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Refugee Status for Soviet Jewish Immigrants to the United States

Cover Page Footnote

19-2

REFUGEE STATUS FOR SOVIET JEWISH IMMIGRANTS TO THE UNITED STATES

*Victor Rosenberg*¹

INTRODUCTION

Among the issues discussed at the November 2001 meeting of American President George W. Bush and Russian President Vladimir Putin was the Jackson-Vanik Amendment,² which denies most-favored-nation status to countries restricting the right of emigration. Although the Jackson-Vanik Amendment appears to be obsolete with reference to post-Soviet Russia, which allows free emigration, it remains on the books, highlighting past and present American concern with the Jews of Russia and the Soviet Union.³

Official American concern for Russian Jews, fostered at least in part by Jewish lobbying, existed during tsarist days. During that period, however, the right of Jews both to emigrate from the Russian Empire and to enter the United States was largely unrestricted. When American concern came to the fore again during the 1950s, especially after 1967, the issue was the right of Soviet Jews to emigrate to Israel. Soon, however, increasing numbers of Soviet Jewish emigrants preferred to go to the United States rather than to Israel. This led to policy debates, both within the American Jewish community and within the American government, which intensified in the late 1980s and early 1990s when the Soviet Union liberalized its emigration policy.

This is a study primarily of changing American policy toward granting refugee status to Soviet Jewish immigrants from the time that liberalization of the Soviet emigration policy led to a

¹ J.D., Cleveland-Marshall College of Law, Cleveland State University; Ph. D. History, Kent State University.

² 19 U.S.C. § 2432 (2000).

³ A bill was recently introduced in Congress to remove Russia from the Jackson-Vanik amendment, and thereby grant it most-favored nation status. See, 149 Cong. Rec. S3721 (daily ed. March 13, 2003). However, the chances that this bill will be passed into law are slim due to Russia's opposition to the U.S. invasion of Iraq. See Ken Guggenheim, *Jackson-Vanik Stays Due to Split on Iraq*, MOSCOW TIMES, April 28, 2003 available at <http://ncsj.org/AuxPages/042803AP.shtml> (last visited May 13, 2003). This particular bill may not pass, but I assume that sooner or later the Jackson-Vanik Amendment will be repealed with regard to Russia.

huge increase in their number. At the center of the discussion is the Lautenberg Amendment,⁴ first passed in 1989, which grants presumptive refugee status to Jews and members of certain other groups from the former Soviet Union. However, to understand the policies of the past decade, it is necessary to sketch the history of American concern for Soviet Jewish emigration in the two decades preceding the Lautenberg Amendment. In particular, this study seeks to answer the questions of (1) why the United States granted refugee status to people not sufficiently persecuted to meet the ordinary definition of “refugee” and (2) why the United States largely, but never completely, retreated from that position when circumstances changed. The focus of this study is on Soviet Jews, but where relevant it will also discuss Armenians and Evangelical Christians (Pentecostals).

JEWISH EMIGRATION AND AMERICAN RESPONSE THROUGH 1972

Emigration from the Soviet Union was always difficult for Jews and non-Jews alike, and from 1948 to 1970 total emigration was only 60,000.⁵ Just after the death of Stalin in 1953, Israel raised the issue of Jewish emigration with Deputy Foreign Minister Andrei Gromyko, resulting only in permission for some parents to join their Israeli children.⁶ On several occasions in the late 1950s, Soviet Premier Nikita Khrushchev responded negatively or evasively to this issue. The Soviet government did, however, allow some Polish Jews to return to Poland. Thereafter, they emigrated to Israel.⁷

Americans were also beginning to express interest in the issue. For example, Eleanor Roosevelt, visiting the Soviet Union in 1957, complained to Premier Khrushchev that it was difficult for

⁴ Foreign Operations, Export Financing, & Related Programs Appropriations Act, 1990, Pub. L. No. 101-167, §§ 599D, 599E, 103 Stat. 1195, 1262 (1989) (codified as amended at 8 U.S.C. § 1157) (2000).

⁵ Sharon S. Russell, *Migration Patterns of U.S. Foreign Policy Interest, in THREATENED PEOPLES, THREATENED BORDERS* 81 (Michael S. Teitelbaum & Myron Weiner, eds., 1995) [hereinafter THREATENED PEOPLES].

⁶ 2 NORA LEVIN, *THE JEWS IN THE SOVIET UNION SINCE 1917: PARADOX OF SURVIVAL* 583 (1988).

⁷ 2 *id.* at 585.

Soviet Jews to visit Israel, let alone emigrate. Khrushchev agreed, but said, "the time will come when everyone who wants to go will be able to go."⁸ In a 1959 letter to Khrushchev, Vice-President Richard Nixon called for permission for Soviet citizens (not exclusively Jews) to emigrate in order to join family members in the United States. Soviet Deputy Foreign Minister Gromyko responded that such requests would be "considered with proper attention."⁹

The June 1967 Six-Day War between Israel and Egypt, Syria, and Jordan intensified both pride among Soviet Jews and official Soviet anti-Semitism. One consequence was the beginning of the Jewish emigration movement, in which some Jews began to enlist outside support. For example, on August 6, 1969, eighteen Jewish families from Georgia wrote to United Nations Secretary General U Thant through Israeli Prime Minister Golda Meir. This example inspired Soviet Jews elsewhere to write letters and sign petitions in 1969 and 1970, variously addressed to U Thant, the United Nations Committee on Human Rights, prominent Soviet officials, and President Zalman Shazar of Israel. These messages often resulted in the arrest and imprisonment of their signers.¹⁰

Further worldwide publicity came with the 1970 arrest and trial of a group of twelve people who had plotted the hijacking of an airplane from Leningrad to Israel as a protest against Soviet restrictions on emigration. Western protests over the harshness of the sentences, including two death sentences, led to their mitigation.¹¹ Moreover, the trial focused further attention on the plight of people who applied to emigrate. Applicants faced loss of their jobs or even arrest for applying, and emigration required an invitation from a relative in Israel; character references from the applicant's boss, a Communist Party representative, and a trade union representative; and consent of all family members, including parents of adult children. Even if these conditions were met, approval of emigration was not assured, and many people were repeatedly rejected. Nevertheless, emigration did increase in 1971,

⁸ ELEANOR ROOSEVELT, *ON MY OWN* 229 (Harper 1958).

⁹ 2 LEVIN, *supra* note 6, at 585.

¹⁰ 2 *id.* at 651, 661-62.

¹¹ 2 *id.* at 672-80.

as 14,300 Soviet Jews emigrated to Israel, compared with 4,300 from 1968 to 1970.¹²

Meanwhile, Western support was increasing, most notably at a conference in Brussels from February 23 to 25, 1971, at which foreign Jewish leaders demonstrated their solidarity with Soviet Jews. Soon after, the Soviet Union began to grant more exit visas to Jews.¹³

In the United States that year, both Congress and the Nixon Administration began to respond to the increase in Soviet Jewish emigration. Democratic Representative Edward Koch of New York and Republican Senator Clifford Case of New Jersey introduced bills allowing 30,000 special immigrant visas for Soviet Jews.¹⁴ Only 250 Soviet Jews entered the United States in 1971. However, on October 1, 1971, Attorney General John Mitchell announced a new policy allowing Soviet Jews to enter the United States by parole. Mitchell welcomed the first four immigrants to benefit from this policy on January 7, 1972.¹⁵

As the Soviet Union sought détente with the United States, Jewish immigration increased over the next two years, to 31,903 in 1972 and 34,733 in 1973.¹⁶ However, there were still refusals, and this led some American politicians, most notably one Senator and one Representative, into action.

THE JACKSON-VANIK AMENDMENT

On October 4, 1972, the White House announced that Soviet Foreign Trade Minister Nikolai Patolichev would be coming to the United States to sign a Soviet-American trade agreement. That same day, Democratic Senator Henry Jackson of Washington first introduced an amendment to ban the granting of most-favored-nation status to Communist countries that restricted emigration. On October 10, Democrat Charles Vanik of Ohio

¹² 2 *id.* at 681-82.

