

GAO

Report to the Honorable
Robert K. Dornan, House of
Representatives

December 1996

VIETNAMESE ASYLUM SEEKERS

A Review of Selected Cases in Four Southeast Asia Countries





United States
General Accounting Office
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National Security and
International Affairs Division

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The Honorable Robert K. Dornan
House of Representatives

Dear Mr. Dornan:

Your letters of April and May 1996 expressed concerns about the implementation and outcomes of the Comprehensive Plan of Action (CPA) for Vietnamese asylum seekers in Southeast Asia. Given the decision to conclude the CPA and close all first asylum camps in the region by June 30, 1996, you asked that we examine selected cases that came to your attention and review how the refugee status determination process worked for these individuals. You specifically asked that we examine family unity and victim of violence cases and, to the extent time permitted, general refugee (merit) cases. Our objectives were to (1) review factual information about these cases from the perspective of international refugee criteria used under the CPA and (2) examine how the screening process was implemented.

We selected 242 cases to review in Hong Kong, Indonesia, Malaysia, and the Philippines from among the more than 500 cases provided by your office. These cases generally involved asylum seekers who had been denied refugee status under the CPA screening process. In reviewing cases, we were mainly limited to examining case files maintained by the U.N. High Commissioner for Refugees (UNHCR). Government officials in each of the first asylum countries we visited denied our requests to interview asylum seekers and review other case file materials. To supplement our work, however, we met with officials from UNHCR, the first asylum governments, U.S. embassies, and other nongovernmental groups who were knowledgeable about the CPA. Because we were limited to case file reviews, we could not independently verify the accuracy of the refugee status claims made by the asylum seekers or make conclusions about the appropriateness of the decisions made by the screening officials. Furthermore, since we reviewed only a limited number of cases, our findings cannot be generalized to other cases or be used to judge the overall reasonableness of the CPA screening process. Further details are contained in the scope and methodology section.

Background

For several years after the fall of the South Vietnamese government in 1975, countries in Southeast Asia agreed to grant temporary asylum to the

thousands of people who fled Vietnam. By the late 1980s, however, the rate of resettlement was far less than the huge and growing influx of asylum seekers from Vietnam. In response, the CPA was developed and adopted by 75 countries in June 1989 to address the Vietnamese boat people problem. It required anyone who arrived in first asylum countries¹ after March 1989 to undergo a formal refugee status determination and demonstrate they had a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion according to internationally recognized refugee standards and criteria.² The agreement called for the establishment of a consistent regionwide refugee status determination process and reaffirmed that the first asylum countries were responsible for determining who qualified as a refugee.

UNHCR's role under the CPA was to help the first asylum countries develop screening procedures that were consistent with international norms and to monitor the implementation of the program. It was responsible for training first asylum country officials involved in the screening process, coordinating the timely resettlement of those determined to be refugees, and administering a safe repatriation program for nonrefugees. In addition, UNHCR was required to review and assess the CPA's implementation and consider additional measures to improve the effectiveness of the program. UNHCR also has independent authority under its charter to formally recognize or "mandate" cases it believes deserve refugee status and, within the context of the CPA program, to reconsider the claims of rejected asylum seekers. This authority provided a third layer of review in many situations.

Since the adoption of the CPA, more than 120,000 Vietnamese asylum seekers have been screened for refugee status. Of those asylum seekers screened, close to 33,000 were determined to be refugees and resettled in third countries, including some 12,900 individuals who came to the United States.³ The screening of cases generally concluded in the region in 1994, and many of those who were determined not to be refugees ("screened

¹The principal countries of first asylum were Hong Kong (a British Dependent Territory), Indonesia, Malaysia, Thailand, and the Philippines. Refugee screening actually began in Hong Kong in June 1988 prior to the CPA.

²Refugee status determinations were to be made in accordance with the 1951 U.N. Convention relating to the Status of Refugees and its 1967 Protocol.

³The Department of State is responsible for overseeing U.S. interests in the CPA, and the Immigration and Naturalization Service is responsible for adjudicating cases to determine their eligibility for resettlement under U.S. laws and regulations. We did not evaluate how U.S. officials carried out these responsibilities as part of our study.

out”) returned voluntarily to Vietnam. However, in early 1995, close to 40,000 screened-out asylum seekers remained in the camps.⁴

From early on in the screening process, outside advocacy groups and representatives from the U.S. Congress and other interested countries raised concerns about the integrity and fairness of the screening process and possible corruption that may have occurred in certain circumstances. These concerns intensified as the screening process came to a close and attention was focused on the screened-out asylum seekers who remained in the first asylum country camps. Some of the issues raised by refugee advocates included asylum seekers not knowing how to present their cases; information being distorted because of poor translation by interpreters; screening officials conducting incomplete interviews; reasons for denial not being provided to asylum seekers, thereby preventing them from preparing adequate appeals; and screening officials not having access to accurate information about country conditions in Vietnam. Refugee advocates also alleged that corruption in some countries resulted in asylum seekers with strong cases being screened out for failing to pay bribes or consenting to sexual demands by screening officials.

The pressure from outside sources led UNHCR to further review some selected cases and investigate the allegations of corruption in the screening process. UNHCR acknowledged that problems existed in the screening process, particularly in the early stages of screening with the use of unqualified interpreters, delays in the processing of refugee status decisions, and the lack of legal assistance on appeals in some cases. It also concluded that corruption cannot be ruled out and that, at least in Indonesia and the Philippines, the impact of corruption was likely to have resulted in some weaker cases being screened in by the first asylum government officials.⁵

Results in Brief

Family unity has been an important principle throughout the implementation of the CPA, yet advocacy groups, asylum seekers, and others have raised concerns that some families were unfairly separated as a result of the refugee screening process. Beginning in late 1994, UNHCR

⁴As of December 1996, all of the camps of first asylum in the region were closed, except for Hong Kong, which had a residual camp population of approximately 9,500. According to the State Department, Hong Kong expects the remaining camp population to be repatriated or resettled by March 1997.

⁵For a further discussion of the screening process and corruption in the CPA, see *Vietnamese Asylum Seekers: Refugee Screening Procedures Under the Comprehensive Plan of Action* (GAO/NSIAD-97-12, Oct. 21, 1996).

undertook a regionwide review of screened-out cases to determine whether asylum seekers would qualify for resettlement according to established family unity criteria. UNHCR reviewed hundreds of cases, but found most failed to meet the program criteria. However, UNHCR identified a small number of cases in Indonesia, Malaysia, and the Philippines that met the criteria prior to UNHCR mandating the asylum seekers as refugees. Among these were 72 cases that were forwarded to U.S. embassies for consideration for resettlement. While the United States initially accepted 23 of 36 cases for resettlement in Malaysia, it refused to review 36 similar cases from Indonesia and the Philippines. The U.S. embassies in the latter two countries refused to review any case that was not first mandated by UNHCR; on the other hand, UNHCR would not issue a mandate without some assurance from the resettlement countries that cases would be approved. This impasse was never resolved and those asylum seekers identified by UNHCR were not reunited with family members in the United States through this process.

Victim of violence cases involved individuals who were physically assaulted on the way to, or upon arriving in, one of the first asylum countries. According to UNHCR officials, because of the trauma and abuse the individuals suffered, many were unable to articulate their claim for refugee status. To avoid subjecting vulnerable persons to the rigors of the regular screening process, UNHCR established special procedures to determine a durable solution in the “best interest” of these individuals. Depending on where the best support structure existed, individuals could be returned to Vietnam to live with family or resettled in a third country. Our review of cases in Indonesia and Malaysia indicated that UNHCR and these governments followed established procedures for processing victim of violence cases. In the cases we examined, social service counselors assessed the ability of individuals to articulate a claim for refugee status and assigned cases to the normal screening process or the Special Procedures Committee. We could not evaluate the quality of the counselors’ assessments, although the assessments described in some detail the individuals’ mental condition, situation in camp, and ability to understand and present their claim for refugee status.

Of the 74 merit cases we reviewed, it appears that most did not present strong refugee claims based on evidence contained in the files. However, the quality of the written case files varied extensively both among countries and within particular countries. Many case files were well-documented and presented detailed facts and logical explanations for decisions that were made, while others contained documents that pointed

to differences and inconsistencies in the way claims may have been handled. These involved incomplete documentation of cases, poorly translated information, different interpretations of screening criteria, lack of legal assistance in presenting cases, and what appeared to be an overemphasis on nonessential points in assessing the credibility of an asylum seeker's claim. As a result, in some cases, we could not determine how well the case files reflected the presentation of the asylum seekers' claims. (See apps. I, II, and III for a detailed discussion of some of the cases we reviewed.)

Most Family Unity Cases Found Not to Meet Criteria

A specific tenet of the CPA was the "need to respect the family unit." According to the UNHCR Handbook, if the head of a family is granted refugee status, then his or her spouse and members of the immediate family are also normally granted refugee status to maintain the family unit.⁶ Children who are minors are generally considered to be part of the immediate family; others, such as aged parents, may be included if they are living in the same household and dependency can be established. Under the principle of family unity, family members do not have to establish an independent well-founded fear of persecution; rather, refugee status is based on their family connection to a refugee. Adult children who are not dependent on their parents are not eligible for family unity consideration and would undergo separate screening under the CPA.

Throughout the implementation of the CPA, UNHCR received numerous requests to consider cases under the principle of family unity. These involved individuals who claimed to have been separated from family members by the refugee screening process. Several included marriages that were not known or accepted as legitimate marriages by the first asylum countries or UNHCR; others involved children, siblings, or other relatives who claimed to have family linkages to individuals who had already resettled in a third country. Recognizing that some families may have been inadvertently split by the screening process, UNHCR undertook a broad regionwide review of screened-out cases in late 1994. By using its mandate authority, UNHCR could provide a means for screened-out family members to join immediate family members currently resettled elsewhere.

⁶The CPA guidelines recognized marriage as a fundamental human right. In addition to legally formalized marriages, the family unity criteria was also extended to couples who entered into common law marriages prior to leaving Vietnam. The criteria also addressed different marriage arrangements and/or relationships that occurred in the first asylum camps. Distinctions were made, however, between legitimate relationships and those that might have been formed by some asylum seekers to gain resettlement.

