

VIETNAMESE BOAT PEOPLE IN SOUTHEAST ASIA AND HONG KONG

**FAMILIES BROKEN:
THE CONSEQUENCE OF SCREENING ERRORS**

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Vietnamese Boat People

Boat People S.O.S. is a voluntary, non-profit, and tax-exempt organization which operates solely on donations from the private sector. Its mandate is to protect the welfare and dignity of Vietnamese boat people in Southeast Asia and Hong Kong, and to defend their rights as asylum seekers. The organization publishes a monthly newsletter with a circulation of 1,500, serving as a forum for Vietnamese boat people in the camps who otherwise would have no voice. The organization also helps fund pro bono lawyers to work on refugee and immigration cases. Headquartered in Virginia, USA, the organization has affiliates in Europe, Canada and Australia.

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INTRODUCTION

In June 1989, the Comprehensive Plan of Action (CPA) was adopted by the second International Conference on Indochinese Refugees in Geneva. Under the CPA, Vietnamese boat people were no longer automatically presumed to be refugees, but had to undergo a process of refugee status determination, or “screening”, carried out by the governments of first asylum countries. Those screened in as refugees are resettled while those screened out as non-refugees are to be repatriated to Vietnam.

According to the CPA, governments of first asylum countries conducted the screening under the monitoring of Office of the United Nations High Commissioner for Refugees (UNHCR). The screening process was to follow UNHCR’s legal guidelines based on the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Accordingly, a refugee is a person who is outside of his country of origin and has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion.” In the screening process, the UNHCR has the mandate discretion to overturn any erroneous screening decisions made by local governments.

THE PRINCIPLE OF FAMILY UNITY

The UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* [1] asserts that family unity is a basic human right and a fundamental principle in refugee status determination:

“Beginning with the Universal Declaration of Human Rights, which states that ‘the family is the natural and fundamental group unit of society and is entitled to protection by society and the State’, most international instruments dealing with human rights contain similar provisions for the protection of the family.

The Final Act of the Conference that adopted the 1951 Convention further ‘recommends Governments to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.’

...As to which family members may benefit from the principle of family unity, the minimum requirement is the inclusion of the spouse and minor children. In practice, other dependents, such as aged parents of refugees, are normally considered.”

The principle of family unity is reaffirmed in the UNHCR's *Internal Guidelines on Refugee Status Determination* [2] used for screening under the CPA. This document asserts that:

“Marriage is a basic human right UNHCR should protect... With regard to the marriage between an accepted person and a pending or rejected one, that second person should benefit from the principle of family unity, and UNHCR will present the case for resettlement.”

By signing the CPA, all first asylum countries also adopted the international standards on refugee status determination as outlined in the UNHCR *Handbook*, and with them the principle of family unity. For example, the *Procedures on the Determination of Refugee Status* [3] issued by the Philippines Task Force on International Refugee Assistance and Administration states that “when a member of a family has been recognized as a refugee, immediate family members of the same family shall also be recognized as refugees.” Resettlement countries also have similar provisions regarding family unity in their immigration law. For example, in the United States, the Lautenberg Amendment, applying to Jewish and Indochinese refugees, ascertains that “accompanying members of households or persons” recognized as refugees shall also be considered as refugees.

THE REALITY

Family unity has not always been preserved in the screening under the CPA. Cases in which the family is separated by inconsistent screening decisions can be grouped into five categories. First, in a small number of cases, members of the same family were separated during their escape from Vietnam and arrived at different camps. Some were screened in as refugees by one government while others were screened out by another government. For example, Vo Lac, a lieutenant with 10 years of “re-education” in a labor camp, was screened in by Hong Kong and has resettled in the United States. His wife and children in the Philippines were however screened out and are now facing deportation to Vietnam. The case of Dinh Ngoc Huy and Dinh Quoc Hung is even more

tortuous. Having arrived in Malaysia as unaccompanied minors, they were recognized as refugees by Malaysia due to the severe persecution facing their family in Vietnam (their father, a first lieutenant was executed when he tried to escape from a labor camp). In the meantime, their mother in the Philippines was denied refugee status. The resettlement of Huy and Hung has been put on hold. If their mother is repatriated, they will have to join her in Vietnam, despite their refugee status.

Second, there are cases in which family members arrived at the same camp, were part of the same household, but received incompatible screening decisions. Nguyen Thi Thu Huong's is a case in point. She and her youngest daughter arrived together in the Philippines. Her daughter was recognized as a refugee because she indirectly suffered from the persecution inflicted on her parents. She has joined the rest of the family in Canada but her mother has been denied refugee status and must return to Vietnam.