¹³ 2 *id.* at 694, 696.

¹⁴ Henry S. Moyer, *Letter to the Editor, Let Soviet Jews In*, N.Y. TIMES, Aug. 23, 1971, at 28.

¹⁵ *Soviet Jewish Family Welcomed by Mitchell*, N.Y. TIMES, Jan. 8, 1972, at 33; see also *infra* text accompanying notes 45-47.

¹⁶ 2 LEVIN, *supra* note 6, at 696.

introduced a similar amendment in the House of Representatives. On September 26, 1973, the House Ways and Means Committee adopted what became known, then and since, as the Jackson-Vanik Amendment, linking most-favored-nation status to the granting of emigration.¹⁷ At the same time, the Soviets continued to grant emigration visas to an increasing number of Jews.¹⁸

The Jackson-Vanik Amendment to the Trade Act of 1974 was officially titled Chapter 12, Subchapter IV: Trade Relations With Countries Not Currently Receiving Nondiscriminatory Treatment. This amendment provided that as of January 3, 1975, most-favored-nation status would not be given to “any nonmarket economy country” if the President determined that the country “denies its citizens the right or opportunity to emigrate . . . impose[s] more than a nominal tax on emigration or on the visas or other documents required for emigration . . .” or “impose[s] more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.”¹⁹ Additionally, the President was given the right to waive the amendment if given “assurances that the emigration practices of that country [will] henceforth lead substantially to the achievement of the objectives of [the amendment].”²⁰

On December 11, 1973, the House passed the Jackson-Vanik Amendment by a 319-80 vote, followed by the Senate’s 88-0 vote on December 13, 1974.²¹ Meanwhile, the Soviets agreed to allow at least 45,000 Jews to emigrate every year, but as historian Raymond Garthoff has pointed out, “[t]he more the Soviets gave . . . the more Jackson demanded, to the discomfort of even other senators seeking a favorable outcome.”²² President Gerald Ford signed the Trade Act of 1974, with its inclusion of the Jackson-

¹⁷ 19 U.S.C. § 2432 (a).

¹⁸ HENRY KISSINGER, *YEARS OF UPHEAVAL* 250-51, 990 (1982); *see also* RAYMOND L. GARTHOFF, *DÉTENTE AND CONFRONTATION: AMERICAN-SOVIET RELATIONS FROM NIXON TO REAGAN*, 347, 401, 444-45 (Rev. ed. 1994).

¹⁹ 19 U.S.C. § 2432 (a).

²⁰ *Id.* § 2432 (c)(2)(B).

²¹ KISSINGER, *supra* note 18, at 991; *see also* PETRUS BUWALDA, *THEY DID NOT DWELL ALONE: JEWISH EMIGRATION FROM THE SOVIET UNION 1967-1990*, 106 (1997).

²² GARTHOFF, *supra* note 18, at 461.

Vanik Amendment, on January 3, 1975, nevertheless “express[ing] . . . reservations about the wisdom of legislative language that can only be seen as objectionable and discriminatory by other sovereign states.”²³ Jackson, however, had various reasons for his actions. He was interested in Jewish emigration for its own sake and also had hopes for the 1976 Presidential election. Moreover, he opposed détente and increased trade with the Soviet Union, and actually led rather than followed the opinion of Jewish groups with his amendment.²⁴ In Henry Kissinger’s words, “Jackson unfortunately wanted an issue, not a solution.”²⁵

Although (or more likely because) the Soviets were conciliatory), on October 18, 1974, Jackson spoke on the White House lawn implying Soviet submission and an American (and a personal) victory. Feeling the need to save face, in January 1975 the Soviet government rejected the Jackson-Vanik Amendment by refusing to put into affect the 1972 Soviet-American Trade Agreement. Meanwhile, Jewish emigration fell from 35,000 in 1973 to 21,000 in 1974 and 13,000 in 1975.²⁶ As Kissinger explained, “[f]ar from spurring emigration, the Jackson amendment in fact wound up substantially reducing it.”²⁷

On January 5, 1979, Vanik publicly said that he might support a removal of the restrictions, however, Jackson vehemently opposed this. At the same time, President Jimmy Carter, noting that Jewish emigration from the Soviet Union was increasing (amounting to almost 30,000 in 1978 and reaching 51,000 in 1979), hoped to extend most-favored-nation status to the Soviet Union shortly after his 1979 summit meeting with Soviet leader Leonid Brezhnev in Vienna.²⁸ However, the collapse of détente after the Soviet invasion of Afghanistan (and the American response to it) led to a sharp decrease in Jewish emigration to 9,447 in 1981, the lowest number since 1970.²⁹

²³ Remarks Upon Signing the Trade Act of 1974, 1 PUB. PAPERS 3 (1975).

²⁴ *Id.* at 505, 508; see also PAULA STERN, WATER’S EDGE: DOMESTIC POLITICS AND THE MAKING OF AMERICAN FOREIGN POLICY, 21, 210-11 (1979).

²⁵ KISSINGER, *supra* note 18, at 996.

²⁶ GARTHOFF, *supra* note 18, at 508-09, 512-14.

²⁷ KISSINGER, *supra* note 18, at 251.

²⁸ GARTHOFF, *supra* note 18, at 800, 810.

²⁹ *Id.* at 1116 n.110.

Meanwhile, another issue arose which stirred debate within the American Jewish community. Originally, world Jewry, including American, had agitated specifically for the right of Soviet Jews to emigrate to Israel. However, increasing numbers of Jews “dropped out,” as was said, preferring to emigrate to the United States. Thus, in the 1970s, of almost 250,000 emigrants, 150,000 went to Israel and 64,000 to the United States. In contrast, in the 1980s, of the 117,000 emigrants, 29,000 went to Israel and 79,000 to the United States.³⁰

In part, those American Jews who favored denying aid to “dropouts” reflected the position of Israel. However, the United States government opposed this position, even matching grants to local welfare agencies to aid Soviet (and Southeast Asian, African, Cuban, and Haitian) immigrants. By January 11, 1982, however, at the urging of Israeli Prime Minister Menachem Begin, the Hebrew Immigrant Aid Society (HIAS) began to aid only those Soviet Jews with first-degree relatives in countries other than Israel.³¹ As Drora Kass stated in the *New York Times*, the dropouts were in effect delivering an ideological blow to Israel, which saw itself as the haven for oppressed Jews.³² Moreover, the words of Leon Dulzin, Chairman of the Jewish Agency, adumbrated the arguments that would be used in the 1990s by the American government to restrict the granting of refugee status, albeit with a different motive: “They are not refugees. A refugee is someone who is compelled to leave and has no place to go. There are no Jewish refugees today. Jews seeking a haven and a new life have somewhere to go.”³³

Meanwhile, the Soviet Union drastically reduced the number of Jews it allowed to emigrate in the early 1980s, rendering much of this argument temporarily moot. For example, in 1981, 9,447 Soviet Jews emigrated; in 1982, 2,688; in 1983,

³⁰ Russell, *supra* note 5, at 71.

³¹ 2 LEVIN, *supra* note 6, at 747-48. However, it must be noted that HIAS had rejected the Begin proposal in 1979. See Drora Kass & Seymour M. Lipset, *America's New Wave of Jewish Immigrants*, N. Y. TIMES MAG., Dec. 7, 1980, at 44; see also *HIAS Modifies Resettlement Policy*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Jan. 1, 1982, at 4, 4-5.

³² Kass & Lipset, *supra* note 31, at 44.

³³ *Id.* at 112 (quoting Leon Dulzin).

1,314; and in 1985, 893.³⁴ However, the accession of Mikhail Gorbachev as General Secretary of the Communist Party of the Soviet Union in 1985 would soon lead to a change in this policy and a consequent reopening of the debate.