Criteria for Adjudicating Cases

UNHCR used the following criteria to review cases that might not have been assessed fairly on the basis of family unity during the regular refugee status determination process:

- Minors and dependant children were to be reunited with parents. Minors were defined as being younger than 18 at the time of the UNHCR review and dependency was based on the “totality of needs and relations.” Nonminor children and siblings who were not dependents were not considered for family reunification.
- Marriages predating the determination of refugee status were recognized regardless of whether couples had any children.
- Marriages postdating the refugee status decision would generally not be accepted unless they were proven to be “bona fide” and there was evidence of a “long-standing, pre-existing” relationship (the existence of children was proof). Obstacles to marriage were to be considered, such as difficulties in obtaining divorce papers from Vietnam, the asylum country not allowing formal marriages to take place (as was the case in Indonesia, for example), or a couple being underage.

A key objective of the family unity initiative was to recognize legitimate marriages and relationships. UNHCR rejected marriages of convenience and other relationships that did not involve immediate family members or dependents. Many of the cases were relatively straightforward; however, several involved complicated family relationships that were difficult to resolve. Relationships that were not split as a result of the status determination process were also excluded from consideration, such as those involving family members who were resettled from a first asylum country prior to the CPA or from Vietnam directly through the Orderly Departure Program (ODP).⁷ UNHCR encouraged family relatives who did not qualify for reunification to return to Vietnam and use alternative migration opportunities, such as ODP.⁸

UNHCR’s family unity review began in Malaysia and was adopted shortly afterwards by other UNHCR field offices in the region. According to UNHCR

⁷ODP was established in 1979 under an agreement between UNHCR and the Vietnamese government to provide a safe and legal means for immigrants and refugees to leave Vietnam for family reunion and humanitarian reasons.

⁸UNHCR officials in Malaysia did consider and support a small number of ODP-related cases that fell outside of the agreed-upon family unity criteria. These involved individuals whose entire family subsequently left Vietnam through migration programs such as ODP. Even though the family was not split as a consequence of the CPA screening process, UNHCR recognized a need to reunite such individuals and avoid returning them to Vietnam in a “vacuum.” Approximately a dozen of these ODP-related cases from Malaysia were resettled in the United States; however, UNHCR generally did not support similar cases from the other first asylum countries.

officials, the resettlement countries and other CPA member countries initially criticized the initiative. The first asylum countries believed that family unity considerations had already been addressed during the regular refugee status determination process and that further review of cases would jeopardize an orderly conclusion to the CPA program. Resettlement countries believed that family unity considerations were more properly effected through their own established migration programs, such as ODP.

In Malaysia, Indonesia, and the Philippines, UNHCR reviewed hundreds of cases under its family reunification initiative. Most were rejected for failing to meet UNHCR's established criteria, but UNHCR believed a small number had valid claims and forwarded them to various resettlement countries for consideration. UNHCR initially forwarded cases without a declaration of mandate because it wanted some assurance that cases would be accepted for resettlement. UNHCR wanted to avoid having screened-in individuals who might have no resettlement option and, because of their mandate status, no means to be repatriated either. This was a concern because individual resettlement countries' criteria for family reunification could differ from UNHCR's criteria.

In Malaysia, there was strong support from the Malaysian government and the U.S. embassy to resolve family unity cases. UNHCR officials identified and forwarded 36 cases in early 1995 to the U.S. embassy for consideration.⁹ The U.S. embassy in Kuala Lumpur agreed to review the cases informally and provide UNHCR with an indication of whether the cases might qualify for resettlement.¹⁰ As a result of this, the United States accepted 23 cases involving 35 persons. The cases were subsequently mandated by UNHCR and resettled in the United States.

In Indonesia and the Philippines, UNHCR also identified several cases that met its family unity criteria and submitted these cases to the resettlement countries for informal review. With respect to U.S.-related cases, UNHCR forwarded 13 cases from Indonesia and 23 cases from the Philippines to the respective U.S. embassies in late 1995. In contrast to the situation in Malaysia, however, there was no progress in resolving these cases for resettlement because the U.S. embassies took no action on the cases.

⁹In addition to the cases that were sent to the United States, UNHCR identified 24 other cases that fulfilled the criteria and were sent to different resettlement countries, such as Canada and Australia, for review.

¹⁰While cases may have met the UNHCR family unity criteria, they also had to meet the regular immigration standards and criteria of the resettlement countries to be approved for resettlement.

U.S. embassy officials did not informally review cases and took the position that there could be no review or implied guarantee of resettlement without a UNHCR mandate.¹¹ However, UNHCR officials did not want to issue a mandate without a clear indication that the cases would be accepted for resettlement.

The impasse over the family unity cases in Indonesia and the Philippines continued from late 1995 through April 1996, when the U.S. Department of State issued written guidance to the embassies. The guidelines indicated that cases should not be reviewed unless they were mandated by UNHCR. Even then, there would be no guarantee of resettlement until U.S. Immigration and Naturalization Service officials conducted an interview and then determined a case met U.S. immigration criteria.

U.S. family unity criteria in some respects are more stringent than UNHCR criteria. According to Department of State guidelines, for example, spouses would only be considered eligible if “the marriage was legally established before release of the refugee screening result, the marriage is legally recognized in the country in which it took place, and there is clear evidence that the marriage is genuine.” These criteria effectively excluded marriages that occurred after a refugee status determination, even if there was evidence of a long-standing, preexisting relationship or common law marriage that occurred in countries such as Indonesia that did not recognize a marriage between asylum seekers.

In Malaysia, cases similar to those that were submitted and approved by the U.S. embassy in early 1995 were rejected under the April 1996 guidelines. UNHCR officials in Indonesia and the Philippines effectively stopped submitting cases for consideration to the U.S. embassies due to the lack of response from the United States to review cases informally prior to a declaration of mandate status. As efforts to close the camps increased after the March 1996 announcement by the CPA countries, UNHCR encouraged all individuals, including those considered for family reunification, to voluntarily return to Vietnam.

¹¹The cases from Indonesia were actually handled out of the U.S. embassy in Kuala Lumpur. The principal embassy official who had worked with UNHCR officials to resolve many of the Malaysian cases had been reassigned when the Indonesian cases were submitted in late 1995. The subsequent involvement of different embassy officials may have hampered progress in addressing the cases. Another issue that further complicated the resolution of cases was the Indonesian government’s refusal to recognize UNHCR’s use of its mandate authority to confer refugee status to asylum seekers. In the Philippines, a change in staffing at the U.S. embassy contributed to the lack of response to the cases submitted by UNHCR. In addition, embassy officials could not review cases until they obtained formal guidance from State Department headquarters.

According to Department of State officials, the April 1996 guidelines did not change U.S. policy but clarified the U.S. position on UNHCR mandates and the application of U.S. family unity criteria. The officials noted that this guidance had not previously been communicated formally to the embassies and that the embassies' refugee officers had some discretion to work independently on CPA family unity issues.

Review of Individual Family Cases Generally Followed Procedures

We reviewed 86 family unity cases in Indonesia, Malaysia, and the Philippines. UNHCR had generally assessed the cases in accordance with its established criteria and procedures, although there appeared to be discrepancies in the way some cases were resolved. UNHCR relied heavily on the biographical information collected from asylum seekers prior to the screening interviews. This information provided the names, relationships, dates of birth, and places of residence of the family members of each asylum seeker. Asylum seekers were also encouraged to inform UNHCR of any changes or updates to this information over time. In assessing requests for family reunification, UNHCR often interviewed asylum seekers and contacted the resettlement countries to obtain supporting information. While this information was for the most part comprehensive, we found that in some cases it was incomplete or was not updated when a marriage or birth of a child occurred.

Almost all of the asylum seekers whose cases we reviewed had ties to relatives in the United States, but most did not meet UNHCR criteria. The main reasons included (1) post-refugee status determination marriages lacked evidence of a long-standing relationship or of any obstacles that prevented a marriage from occurring prior to the refugee screening, (2) children who were nonminors sought reunification with parents or siblings, and (3) family members were linked to ODP cases that were not split as a result of the refugee status determination process.

While most post-refugee status determination relationships were rejected, UNHCR did deviate from its fairly consistent application of the criteria to support a few cases. In one case in Indonesia, UNHCR approved a family unity claim after examining numerous correspondence between the asylum seekers and their respective families, which indicated that the marriage was recognized by the families in Vietnam through a formal ceremony prior to the refugee status determination. In another case in the Philippines, UNHCR supported a couple seeking family reunification because written affidavits from third parties attested to the long-term relationship of the couple as well as long explanations by both spouses

about their delay in getting married. As a rule, UNHCR rejected petitions to reunite either adult children with their resettled parents or individuals with family members who resettled through ODP, but it made some exceptions for compelling humanitarian reasons. One case in Indonesia, for example, involved an adult daughter seeking reunification with parents who were critically ill. UNHCR approved the case based on humanitarian concerns.

UNHCR rejected reunification claims involving family members who left Vietnam under ODP because such cases, according to UNHCR, were not split as a result of the CPA refugee screening process. However, UNHCR in Malaysia did support several ODP-linked cases in which no more family members were in Vietnam. Similar cases in Indonesia and the Philippines, though, were generally not recognized by UNHCR. A case in the Philippines, for example, involved a 16-year-old unaccompanied minor who was assessed under UNHCR's special procedures process. UNHCR determined that the best support structure for the child existed in Vietnam where the mother resided. Subsequently, however, the mother, who was the only immediate family to the applicant, migrated to the United States under ODP. When the case was reviewed again under UNHCR's family unity exercise, the situation with the applicant's mother was not an overriding factor and the applicant was considered to have "aged-out" as a minor and was rejected as an adult.

In situations involving siblings, a few cases were screened differently. In one case in Indonesia, four siblings (including a minor) arrived together at the first asylum camp. Each sibling was screened separately and all except one was recognized as a refugee. Upon appeal, the review committee used the principle of family unity to reverse the first instance decision and grant refugee status to the remaining sibling. In another case involving a minor and two siblings, each was screened separately. While the minor was granted refugee status under the special procedures process, the two adult siblings who accompanied him were rejected.

