the other members of the SIG/R, a recommendation that the Administration adopt a position for the House-Senate conference opposing this Amendment.

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Cleared: RP:JNPurcell, Jr.
RP/RA:RDEnglish
RP/PB:ROliver
OMB:SGates (info)

CC: C:JClunan
M/COMP:LEmery
H:TBleha
HHS/ORR:PHolman

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