Third, there are cases of common-law spouses. These couples met in the camps and were allowed to co-habit. Many had children. They, however, could not get married. A UNHCR memorandum explains this situation: "The [Indonesian] government has designated Galang as a special area within Indonesia where Indonesian law does not apply. Thus, Vietnamese refugees in Galang have no means to get married or certify a co-habitation under Indonesian law." As a result, these couples were screened separately. Although the screening officials usually tried to match the screening decisions on such couples, a number of cases have been missed. There are some 200 cases, mostly in Indonesia, where one spouse was screened in and resettled while the other spouse, often with children, was screened out and now must return to Vietnam. Their predicament is illustrated by the case of Hoang Phuong Uyen. Her husband was screened in by Indonesia but she and her son were



Hoang Phuong Uyen parting with her husband who departed for the United States. A friend was holding their new-born child. Her husband now resides in Dorchester, Massachusetts, USA.

denied refugee status. Upon appeal, the Indonesian screening authorities reversed their original decision, deciding that Uyen "should be reunited with her husband in Amerika". The United States, however, refused to resettle Uyen because she and her husband were not legally married. This has inevitably discouraged Indonesia from any further self-correction of screening errors.

Fourth, there are also a number of boat people legally married to citizens of other countries. Under the immigration law of some resettlement countries, e.g., the United States and Canada, these boat people are entitled to resettlement as immigrants on the basis of family reunification. Their visa petitions, however, cannot be processed because resettlement countries are denied access to the boat people. John Segovia Nguyen, a US citizen residing in Massachusetts, is one among the 200 persons who are desperately seeking reunification with their spouses from camps. He met Thanh-Nga 24 years ago but the relationship was disrupted by the war. In 1975, he was captured by the Communists and sent to prison. In 1979, he escaped from Vietnam and was admitted to the United States as a refugee. In 1993, informed by a friend that Thanh-Nga had escaped to the Philippines, he flew to Palawan Camp. Their marriage was approved by the UNHCR and the US Consulate and officiated by the Filipino Government. He soon filed a visa petition for his wife, which was approved in May 1993. After a year of fruitless waiting in the United States, Nguyen left work and flew to Palawan to stay with his wife. Recently, his wife was told by the Philippines that she must repatriate to Vietnam before the end of 1994.

Hong Kong is the only exception in the region. Hong Kong Immigration Ordinance provides that the government should not deny any person in its territory the opportunity to emigrate: "Every person detained under this section shall be permitted all reasonable facilities to enable him to obtain any authorization required for entry to another state or territory or, whether or not he has obtained such authorization, to leave Hong Kong." Pressed by law suits by refugee organizations, the United States and Canada are processing current immigrant visa petitions in Hong Kong.

Finally, there are cases of siblings who share the same family background, are close to each other in age, and experienced almost identical forms of persecution in Vietnam. In numerous instances, these siblings also shared the same case number and were screened by the same officer. They, however, received different decisions. For example, Tran Anh Dung escaped from Vietnam and arrived in the Philippines with his two younger sisters, Tran Thi My-Lien and Tran Thi My-Phuong. Their father, a former captain of South Vietnam, was captured as a prisoner of war and sent to a total of three years in a communist labor camp. He was released after he had contracted

malaria and become permanently disabled. Dung and My-Phuong were evicted from school and forced to a malaria-infested New Economic Zone (NEZ). Dung's health rapidly deteriorated and he developed chronic asthma. The two siblings were stripped of their civil rights and prohibited from returning to their home town. My-Lien, on the other hand, was allowed to stay behind to take care of their ill mother. After finishing her 12th grade she was also evicted to the NEZ. My-Lien was screened in on the basis that "the applicant has a well-founded fear of persecution" and has resettled in the United States. Dung and My-Phuong, more severely persecuted than My-Lien, were both screened out, by the same screening officer. Dung later died of an asthma attack due to the lack of medical care after the UNHCR closed the only medical clinic in the camp. My-Phuong currently faces deportation to Vietnam. Boat People S.O.S. has documented about 100 sibling cases. Although the strict definition of the nucleus family may not apply to them, the fact that these siblings shared almost identical background but were screened differently indicates that inconsistency and potential errors might have occurred in screening.

The overall number of family unity cases including all the above categories is approximated at 600. Of these, 60% have family members already resettled in the United States, 20% in Australia, and 20% in Canada and other resettlement countries.

THE ROLE OF THE UNHCR

According to its own *Internal Guidelines on Refugee Status Determination* [2], "marriage is a basic human right UNHCR should protect, and where necessary promote the right of asylum-seekers and refugees to marry, including the right of persons of different status to marry." Section 1.1.2 of the document specifies that: "with regard to two persons who are pending interviews, their case will be considered together. With regard to the marriage between an accepted person and a pending or rejected one, that second person should benefit from the principle of family unity, and UNHCR will present the case for resettlement."

Despite these guidelines, there is a belief among some UNHCR officials that camp marriages are primarily of convenience. Such a view contradicts the objectivity advocated by the UNHCR in its *Internal Guidelines*: "It is neither feasible nor appropriate for UNHCR to undertake to determine whether these are marriages of convenience." Besides, camp marriages make up only 1-2% of the current camp population, which is a surprisingly low percentage for a population consisting mainly

of young and single individuals living in closed quarters for up to five years. This prejudicial view in turn spawns a pervasive presumption that resolving co-habitation and camp marriage cases would encourage more marriages of convenience. Such a presumption is unfounded. The screening process is virtually over and only screened-out people remain in the camps. Camp marriages among asylum seekers of the same status will not offer any prospect of a change in their status nor a chance of resettlement.