In a few cases, we had information (provided by your office) supporting a claim for family unity that UNHCR did not have in its files. In the Philippines, for example, UNHCR rejected a post-refugee status determination marriage where no evidence of a genuine relationship was presented. After we presented a copy of a birth certificate of a child born to the couple, UNHCR officials indicated that based upon this new information, the case probably would have been forwarded to the U.S. embassy for consideration as part of the family unity exercise. The case,

however, would probably not have been resettled since the U.S. embassy did not respond to the other cases forwarded for review by UNHCR.

In several other cases, UNHCR had information that was not in the case file information we had received through your office. We reviewed several cases where one of the parties to a family unity claim had a preexisting marriage or had established his or her refugee status through a marriage to a different spouse. Some of the cases were extremely difficult to sort out due to the multiple relationships that were involved, linking partners in Vietnam, the first asylum camp, and the United States. It was not unusual to have a situation, for example, of a couple forming a relationship in a first asylum camp while each still had a prior spouse in Vietnam. Subsequently, one partner would be screened in to resettle with his or her spouse who immigrated to the United States through ODP. The partner then divorced the first spouse and sought reunification with the other partner still in the first asylum camp.

Procedures Were Followed in Victim of Violence Cases

Victims of violence is a broad term used to describe cases of individuals who asserted they had experienced traumatic or violent incidents en route to or in first asylum countries. Though the full scope is unknown, many Vietnamese boat people came under attack from pirates who were in most cases opportunistic fishermen who viewed the fleeing Vietnamese with their life possessions as easy targets of opportunity. Many individuals reportedly perished during these attacks. Women and young girls were especially vulnerable to sexual assault and rape. Other reported incidents of violence occurred at islands in the South China Sea, such as Terempa and Kuku. Some asylum seekers who landed on the islands in search of temporary refuge experienced rape, robbery, and beatings at the hands of soldiers and gangs of fishermen who sometimes congregated there. In other cases, boats were reportedly towed to the islands for the express purpose of victimizing the asylum seekers. Some asylum seekers endured multiple attacks and rapes during their escape attempt.

Criteria for Adjudicating Victims of Violence Cases

UNHCR first developed guidelines for handling survivors of violence cases as an internal memorandum in June 1990 and formalized them in its November 1992 "Guidelines on Special Procedures under the Comprehensive Plan of Action." These two documents outlined the criteria and rationale for including victim of violence cases in a process known as "Special Procedures." Special Procedures was designed as a

separate process to deal with unaccompanied minors and other vulnerable persons such as victims of violence.

The standard for determining whether asylum seekers who had experienced violence should have been handled under Special Procedures was “the effect [of violence] on their ability to understand persecution or articulate a well-founded fear of persecution more than the disability per se” It was recognized that individuals who were victims of violence may have been severely traumatized and unable to comprehend the screening process or articulate their claim to refugee status. In such cases, it would have been inappropriate, if not impractical, to subject individuals to the rigors of the screening process.

An important principle underlying the establishment and implementation of Special Procedures is the assessment of “best interest” of persons who are vulnerable and of humanitarian concern. The best interest determination was to be made on the basis of information derived from circumstances or conditions generally beyond what would necessarily be considered in determining refugee status. In determining a durable solution in the best interest of a vulnerable person, all circumstances, including events occurring en route to or in a first asylum country, particularly piracy attacks, were to be considered relevant and taken into consideration.

Process Used for Reviewing Cases

When asylum seekers arrived at a first asylum camp and identified themselves as victims of violence, or in cases where UNHCR initiated the identification of the victim, a UNHCR social service counselor would first examine the individuals to determine whether they could articulate their claim to refugee status. If they could, they would go through the usual refugee status determination procedure. If they could not, due to the traumatizing nature of the experience, the Special Procedures process would be used. Under Special Procedures, the question of a person’s possible refugee status was dealt with first. According to UNHCR, refugee status under Special Procedures was evaluated in a supportive environment that specifically considered a person’s difficulty in articulating his or her case. A person determined to be a refugee would be resettled. If a person was determined not to be a refugee, the best interest test was applied.

The Special Procedures process was implemented by a Special Procedures Committee whose membership varied from country to country, but usually

involved individuals from UNHCR's implementing partners who possessed either a social service or status determination background. In Malaysia, for example, the Special Procedures Committee was variously composed of officials from the Red Cross and Red Crescent Societies, social counselors on loan from the Jesuit Refugee Service, UNHCR, and a private practice Malaysian psychiatrist. The role of the Special Procedures Committee was to determine where the best support structure resided to help individuals recover from their traumatic experience. In some instances, resettlement with family members in third countries was the best solution. However, according to UNHCR officials, the generally preferred solution, in keeping with social welfare principles, was to reunite the individual with family members in Vietnam.

If asylum seekers did not disclose the violent experience either when they arrived at the refugee camp or during the refugee status determination process, UNHCR assessed each situation on a case-by-case basis. UNHCR officials told us it was not uncommon for individuals to initially keep their experience of violence secret due to shame or fear of retribution from country-of-asylum officials. They said many individuals began coming forward with claims of violence after receiving negative screening decisions and learning that other individuals with similar experiences were being resettled after proceeding through the Special Procedures process. Others, though, may have come forward because they experienced difficulties in coping with the effects of the earlier incident of violence. When evaluating these types of cases, UNHCR's social service counselors were expected to look for symptoms of trauma, such as visits to the camp hospital or counselors or an inability to forge relationships with other camp residents. If trauma was evident, counselors would refer the case to the Special Procedures Committee for a best interest solution.

Victim of Violence Cases in Malaysia and Indonesia

We examined the case files of 5 Malaysian and 77 Indonesian victims of violence. The majority of the Indonesian cases were at Kuku Island, the northern island army camp. Because we did not interview the asylum seekers, social service counselors, or members of the Special Procedures Committees, who had disbanded at the conclusion of the screening process, our review was limited to determining whether the documentation in UNHCR files indicated that the procedures had been followed, not the quality of the assessments per se.

UNHCR documents indicated UNHCR's social service counselors interviewed and assessed the victim of violence cases and then assigned the case to

proceed either through normal refugee status determination processing or to the Special Procedures Committee process. The assessments discussed the individual's current mental state, situation in camp, and ability to understand and articulate a claim of a well-founded fear of persecution.

Of the five Malaysia cases we reviewed, four were referred to the Special Procedures Committee for a best interest decision and the fifth was referred to the regular refugee status determination process. It was decided in two of the cases that the best support structure for the individuals lay with family members who resided in Vietnam. In the other two cases, the best support structure was determined to be with family members who lived in the United States and Australia, respectively. In Indonesia, the 77 cases we reviewed were processed through the normal refugee status determination process at the recommendation of the social service counselor. Although we did not track the final disposition for all cases, several were granted refugee status and were subsequently resettled in third countries.

We noted a few cases in Indonesia where the social service counselor described emotional difficulties by the asylum seeker but nonetheless recommended that the normal refugee status determination process be followed. For example, in one case, the social service counselor wrote that ". . . [the individual] appears very depressed and complains having suffered from a variety of psychosomatic illnesses [The individual] experienced a horrific experience during her journey to Galang. However, there is evidence that she is on her way [to] a full recovery. It's recommended that she should go through the normal refugee status determination process." Although this kind of recommendation appeared consistent with the standard for determining whether someone should go through Special Procedures, we still had some difficulty understanding it in view of the counselor's observations about the emotional condition of the individual involved.

The following is an example of the steps the Special Committee in Malaysia took to reach a solution in the best interest of a victim of violence:

"A husband and wife reported they were victims of violence as they traveled from Vietnam to asylum in Malaysia. The husband died in camp (due to causes unrelated to the violence incident). The woman was assessed by the social service counselor to be unable to understand or articulate a claim and her case was assigned to the Special Committee for a durable solution. The Special Committee decided that the woman's best support structure

lay with her husband's family in Vietnam. However, after reaching this decision and before the woman returned to Vietnam the family had resettled in the United States under ODP. The Special Committee then decided that the woman's 'best interest' still lay with the husband's family in the United States. Thereafter, the woman was eventually accepted for resettlement in the United States and reunified with her husband's family."

A majority of the victim of violence cases we examined from Indonesia occurred at Kuku Island. Information in the case files we reviewed indicated that a number of women and girls were sexually assaulted and raped by government soldiers. Men who attempted to intervene to protect their wives, children, or siblings were beaten. Some of the individuals who experienced violence at Kuku Island were processed through Special Procedures, where it was determined that resettlement in third countries was in their best interest. The majority, including the cases we reviewed, were assessed through the normal refugee status determination process.

Some Vietnamese advocacy groups and others have criticized UNHCR's handling of the Kuku Island cases. They have argued that (1) an agreement existed between the Indonesian government and UNHCR to resettle all the victim of violence cases and (2) all similarly situated cases should be treated alike. According to UNHCR officials we interviewed, there was no agreement with Indonesia to resettle all victim of violence cases. UNHCR initially resettled a number of these cases because of humanitarian concerns that may have left an impression of precedent for other cases. We found UNHCR handled these cases consistent with the "Guidelines on Special Procedures Under the Comprehensive Plan of Action."

Possible Inconsistencies in Review of Some General Refugee Status Determination (Merit) Cases

To qualify for refugee status, asylum seekers had to demonstrate a well-founded fear of persecution. We reviewed 74 refugee status determination cases and discussed them with UNHCR officials and others involved in the CPA program. Procedures in each of the countries we visited were designed to help ensure that those with strong refugee claims would be recognized as refugees. Most of the screened-out cases we reviewed did not appear to have strong claims based on the case file evidence we examined. However, in some cases we identified issues that pointed to possible differences and inconsistencies in the way screening procedures may have been implemented. The limitations on our access to documents and our inability to interview asylum seekers preclude us from concluding with certainty whether these issues may have contributed to unfavorable screening decision outcomes in these cases. (See apps. I

through III for our review of merit cases in the Philippines, Indonesia, and Hong Kong, respectively.)

