

FOIA MARKER

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Original OA/ID Number: 213				
Document ID: 9407490				
Stack: v	Row: 44	Section: 3	Shelf: 8	Position: 2

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9407490
RECEIVED: 16 SEP 94 17

TO: LAKE

FROM: SCHWARTZ

DOC DATE: 16 SEP 94
SOURCE REF:

KEYWORDS: HAITI

REFUGEES

PERSONS:

SUBJECT: HIV POSITIVE REFUGEES

ACTION: NOTED BY LAKE

DUE DATE: 20 SEP 94 STATUS: C

STAFF OFFICER: SCHWARTZ

LOGREF: 9408745

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSDRS

CLOSED BY: NSJDA

DOC 1 OF 1

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9407490

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 LAKE
001

Z 94102714 FWD TO PRESIDENT FOR INFORMATION
X 94103014 NOTED BY LAKE

UNCLASSIFIED

rec'd 10/17 12:20p

National Security Council
The White House

PROOFED BY: JB LOG # 7490
 URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT
 BYPASSED WW DESK: _____ DOCLOG JB A/O _____

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<i>NSN</i> Berger	<u>2</u>	<u>AMU</u>	<u>NOTE</u>
Lake	<u>3</u>	<u>SR</u>	<u>"</u>
Situation Room		Natl Sec Advisor	
West Wing Desk	<u>4</u>	has seen	
NSC Secretariat		<u>MON 10/19</u>	<u>(SEE BLUE ADDENDUM SHEET)</u>
<i>Schwartz</i>	<u>5</u>		<u>FPA</u>
<u>SECRETARIAT</u>	<u>6</u>		<u>N*</u>

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: _____

COMMENTS:

*** SEE 8745 FOR FINAL ACTION.**

Exec Sec Office has diskette

YES

returned 10/19

17 OCT 1984

ADDITIONAL COMMENTS

1] SB TO TL Date:

I'm not sure why we should
continue to bring Haitian
'political refugees' to U.S.
Do we still believe they

2] TO Date:

have well founded fear of
persecution? Hard for us to
sustain this w/ 15,000 troops there
and Aristide home

3] TO Date:

Do they have a vested right
to come to U.S. because they
were refugees when
processed? I'd send back

4] TO Date:

to Eric if you agree.

R

5] TL TO SB Date:

I agree.
R

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

October 14, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE
THROUGH: RICHARD A. CLARKE *[Signature]*
FROM: ERIC SCHWARTZ *ES*
SUBJECT: HIV-Positive Refugees: INS Policy Change

I have attached a memorandum to the President on the subject issue.

I have drafted it as an information memorandum so that the decision on this sensitive issue remains with INS unless the President objects. As indicated below, I have coordinated with DPC staff.

Concurrences by: Jamie Baker *ES*, Steve Wainath (DPC staff), *ES*
Halperin *ES*

RECOMMENDATION

That you sign the memoranda to the President at Tab I.

Attachments

Tab I Memorandum to the President

THE WHITE HOUSE

WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
CAROL RASCO

SUBJECT: HIV-positive Refugees

Summary

The Immigration and Naturalization Service intends to modify a discriminatory restriction on entry of refugees who test positive for the HIV virus. All concerned agencies -- State, HHS and Justice -- as well as the National Office of AIDS Policy strongly support the INS policy modification. The shift is likely to result in entry of some HIV-positive Haitian refugees; however, none of these movements would take place before mid-November at the earliest.

I. Discrimination against HIV-positive refugees

As a result of an amendment by Sen. Helms last year, HIV is considered a "communicable disease of public health significance" and is therefore a ground for exclusion under the Immigration and Naturalization Act (INA). Under the INA, however, this exclusion may be waived -- in the case of refugees, for humanitarian or public interest purposes or to ensure family unification.

A 1988 INS directive established yet additional waiver requirements for refugees who are HIV-positive. Before being permitted to apply for the waiver, HIV-positive refugees must show that 1) the danger to public health and the possibility of the spread of the disease would be minimal and 2) there would be no cost incurred by any level of government agency without prior consent as a result of the disease.

According to INS, the second part of this test -- while appropriate for non-refugee immigrants who are HIV-positive -- is not appropriate for HIV-positive refugees. This is because the second part of the test clearly imposes a "public charge requirement," to which refugees, by virtue of their status, are exempt under our law. State, HHS, Justice and INS point out that the public charge requirement in this INS directive unfairly

cc: Vice President
Chief of Staff

discriminates against HIV-positive refugees, as refugees with far more costly diseases enter the U.S. each year.

INS thus intends to alter its policy directive by removing the public charge requirement for HIV-positive refugees and remedying this inconsistency. The current public charge requirement for immigrant (i.e., non-refugee) waiver applicants would not be affected by this decision and would be maintained. INS also intends to maintain the first requirement in its policy directive on HIV-positive refugees, relating to public health and spread of the disease.

II. Worldwide numbers involved and costs

INS estimates that of the some 110,000 refugees to which we provide entry each year, there may be about 200 approved applicants who test positive for the HIV virus and who would be considered (but not in all cases approved) for the waiver.

HHS estimates that the annual costs for HIV sufferers without active AIDS is about \$10,000 and that the lifetime costs for caring for HIV sufferers is about \$100,000. These costs are lower per capita than the costs for other diseases suffered by refugees (such as some heart diseases and cancers). Moreover, some refugees will obtain private health care at no cost to the states and HHS already provides refugees with aid for medical assistance.

III. Implications of the policy shift for HIV-positive Haitian refugees

Current general policy toward approved refugees from Haiti:

We have suspended acceptance of new applications under the in-country refugee processing program in Haiti. However, there are about 1000 Haitians in Haiti who were already approved for refugee status and entry to the United States and have made preparations to leave (such as selling their homes and belongings). These refugees -- many of whom have spent periods in hiding -- remained in Haiti because they were prevented by the military regime from traveling or because their final paperwork had not been completed.

Under current circumstances, in which there are still pockets of instability, we are processing the already-approved applicants for resettlement if they so desire, but are keeping this issue under review. After a State Department determination that conditions are sufficiently stable in Haiti, our plan is to move to case-by-case reevaluation of those approved applicants who have not yet left. Under case-by-case review, only those with

compelling humanitarian justifications will be permitted U.S. entry.

HIV-positive Haitian refugees: There are about 29 HIV-positive refugees at Guantanamo who went through the refugee adjudication process on our processing ship in Jamaica and were granted refugee status, but who could not meet the third waiver requirement. They remained in Guantanamo while the 600 other Jamaica-approved refugees entered the U.S. There are also about 88 HIV-positive approved refugee applicants within Haiti. Under the INS policy shift, these refugees will also be subject to the modified waiver requirement. If their waiver applications are approved, they will be considered for entry in the same manner as other approved refugees.

These refugees will be counseled and otherwise assisted by non-governmental resettlement organizations on arrival. They will also be eligible for financial and medical support provided by the refugee admissions program, by special federal legislation for Haitian and Cuban entrants and by other federal and state social service programs.