THE LATE 1980s: QUESTIONING OF AMERICAN POLICY

Jewish emigration from the Soviet Union began to accelerate most markedly in 1988. Whereas only 3,694 Soviet immigrants were admitted into the United States in fiscal year 1987,³⁵ for fiscal year 1988, the Administration found it necessary to increase the ceiling on admissions from the Soviet Union and Eastern Europe from 15,000 to 30,000.³⁶ As *Refugee Reports* stated:

Having long promoted free emigration from the Soviet Union and Eastern Europe, the United States now faces what one voluntary agency official has termed a "crisis of success," as liberalized migration policies in many of the Eastern Bloc countries have contributed to near-record outflows in 1987 and 1988, and the U.S. government struggles to accommodate them.³⁷

As increasing numbers of Jews and other groups, especially Armenians, were able to leave the Soviet Union, controversy arose over their status as refugees. According to the Refugee Act of 1980, in order to qualify as a refugee, a person must be a victim of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group,

³⁴ 2 LEVIN, *supra* note 6, at 750.

³⁵ *Soviet Emigration Increase, Southeast Asia Crisis—The Refugee Admissions Numbers Game*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Feb. 26, 1988, at 9, 10.

³⁶ *State Department Seeks Privately Financed Admissions for Some Soviets*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Aug. 12, 1988, at 11, 11.

³⁷ *Large Outflows in Soviet Union/Eastern Europe Create "Crisis of Success,"* REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Oct. 14, 1988, at 2, 2-3.

or political opinion.”³⁸ Republican Senator Alan K. Simpson of Wyoming, who would be a leading opponent of liberal granting of refugee status over the next decade, was quoted as telling Secretary of State George Shultz that “the American people will respond always to a true refugee, but not to a gimmick refugee.”³⁹ This questioning was echoed by Immigration and Nationalization Service Commissioner Alan Nelson: “We must recognize that some of those wishing to depart the Soviet Union are not refugees,” but “are, rather, prospective immigrants, and as such, they should enter this country according to the requirements of our own immigration laws.”⁴⁰ Indeed, some Soviets were admitted without even claiming to be persecuted.⁴¹

Still, through fiscal year 1988, refugee status was almost always granted to Soviet immigrants: the approval rate was 99 percent that year.⁴² Then, however, a sharp increase in immigration combined with budgetary pressures on the United States to create what *Refugee Reports* called a “receptive climate” for rethinking the almost automatic granting of refugee status to Soviet Jews.⁴³

Among those questioning the automatic granting of refugee status was Attorney General Edwin Meese, who wrote an August 4, 1988 letter to National Security Advisor Colin Powell. Meese did say that the United States should not “close the door on any person who has been given an expectation of admission to the United States,” and that INS officials should be “as generous as possible in their application of the refugee definition,” further stating that those not granted refugee status “*will be considered* for

³⁸ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended at 8 U.S.C. 1101(a)(42) (2000)).

³⁹ *Administration Says Not Everyone Leaving the Soviet Union is a Refugee*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Oct. 14, 1988, at 6, 6.

⁴⁰ *Id.* (quoting Nelson’s written testimony before Congress).

⁴¹ Kathleen Newland, *The Impact of U.S. Refugee Policies on U.S. Foreign Policy: A Case of the Tail Wagging the Dog?*, in THREATENED PEOPLES, *supra* note 5, at 207.

⁴² *Jews, Pentecostals Challenge INS Denials of Refugee Status for Soviet Emigres*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Mar. 17, 1989, at 6, 6 [hereinafter *Jews, Pentecostals Challenge*].

⁴³ *Id.*

entry to the United States under my parole authority.” However, he also said, “[c]urrent practices in processing Soviet emigres appear not to conform with the requirements established by the Immigration and Nationality Act of 1980,” and that “procedures followed by the Embassy in Moscow must be brought into sync with INS procedures.”⁴⁴

Continuing along these lines, on November 17, 1988, Secretary of State George Shultz asked new Attorney General Richard Thornburgh to apply the INS Refugee standard of a “well-founded fear of persecution,” and Soviet Jews in Rome were first denied refugee status in September 1988. Denials reached 8 percent from September to December, more than doubling in January 1989. Thornburgh did, on the other hand, grant parole status to all Soviets in Rome who were not granted refugee status, as well as to up to 2,000 per month in Moscow.⁴⁵

This concession was unpopular, however, because parolees, unlike refugees, were not eligible for medical benefits, government funding for transportation to and resettlement in the United States, nor adjustment of their status to permanent resident. Additionally, unlike refugees, parolees needed to provide an affidavit of support from a relative or a sponsor in order to guarantee that they would not become public charges, and there were many applicants unable to do this.⁴⁶ Yet, at the same time, Thornburgh described the granting of parole status as an “interim measure,” stating that he had requested that the Office of Legislative Affairs in the Justice Department propose legislation establishing special immigrant status for some applicants in “special circumstances.”⁴⁷

⁴⁴ *Soviet Refugees, Hearing Before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 101st Cong. 128, 130 (1989) [hereinafter *Refugee Hearings*] (letter from Edwin Meese, Attorney General, to Lt. General Colin Powell) (emphasis added).

⁴⁵ *Jews, Pentecostals Challenge*, *supra* note 42, at 7.

⁴⁶ *Id.*; see also *Refugee Hearings*, *supra* note 44, at 121 (statement of Alan C. Nelson, Commissioner, Immigration and Naturalization Service), 150 (prepared statement of Nancy P. Kingsbury, Director, Foreign Economic Assistance Issues, National Security and International Affairs Division, General Accounting Office), 309 (Jonathan K. Baum, Mark Blocker, Gary Finder, & Adrienne C. Lalak: Report to the Subcommittee on Immigration, Refugees, and International Law, “Refugee Status for Jews Emigrating from the Soviet Union”).

⁴⁷ *1988 Statistical Issue*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Dec. 16, 1988, at 1, 1.

In 1989, as Soviet emigration increased further, the new presidential administration of George Bush reacted ambivalently. On the one hand, on April 5, the administration proposed an increase in the number of Soviet refugees from 25,000 to 50,000 for the year. It also proposed legislation allowing the president to admit up to 30,000 people in each of the next five years “for foreign policy reasons” as special immigrants with permanent resident status under Immigration and Naturalization Act section 101(a)(27).⁴⁸ It was also intended that Soviets who had already entered as parolees would be granted permanent resident status. On March 24, the State Department had already requested \$100 million in additional funds, \$85 million of which would be allocated for admission of refugees.⁴⁹

Congress was also active in promoting increased Soviet immigration. Democratic Senator Edward Kennedy of Massachusetts and Republican Senator Robert Kasten of Wisconsin sponsored a bill which would “shift \$150 million of . . . available funds to support the processing and resettlement of an additional 25,000 Soviet Jews and other refugees,” in other words, likewise proposing an increase in Soviet refugee admissions from 25,000 to 50,000.⁵⁰

Concern over funding led to additional measures by the Bush administration. In December 1988, the State Department announced that in addition to refugees funded in full by the federal government, 6,000 semi-funded and 2,500 privately funded slots would be opened for Soviet refugees in fiscal year 1989.⁵¹ At this time, the American Embassy in Moscow presented a letter to Soviet visa applicants telling them, “[i]ncreasingly, Soviet citizens who immigrate to the United States will be asked to establish that they, with the assistance of their U.S. sponsors, [will be] able to support themselves without financial assistance from the United

⁴⁸ See 8 U.S.C. § 1101(a)(27) (2000) for numerous definitions of what constitutes a special immigrant.

⁴⁹ *Congress Considers Proposals to Increase Soviet Emigre Flow*, 66 INTERP. REL. 398-99 (1989).

⁵⁰ 135 CONG. REC. 3154-55 (1989).

⁵¹ *Alternatives Proliferate for Soviet Emigres*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Jan. 27, 1989, at 10, 11.