In reading the UNHCR case files, we noted considerable variation in the quality of the information presented regarding refugee claims and screening officials decisions. Although many of the case files were well-documented and contained detailed case histories with clear and logical explanations for the refugee status decisions, others were less complete and decisions did not appear to be well-supported by the recorded facts. Some case files had inconsistent or contradictory remarks by the screening interviewers. Such inconsistencies in the case file documentation often prevented us from concluding whether a screened-out decision was the result of poor record-keeping or it properly reflected the facts of the case. Case file documentation was particularly important because adjudicators at the appeals and mandate review stages relied on the case file record for their deliberations. According to Hong Kong officials, 25 percent of the appeals cases were reinterviewed, but we were told that few, if any, reinterviews occurred during appeals in Indonesia and the Philippines.

A few of the most difficult case files to assess involved screening decisions that focused on the credibility of the applicant's claim for refugee status. In these cases, screening officials seemed to place great emphasis on inconsistencies that appeared in the applicant's claim and/or appeal. Their attention seemed to focus on relatively small details regarding a claim, such as the dates of noncrucial events and statements of when and where something may have happened many years ago, rather than on the major factors addressing the claim of persecution. In other cases where credibility issues were the principal reason to screen out an asylum seeker, the screening official presented convincing evidence that challenged key aspects of a case. For example, in one case in the Philippines, the asylum seeker claimed to have served several years in a Vietnamese prison under harsh conditions and away from his family. However, information in the case also indicated that the individual had fathered two children with his wife during the same period and the prison release documents appeared to have been tampered with.

Other issues that surfaced during our review dealt with potential difficulties asylum seekers may have had in presenting their cases. A few of the appeal petitions submitted by asylum seekers in the Philippines and Hong Kong, for example, raised concerns about the relatively small amount of time spent by screening officials in conducting the first instance

interviews. Communication difficulties may have occurred. Several appeal petitions in the Philippines and legal briefs presented by attorneys in Hong Kong criticized the quality of the translations conducted by interpreters. In a few cases in Hong Kong, interpreters may not have been able to translate the Nung ethnic dialect spoken by the asylum seeker. A further issue that was reported to us was a practice used in the early stages of screening in the Philippines where asylum seekers were asked to sign a blank record of their interview before it was written up. As a result of this practice, asylum seekers had no assurance that the information they had presented in the interview was accurately recorded. According to UNHCR officials, this practice occurred in some cases during the first year or so of screening; however, it was subsequently changed and asylum seekers signed only completed write-ups.

Refugee status determinations inherently involve judgment on the part of the screening official. As a result, some differences in screening decisions are to be expected. Some cases we reviewed appeared to have similar facts and elements of a claim but were assessed differently by screening officials. In the Philippines, screening rates among first instance screening officials varied widely, according to UNHCR data.¹² The overall screened-in rate at the first instance stage was 43 percent—the highest screened-in rate among all the first asylum countries. However, some officials were very lenient and consistently screened in a very high percentage of cases (75 percent and higher), and others were quite stringent and screened in far fewer cases (25 percent or less). UNHCR officials said that a number of weak cases probably were screened in, but they maintained that the appeals process and UNHCR’s own mandate authority helped ensure that individuals with strong refugee claims would be recognized and accepted for resettlement.

Agency Comments

In providing oral comments on a draft of this report, UNHCR and Department of State officials generally concurred with the report’s content. They provided technical and clarifying comments that we have incorporated in the report where appropriate.

Scope and Methodology

As agreed with your office, the focus of our work was on selected family unity, victim of violence, and general refugee merit cases of individuals who were screened out under the CPA program. Our approach was to

¹²UNHCR Report on Alleged Corruption in the Refugee Status Determination in the Philippines (Oct. 1995).

conduct case file reviews to assess the strength or weakness of the claims that were made and determine how the screening process worked in these cases. We concentrated on cases from Indonesia, Hong Kong, Malaysia, and the Philippines, and selected them from among the approximately 500 cases provided through your office.¹³

Our review was mainly limited to an examination of UNHCR case files in the first asylum countries. The government in each country we visited denied our requests to visit the camps and interview asylum seekers and would not grant us access to their own case files. Officials from these countries expressed concerns that our presence in the camps might raise false expectations among the asylum seekers that the U.S. government was pursuing a rescreening of cases. We did not have the authority to require other governments to provide us access for interviews or review case files under their jurisdiction, and we had to rely on the willingness of host governments to grant us access. The lack of access to host government case files was a significant limitation on our work because the government of the first asylum countries were responsible under the CPA for the refugee status determination process that involved both the initial interview and the appeals process. Information contained in these files was often not available in the UNHCR files we were permitted to examine. However, to supplement our review of cases, we did meet and discuss the CPA screening process with officials from UNHCR, the first asylum governments, and the U.S. embassies. In addition, we interviewed representatives from nongovernmental organizations such as legal assistance groups who were involved with the CPA.¹⁴

To learn more about the CPA screening criteria and procedures, we reviewed available UNHCR documents, met with UNHCR officials in Geneva, and participated in a 2-day briefing with the UNHCR regional coordinator of the CPA program and other staff in Malaysia. The amount and focus of our fieldwork differed in each country, given the number and type of cases we had to work with and the existing time frame established to conclude the CPA program in each country. We reviewed 242 cases in the 4 countries we visited during a 3-week period from late June to early July 1996. (See table 1.) The cases covered individuals who were still in the camps at the

¹³We did not include Thailand in our review due to limited time and resources.

¹⁴Although we were not able to visit the camps and interview asylum seekers, we did interview seven asylum seekers through a Vietnamese Catholic priest working in Manila. Because the Philippines' camp at Palawan operated as a relatively open facility, several hundred asylum seekers have left over the years and assimilated into Philippine society. In Hong Kong, we also met with a few individuals who had been declared refugees but had not been resettled and were staying in an open camp. These individuals provided us with additional perspectives on the screening process.

time of our visits as well as those who had already returned to Vietnam. We prioritized the workload by first reviewing family unity and victim of violence cases and then the general merit-type cases. We assessed cases from the perspective of the CPA criteria, reviewed factual information in the case files, and sought to examine how the screening process was implemented. We read each case file, took appropriate notes on information in the files, and discussed cases with available UNHCR staff and among ourselves.

Table 1: Cases Reviewed by Type in Each Country

	Family unity	Victim of violence	Merit	Total
Hong Kong	0	0	18	18
Indonesia	33	77	11	121
Malaysia	31	5	1	37
Philippines	22	0	44	66
Total	86	82	74	242

The type and quality of information included in the UNHCR case files varied both across and within the countries we visited. In Hong Kong, for example, we only had access to that portion of the case files belonging to UNHCR. We were permitted to read UNHCR mandate review documents that pertained to a case but generally not other documents produced by and belonging to the Hong Kong government, such as the first instance and review board interviews and decisions. While the mandate review documents usually included summaries of what occurred at earlier stages of the screening process, they lacked many important details about how asylum seekers presented their cases or the assessments by Hong Kong officials. However, in Hong Kong, because of the extensive legal assistance available to asylum seekers, we were also able to collect from these sources quite detailed information about some individual cases. In Malaysia and the Philippines, we had access to all the documents contained within the UNHCR files, regardless of whether they were produced by UNHCR or the first asylum government. However, these files usually did not include appeal decision assessments. Also in Indonesia, the case files did not include documents generated by the Indonesian screening officials and belonging to the Indonesian government. Indonesia did not permit nongovernmental organizations to participate in applicant counseling, as the Hong Kong government did; consequently, this source of information was not available in Indonesia.

The written material in UNHCR case files also limited the conclusions we could draw about individual cases. While many of the case files were quite detailed, some had insufficient information to allow us to determine the appropriateness of an applicant's claim for refugee status or to understand what rationale or reasons an interviewer used in making a decision. This does not mean that the process was deficient in these cases or that an inappropriate decision was reached; it only means that the files we were permitted to examine may have been incomplete. Nonetheless, as a result, it was difficult to differentiate whether the strength or weakness of a particular case reflected the write-up of the case or the actual facts and presentation of the case during the refugee status determination.

Due to the variance in the number and type of cases presented for our review in the countries we visited, our detailed discussion of cases in appendixes I, II, and III vary as to form and content. For example, due to our familiarity with the screening process in Hong Kong (based upon our prior work), the relatively smaller number of cases to review, and the larger volume of case file data, we are able to present a fuller discussion of the asylum seekers' claim and the basis for their decisions. Since we did not visit the Philippines during our previous work on the CPA, our discussion focuses on both the screening process and case examinations. Indonesia had the largest number of cases we reviewed, the majority of which were victim of violence and family unity cases. We focused primarily on whether these cases appeared to be adjudicated properly based upon family unity and Special Procedures criteria. Subsequently, we also reviewed the cases based upon general refugee merit criteria, which is the basis of our case presentations.

In a letter dated December 10, 1996, you raised some concern about the findings of this report and the reasonableness of its conclusions. We have attempted to clarify the information in this report where appropriate, and to further describe the scope limitations placed on our work. Because our office could not make independent findings of fact, we could not draw conclusions about individual cases. In addition, because we reviewed only a limited number of cases, our findings cannot be generalized to other cases or be used to judge the overall reasonableness of the CPA screening process.

We conducted our review from April to September 1996 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairmen and Ranking Minority Members of the House and Senate Committees on Appropriations, the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and other interested committees; the Secretary of State; the Attorney General; the U.N. High Commissioner for Refugees; Congressmen Tom Davis and Benjamin A. Gilman, and Congresswoman Zoe Lofgren of the House of Representatives because of their expressed interest; and others upon request. If you or your staff have any further questions concerning this report, please contact me at (202) 512-4128. Major contributors to this report were Patrick Dickriede, Le Xuan Hy, John Oppenheim, Audrey Solis, and Thai Tuyet Quan.

Sincerely yours,

A handwritten signature in black ink that reads "Harold J. Johnson". The signature is written in a cursive style with a large, sweeping initial "H".

