

Section I

STAYING DEPORTATIONS

An amendment by Rep. Moakley would be incorporated into the bill by the recommended rule. These provisions establish a standardized procedure for temporary stays of deportation for aliens from countries where there is an armed conflict, natural disaster, or other unsafe conditions that make return to the country dangerous. Under the Moakley provisions, most illegal immigrants from El Salvador, Lebanon, Liberia, and Kuwait would have deportation and detention orders suspended for three years.

SUSPENSION OF DEPORTATION

The Moakley provisions suspend the detention and deportation of illegal immigrants from El Salvador, Lebanon, Liberia, and Kuwait for three years beginning with the bill's enactment. Only those illegal Salvadoran, Lebanese, Liberian, and Kuwaiti immigrants who register with the Immigration and Naturalization Service (INS) within nine months of the bill's enactment would be eligible for these temporary stays. Under the measure, detention or deportation would not be suspended for those individuals who have committed crimes or who are otherwise excludable under current immigration laws, such as those who pose a threat to U.S. national security.

In order to be eligible for a temporary stay, the alien must be present continuously since enactment of the bill, and continuously resided in the United States since September 19, 1990. Brief, casual, and innocent departures or temporary trips in case of emergency would not preclude eligibility.

The provisions specify that Salvadorans, Lebanese, Kuwaitis and Liberians covered by the measure are not to be considered permanent resident aliens. Under the measure, these aliens would not be eligible for most forms of federally funded public assistance, except for Medicaid coverage of emergency medical treatment. The provisions also permit states to deny state and local public assistance to persons covered by the amendment.

PROCEDURE FOR DESIGNATING OTHER COUNTRIES

The Moakley provisions require the Justice Department to designate the nationals of other countries as eligible for temporary stays of deportation if it finds any of the following conditions:

- * Armed Conflict -- Any ongoing armed conflict in the foreign country which would pose a substantial threat to the personal safety of the nationals who might be required to return home;

- * Natural Disaster -- An earthquake, flood, drought, epidemic, or other environmental disaster in the foreign state resulting in a substantial, but temporary, disruption of living conditions in the area affected, and a finding that the foreign state is unable to handle returnees and requests a temporary stay; or,
- * Other Unsafe Conditions -- Other extraordinary and temporary conditions in the foreign state that make a safe return of nationals to their country unlikely, unless the Justice Department finds that allowing the nationals to remain here would be contrary to U.S. national interests.

The provisions generally impose the same eligibility requirements as those specified by the measure for those additional nationals who are designated as being eligible for temporary deportation stays as for Salvadorans, Lebanese, Liberians, and Kuwaitis. The only differences are that nationals of a newly designated country must register within six months (rather than nine months for the Salvadorans, Lebanese, Kuwaitis, and Liberians) of designation, and the period of deportation stay would initially be six to 18 months with periodic reviews; instead of the three-year stay for Salvadoran, Lebanese, Liberian, and Kuwaiti refugees.

Finally, the Justice Department would be required by the measure to submit annual reports to Congress listing both the nations and the number of foreign nationals under temporary protected status. (Staff Contact: Jim McGovern, ext. 58273)

REP. McCOLLUM will offer an amendment to strike the "Moakley provisions" of the bill -- which would be incorporated into the bill by the recommended rule -- that would suspend detention and deportation of illegal immigrants from El Salvador, Lebanon, Liberia, and Kuwait for three years, beginning on the date of the bill's enactment. Debate Time: 20 minutes. (Staff Contact: Ann Scarborough, ext. 52176)

Arguments FOR the McCollum Amendment -- Supporters of the amendment argue that a blanket suspension of deportation for these groups is inappropriate, will set a bad precedent of specialized treatment for certain countries, and undermine the Refugee Act of 1980 and the 1986 Immigration Reform Act dealing with illegal immigrants. The current case-by-case process is more than sufficient to meet the need to avoid returning from war-torn countries without encouraging illegal immigration or providing specialized treatment for certain countries.