States,” and that they “should begin now to discuss finances with [their] relatives in the United States.”⁵²

In March 1989, Secretary of State James Baker told American Jewish leaders that the Soviet Jewish refugee issue was one of the State Department’s largest budgetary problems.⁵³ This budgetary issue would continue to affect American policy. Beginning on October 1, 1989, the administration implemented the policy of processing Soviet refugees in Moscow rather than in Vienna and Rome. In doing so, it intended both to save money in an increasingly expensive process and to inform would-be refugees of their status before they left the Soviet Union. In essence, the measure meant that Soviet Jews, all of whom left with Israeli visas, would not be able to apply for admission to the United States as refugees once they were in a third country (i.e., Austria or Italy).⁵⁴ As Immigration and Nationalization Service Commissioner Nelson pointed out, the Soviet Jews did have the option of going to Israel: “Elsewhere, and under normal procedures, such ‘offers of firm resettlement’ are bars against further consideration for the U.S. refugee program.”⁵⁵

The change of venue was strongly criticized. Denial rates were significantly higher in Moscow than in Rome and Vienna, averaging approximately 20 percent in Rome and Vienna, but 46 percent in Moscow, including 54 percent in January 1989 and 87 percent in March.⁵⁶ Moreover, half of the denials in Rome and Vienna were overturned on appeal as a result of help from the

⁵² *Id.*

⁵³ BUWALDA, *supra* note 21, at 190.

⁵⁴ *U.S. Set to Judge All Soviet Refugee Claims in Moscow, 50,000 Places for Soviet Refugee Admissions Requested*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Sept. 22, 1989, at 1, 2 [hereinafter *U.S. Set to Judge*]; *Processing of Soviet Refugees: Joint Hearing Before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs and the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 101st Cong. 88-89 (1979) [hereinafter *Processing Hearing*] (exchange between Representative Lamar Smith, R-Texas, and Princeton Lyman, Director, Bureau for Refugee Programs).

⁵⁵ *Congress, Administration Offer Legislative Response to Soviet Refugee Surge*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Apr. 28, 1989, at 1, 2 [hereinafter *Congress, Administration Offer Legislative Response*].

⁵⁶ *U.S. Set to Judge*, *supra* note 54, at 4.

Hebrew Immigrant Aid Society (HIAS). As Jewel S. Lafontant, U.S. Coordinator for Refugee Affairs, explained:

When I talked to the HIAS people in Rome, I said to them that I did not feel that the applicants who went before the INS knew how to present their cases properly. They were at a loss as to what to say. They could not prove that they were actually persecuted.⁵⁷

Karl Zukerman, executive vice president of HIAS, noted that not only were HIAS representatives failing to aid prospective refugees in Moscow, but also that Moscow lacked a private space where applicants could speak about their persecution.⁵⁸

Additionally, criticisms were voiced by a group sent to Rome in January 1989 by World Relief, part of the National Association of Evangelicals, to investigate the denial of refugee status to ninety-nine Pentecostals. The World Relief team found that different INS examiners approved applicants at vastly different rates; interviews were generally superficial, averaging ten minutes; and examiners were sometimes hostile or inattentive. Moreover, “[i]n some instances, attempts by applicants to present their ‘story’ were specifically cut off.”⁵⁹

CHALLENGES TO STRICTER STANDARDS

On April 5, 1989, Assistant Attorney General Thomas Boyd wrote to Chairman Bruce Morrison of the House Subcommittee on Immigration, Refugees, and International Law, explaining that because so many more people were being allowed to leave the Soviet Union, the character of the emigrant pool had changed. In particular, increasing numbers of people were leaving not to flee persecution, but solely for purposes of family reunion or economic opportunities.⁶⁰ Yet some observers perceived the irony

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 6.

⁵⁹ *Jews, Pentecostals Challenge*, *supra* note 42, at 6-8.

⁶⁰ *Refugee Hearings*, *supra* note 44, at 89 (letter from Thomas M. Boyd, Assistant Attorney General, to Bruce A. Morrison, Chairman, Subcommittee on Immigration, Refugee, and International Law).

of the situation. In the words of one refugee in Ladispoli, Italy, in 1989, "[t]he American government fought for us to leave. It's very difficult for us to understand why America is now rejecting us."⁶¹

There was also indignation in Congress, as expressed, for example, by Bruce Morrison, a Democratic Representative from Connecticut: "The President calls on the Soviets to open up emigration. At the same time, his administration makes it impossible for Soviet Jews to be processed expeditiously and fairly into the U.S. ."⁶²

Likewise, in early 1989, fifty-four Senators wrote a letter to Secretary of State James Baker and Attorney General Thornburgh expressing concern over the denial of refugee status to some Soviet Jews in Rome as well as over pending delays of at least a year in processing applications in Moscow. They wrote, "[p]ersonnel ceilings notwithstanding, is there not a way to deal with this backlog so that the U.S. government does not replace the Soviet government as the obstacle to departure?"⁶³

The letter further called on the administration to return to the policy of regarding all Soviet Jews as refugees, noting the history of anti-Semitism in Russia and the Soviet Union and pointing out that Gorbachev's reforms "are encouraging, but have yet to take hold in the daily lives of Soviet Jews and other religious minorities."⁶⁴ The letter further noted that "one byproduct of glasnost is that extremist groups, including virulent anti-Semites, are growing increasingly outspoken."⁶⁵ Similarly, HIAS issued a report on February 10, 1989 referring to this history and unpredictability, concluding that "it is reasonable for Soviet Jews to fear persecution on account of their religion if they return."⁶⁶ Additionally, Jews and Pentecostals were concerned lest Gorbachev and his reforms not last.⁶⁷

⁶¹ 135 CONG. REC. 14,677 (1989).

⁶² *Id.* at 14,678.

⁶³ *Id.* at 3155.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Jews, Pentecostals Challenge*, *supra* note 42, at 6, 8.

⁶⁷ See *Refugee Hearings*, *supra* note 44, at 23 (statement of Hon. Gerry Sikorski, Representative from Minnesota); *Processing Hearing*, *supra* note 54,

THE LAUTENBERG AMENDMENT

The above comments by the fifty-four Senators and by HIAS foreshadowed another issue that came to the fore in 1989: that of presumptive refugee status for Soviet Jewish immigrants. As HIAS pointed out:

The notion of applying a “presumption of persecution” to the situation of Soviet Jews is hardly a revolutionary idea. There is a precedent for it in the case of refugees from Indochina and, indeed, precedent in the operation of an informal presumption in favor of Soviet Jews up until last fall.⁶⁸

Such a presumption of persecution would eliminate neither personal interviews nor annual ceilings on admissions of refugees. However, membership in a designated group, in this case Soviet Jews, would mean that the INS officer was to presume an individual to be a refugee unless there were persuasive contrary evidence.⁶⁹

The legislative response to the change in policy set forth by the Meese memorandum came in 1989. Sponsored primarily by Democratic Senator Frank Lautenberg of New Jersey and Democratic Representative Bruce Morrison of Connecticut, what came to be known as the Lautenberg Amendment originally was to last only until September 30, 1990, a terminus explained by Morrison as reflecting the recognition that “refugee conditions are by nature fluid.”⁷⁰

The Lautenberg Amendment comprised Sections 599D and 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act.⁷¹ Section 599D provided that, in addition to certain Indochinese, designated categories of aliens

at 173 (Appendix 3: Background Information on Soviet Emigrants, Prepared by the Department of State) (submitted by Rep. Howard Berman (D-California)).

⁶⁸ *Jew, Pentecostals Challenge*, *supra* note 42, at 9.

⁶⁹ *Id.*; H.R. REP. NO. 101-122, at 9.

⁷⁰ 135 CONG. REC. 14,661 (1989).