Harold J. Johnson, Associate Director
International Relations and Trade Issues

Contents

Letter		1
Appendix I		24
Refugee Status	Screening Process	24
Determination in the	Concerns With the Process	25
Philippines	Review of Merit Cases Highlights Difficulties in Interpreting Refugee Criteria	28
	Limited GAO Blind Study Indicates Some Screening Variations	30
Appendix II		32
Refugee Status	Case 1	32
Determination in	Cases 2 and 3	33
Indonesia	Case 4	33
	Cases 5 and 6	34
Appendix III		35
Refugee Status	Case 1	35
Determination in	Case 2	36
Hong Kong	Case 3	37
	Case 4	38
	Case 5	39
	Case 6	39
	Case 7	40
	Case 8	40
	Case 9	41
	Case 10	42
	Case 11	43
	Case 12	44
Tables	Table 1: Cases Reviewed by Type in Each Country	19
	Table I.1. Results of First Instance Screenings by Philippine Government Immigration Officials	26

Abbreviations

AET	Anciens Enfants de Troupe
ARVN	Army of South Vietnam
CPA	Comprehensive Plan of Action
LAVAS	Legal Assistance for Vietnamese Asylum Seekers
NEZ	New Economic Zones
ODP	Orderly Departure Program
UNHCR	United Nations High Commissioner for Refugees

Refugee Status Determination in the Philippines

Of the 66 cases we reviewed in the Philippines, 44 were merit cases. Among these were 11 cases of individuals who had been screened in as refugees. This provided us a limited opportunity to compare the relative strengths of screened-in and screened-out cases. Because these cases represent only a fraction of the thousands of adjudicated cases, we cannot draw any conclusions based on our review. Rather, our review demonstrates how judgments varied during the screening process. Before presenting our review of cases, we describe how the refugee status determination process was structured and note some general issues about its implementation.

Screening Process

Beginning in March 1989, all asylum seekers arriving in the Philippines by boat were required to undergo screening in the Palawan refugee camp operated by the Philippine army and supported by the U.N. High Commissioner for Refugees (UNHCR). The Philippine government's Task Force on International Refugee Assistance and Administration was charged with coordinating refugee activities with UNHCR and other international organizations.¹ The initial refugee status determination screening at Palawan was conducted by nongovernmental legal consultants contracted by UNHCR. Using standard interview forms approved by the Task Force, the predetermination interviewer was to collect relevant information and any documents that were in the asylum seeker's possession. The asylum seeker was to sign the finished interview forms and questionnaires. UNHCR then presented these forms and any documents provided by the asylum seeker to the Philippine government's Commission on Immigration and Deportation for refugee status determination.

A Philippine immigration official was to use the predetermination information to decide refugee status. The immigration official was to conduct his or her own interview to fully assess and evaluate the asylum seeker's claim for refugee status, in accordance with UNHCR criteria. UNHCR provided an interpreter to translate for the asylum seeker. A UNHCR representative was to be present during the interview, although he or she did not participate in the proceedings. However, the immigration official and the UNHCR representative could confer with each other after the interview.

¹The influx of Vietnamese asylum seekers in the 1970s prompted President Marcos, in cooperation with UNHCR, to provide temporary lodging for refugees prior to their final resettlement in other countries. Through executive orders, he created the Task Force in August 1979, and President Aquino introduced changes to its structure and functions in August 1988.

Decisions were made in Manila, not in Palawan, and were to be based on CPA criteria for refugee status. When a member of a family was recognized as a refugee, immediate members of the family—spouses, minor children, and other dependents—were also to be recognized as refugees. Decisions were to be provided in writing no later than 2 months from the time the status determination interview was conducted. If refugee status was denied, the basis for the denial was to be documented in writing. A UNHCR representative was to present the decision to the asylum seeker for his or her signature and date. All decisions and pertinent records were forwarded to the Task Force.

Asylum seekers could appeal a denial for refugee status by filing a notice of appeal with the Appeals Board, through the Task Force, within 15 days after receiving the decision. The appeal could also include a request to submit an extended written statement and supporting documents within an additional 15 days from the filing of the notice of appeal. If an asylum seeker did not file an appeal within 15 days of receiving the first instance decision, he or she was deemed to have chosen voluntary repatriation. The three-member Appeals Board was to resolve the appeal within 2 months after receiving the appeal or, when appropriate, the extended written statement. Appeals Board decisions were final. Beyond the appeal stage, UNHCR could exercise its mandate authority for granting refugee status to cases not screened in during the first instance or appeal phases.

The Philippine government screened a total of 4,810 cases, which equated to 7,272 individual asylum seekers. Of this number, 2,087 cases (3,392 persons) were screened in as refugees at the first instance stage; and 2,723 cases (3,880 persons) were denied refugee status or “screened out,” for a screened-in case rate of 43.4 percent. An additional 351 cases (471 persons) were screened in when the Appeals Board overturned negative decisions. UNHCR exercised its mandate authority for an additional 13 cases, or 19 people, for an overall screened-in case rate of 50.9 percent. The Philippines’ overall and first instance screened-in rates were the highest of all countries of first asylum.

Concerns With the Process

The two-tiered screening process by the Philippine government and UNHCR’s mandate authority was intended to ensure that those with strong refugee claims would be screened in and recommended for third country resettlement. However, despite the relative generosity reflected in the screened-in rates, we noted in our reading of case files that some first instance decisions by immigration officials contained inconsistent or

**Appendix I
Refugee Status Determination in the
Philippines**

contradictory remarks, widely varying interpretations of country of origin information, or incomplete information. UNHCR reported that the criteria for determining refugee status was often inconsistently applied at the first screening decision level,² and some Philippine government and nongovernmental officials also voiced these concerns. UNHCR statistics also revealed some wide variances of screened-in rates among immigration officers. (See table I.1.)

Table I.1. Results of First Instance Screenings by Philippine Government Immigration Officials

Interviewer^a	Number positive	Percent positive	Number negative	Percent negative
A	26	50.00	26	50.00
B	61	54.95	50	45.05
C	38	29.69	90	70.31
D	67	39.18	104	60.82
E	135	51.92	125	48.08
F	29	37.18	49	62.82
G	134	43.23	176	56.77
H	60	34.09	116	65.91
I	30	22.22	105	77.78
J	103	100.00	0	0.00
K	62	26.16	175	73.84
L	59	51.30	56	48.70
MN	25	39.06	39	60.94
O	121	58.45	86	41.55
P	133	84.71	24	15.29
Q	21	26.92	57	73.08
R	74	45.68	88	54.32
S	59	53.64	51	46.36
T	125	51.23	119	48.77
U	214	68.15	100	31.85
V	141	55.95	111	44.05
W	91	71.09	37	28.91
X	63	53.39	55	46.61
Y	43	31.62	93	68.38
Z	20	17.09	97	82.91
AA	129	50.59	126	49.41
BB	241	75.31	79	24.69
CC	67	44.08	85	55.92

(continued)

²UNHCR Report on Alleged Corruption in the Refugee Status Determination in the Philippines (Oct. 1995), p. 4.

**Appendix I
Refugee Status Determination in the
Philippines**

Interviewer^a	Number positive	Percent positive	Number negative	Percent negative
DD	52	37.14	88	62.86
EE	46	38.02	75	61.98
FF	98	43.36	128	56.64
GG	33	46.48	38	53.52
HH	177	29.30	427	70.70
II	68	51.13	65	48.87
JJ	144	48.81	151	51.19

^aWe excluded interviewing teams, names of interviewers, and officials with fewer than 50 interviews.

Source: Report on Internal Survey on the RSD under the CPA in the Philippines, UNHCR (Manila: July 1995), Annex A.

Nonetheless, UNHCR and government officials stated that the appeals process and UNHCR’s mandate authority helped ensure that those with strong claims to refugee status would be screened in. UNHCR reported that it reviewed all cases screened out by immigration officials to ensure that no person with a well-founded fear of persecution would be denied refugee status.

Our review of the appeals process was limited because the Appeals Board did not explain its decisions in writing. It was not entirely clear how the Appeals Board fully resolved discrepancies or credibility issues because it did not reinterview the appellants, although new or clarifying information was presented as part of some asylum seekers’ appeal petitions. According to a former member of the Appeals Board, members received the case files and any new documentation about a week before a board meeting. This official said that the Board would often delay a decision while awaiting additional relevant documentation. Since written explanations were not in the files, we could not determine whether or how the Board considered the material clarifications contained in the appeal submissions.

According to a UNHCR report,³ rumors of corruption persisted during the first instance screening by immigration officials. UNHCR reported that its field office repeatedly encouraged asylum seekers to provide specific information about these charges, offering protection against reprisals, but no one came forward. Other officials also said that they had heard rumors of corruption, but these allegations had not been substantiated. In July 1995, an advocacy group published a report criticizing the screening

³Ibid., pp. 1-2.

process and citing 12 cases in which money or sexual favors were allegedly sought or given in exchange for positive refugee status decisions. The charges were directed against eight immigration officers and two UNHCR legal consultants. UNHCR reviewed the cases handled by these individuals and did not find any evidence of corruption. We did not evaluate UNHCR's methodology for investigating the corruption allegations.

UNHCR acknowledged that a number of weak cases had been screened in, creating an impression of unfairness for those with stronger claims who were unable to establish a well-founded fear of persecution due to a convention-related reason.⁴ UNHCR maintains that the appeals process identified those cases with a strong claim to refugee status and that the remaining deserving cases were accepted or identified for refugees status under its mandate protection. We were unable to validate these assertions. As discussed below, we identified some cases that appeared to have some strong or cumulative elements of persecution, but we could not conclude that they were adjudicated fairly or unfairly given the limitations of the information in the files and our lack of access to asylum seekers.

