

103^D CONGRESS
1ST SESSION

H. R. 3162

To provide for expedited asylum and exclusion procedures for certain aliens and to provide for enhanced penalties for alien smuggling and asylum abuse.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1993

Mr. NADLER (for himself and Mr. BECERRA) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To provide for expedited asylum and exclusion procedures for certain aliens and to provide for enhanced penalties for alien smuggling and asylum abuse.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF**
4 **CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Asylum at Ports of Entry System Improvements Act of
7 1993”.

8 (b) REFERENCES TO IMMIGRATION AND NATIONAL-
9 ITY ACT.—Except as otherwise expressly provided, when-
10 ever in this Act an amendment or repeal is expressed in

1 terms of an amendment to, or repeal of, a section or other
 2 provision, the reference shall be considered to be made to
 3 a section or other provision of the Immigration and Na-
 4 tionality Act.

5 (c) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

- Sec. 1. Short title; references in Act.
- Sec. 2. Expedited consideration and exclusion procedures for asylum claims by persons with missing or fraudulent documents.
- Sec. 3. Enhanced penalties for alien smuggling and asylum abuse.
- Sec. 4. Definitions.
- Sec. 5. Effective date.

7 **SEC. 2. EXPEDITED CONSIDERATION AND EXCLUSION PRO-**
 8 **CEDURES FOR ASYLUM CLAIMS BY PERSONS**
 9 **WITH MISSING OR FRAUDULENT DOCU-**
 10 **MENTS.**

11 (a) ADMISSIONS FRAUD.—Section 212(a)(6)(C) (8
 12 U.S.C. 1182(a)(6)(C)) is amended—

13 (1) in the section heading by striking “**MIS-**
 14 **REPRESENTATION**” and inserting “**FRAUD, MIS-**
 15 **REPRESENTATION, AND FAILURE TO PRESENT**
 16 **DOCUMENTS**”,

17 (2) in clause (i) by inserting “or clause (ii)”
 18 after “clause (i)”;

19 (3) by redesignating clause (ii) as clause (iii),
 20 and

21 (4) by inserting after clause (i) the following
 22 new clause:

1 “(ii) FRAUDULENT DOCUMENTS AND
2 FAILURE TO PRESENT DOCUMENTS.—

3 “(I) Any alien who, in seeking
4 entry to the United States or board-
5 ing a common carrier for the purpose
6 of coming to the United States, pre-
7 sents any document which, in the de-
8 termination of the immigration officer
9 to whom the document is presented, is
10 forged, counterfeit, altered, falsely
11 made, stolen, or inapplicable to the
12 alien presenting the document, or oth-
13 erwise contains a misrepresentation of
14 a material fact, is excludable.

15 “(II) Any alien who, in entering
16 the United States or boarding a com-
17 mon carrier for the purpose of coming
18 to the United States, presents a docu-
19 ment which relates or purports to re-
20 late to the alien’s eligibility to enter
21 the United States, and willfully fails
22 to present such document to an immi-
23 gration officer upon arrival at a port
24 of entry into the United States, is ex-
25 cludable.”.

1 (b) EXPEDITED EXCLUSION PROCEDURES.—The Im-
2 migration and Nationality Act is amended by inserting
3 after section 235 the following new section:

4 “EXPEDITED PROCEDURES FOR CERTAIN ASYLUM CASES

5 “SEC. 235A. (a) SENIOR ASYLUM OFFICERS; SPE-
6 CIAL MOBILE ASYLUM TEAM.—

7 “(1) SENIOR ASYLUM OFFICERS.—The Attorney
8 General shall designate a class of asylum officers
9 having at least 2 years of experience in asylum adju-
10 dications as senior asylum officers who shall perform
11 duties under this section at United States airports
12 and other ports of entry in the United States.

13 “(2) SPECIAL MOBILE ASYLUM TEAM.—

14 “(A) The Attorney General may, from time
15 to time, designate from among the senior asy-
16 lum officers provided for in paragraph (1) such
17 officers as the Attorney General considers nec-
18 essary to constitute a Special Mobile Asylum
19 Team to help manage large scale asylum situa-
20 tions or to conduct spot checks at United
21 States airports or other ports of entry in the
22 United States.

23 “(B) Funds appropriated subject to section
24 404(b) shall be available to the Attorney Gen-
25 eral for mobilizing the Special Mobile Asylum

1 Team in emergency large scale asylum situa-
2 tions.

3 “(b) EXAMINATION BY IMMIGRATION OFFICER.—

4 “(1) Any alien who is believed by the examining
5 immigration officer, based on reasonable suspicion
6 grounded on articulable facts, to be excludable under
7 section 212(a)(6)(C) but who requests, or indicates
8 a desire for, asylum shall be detained for further in-
9 quiry to be conducted by a senior asylum officer
10 promptly after the alien’s arrival.

11 “(2) Whenever any such officer has reason to
12 believe that an alien who is otherwise excludable
13 under section 212(a)(6)(C) of such Act may have a
14 claim to asylum, such officer shall inform the alien
15 of his right to apply for asylum and inquire of the
16 alien to determine if the alien desires to request asy-
17 lum.

18 “(c) DETERMINATIONS BY SENIOR ASYLUM OFFI-
19 CER.—

20 “(1) For each case under subsection (b), the
21 senior asylum officer shall determine only—

22 “(A) whether the alien has a nonfrivolous
23 claim for asylum; and

24 “(B) whether the alien has been firmly re-
25 settled in another nation.

1 “(2) In each case under this subsection, the
2 alien shall have the opportunity to be represented by
3 counsel of his choosing (at no expense to the Gov-
4 ernment).