⁷¹ Foreign Operations, Export Financing, & Related Programs Appropriations Act, 1990, §§ 599D, 599E.

from the Soviet Union would be presumed to be “targets of persecution in the Soviet Union on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁷² These categories would be established by “the Attorney General, in consultation with the Secretary of State and the Coordinator for Refugee Affairs,” and were to include Jews, Evangelical Christians, and members of the Ukrainian Catholic and Ukrainian Orthodox Churches.⁷³ Section 599E provided for adjustment of the status of nationals from the Soviet Union, Vietnam, Laos, and Cambodia who were inspected and paroled into the United States from August 15, 1988, through September 30, 1990, to that of permanent residents, provided that they were physically present in the United States for at least one year, applied for the adjustment, and paid a fee for the processing of the application.⁷⁴

There was some opposition to the Lautenberg Amendment. Republican Representative Lamar Smith of Texas saw such preference to selected groups as a bad precedent and also as unfair: “We are saying basically that whoever gets in line and whoever finds a political champion or whoever has enough political influence, that they can perhaps get special attention, get special preference.”⁷⁵

Democratic Representative Romano Mazzoli of Kentucky saw it as “a step backward,” counter to the Refugee Act of 1980, which eliminated national preferences in granting refugee status.⁷⁶ Other objections had been voiced in June in the House Judiciary Committee by Republican Henry Hyde of Illinois. He spoke of the unfairness of granting preference to Soviets without relatives in the United States over Filipinos who might have to wait at least ten years to be reunited with relatives. Additionally, he reprised and foreshadowed an argument made by others by saying that this was “doing Israel no favor. They need and want these people.”⁷⁷

⁷² *Id.* § 599D.

⁷³ *Id.*

⁷⁴ *Id.* § 599E, 103 Stat. at 1263.

⁷⁵ 135 CONG. REC. 14,664, 14,674.

⁷⁶ *Id.* at 14,666.

⁷⁷ *House Judiciary Committee Approves Three Immigration Bills*, 66 INTERP. REL. 675 (1989).

Senator Simpson, although he did vote for the Lautenberg Amendment, nevertheless expressed his reservations. As did Mazzoli, he referred to the Refugee Act's barring of national preferences.⁷⁸

Despite this opposition, the amendment passed 97-0 in the Senate and 358-44 in the House.⁷⁹ Three main arguments were adduced in favor of the granting of presumptive refugee status to the Soviet Jews and the others. As noted above, there was the alleged hypocrisy in pressing the Soviet Union to let Jews emigrate while denying the Jews admission to the United States on the grounds that they were not persecuted. As Republican Senator Rudolph Boschwitz of Minnesota stated, "we seem to be saying to the Soviets: 'You were right, these people weren't really persecuted after all.'"⁸⁰

Second, as Senator Lautenberg stated, many Soviet Jews applied to emigrate with the expectation of entering the United States: "[T]hey gave up home, family, and friends to rely on the U.S. Government's longstanding promise of resettlement."⁸¹ Democratic Representative Gerry Sikorski of Minnesota, responding to accusations that these groups were being given special treatment, said that "the treatment we have been giving them for the last 10 months is not very special in light of the commitment we have made to them for the last 20 years."⁸²

Third, there were numerous reports of inconsistencies and biases on the part of INS interviewers. INS interviewers were criticized for being cold and impersonal, an attitude which "destroys any potential for a sense of trust essential to effective communication of the highly personal information about the applicant's religious life and persecution."⁸³ Further, this unwelcoming attitude ran counter to INS Guidelines which "specifically encourage a warm, personal style with direct communication with the applicant."⁸⁴

⁷⁸ 135 CONG. REC. 15,527 (1989).

⁷⁹ *Id.* at 15,530, 14,680.

⁸⁰ *Id.* at 15,523.

⁸¹ *Id.* at 15,516.

⁸² *Id.* at 14,669.

⁸³ 135 CONG. REC. 15,520.

⁸⁴ *Id.*

Additionally, there were cases where “personal bias . . . played a significant role in many of the denials”; this was especially a problem with the Pentecostals.⁸⁵ At times, interviewers insisted that incidents of physical persecution or arrests be recent. However, as Lynn Buzzard, Chairman of the Soviet Refugee Legal Task Force, pointed out, “a well founded fear [of persecution] doesn’t require either very recent incidents or particularly striking personal incidents.”⁸⁶

The INS responded to criticism by “h[olding] a training program aimed partly at achieving greater consistency,” and also by holding seminars to familiarize their officers with the history and conditions of Pentecostals and Jews in the Soviet Union.⁸⁷ Additionally, Senator Edward Kennedy of Massachusetts pointed to the handbook of the United Nations High Commissioner for Refugees, used worldwide, which indicated that discrimination can at times be tantamount to persecution, as when “measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g., serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.”⁸⁸

The Lautenberg Amendment itself, in an addition of September 20 1989, spelled out how an applicant from one of the enumerated groups could qualify for refugee status. The applicant could point to:

[Such] acts of mistreatment, or prejudicial actions against him or her personally [as an] inability to study or practice religious beliefs or ethnic heritage [or a] denial of access to educational, vocational or technical institutions for which he or she is otherwise qualified, based on membership in one of the above categories [or] adverse treatment in the workplace stemming from prejudicial attitudes toward members of his or her category.⁸⁹

⁸⁵ *Id.* at 15,520, 15,522.

⁸⁶ *Id.* at 15,522.

⁸⁷ *Id.* at 15,518.

⁸⁸ 135 CONG. REC. 15,526.

⁸⁹ *Id.* at 21,107.

Alternately, the applicant could point to “acts of persecution committed against other persons in his or her category, in his or her geographical locale; or acts, regardless of locale, which give rise to a well-founded fear of persecution.”⁹⁰ Another possibility, based on the frequent oppression of Soviet Jews who had applied for emigration visas, was to demonstrate “instances of mistreatment or prejudicial actions based on his or her personal request to depart his or her homeland, including, but not limited to, loss of home, job, or educational opportunity.”⁹¹ Still expressing reservations about preference for certain groups, Senator Simpson explained this as “just adding a lesser burden of proof.”⁹²

The Armenians were a noteworthy omission from the Lautenberg Amendment. Armenians, as did Jews, took advantage of Gorbachev’s liberalization of emigration policy. Also like the Jews, the Armenians received considerable support from their fellow ethnics upon arrival in the United States. Unlike the Jews, however, the Soviet Armenians had a genuine ethnic homeland within the Soviet Union. Accordingly, the Armenian-American community was ambivalent about emigration from Armenia. Harut Sassounian, an Armenian-American newspaper editor and publisher, referred to the Armenian diaspora as resulting from persecution, especially by the Ottoman Empire: “Because of the injustice we suffered . . . we all dream of one day returning to our homeland.”⁹³ He further expressed an attitude similar to that of many Jews toward Jews who leave Israel: “When Armenians on any part of our historical homeland leave Armenia, they go against the struggle, against our goals,” saying that while many recent arrivals were his friends, “the interest of individuals is secondary to the national interest.”⁹⁴ Another editor, Ani Keshishian, expressed a contrary attitude: “No one has the right to say, ‘don’t go,’ when you are not there yourself.”⁹⁵

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 21,109.

⁹³ *From Yerevan to Hollywood, the Armenians Are Coming*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Mar. 18, 1988, at 8, 8-9.

⁹⁴ *Id.* at 9.

⁹⁵ *Id.*

At the same time, by early 1988 many Armenians were being granted refugee status without even claiming to be victims of persecution. Indeed, some even openly denied that they were persecuted, acknowledging that they wanted to come to the United States to improve their economic situation.⁹⁶ Some were being denied refugee status, thereupon being given parole status instead; the denial rate reached 85 percent in March 1989.⁹⁷ Whereas Jews and Pentecostals favored presumptive eligibility for refugee status for their own peoples, Ross Vartian, executive director of the Armenian Assembly of America, had no problem supporting the idea of special immigrant status for Armenians.⁹⁸ It appears that the Armenian-American community in general opposed the idea that their fellow ethnics in the Soviet Union were victims of persecution, and this opposition led to their exclusion from the Lautenberg Amendment.⁹⁹ In addition to the desire to avoid weakening Armenia, the historic preference for Russia, even Soviet Russia, as a protector of the Armenians against Turkey probably came into play.

AGAIN: USA OR ISRAEL?

As in the late 1970s, with the great increase in the 1980s of Soviet Jewish emigration there was controversy over the Jews' destination. On February 18, 1987, Israeli Prime Minister Yitzchak Shamir requested of Secretary of State Shultz that the United States not grant refugee status to Soviet Jewish emigrants. Shamir stated that since the emigrants were leaving the Soviet Union on Israeli visas they were no longer refugees. This was answered by Karl Zukerman, who said that since the Jews faced religious persecution in the Soviet Union, they were indeed refugees according to international law. Warren Eisenberg,

⁹⁶ *Controversy Erupts Over Armenian Refugee Admissions*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), June 24, 1988 at 10, 10-11; see also *Refugee Hearings*, *supra* note 44, at 163 (response of Nancy Kingsbury to question of Bruce Morrison).