Review of Merit Cases Highlights Difficulties in Interpreting Refugee Criteria

Of the 33 screened-out cases we reviewed, most did not appear to have strong claims based on the evidence contained in the files. Our review indicated that six cases appeared to have some strong or cumulative elements of persecution, but we could not conclude that they were adjudicated unfairly given the limitations of the information in the files and our lack of access to the asylum seekers themselves. A more lenient officer might have screened in these cases. While we cannot conclude that strong cases were screened out, we believe that human judgment is an unavoidable variable in any refugee screening process in which the individual's story is difficult to substantiate. Moreover, according to UNHCR guidance, the screening decision should consider the duration and the recency of the persecution as well as the cumulative nature of persecution. For example, a person could be subjected to many forms of persecution or harassment that are minor by themselves, but the cumulative nature over time may constitute convention-related persecution. Because there is no universally accepted definition of persecution, refugee status decisions depend greatly on the individual circumstances of each case and the likelihood of persecution if an individual returns.

⁴According to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, the 1951 Convention stated that an individual could seek refugee status due to a well-founded fear of persecution for the following reasons: race, religion, nationality, membership of a particular social group, or political opinion.

We noted some inconsistencies among immigration screeners and widely varying interpretations of country of origin information. For some interviewers, potentially persecutory actions taken by the Vietnamese government were simply “national policy.” For example, UNHCR guidance states that the duration and hardship incurred as a result of being sent to a New Economic Zone (NEZ)⁵ should be considered if the person was sent to a zone for convention-related reasons.⁶ Several case files of screened-out individuals described serious hardship in the zones, such as lack of medical care resulting in the death of a family member, that did not appear to influence the interviewer. In one screened-out case, the interviewer wrote, “They were not the only family which was sent to the NEZ but all the families who were once upon a time associated with the past regime.” This seems to indicate a decision to send families to the zones that went beyond the national policy of returning farmers to the countryside for food production. However, past persecution was normally not enough by itself to substantiate a well-founded fear of persecution upon return to Vietnam, and this individual’s claim for refugee status was denied due to lack of merit and credibility problems.

UNHCR guidance also notes that, although it is a general legal principle that the burden of proof lies with the person submitting a claim, an applicant may not be able to support statements by documentation or other physical evidence in refugee status determination situations. In such cases, UNHCR recommends that “if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.”⁷ In about half of the cases we reviewed, immigration interviewers and UNHCR legal consultants noted credibility problems, but we could not ascertain from the information provided whether the accounts were credible.

Several immigration officers rejected claims partly because an individual or his or her family was able to obtain a family registration card (ho khau) issued by the Vietnamese government. Such registration is the first step for many basic rights, such as obtaining education, legal employment, business licenses, medical care, and ration cards for price-controlled food.

⁵In an effort to decongest cities and increase food production, the Vietnamese authorities launched schemes designed to relocate people from urban areas to the countryside. Many people with bad family records and no farming experience were also sent to these areas with little government support.

⁶Guidelines on the Application of the Refugee Criteria to the Caseload of the Vietnamese Boat People in Southeast Asia, Office of the United Nations High Commissioner for Refugees (Kuala Lumpur, Malaysia: Mar. 1992) p. 13.

⁷UNHCR Handbook, paragraph 196.

Several asylum seekers asserted, however, that such registration was simply a means of controlling citizens and did not, by itself, guarantee ration cards or medical care, which they said they had been denied. In one case, an applicant claimed that, due to past political troubles with the Vietnamese government, the only way his family could get a family registration card was by paying a bribe. According to the interviewer's written decision, that ability to bribe meant that the individual's family must be well-off and not subject to persecution. His appeal was subsequently denied.

Assessing the screening process for Vietnamese veterans was particularly difficult because it appears that almost everyone who was associated with the South Vietnamese or U.S. governments was subject to some form of punishment, such as "reeducation." In most of the veterans' cases we reviewed, the punishment occurred immediately after the communist victory in 1975 and tended to taper off during the 1980s. Also, the punishment often appeared light, such as reeducation for several days. However, there appeared to be some exceptions to this. For example, in one case, a husband had served in the South Vietnamese Army from 1967 until 1974. From 1967 until 1972, he was an interpreter assigned to the U.S. Army 517th Intelligence Unit, where he helped interrogate captured North Vietnamese. In the appeals documents he and his wife submitted, they noted that, among other things, a new police chief in their district had been interrogated by the husband during the war and severely beaten by U.S. intelligence officers. In denying his claim to refugee status, the interviewer recorded that the police chief had been assigned in 1980, and that nothing had happened to the couple in the intervening years prior to their escape. According to their appeal submissions, the police chief was assigned in 1988, not 1980, and consequently the husband fled, fearing persecution. The wife stated that she was detained and raped by the new police chief ("a mere abuse of police power," granting that it was true at all, according to the interviewing officer). In addition, the husband claimed that he was involved in an anticommunist organization in 1987 and was shot while escaping from his mother's house in Saigon. The Appeals Board upheld the first instance decision to deny him refugee status. He requested a mandate review by UNHCR, but the file did not indicate a response.

Limited GAO Blind Study Indicates Some Screening Variations

Prior to our fieldwork, we obtained first instance screening decisions prepared by Philippine immigration officials for 177 asylum seekers and then blacked out all the decisions to conduct a test. A team of five GAO evaluators each reviewed a set of decisions and assessed whether the

applicant had been screened in or out based on the information in the decision paper. In general, the team found that many of the screening decisions presented limited information about the asylum seeker's claim for refugee status. The write-ups often lacked important details about the applicant's background, situation in Vietnam, and reasons for leaving the country. Without such information, it was difficult to determine the relative strength or weakness of individual cases. In addition, many of the write-ups contained weak support or no explanation for the screening decisions made by the immigration officials. In reviewing cases, different members of the team often chose a decision different from the decision rendered, indicating that a good deal of subjective judgment may be involved in the adjudicator's decisions. In the 177 screening decision papers, there were 7 in which the screening officer laid out clear and logical reasons for granting or denying refugee status. In a majority of the other cases, however, it was less clear from the write-ups why a particular decision had been reached. At least 24 cases appeared to be identical or very similar, yet received different decisions from different screening officers. It should be noted, however, that these decision papers were only one part of an applicant's file and cannot be used to assess the credibility and reliability of the screening process, or compliance with international norms for refugee status determination.

Refugee Status Determination in Indonesia

In Indonesia, of the 121 cases we reviewed, 11 were asylum seeker cases that underwent the regular status determination process. We also examined the 77 victim of violence cases (which after assessment for trauma by a social service counselor underwent normal refugee status determination processing) and 2 of the family unity cases to assess the strength of their claims for refugee status.¹

Our review indicated that the large majority of the cases decided on merit seemed to have been adjudicated fairly and the decisions appeared reasonable based on the available case file information. A common element that ran through the case presentations by the asylum seekers was the harsh conditions and difficult economic situation present in Vietnam, especially in the late 1970s and early 1980s. Those asylum seekers who spent time in a NEZ seemed to have particularly difficult living situations. However, despite the difficult living conditions, the case file documentation appeared to lack persecutorial elements and did not present facts to support a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion.

Of the 11 merit cases we examined, 2 were screened in while 9 were screened out. Eight of the nine screened-out cases appeared to have been properly adjudicated based on information available in the case files. These cases failed to present convention-related claims, and the individuals appeared able to live tolerable lives. The case files for the two screened-in cases also indicated weak claims for refugee status and may have benefited from a generous application of the refugee criteria.

The following six screened-out cases² presented facts or issues reported by the asylum seekers that we believe may have merited further consideration or clarification.

Case 1

This case, involving an ethnic Khmer, included cumulative factors that may have supported a claim for refugee status based upon ethnicity and political beliefs. The asylum seeker's father was arrested in 1982 and sentenced to 7 years in prison (where he died) for his affiliation with an

¹For a detailed description of the screening process in Indonesia, see *Vietnamese Asylum Seekers: Refugee Screening Procedures Under the Comprehensive Plan Of Action* (GAO/NSIAD-97-12, Oct. 21, 1996).

²The 6 cases were among the 121 cases we assessed on the basis of their claim for refugee status. Three of these cases were victim of violence, 2 were family unity, and 1 was a merit case included within the 11 merit cases we examined.

antigovernment political party. While the father was in prison, the asylee's family lost their family registration card and the children could not attend school. The individual was arrested in 1986 for antigovernment activities and imprisoned for 18 months.

Cases 2 and 3

These cases involved a brother and sister who, as adults, were screened separately, in accordance with established procedures. Their father spent 5 years in a reeducation camp, and the brother spent 7 years in a NEZ. After returning from the NEZ, the brother was then arrested for printing Catholic religious materials and was imprisoned from 1986 to 1990. The sister was arrested for teaching the catechism and sentenced to 22 months of labor and was repeatedly summoned for questioning due to her brother's activities. Upon release from prison, the brother and sister fled Vietnam. The legal consultant who reviewed the case noted in the file that the persecution for religious involvement was "remote in time" and recommended against granting refugee status.

While conditions in Vietnam may have changed in terms of religious tolerance, we believe the length of incarceration for the applicants could be considered excessive and therefore warranted a more generous treatment. When we discussed these cases with a UNHCR official, he told us that, in hindsight, the decision might have been erroneous for this reason. However, the individuals were not eligible for mandate because the mandate exercise weighs factors and events at the time of review, not when the individuals initially fled Vietnam, and according to the UNHCR official, Catholicism is no longer persecuted in Vietnam.

Case 4

In this case, the asylum seeker's father-in-law was detained in a reeducation camp for 9 years. The asylum seeker was jailed for 26 months, according to the legal consultant's notes, for illegal peddling. However, in her appeal, the asylum seeker linked her imprisonment to her husband's political activities and the family's adverse background. The claim was discounted during the first instance interview because she could not document her imprisonment. The Appeals Board rejected her appeal citing lack of new information. The length of the imprisonment raises the question whether the asylum seeker's political background may have been a factor in the sentencing.

Cases 5 and 6

These two cases involve the credibility of the applicants' claims for refugee status. Based upon biographical data and the interview instruments, both applicants appeared to present strong claims. However, in one case, the reviewing legal consultant doubted the credibility of the asylum seeker's claim that he spent 3 years hiding in the compounds of two churches after the presiding priest of the church where he taught the catechism was arrested. According to the case file, the interviewer reasoned that no church in Vietnam would harbor possible criminals. In the other case, the legal consultant questioned the asylum seeker's claimed link to an antigovernment group (FULRO) based on the applicant's ethnicity. Although FULRO usually consisted of members from minority tribes in central Vietnam who sought to establish an autonomous region, it was not clear that the group denied membership to those from other ethnic groups, such as the asylum seeker in this case.

