



What Price Freedom?

"Necessity is the plea for every infringement of human freedom; it is the argument of tyrants; it is the creed of slaves."

—William Pitt

A YOUNG MAN IS RELEASED from prison. His hands are battered from abuse; fingernails ripped out. One ear rings constantly because tormentors put a metal bucket on his head and banged and banged on it. Desperate, he acquires documents to leave his country and boards a plane for the "Land of the Free." When he arrives in the United States, he asks for help. He does not have an attorney, none is provided, and he is held until an asylum officer makes a finding that he has a "credible fear" of persecution if returned to his country. The officer is convinced, but the young man remains in detention until his asylum case can be heard.

This is our asylum system. Fortunately, help may find this young man. The Lutheran Immigration and Refugee Service (LIRS), funded by the U.S. Office of Refugee Resettlement, coordinates a nationwide Detained Torture Survivor Legal Support Network to reach and assist torture victims in Department of Homeland Security (DHS) jails.

But what if this man were released? For the first 150 days after filing his asylum claim, he would not be able to obtain work authorization. How would he live? And will he ever overcome the assault on his human dignity?

Denial Across the Board

How did the U.S. asylum policy become so harsh toward those most in need of its protection? Here's how. On January 4, 1995, legacy INS took the heartless action of denying employment authorization to all applicants for 150 days if the Agency, itself, did not hear the case. That timeframe effectively became much longer due to processing procedures. Since then, a con-

sistent series of policies and legislation has shifted burdens from the government to applicants as a "necessary" means to solve governmental inefficiency, lack of resources, or other root causes of adjudications delays.

The situation worsened dramatically later in 1996 with the passage of IIRAIRA, which provided for removal of foreign nationals at U.S. borders and ports without the right to have counsel present or a hear-

In these grimmest of times, attorneys have come forward to do human rights work on our own American soil. The sacrifices the attorneys make are great; the rewards are few.

ing before any administrative judge, and for imprisonment of asylum seekers. Bond is possible, but detention is often "necessary" because immigration agencies have no reliable means of tracking persons in removal proceedings and ensuring their appearance at hearings. Again, rather than mandating resolution of the inability to locate applicants, severe burdens were placed on the applicants themselves.

Necessity, the Mother of Invention

Necessity is a harsh taskmaster. In April 2003, the Attorney General determined that David Joseph, an 18-year-old Haitian asylum seeker, should be held in detention

because his release might threaten national security. How? Because if Joseph were released, large numbers of Haitians might attempt to migrate and therefore place a strain on the U.S. Coast Guard and Department of Defense resources. The leap of logic strains credibility.

"Necessity" has made its appearance again in the form of monitors strapped onto asylum seekers to effectuate house arrest. "Tethered" asylum applicants may leave their houses during specific, weekday hours to go to work and accomplish other necessary tasks.

The reason for this program? The Department of Homeland Security has no resources to detain everyone; they have no other system to track applicants for asylum or other relief from removal. The government's lack of records of addresses, employment, departure from the United States, or even the death of individuals in removal proceedings "necessitates" a new program of house arrest for applicants whose cases are in process in the "Land of the Free."

In these grimmest of times, attorneys have come forward to do human rights work on our own American soil. Some have formed foundations, others work for established nonprofits, and many, many others represent asylum applicants for reduced fees, or pro bono publico. The sacrifices the attorneys make are great; the rewards are few.

One such attorney recently described the pure joy of an asylum seeker released from jail. When asked if she had a place to stay, the asylum seeker replied, "I am free. I cannot worry about where I will stay." She later won her asylum claim.

What price freedom?

AILA President **Palma R. Yanni** practices immigration law in Washington, D.C.