⁹⁷ REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Dec. 16, 1988, at 1, 1; *Congress, Administration Offer Legislative Responses*, *supra* note 55, at 2.

⁹⁸ *Congress, Administration Offer Legislative Responses*, *supra* note 55, at 4.

⁹⁹ Newland, *supra* note 41, at 209.

Director of the International Council of Bnai Brith, stated that “[w]e support *aliya* [immigration to Israel], but we also support freedom of choice,” and Gary Rubin of the American Jewish Committee said, “it is not for us to tell Soviet Jews where they should go.”¹⁰⁰

On the other hand, some American Jews were expressing doubts. For example, Elaine Cooper, Director of National Programs of the Zionist Organization of America, while not advocating an end to refugee status for Soviet Jews, nevertheless agreed that Jews with Israeli visas were not refugees. Morris Abram, chairman of the National Conference on Soviet Jewry, said that although his organization had not yet taken a position, American Jews agreed “on the need for substantial and sustained emigration from the Soviet Union . . . to Israel, and that the claim for repatriation to Israel is a valid and compelling argument.”¹⁰¹ As had the Armenian-Americans, some Jewish Americans spoke of the hypocrisy of insisting that their fellow ethnics live in a place where they themselves had not chosen to live.¹⁰² Meanwhile, a State Department spokesman said that the administration favored freedom of choice for the Soviet Jews, a view reiterated in September 1988 by Secretary Shultz.¹⁰³

While the debate over refugee status for Soviet Jews in the United States continued, the debate over whether they should go to Israel was rendered moot in the 1990s. In 1990-91, almost 400,000 Jews left the Soviet Union. Political scientist Sharon Stanton Russell explained that “the sheer numbers of Jews permitted to emigrate, coupled with the relative ease of obtaining a visa for Israel, and the institution of more direct air and land transport routes resulted in most Jewish emigrants--333,000--going to Israel; 66,000 went to the United States.”¹⁰⁴ And although statistics vary,

¹⁰⁰ *Israel Asks United States Not to Admit Soviet Jews as Refugees*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Mar. 20, 1987, at 13 [hereinafter *Israel Asks United States*].

¹⁰¹ *Id.* at 14.

¹⁰² See Michael R. Gordon, *Exit for Soviet Jews, Conflict for Americans*, N.Y. TIMES, Aug. 14, 1988, § 4, at 2.

¹⁰³ *Israel Asks United States*, *supra* note 100, at 13; *Administration Reiterates Support for “Freedom of Choice” for Soviet Jews*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Oct. 14, 1988, at 7, 7.

¹⁰⁴ Russell, *supra* note 5, at 71.

a reasonable approximation is that in the 1990s, of slightly over one million Jews who left the Soviet Union and its successor states, over 800,000 went to Israel.¹⁰⁵ Additionally, of course, Israel not only had no maximum number of Jewish refugees that it would accept but was eager to welcome as many Jewish immigrants as possible.

REFUGEES IN THE 1990s

The Lautenberg Amendment achieved its purpose. A May 8, 1990, General Accounting Office report found that after the amendment was passed, the percentage of applicants interviewed in Moscow who were approved for refugee status in fiscal year 1990 increased from under seventy-eight to ninety.¹⁰⁶ On May 23, Lautenberg and Morrison introduced legislation extending their amendment for two years, to October 1, 1992.¹⁰⁷ However, one restriction was already coming into play. In the division of refugee categories¹⁰⁸ into six priorities, 70 percent of Soviet applicants were in the lowest priority: P6, for those with close ties, especially of family, to the United States. Most of the others were in the P3 categories (spouses, unmarried sons or daughters, or parents of persons in the United States) or the P5 category (married sons or daughters, siblings, grandparents, or grandchildren). Many of the Soviet Jews qualified under P3 or P5, and the United States increasingly preferred to give priority under P6 to evangelical Christians, many of whom lacked relatives in the United States. Therefore, already the State Department was predicting the unlikelihood of Soviet Jewish P6 applicants gaining refugee status for several years. Arnold Leibowitz, Washington counsel to HIAS, pointed out that there would be enough P3 and P5 applicants to

¹⁰⁵ Statistics, *Jewish Emigration from the Former Soviet Union & the United States* (updated January 27, 2003) at <http://ncsj.org/stats.shtml> (last visited May 4, 2003).

¹⁰⁶ *Amendment Introduced to Extend Lower Refugee Threshold for Soviet Jews, Evangelicals, and Other Category Groups*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), June 22, 1990, at 8, 8.

¹⁰⁷ *Id.*

¹⁰⁸ *The Washington Processing Center: One Year Later*, 67 INTERP. REL. 1120, 1120-21 (1990).

fulfill the maximum quota, even if more individuals would be denied entry.¹⁰⁹

Then came a watershed. On May 20, 1991, the Soviet Parliament approved a law, to take effect January 1, 1993, allowing freedom of travel and emigration. As the *New York Times* noted, this codified a process that had been occurring de facto under Gorbachev.¹¹⁰ Additionally, the Soviet Union dropped its requirement that invitations to immigrate be made by close family members. Accordingly, there would potentially be a huge increase in the number of immigrants. As *Refugee Reports* noted, "most countries, with the exception of Israel, would probably be averse to receiving large numbers of Soviet immigrants."¹¹¹

As it happened, fairly large numbers of Jewish immigrants did enter the United States after the breakup of the Soviet Union, but at the same time standards were tightened and the numbers decreased. From the start of the Lautenberg Amendment until Fall 1999, more than one million refugee applicants underwent review, of whom over 420,000 former Soviets entered the United States, with a high of 61,298 in 1992. However, the numbers declined every year after 1992: to 27,072 in fiscal year 1997, 23,349 in fiscal year 1998, and approximately 16,900 in fiscal year 1999, and a projected (as of September 2000, with one month to go in the fiscal year) 14,000 in 2000. Concurrently with this went a drop in the ceiling for refugees from the former Soviet Union, from 26,000 in fiscal year 1998 to 23,000 in fiscal year 1999, 20,000 in 2000, and 17,000 for 2001.¹¹² Moreover, the proportion of applicants

¹⁰⁹ *Id.* The refugee categories were developed for use at the Washington, D.C. Processing Center, established in 1989 to process the applications of Soviet refugees, *Administration Proposes Admitting 125,000 Refugees Next Year*, 66 INTERP. REL. 1029, 1030 (1989).

¹¹⁰ Esther B. Fein, *Soviets Enact Law Freeing Migration and Trips Abroad*, N.Y. TIMES, May 21, 1991, at A1.

¹¹¹ *Soviet Processing: A First-Hand Account from Moscow*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Aug. 30, 1991, at 10, 12.

¹¹² *Trouble-shooting U.S. Refugee Processing in the Former Soviet Union and Egypt*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Sept./Oct. 1999, at 1, 2 [hereinafter *Trouble-shooting U.S. Refugee Processing*]; see also *From 90,000 to 72,000 and Counting: U.S. Refugee Admissions Shortfall Expected for FY 2000*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Sept. 2000, at 1, 6 [hereinafter *From 90,000 to 72,000 and Counting*].

who were Jews declined to only about 50 percent by 1998, with Evangelical Christians accounting for most of the rest.¹¹³ Evangelical Christians, of course, did not have the same option of refuge in Israel.

