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# CANADA'S PERIODICAL ON REFUGEES

# REFUGEE

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## CRISIS IN NORTH AMERICA: PART III

### Legal Perspectives

#### **The Need for a Formal Safe Haven Remedy in the United States**

*Arthur C. Helton*

Salvadoran President Jose Napoleon Duarte requested recently that the United States refrain from deporting as many as 500,000 undocumented Salvadorans currently living in the United States. Duarte cited the disastrous effect such an action would have on El Salvador's economy, since \$350 million to \$600 million is remitted home each year by Salvadorans living in the U.S. Duarte's plea, however, is only the first demonstration of the need now for a formal policy on the issue of temporary safe haven in the United States.

The new United States immigration law, the Immigration Reform and Control Act of 1986 (IRCA), has forced a gap in the protection of those foreign nationals who have fled to the United States to escape civil war and natural disaster in their homelands. These individuals are in desperate need of protection because, under current U.S. law, foreign nationals are only entitled to protection and refuge in the United States if they satisfy the statutory definition of "refugee," which required a showing of individualized persecution. This limited definition leaves unprotected aliens who are unable to prove such persecution, and who are thus dependent for protection on the discretion of the Executive.

The vulnerability of this group has been magnified by the employment controls of the law, which place severe sanctions on employers who knowingly hire undocumented workers; IRCA thus substantially narrows the employment options of unauthorized aliens and their ability to subsist and remain in this country. The effects of the law are being felt even before full implementation; for example, undocumented aliens have been fired from their jobs and larger numbers of Salvadorans have moved north to seek refuge in Canada. The passage of IRCA therefore creates a need for greater and more certain protection for aliens who do not qualify as refugees, but who cannot safely return to their country of origin because of civil war, generalized conditions of violence, or natural disaster.

A Temporary Safe Haven Act of 1987, H.R. 2922, has been proposed in the House of Representatives to fill the gap,

although it too requires some adjustment if it is to fit it into a comprehensive approach to refugee policy. Certain Salvadorans and Nicaraguans fleeing civil war in their homelands will be covered by the proposed Moakley-DeConcini bills, which if enacted, would provide a good first step toward a comprehensive policy. Ultimately, generic legislation will be needed.

#### **Current U.S. Law**

Current law provides aliens in the United States with three principal mechanisms through which they can avoid deportation and seek to remain in the United States. These mechanisms are asylum, withholding of deportation and the exercise of discretion by the immigration authorities on a case-by-case basis.

An alien must satisfy the statutory  
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