Those who demonstrate that their lives would be endangered upon return to their homeland have a very good chance of qualifying for political asylum under current procedures. Further, the

Justice Department has suspended deportation of citizens from specific countries in the past on the basis of foreign and domestic policy concerns and humanitarian considerations -- without the need for new legislation.

By providing across-the-board asylum for certain migrants, the bill runs contrary to the comprehensive asylum system established by the Refugee Act of 1980, and returns us to the ad hoc, country-specific and discriminatory system which Congress sought to eliminate by enacting that law.

Automatic suspension of deportations of Salvadorans also undermines the 1986 immigration reform law. There is no telling how many more Salvadorans will illegally immigrate to this country within the nine-month registration period that the bill establishes. The bill would act as a magnet encouraging more illegal aliens, not simply Salvadorans, to illegally enter the United States thinking that they too might receive temporary protected status.

Finally, the Administration has determined that a blanket suspension is inappropriate for the Salvadorans, because they have come out of economic rather than political concerns. Rarely are those who return home persecuted. In fact, Salvadorans who have obtained asylum in the United States have often returned to their countries for vacations to visit their families. Salvadoran immigration to this country has not varied with the intensity of fighting in El Salvador.

Current procedures for relief will stop the return of those from countries ravaged by civil strife, without singling out particular countries or encouraging illegal immigration. This amendment is critical to eliminate the blanket suspension of deportation for certain groups in the bill that will set a bad precedent of specialized treatment for certain countries.

Arguments AGAINST the McCollum Amendment -- Opponents of the amendment argue that an orderly, systematic procedure for providing temporary protected status for nationals of countries undergoing civil war or extreme tragedy is needed to replace the current ad hoc haphazard procedure. The bill also provides immediate relief to four groups of aliens whose lives would be in danger if they were forced to return home.

Specifying the Salvadorans, Lebanese, Liberians, and Kuwaitis in the bill is simply following the bill's general criteria -- providing temporary protection for those who have been uprooted by violence and civil strife in their home countries, and who face a substantial threat to their lives if they were to return. In the past 10 years, over 70,000 Salvadorans civilians have been killed, 150,000 Lebanese have been killed since the beginning of the civil war there, Kuwait is currently overrun by Iraq, and thousands of Liberians have been killed in the last two months. All these groups need the safe haven of the United States.

The current extended voluntary departure (EVD) process is so arbitrary and discretionary that aliens currently under temporary stays are never certain that they are truly protected. It is unclear what the alien's rights are, how the Justice Department determines what group merits EVD status, or how long they will be able to stay. The bill remedies each of these problems by specifying who is eligible for a temporary stay, what process they must go through, and the duration of their stay.

The United States has suspended the deportation of illegal immigrants from specific countries some 14 times during the past 25 years. In fact, during the past 29 years, only two months have gone by during which there is not at least one group of aliens in the United States under EVD status.

Suspending the deportation for these groups will not undermine the 1986 immigration law or the 1980 Refugee Act. In fact, the registration required by the bill would provide the government with the means to keep track and control the influx of these people. The bill will not thwart the intent of the Refugee Act, which eliminated preferential treatment of persons seeking political asylum from specific countries. Those specified in the bill would not be granted asylum and they would not be allowed to stay permanently. Clearly El Salvador, Lebanon, Kuwait, and Liberia are countries where civil strife currently threatens the safety of nationals who might return from the United States, and clearly these aliens now in the United States need temporary protection.

The bill should be passed not only for the protection it affords to these four specified groups, but also because of the new general rules it would establish. The bill will replace the current random policy in granting temporary protected status to aliens of countries in emergency circumstances with a comprehensive, specified program that defines and limits the rights of the aliens.

Note: The arguments presented above are not DSG's arguments nor do they represent a DSG evaluation of the amendment. As indicated, they are the arguments that supporters are making on behalf of the amendment and that opponents are making against it. DSG attempts only to summarize the arguments on both sides as cogently as possible.

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