Refugee Status Determination in Hong Kong

We examined 18 refugee merit cases in Hong Kong from among those provided through your office.¹ The UNHCR case files we had access to did not include the interview and appeal information compiled by Hong Kong authorities. They did, however, contain detailed UNHCR mandate review assessments and other information, including submissions by the asylum seekers and/or their lawyers. We also obtained additional documents from attorneys who represented many of the cases we reviewed. In addition, we held lengthy discussions with UNHCR staff and some asylum seekers' attorneys. Due to the smaller number of cases, the greater amount of case file information, and the type of cases we examined, we were able to spend more time and learn more about each of the cases in Hong Kong than in Indonesia and the Philippines.

After reviewing available information, we had a number of questions about the application of the screening criteria in the cases we reviewed. However, because we lacked access to the asylum seekers and to all the components of each case (and we did not seek to adjudicate cases), we could not conclude whether Hong Kong and UNHCR officials had assessed the cases appropriately.

In the remainder of this appendix, we present 12 cases that highlight issues involving (1) the manner in which interviews were conducted; (2) different interpretations of the screening criteria, such as the use of country of origin information; (3) communication difficulties resulting from poor translations by interpreters; and (4) judgments made about the credibility of cases. Unless otherwise indicated, the sources of the factual information are representations of the asylum seekers or their lawyers.

Case 1

The asylum seeker in this case reported that he was persecuted for his commitment to the Catholic Church. In Vietnam, he studied to become a priest but claimed he was denied admission to a university because of his family's religious background. The asylum seeker was arrested and charged with sabotage for harboring a Catholic seminarian who was trying to escape the country. He was imprisoned and subsequently escaped. Hong Kong screening officials challenged his credibility regarding how he escaped from jail but did not question his involvement with the Catholic Church.

According to a report from a Catholic chaplain working in the Hong Kong camp, the asylum seeker had been active in religious organizations in the

¹See our October 1996 report for a detailed description of the screening process in Hong Kong.

camp. His lawyer reported that the Catholic Diocese of San Francisco sponsored him for a special religious immigrant visa to work in a church in the United States. The asylum seeker also expressed concern that he would be rearrested for sabotage if he returned to Vietnam. We discussed this case with UNHCR officials who thought that the case could qualify on humanitarian grounds, and they subsequently informed us the asylum seeker was screened in under UNHCR mandate in November 1996 based upon new information submitted on the case.

Case 2

The asylum seeker reported that his father was a high ranking civilian in Da Nang and an official in an anticommunist party during the war. When Saigon fell, his father was sent to a reeducation camp for nearly 5 years, and then to a NEZ with his family. Although the asylum seeker completed high school in 1975, he claimed he was not permitted to take the university entrance exam. He was required to do forced labor in the NEZ but was allowed to stop after being injured in an accident. Because he did not have a registration card, he supported himself in a variety of odd jobs. According to the appeal petition filed by his lawyer, the asylum seeker joined an anticommunist group in 1976. When the group was discovered, he attempted to leave Vietnam but was caught and imprisoned. After 2 years, he escaped and subsequently joined another anticommunist group in 1982. When this group was discovered a few years later and some members were imprisoned, the asylum seeker went underground. He joined a third anticommunist group in 1987 that sold illegal music in the black market, some of which contained antigovernment themes. After authorities reportedly began cracking down on such groups in 1988, the asylum seeker and his wife escaped to Hong Kong to avoid arrest.

The asylum seeker continued to be politically active in Hong Kong, opposing conditions in the camp and the forced repatriation of asylum seekers to Vietnam. In reviewing the case for possible mandate, the UNHCR reviewer determined that the claim lacked convention-related persecution and had credibility problems. In this regard, UNHCR found that the asylum seeker's family had obtained legal registration by 1988, thereby demonstrating that the family had reintegrated into Vietnamese society. Furthermore, the UNHCR reviewer found it implausible that the asylum seeker would join another political group so soon after escaping prison, and considered selling antigovernment materials in the black market to be a criminal offense that was not convention-related. Finally, the reviewer found that the asylum seeker's political activities in Hong Kong were

directed against the screening process and were not convention-related activities.

Notwithstanding the UNHCR's initial determination, because of the complexity of the case, UNHCR informed us that it would fully review the case again. In November 1996, the asylum seeker was screened in under UNHCR mandate.

Case 3

According to the asylum seeker, his father was a counterintelligence officer in the South Vietnam Army (ARVN) from 1954 to 1975 and his mother worked at a large American base in Da Nang. His father was in a reeducation camp for 3 years, then sent to a NEZ with his family after their home was confiscated. In 1981, the family fled the NEZ and the children were denied the right to attend school. The family was also subjected to weekly public humiliation sessions that were intended to force them back to the NEZ. The following year, when the asylum seeker was 17 years old, he and another individual were implicated in an event in which a policeman was killed. He tried to escape from Vietnam but was caught and sentenced to 3 years in prison on charges of aiding an anticommunist group and participating in the death of the police officer. He failed in an attempted prison escape and spent more than 7 years in prison.

The Hong Kong review board, which interviewed the asylum seeker, found that neither he nor his family suffered convention-related persecution despite facing discrimination for convention reasons. It did not find the asylum seeker's account of his arrest for the death of the policeman to be credible and concluded that if he had been responsible for the policeman's death, he would have been charged with murder or at least manslaughter. The board also concluded that the asylum seeker had embellished and fabricated this aspect of his claim. The UNHCR review of the case essentially agreed with the review board decision, finding serious credibility concerns. The UNHCR reviewer thought it credible that the asylum seeker spent considerable time in prison and possibly suffered mistreatment, but the imprisonment resulted from a common crime and was not convention-related.

We questioned the completeness of the first interview with the asylum seeker that was conducted only 1 day after he arrived in Hong Kong, but UNHCR said that the first interview was part of the material and evidence offered by the asylum seeker and was properly considered. UNHCR also noted that the asylum seeker gave totally different accounts to the

interviewing officer concerning the reason for his imprisonment and omitted or changed circumstances in his life story. UNHCR concluded that the benefit of the doubt principal did not apply since the asylum seeker's account lacked coherence and plausibility, and ran counter to generally known country of origin information. UNHCR said that the asylum seeker might return to prison if repatriated, but the evidence suggested the imprisonment would not be for a convention-related issue.

Case 4

The asylum seeker claimed that her father, a lieutenant in the ARVN, died after being captured by the communists in 1975. Her family's property was confiscated, and she was resettled in a NEZ with her grandmother and mother. Her grandmother contracted malaria and died, and the asylum seeker also became ill with malaria so her mother took her out of the zone illegally. The asylum seeker reported that her mother could not provide for her, so she was sent to live with a family friend and former military comrade of her father's, and her mother disappeared. Because of her illegal residence, the asylum seeker was not allowed to attend school. She helped the new family with an illegal vending business, but was caught and sent to a youth detention center due to her age (15) at the time of her arrest. She escaped to Hong Kong in January 1991 when she had just turned 16.

Her lawyer provided us with a copy of the review board's 1991 decision, which challenged her credibility because of several contradictions in the record. The board decision noted that "there is no country of origin information that the Review Board is aware of which supports the proposition that children of ex-ARVN soldiers are systematically discriminated against or persecuted in present day Vietnam." The asylum seeker's lawyer, however, submitted to UNHCR the following excerpt from the Country Reports on Human Rights Practices for 1992 issued by the U.S. State Department: "Family members of former South Vietnamese Government and military officials . . . have been systematically discriminated against."

UNHCR also reviewed the case and, while noting that the asylum seeker "led a miserable existence," concluded that her life had improved after she was sent to live with her father's friend. In the UNHCR assessment for mandate review, the reviewer also used country of origin considerations to decide that the asylum seeker had been treated like any other homeless child. The reviewer "[does] not find any discrimination suffered amounts to persecution" even if benefit of the doubt were given to claims.

Case 5

According to the case file, the asylum seeker served with the U.S. Army from 1963 to 1975. He was sent to a reeducation camp for 3 days after the war and then to a NEZ with his family. His wife and children contracted malaria and were allowed to leave the NEZ for treatment. Two years later he joined his family without government approval and the family lost their ho khau. As a result, his children were denied public education for 10 years and had to perform forced labor at regular intervals. In 1988, the asylum seeker received a ho khau but also lost his job when the factory where he worked became state-run. After his ho khau was reinstated, the asylum seeker's children were allowed to pursue their education again. Because he had helped protest the factory takeover, he was detained for 2 months and required to report regularly to the authorities until 1991. In 1989, while serving on the board of directors of a school, he protested a policy change and was subjected to more forced labor. In 1991, he was arrested for illegal residency and although he was released after he presented his ho khau, he was required to report every week to the authorities.

UNHCR reviewed this case and concluded that the asylum seeker's military background was remote in time and that the difficulties he had encountered did not amount to persecution. UNHCR indicated that the asylum seeker's illegal residency made it difficult for him to obtain a ho khau. UNHCR also noted that the issue of ho khau is no longer a problem as the implementation of the CPA ensures reinstatement of a ho khau to all returnees. Furthermore, the factory protest was viewed as a public disturbance and not convention-related persecution.

Case 6

The asylum seeker served in the South Vietnam Army from 1960 to 1969 and left because of injury. He was the district security leader in Da Nang from 1970 to 1975, a nonmilitary governmental position. The asylum seeker was in a reeducation camp from 1975 to 1976 and 1978 to 1981, and his home was confiscated. He belonged to an antigovernment religious group from 1981 until he left Vietnam in 1990 due to fear of arrest.