Some UNHCR officials even argue that the relationships are only casual and passing and that claims of relationship are made only by those remaining in the camp so as to gain refugee status and resettlement. In reality, the claims are often made by the spouses who have resettled. In 80 percent of the 200 cases of co-habitation compiled by Boat People S.O.S., the screened-in spouses actively approached the organization to seek help. They have all filed an affidavit of relationship and sponsorship for their common-law spouses and children.

Even for the most obvious and compelling cases, the UNHCR has been reluctant to apply corrective measures. In some instances, the UNHCR even opposed corrective actions initiated by the first asylum countries. In the case of Hoang Phuong Uyen mentioned above, despite Indonesia's favorable decision on her appeal, the UNHCR insisted that she and her son return to Vietnam because "if the relationship between Uyen and Long (her husband) is strong enough for them to anticipate spending their lives together, it will withstand the period of separation whilst Long establishes himself in the USA and is in a position to take responsibility for a family." Disregarding the position of the UNHCR, in late August of this year the United States granted Uyen and her son resettlement as parolees.

In the very few cases reviewed by the UNHCR, the results are not released. In the case of Vo Lac, a year ago the UNHCR decided to consider granting his wife and children mandate refugee status. The decision of this review has not yet been announced. In the meantime, Lac is increasingly



Le Minh Tan is shown presenting a petition to Senator Nick Bolkus, Minister of Immigration of Australia. His common-law wife was screened out and remains in Sikhui Camp, Thailand. He has filed an affidavit of sponsorship for his wife and step-daughter with the Government of Australia.

distressed by his long separation from his wife and children, including his ten years in a forced labor camp and their five years in an asylum camp.

Inaction on the part of the UNHCR to resolve these family unity cases may work against the agency's objective of closing the camps by the end of 1995. Voluntary repatriation is not a viable option for the spouses and children left in the camp because reunification via immigration from Vietnam is not feasible for many of them, at least in the foreseeable future. An expeditious resolution of this specific and relatively small group of family unity cases will not affect the voluntary repatriation program. In fact, it may help clear the camps of a group that are the least willing to repatriate. Failure to review these cases and to expeditiously release the decisions amounts to prolonging the detention of refugees, which is a form of human rights violation. The UNHCR, as a humanitarian organization, should have a vested interest in expediting family reunification and reviewing cases whenever there are indications of potential errors in the decision.

A PROPOSED SOLUTION

A solution is possible within the framework of the CPA but needs the full cooperation between the UNHCR, first asylum countries and resettlement countries. The following measures, if properly implemented, will quickly end the unnecessary separation of refugees and their families and will also contribute to the early closure of the asylum camps.

1. First asylum countries should be encouraged to initiate their own review of family unity cases. In Indonesia, for instance, there are cases that have not exhausted the appeal procedure. A review by the Appeal Board of these cases is well within the screening procedure established under the CPA.
2. For cases that have exhausted the appeal procedure of the local governments, the UNHCR should exercise its mandate authority to review them. Furthermore, since many camps, such as Galang Camp, have been designated as special areas under the auspices of the UNHCR, the UNHCR should consider officially recognizing legitimate camp marriages so as to fulfill the legal requirements of resettlement countries.

3. Resettlement countries should take into consideration the special circumstance in the camps in their assessment of resettlement eligibility. For instance, the United States should consider granting public interest parole to family unity cases. Particularly for couples with children, the Lautenberg Amendment certainly applies to the children who were issued official birth certificates by the local governments. These children are eligible for refugee status under US law and their accompanying parents should be allowed to enter the United States as parolees.

4. Arrangement should be made between first asylum countries, resettlement countries and the UNHCR to allow the processing of immigrant visa petitions that have become current, similarly to the current practice in Hong Kong.

REFERENCES

- [1] UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- [2] UNHCR Internal Guidelines on Refugee Status Determination (Appropriate Use of the Appeals Boards)
- [3] Procedures on the Determination of Refugee Status for the Philippines Task Force in International Refugee Assistance and Administration
- [4] Lautenberg Amendment
- [5] UNHCR memo regarding marriages in Galang Camp, Indonesia, dated January 7, 1994

SUGGESTED ACTIONS

You can write to the following officials with a request to consider the above proposed measures.

Mr. Werner Blatter
Director, Bureau for Asia and Oceania
UNHCR, Case Postale 2500
CH-1211 Geneve 2 Depot
SWITZERLAND

The Honorable Phyllis E. Oakley
Director, Bureau of Refugee Programs
US Department of State
2201 C Street, NW, Room 5824
Washington, DC 20520
(Or the Ministry of Foreign Affairs in your country of residence.)

If you have spouses, children, or siblings in the camps, you also need to contact your representative and senators and request that they write to the UNHCR and the Department of State in support of your case.