5 “(d) INELIGIBILITY FOR ASYLUM AND EXCLUSION.—

6 (1)(A) If the senior asylum officer determines that the
7 alien’s claim to asylum is frivolous or that the alien has
8 been firmly resettled in another nation, the officer shall
9 find the alien ineligible for asylum and shall order the
10 alien excluded from the United States. The alien shall be
11 held in detention pending final disposition of the alien’s
12 case, except where the Attorney General determines that
13 the alien’s detention is not in the public interest.

14 “(B) Any alien ordered excluded under subparagraph
15 (A) shall be ineligible for withholding of deportation under
16 section 243.

17 “(2) The exclusion of an alien in the United States
18 under paragraph (1) shall be directed by the Attorney
19 General to a country promptly designated by the alien if
20 that country is willing to accept the alien into its territory,
21 unless the Attorney General concludes that deportation to
22 such country would be prejudicial to the interests of the
23 United States. No alien shall be permitted to make more
24 than one such designation. If the government of the coun-
25 try designated by the alien fails to advise the Attorney

1 General within 5 days following the original inquiry wheth-
2 er that government will or will not accept such alien into
3 its territory, then the Attorney General may thereafter
4 disregard such designation.

5 “(e) PETITION FOR REVIEW.—An alien adversely af-
6 fected by an order of a senior asylum officer under this
7 section may, within 48 hours after such order is issued,
8 file a petition for review of the order in a proceeding before
9 an asylum immigration judge. Such review shall be the
10 sole and exclusive administrative review of such order.

11 “(f) ADMINISTRATIVE REVIEW.—An asylum immi-
12 gration judge, shall promptly hold an administrative hear-
13 ing which shall be limited to the issues set forth in sub-
14 section (g).

15 “(g) SCOPE OF REVIEW.—The issues referred to in
16 subsection (f) are—

17 “(1) whether the applicant is an alien;

18 “(2) whether the applicant has sought entry to
19 the United States with fraudulent documents or with
20 no documents;

21 “(3) whether the applicant’s request for asylum
22 is frivolous; and

23 “(4) whether the applicant has been firmly re-
24 settled in another nation.

1 “(h) ASYLUM ADJUDICATION IN CERTAIN CIR-
2 CUMSTANCES.—A senior asylum officer may refer an alien
3 not excludable under subsection (d) for asylum adjudica-
4 tion by the Executive Office of Immigration Review while
5 an exclusion proceeding is pending if such proceeding can-
6 not be scheduled within 90 days.

7 “(i) JUDICIAL REVIEW.—No court shall have juris-
8 diction to review, except by petition for habeas corpus, any
9 individual determination made with respect to an alien
10 found excludable from the United States under subsection
11 (d). In any such case, review by habeas corpus shall be
12 limited to examination on the questions set forth in sub-
13 section (g).”.

14 (c) CLERICAL AMENDMENT.—The table of contents
15 of such Act is amended by inserting after the item relating
16 to section 235 the following new item:

“Sec. 235A. Expedited procedures for certain asylum cases.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to aliens who arrive in, or seek
19 admission to, the United States on or after the date of
20 enactment of this Act.

21 **SEC. 3. ENHANCED PENALTIES FOR ALIEN SMUGGLING**
22 **AND ASYLUM ABUSE.**

23 (a) IN GENERAL.—Section 274(a)(1) (8 U.S.C.
24 1324(a)(1)) is amended—

1 (1) by inserting “for the purpose of commercial
2 advantage or private financial gain” after “Any per-
3 son who”;

4 (2) by striking “five years” and inserting “10
5 years”; and

6 (3) by inserting before the period at the end of
7 such paragraph “(or 20 years, or both, in the case
8 of such a violation in which the person is determined
9 to knowingly or recklessly have caused serious bodily
10 injury to, or have placed in jeopardy the life of, any
11 alien involved in the offense)”.

12 (b) EFFECTIVE DATES.—The amendment made by
13 subsection (a) shall apply to violations occurring on or
14 after the date of the enactment of this Act.

15 **SEC. 4. DEFINITIONS.**

16 Section 101(a) (8 U.S.C. 1101(a)) is amended by
17 adding at the end the following new paragraphs:

18 “(47) The term ‘frivolous’ means, with respect to a
19 claim for asylum, a claim that—

20 “(A) the grounds of the claim are outside the
21 scope of the definition of a refugee under this sec-
22 tion,

23 “(B) the claim is totally lacking in substance,
24 or

1 “(C) the claim is manifestly lacking in any
2 credibility.

3 “(48) The term ‘firmly resettled’ means, after an
4 alien’s entry into a country of refuge, the alien’s receipt
5 of an offer of permanent resident status, citizenship, or
6 some other type of permanent resettlement unless the
7 alien establishes that—

8 “(A) the entry into that country was a nec-
9 essary consequence of the flight from persecution,
10 that the alien remained in the country only as long
11 as was necessary to arrange onward travel, and that
12 the alien did not establish significant ties in that
13 country; or

14 “(B) the conditions of residence in that country
15 were so substantially and consciously restricted by
16 the authorities of the country that the alien was not
17 in fact resettled, taking into account the conditions
18 under which other residents of that country live, the
19 type of housing made available to the alien, whether
20 permanent or temporary, the types and extent of
21 employment available to the alien, whether perma-
22 nent or temporary, and the extent to which the alien
23 received permission to hold property and to enjoy
24 other rights and privileges ordinarily available to
25 other residents in the country such as travel docu-

1 mentation (including documentation for a right of
2 entry or reentry), education, public relief, or natu-
3 ralization.”.

4 **SEC. 5. EFFECTIVE DATE.**

5 Except as otherwise provided, the amendments made
6 by this Act shall take effect 90 days after the date of the
7 enactment of this Act.

○