Still, the Lautenberg Amendment has been continually renewed, and unlike most former Soviets who need to show a “well-founded fear of persecution” to gain refugee status, the designated groups need only state that they fear persecution and demonstrate a “credible basis of concern” in that regard.¹¹⁴

That concern persisted even after the dissolution of the Soviet Union, although the precise locus of the concern shifted. For example, there was considerable consternation at the success of Vladimir Zhirinovsky’s right-wing Liberal Democratic Party in the December 1995 elections to the Russian parliament.¹¹⁵ Although Zhirinovsky soon appeared to be a spent force in Russian politics, anti-Semitic incidents persisted throughout the 1990s, including bombings of synagogues, physical attacks on Jewish leaders and institutions in various parts of Russia, and anti-Semitic remarks from opposition Russian politicians and local governors, ranging from Communist leader Gennadi Zyuganov’s complaints about excessive Jewish presence in the media to right-winger Albert Makashov’s call to send all Jews to their graves. Although the official anti-Semitism of the Soviet period was absent from the top levels of the Russian government, the situation was perhaps best expressed by Paul Goble, Senior Fellow at the Potomac Foundation, who in 1996, referred to the anti-Semitism in the former Soviet Union as having been “privatized: that is, governments do not effectively control the manifestation of this ancient evil”¹¹⁶

In March 1999, Diana Aviv, Director of the Washington office of the Council of Jewish Federations (CJF), referred to anti-Semitism in the successor states as “virulent, pervasive, and

¹¹³ *FSU Refugee Resettlement Drops*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Feb. 28, 1998, at 6, 7.

¹¹⁴ *Id.*

¹¹⁵ *Political Climate in Former Soviet Union Darkens; Attitudes Toward Jews, Uncertain*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Mar./Apr. 1996, at 1, 1.

¹¹⁶ *Id.* at 2.

increasingly violent,” and said that the CJF supported a further extension of the Lautenberg Amendment: “Our hope was that it would not be necessary to renew this amendment, that the situation would change for the better. Sadly, this is clearly not the case. Nor does it appear that improvement is on the horizon.”¹¹⁷

STRICTER ENFORCEMENT OF STANDARDS FOR REFUGEE STATUS

Despite the persistence of such problems, however, there was continued questioning of the need for refugee status for Soviet Jews. Alan Simpson continued to be a vocal opponent. Speaking against an extension of the Lautenberg Amendment on the Senate floor on February 1, 1994, he pointed out that there was “unofficial discrimination against groups” in the United States as well, but that that did not make them, or similar Soviet groups, refugees.¹¹⁸ On another occasion, pointing out that roughly 85 percent of refugees were leaving their home countries for the United States without having to flee, Simpson said, “[it] appears to me that our refugee program has become for the most part an immigration program in refugee clothing, and with refugee funding.”¹¹⁹

After Simpson retired in 1997, his successor as chair of the Senate immigration subcommittee, Republican Spencer Abraham of Michigan, was more sympathetic toward refugees. Abraham expressed doubts in a July 31, 1997 hearing about the American policy of lowering the number of refugees it was accepting. Also, as had many others, he expressed concern over manifestations of anti-Semitism in the former Soviet Union.¹²⁰

¹¹⁷ “*Culture of Negativism*” Debated at Congressional Refugee Hearing, 20 REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Mar./Apr. 1999, at 1, 18.

¹¹⁸ 140 CONG. REC. 638 (1994).

¹¹⁹ *International and Domestic Political Developments Spark Debate Over Future of Refugee Resettlement Program*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), June 30, 1994, at 1, 3 [hereafter *Developments Spark Debate*].

¹²⁰ *Refugee Admissions Remain Level For FY 98: Bosnian Admissions to Increase While Former Soviet Admissions Decline*, REFUGEE REP. (U.S. Committee for Refugees, Washington, D.C.), Aug. 29, 1997, at 8, 8.

Nevertheless, the numbers continued to decrease. Although refugees admitted under the Lautenberg Amendment are not required to have family in the United States, the Washington Processing Center said in early 1998 that it only considered applicants who had a parent, child, sibling, or grandparent as a sponsor. According to *Refugee Reports*, the State Department inaugurated this policy in order to make the number of applicants more manageable when it greatly increased in the early 1990s. As it was, in early 1998 the Washington Processing Center had files of an estimated 80,000 people who could conceivably have qualified as Lautenberg refugees but lacked such family sponsors.¹²¹ Moreover, as Soviet Jewish refugees in the United States were able to bring their families over, there was a decline in the number of Jews remaining in the former Soviet Union who still had American relatives.¹²² This led to the steady decrease in admissions in the 1990s.¹²³ Another possibility was that the people who most wanted to leave the former Soviet Union for United States and Israel had done so as soon as possible, leaving behind many who preferred to stay.¹²⁴

Additionally, there were other factors that kept the number of applicants down. For a long time even after the dissolution of the Soviet Union the INS interviewed applicants from any of the former Soviet republics only in Moscow. Accordingly, the necessity of traveling to Moscow made applying for refugee status financially prohibitive for some potential applicants, to say nothing of bureaucratic difficulties involved in traveling from other former Soviet republics, now separate states, to Russia.¹²⁵ Additionally, there were cases when people certified as refugees by the United Nations High Commissioner for Refugees (UNHCR) were denied refugee status by the INS. This, coupled with the lack of INS circuit rides to outlying areas, often caused the UNHCR to be discouraged from referring refugee cases to the United States. As

¹²¹ *FSU Refugee Resettlement Drops*, *supra* note 113, at 8.

¹²² *Trouble-shooting U.S. Refugee Processing*, *supra* note 112, at 2.

¹²³ *Id.*

¹²⁴ Mitchell Landsberg, *Russian Emigration Rising; Most Russians Who Seek a New Life in the United States are Jews*, TULSA WORLD, January 17, 1999, available at 1999 WL 5387430.

¹²⁵ *FSU Refugee Resettlement Drops*, *supra* note 113, at 9.

one official said: "We avoid approaching the United States about high-risk cases. It takes too long, and we lose control of the case. This is unfortunate, since the United States has such a large quota."¹²⁶

However, the United States finally responded early in fiscal year 2000 by instituting circuit rides, serving mostly Lautenberg refugees but also some category P-1 referrals from the UNHCR in Azerbaijan, Uzbekistan, Turkmenistan, and Kazakhstan, and there was talk of extending the circuit rides to St. Petersburg as well.¹²⁷

An additional concern, stated, not surprisingly, by Senator Simpson, was that some people were fraudulently entering the United States as Lautenberg refugees. In December 1995, Simpson had printed into the *Congressional Record* a November 4 *Washington Times* article which quoted the INS director in Moscow, Leonard Kovensky, as saying that some applicants brought passports showing that they were ethnically Russian, but because one grandparent was Jewish, the rules required that they be given visas. In addition, a Pentecostal leader told the INS that many people were falsely claiming to be Pentecostals in order to acquire refugee status, and Kovensky said that "[m]any reliable sources" had told the INS of classes for people to learn how to pass as Pentecostals in their interviews with the INS.¹²⁸ In 1996, the State Department Inspector General's Office referred to fraudulent documentation and also to the fact that it was not necessary to prove membership in the designated categories, only to state it. Because of this fraud, INS officials in Moscow favored ending the Lautenberg program as early as 1993, but both then and in 1996, attempts led by the State Department to do so were unsuccessful. Moreover, several INS officers complained of being ignored when they called for a crackdown on fraud and unfounded allegations of persecution; the officers were requesting criminal background checks and equipment capable of detecting forged documents. Applicants often claimed that they had lost their Soviet passports, which contained a line indicating the bearer's nationality (ethnic group), presenting other papers of dubious provenance instead. At

¹²⁶ *Trouble-shooting U.S. Refugee Processing*, *supra* note 112, at 2.

¹²⁷ *From 90,000 to 72,000 and Counting*, *supra* note 112, at 6.