In conducting a mandate review of this case, the UNHCR legal counselor concluded that the asylum seeker "should be recognized on account of political opinion," but another UNHCR eligibility counselor disagreed as he found the case too doubtful to apply the benefit of the doubt principle. As a result, the legal counselor reinterviewed the asylum seeker and determined again that a favorable decision should be made. Due to the difference of opinion, UNHCR's Assistant Chief of Mission reviewed the case

and decided that “the asylum seeker could not be granted the benefit of the doubt due to irreconcilable credibility problems which were material to the claim.”

Case 7

This case was unusual in that a month after the asylum seeker’s interview with the review board, he was recognized as a refugee and moved to a refugee transit camp. According to his lawyer’s submission, the asylum seeker was informed 17 days later that he was not a refugee and had to return to the asylum camp. We did not see any record in the UNHCR file explaining why this situation occurred. UNHCR informed us that “it was an administrative error” and was “amended as soon as possible.”

The asylum seeker was a member of a prohibited religious sect in Vietnam and claimed to have been a victim of religious persecution. He met a publisher of religious books in the summer of 1990 in Vietnam and was introduced to a book published by the Ching Hai group in Taiwan. The asylum seeker introduced the book to his father, who had become a Buddhist monk a few years earlier. His father also liked the book and distributed 100 copies to his followers and introduced them to the Ching Hai philosophy. The Ching Hai group has been described as religious but also critical of the Vietnamese government. The asylum seeker reported that he assisted in the printing of the book and in September 1990, he and his father and several others were arrested for “propagating anti-government material.” The asylum seeker subsequently was able to escape and flee to Hong Kong while his father remained in prison.

The Hong Kong Review Board’s decision stated that “there was no information that Buddhism followers were being suppressed by the Vietnamese authorities at the moment or would be suppressed upon their return.” UNHCR, however, provided us information that “the Ching Hai religious sect is prohibited in Vietnam and can only be practiced by its followers in private. There can be repercussions if the faith is practiced in public which may involve questioning by police, confiscation of material, or threats of further problems.” UNHCR indicated though that it was not aware of any person who had been sentenced or arrested for following Ching Hai.

Case 8

The asylum seeker reported that he went to a high school military academy, then entered the South Vietnamese army. In 1975, he was imprisoned for not having a military identification card and was sent to a

reeducation camp for 10 months, and then sent to a NEZ. In 1985, he claimed he went to Cambodia and joined an antigovernment group Ancien Enfants de Troup (AET). Subsequently, two other members of the group were arrested for distributing antigovernment leaflets. Fearing arrest, the asylum seeker fled to Hong Kong.

A complicating issue in this case was determining when and on what basis statements by the asylum seeker were considered noncredible. According to UNHCR, the asylum seeker's claim in this case was rejected because of inconsistencies in statements given by the asylum seeker about his activities with the AET, how he made contact with his wife, and statements provided by himself and his wife. According to information about the mandate review assessment, the asylum seeker did not mention his involvement in the antigovernment group during a preinterview counseling session but did so later during the status determination interview. When we asked whether it was appropriate to question credibility based upon what was not said in a counseling session, UNHCR responded that credibility is weighed based on all statements made by the asylum seeker. No distinction is made as to when or in which forum statements are made. UNHCR also noted that their case file records indicated the asylum seeker had stated in the prescreening interview that he was never involved in any antigovernment organization. However, the part of the case file we were able to review did not confirm this assertion.

Case 9

The asylum seeker's father was a soldier in the ARVN and a driver for the U.S. military until 1974. In 1975, the father was sent to a reeducation camp but escaped after 1 year. He remained underground and informed his family that he was a member of an anticommunist group known as FULRO. He was recaptured in 1982 and imprisoned until being released in 1988. The asylum seeker was 13 years old in 1975, was not allowed to attend school, and, with other members of the family, was sent to a NEZ. The family left the NEZ after 10 days, and although they had no registration card, they worked in various farming and factory jobs. In 1985, the asylum seeker was arrested with his Kung Fu teacher, because the latter was supposedly involved in an antigovernment organization. He was imprisoned for almost 2 years for "intention to go against the government." In 1989, he was arrested again because he was associated with another individual who belonged to an antigovernment group. According to his claim, the asylum seeker cut his wrist while in solitary confinement and was taken to the hospital, where he escaped the following day and then eventually fled to Hong Kong.

In reviewing this case, we noted two issues: (1) language difficulties that appeared to complicate the case and (2) the manner in which the various screening interviews were conducted.

The petition filed by the asylum seeker's lawyer reported several language difficulties encountered by the asylum seeker, who is ethnic Nung and did not speak Vietnamese fluently. His case was rejected in large part because of inconsistencies presented in different interviews. He, however, complained even before his rejection notice that his request for the interviewing official to read back the interview had been denied. According to the lawyer's petition, the interviewing official had not accurately recorded the asylum seeker's claim.

Notes taken by the UNHCR monitor at the Hong Kong Review Board interview indicated that the way the interview was conducted may have resulted in an inaccurate presentation of the asylum seeker's claim. The UNHCR official noted that the interviewer "badgers, is hostile, imperious and almost deliberately misinterprets the [asylum seeker]. [The interviewer] had the irritating habit of repeating everything the [asylum seeker] said, but in a tone of disbelief." UNHCR also conducted an interview for a mandate review. It was noted that "the language difficulties are still a problem as noted by the interpreter and may have led to some material components of the claim being missed at the interview." UNHCR maintained that in the mandate review, the legal consultant clearly understood and recorded all facts. Even though discrepancies due to communication difficulties were discounted, the asylum seeker's claim for refugee status still had major inconsistencies that raised credibility doubts.

Case 10

The asylum seeker said that he served in the ARVN from 1970 until he was discharged due to battle wounds in 1973. In 1975, he went to a reeducation camp for 2 months and then was sent to a NEZ with his wife and three daughters. According to the asylum seeker, the family faced severe difficulties in the NEZ and all three of his daughters became ill and died. Although a health clinic was available, the asylum seeker reported that his family was denied access to it because of the family's unfavorable background. The asylum seeker helped his brother, who belonged to an anticommunism group, deliver some documents and was arrested. He was released from prison in 1980 after a year after agreeing to serve as an informer. The asylum seeker and his wife then left the NEZ and attempted to escape from Vietnam rather than inform on his friends. The escape attempt failed and he was arrested and beaten so severely that his right leg

became paralyzed. After a year in solitary confinement, he was sentenced to 7 years of reeducation for the political crime of “counter-revolution,” but was released in 1987 after 5 years with the condition that he could not leave his village for 3 years without permission. He was also forced to do unpaid labor and was not able to obtain a family registration card. The asylum seeker was detained by the authorities supposedly for antigovernment activities two more times during 1988 and 1989 but was not tried. In 1990, he helped four others write an anonymous letter complaining about corrupt local officials. Fearing that the authorities had learned of his involvement, he escaped with his family to Hong Kong, while the other four people were imprisoned from 2-1/2 to 4 years. Because he evaded arrest, he is afraid that he would be imprisoned if returned to Vietnam.

The case appears to have been rejected because of inconsistencies and credibility issues raised in the screening interviews. The Hong Kong Review Board did not find the asylum seeker was persecuted in the NEZ; rather his experience was in line with national policy in Vietnam to redistribute population. The officials also apparently did not believe the asylum seeker’s accounts about the death of his children and about the various arrests and imprisonment he endured. The UNHCR reviewer found the events that occurred in the distant past to be believable but the more recent events were less credible and may not have been convention-related. As a result, the reviewer recommended that the claim be rejected. Regarding the possible imprisonment of the asylum seeker if returned to Vietnam, UNHCR considers the evasion of arrest by itself not to be convention-based persecution.

Case 11

This asylum seeker arrived in Hong Kong in 1991 at the age of 26. The year before, other members of his family, including both parents and three siblings, also arrived in Hong Kong. The other members of the family were granted refugee status, but the asylum seeker was rejected. We asked UNHCR whether the circumstances of the other family members should have influenced the asylum seeker’s case. The principal applicant in the other case was the asylum seeker’s brother who was 2 years younger. Since the brothers were close in age and relatively young such that it was unlikely that their personal histories differed too much, it was not clear why a different decision was reached in each case. UNHCR indicated that under the Handbook criteria, “the situation of each person must be assessed on its own merits.”

We also found a letter from the asylum seeker to UNHCR in such poor English that the meaning was uncertain, and there were no notes attached regarding any attempt to clarify the meaning. UNHCR assured us, however, that “there were no language problems which affected the assessment of the case.”

Case 12

The asylum seeker is a member of a Nung ethnic tribe that was well-known for its anticommunist activities before and after 1975. He became interested in Christianity, completed a course at a missionary school, and became a pastor’s assistant. When the communists took control in 1975, the pastor fled and the asylum seeker conducted services for about 6 months. On hearing that a former classmate was arrested for conducting illegal religious services, the asylum seeker went into hiding and subsequently joined FULRO, an armed anticommunism group. He participated in many battles against communist military forces and was wounded in 1977. Afterwards, he was imprisoned and treated inhumanely, according to his claim. The following year he escaped from prison with a friend, assumed a fake identity, and worked on a farm for several years. In 1987, the asylum seeker became involved in a land dispute and was questioned by the local authorities. The following year, his fellow-escapee was arrested. Fearing arrest himself, he went into hiding and learned that his true identity had been exposed. As a result, he escaped to Hong Kong.

In the camp, even before being interviewed, he “expressed concerns repeatedly about his ability to communicate in Vietnamese,” according to a UNHCR record. His case was screened out due to lack of credibility. We noted many contradictions in his file and three different versions of the same story. The asylum seeker’s lawyer told us that it was difficult for the asylum seeker to communicate with anyone, including his own lawyer. However, UNHCR officials reported that they had taken a number of measures to enable the asylum seeker to communicate clearly during the screening interviews, including counseling the asylum seeker on preparing his presentation and informing the Hong Kong screening officials about the asylum seeker’s language difficulties prior to his being interviewed. UNHCR officials said they would reassess the case and ask the asylum seeker about the different versions of his claim. However, the asylum seeker repatriated before the reinterview could occur. UNHCR planned to continue to monitor his reintegration into Vietnam.

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