¹²⁸ 141 CONG. REC. 37,058 (1995).

the same time, according to Stephen Kurkjian of the *Boston Globe*, no one knew how extensive such fraud was.¹²⁹

Despite the alleged fraud and the complaints by the INS officials that their superiors often challenged their rejection of applications,¹³⁰ increasing numbers of applicants were being rejected. As early as 1992, Jack Matlock, former American Ambassador to the Soviet Union, was quoted as saying, “[i]t’s going to be hard to make a case of discrimination against you by officialdom. Everybody is having a pretty rough time.”¹³¹ Particularly by the end of the decade, growing numbers of applicants were denied refugee status because of an inability to prove persecution. Daniel Retter, a New York lawyer handling such cases, was cited in the *Milwaukee Journal Sentinel* to the effect that some rejected applicants appeared to satisfy the requirements of the Lautenberg Amendment and that interviewing in Moscow seemed increasingly “adversarial.”¹³²

Senator Lautenberg himself, in a letter to the editor of the *Boston Globe* in answer to the allegations of fraud, stated that his amendment “in no way encourages immigration officials to relax their standards regarding fraudulent applications.” He further stated that “Russian Jews are having greater difficulty these days qualifying for refugee status under my amendment. In fact, lawyers who handle these cases say the interview process has gotten tougher and fewer applications are winning approval.” At the same time, referring to anti-Semitic incidents in the former Soviet Union in 1998 and 1999, specifically the explosion of bombs near Moscow synagogues and the July 1999 stabbing of a Jewish leader in Moscow’s Choral Synagogue, he concluded: “Victims of this persecution deserve our protection. The Lautenberg Amendment gives them that help. And it sends an

¹²⁹ Stephen Kurkjian, *Russian Refugees Skirt Regulations to Flood U.S.*, BOSTON GLOBE, Aug. 1, 1999, available at LEXIS, News Library, Bglobe File.

¹³⁰ *Id.*

¹³¹ Seth Mydans, *Seeking Shelter in U.S. After the Soviet Storm*, N.Y. TIMES, Jan. 25, 1992, at 7.

¹³² Landsberg, *supra* note 124; Mitchell Landsberg, *Stream of Russians Seeking to Emigrate is Again on Rise; Many are Jews, Wary Amid Thickening Atmosphere of Grass-Roots Anti-Semitism*, MILWAUKEE JOURNAL SENTINEL, Jan. 31, 1999, available at 1999 WL 7656561.

important signal that the United States still leads the world in protecting human rights.”¹³³

CONCLUSION

On April 6, 1989, INS Commissioner Alan C. Nelson, testifying before the Subcommittee on Immigration, Refugees, and International Law of the House Committee on the Judiciary, correctly noted that while emigration was an internationally recognized right, immigration is a “privilege granted by sovereign governments.”¹³⁴ Yet at the same time, while acknowledging this legal disparity, some people suggested that there was a moral equivalence created by American raising of the Soviet Jews’ expectations of reception in the United States.

Nevertheless, the sheer number of immigrants beginning in 1988 led to rethinking and then change in American policy. In effect, the Lautenberg Amendment served as a sort of compromise between, on the one hand, the statutory numerical limitations on refugee admissions and the sovereign right of the United States to restrict immigration, and on the other hand, the implicit moral obligation perceived by some people. As discussed above, there has been some opposition to the Lautenberg Amendment, most prominently from Senator Alan Simpson, but there was never much, and the Lautenberg Amendment is still being renewed. Paula Stern has noted that Henry Jackson:

was aided by a reputation among his congressional colleagues as a *specialist* on Soviet affairs among a body of generalists When it comes time for the Congress as a whole to consider a particular issue - - for example, trade relations with the Soviet Union -- the views of those members like Jackson specializing in the field have a disproportionate influence over the rest of the Senate and House membership.¹³⁵

¹³³ Frank Lautenberg, *Letter to the Editor*, BOSTON GLOBE, Aug. 15, 1989, at F6, available at 1999 WL 6077124.

¹³⁴ *Refugee Hearings*, *supra* note 44, at 104 (testimony of Alan C. Nelson, INS Commissioner on Soviet Refugee and Immigration Issues).

¹³⁵ STERN, *supra* note 24, at 204 (emphasis in original).

A similar situation may have obtained with regard to the Lautenberg Amendment. Support for the Lautenberg Amendment may also have resulted as much from the lack of passionate objection to it, Simpson and others notwithstanding, as from any consideration of the relative merits of different claimants to refugee status. Additionally, of course, there was the desire not to abandon the Soviet Jews or to be seen as abandoning them: a moral principle amounting to a sort of *stare decisis* in refugee policy.

The specific role of Jewish lobbying is hard to assess. Examples of testimony by representatives of Jewish organizations have been cited above, in addition to the ambivalent attitude of Jewish groups toward whether to encourage free choice of destination rather than solely immigration to Israel. Sources on examples of lobbying, such as campaign contributions or letter writing to Congressmen, are less available. Certainly in the 1990s, Jewish groups were active in calling attention to the persistence of anti-Semitism in the former Soviet Union, and this may have helped keep the Lautenberg Amendment alive. At the same time, given the overwhelming bipartisan support for the Lautenberg Amendment, and for that matter, issues concerning Soviet Jews in general, it is most likely that Jewish lobbying reinforced rather than caused such support. And certainly there were limits: no amount of lobbying could ever have induced the United States to admit one million former Soviet Jews as refugees in the 1990s.

Moreover, official repression of Jews in the Soviet Union and its successor states declined steeply, even if there were still anti-Semitic incidents (as there are in the United States, even if the United States lacks the same tragic history with respect to treatment of Jews). As Petrus Buwalda, Dutch ambassador to the Soviet Union from 1986 to 1990, pointed out, “under Gorbachev the situation of Soviet Jews was no longer so precarious as to generate the political and financial support needed for a continuation of the old policy.”¹³⁶

This ambivalence led to an unusual policy toward Jews from the former Soviet Union. Simpson is quoted above as referring to the Lautenberg program as an “immigration program in refugee clothing.”¹³⁷ Even Buwalda, who was a more

¹³⁶ BUWALDA, *supra* note 21, at 197.

¹³⁷ See *Developments Spark Debate*, *supra* note 119, at 3.

sympathetic observer, similarly wrote: "In fact, the refugee program became a converted immigration program: only close relatives of American citizens could henceforth hope to qualify, . . ."¹³⁸ More accurately, what the Lautenberg program became was sui generis, a hybrid program whose applicants simultaneously had to meet lesser standards as refugees and ordinary standards as immigrants, whereupon family-sponsored immigrants would be treated as the equivalent of immediate family.

The additional ambivalence reflected in the persistence of the Lautenberg program is that of the United States toward Russia, its former Cold War rival. Just as the North Atlantic Treaty Organization has expanded partly out of a sense of vigilance (or paranoia) about the possible but unlikely resurgence of a militant Russia, so the Jackson-Vanik Amendment, despite being waived for Russia and other countries that comply with it, is still on the books despite Russia's granting of the right to emigrate (even embedding this right into article 27 of its Constitution),¹³⁹ and despite Russia's no longer having a "nonmarket economy." Thus, the United States continues to insist that the Soviet Union grant Jews the right to emigrate to Israel while not offering many of them admission itself, a not unprecedented type of American moralizing. As the *New York Times* pointed out in 1992:

One bureaucratic detail seems to symbolize the topsy-turvy nature of the changed Soviet-American relationship. In the past, when a Soviet citizen wished to travel abroad, his Government forced him to leave behind a close family member to help insure his return. Now it is American consular officials in Moscow who often require that a family member be left behind as proof that a tourist does not intend to overstay his visa.¹⁴⁰

¹³⁸ *Id.* at 196.

¹³⁹ Vladimir N. Pregelj, *IB93107: Most-Favored-Nation (Normal-Trade-Relations) Policy of the United States* (June 7, 2000), at <http://www.ncseonline.org/nle/crsreports/economics/econ-49.Cfm?&CFID=6621257&CFTOKEN=20422312> (last visited May 7, 2003); KONST. RF Art. 27(2) (1993).

¹⁴⁰ Mydans, *supra* note 131.

Although this refers to admission of nonimmigrant visitors (hence presumed immigrants) rather than to refugee admissions, American immigration restrictions in general, whether of immigrants, nonimmigrants, or refugees, have created an irony. In the post-Cold War world, now that former citizens of the successor states to the Soviet Union have the right to emigrate, for many of them, as well as for many people of other nationalities throughout the world, the iron curtain is at the American border.