THROW THEM TO THE WOLVES: ASYLUM AND ASYLUM LAW

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This paper may raise more questions than it answers. The plight and saga of the ship Golden Venture, Chinese and specific case studies will be employed to illustrate the issues addressed. Space limits this paper to an overview of the topic. To cover each stage in depth would fill a book. That is how complex this case has become. Areas to be highlighted are selected United States laws regarding asylum, the complex and convoluted process to date of asylum determination and other outgrowths of this case. It is an amazing story that goes far beyond the law. It involves the White House, members of Congress, politics and business, the media, a new art form, and the creation in York, PA of a nationwide grass roots organization, The People of the Golden Vision. These elements will be woven into this narrative.

II. INTRODUCTION

"Give me your tired, your poor, your huddled masses yearning to breathe free . . . ," states the beginning of Emma Lazarus’ poem inscribed on the pedestal of the Statue of Liberty. The Statue of Liberty itself has been, for over 100 years, the symbol of freedom to the oppressed and persecuted of this world as they sought asylum and refuge in this great country of ours. With the enactment into law of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) in September and the current anti-immigrant fervor, what has happened to the welcoming message of these oft-quoted words written by this nineteenth Century American poet and Jewess.

We as a nation seem so quick to stereotype all immigrants and put them into the same kettle. Myths continue to be fomented by the government, the media, business, and others to inflame anti-immigrant fervor. This to the point where the reality is skewed. If it is politically in the interest of the United States, our government may or may not do business with atrocious human rights violators or, as in the case of China, the current Administration looks the other way. These instrumentalities legitimate and escalate the fears about groups of immigrants, particularly illegal aliens. This instead of looking at the countries and cultural practices from which they fled, and basic human rights violated by the persecutory policies of their homelands as really implemented. In reality,
did those coming to our shores illegally have any other way to flee persecution and relevant policies of their countries?

This raises multiple issues for those of us, on both sides, who will determine their fate. Our immigration laws and most immigration decision makers, including many in the legal profession, when evaluating these cases have little understanding of the cultures and cultural practices, the distrust and fear of government authorities, and potentially persecutive actualities and pressures imposed at all levels of implementation of government policies in the countries from which they fled, specifically of those coming from communist and totalitarian regimes or other countries in turmoil. One needs to be aware of these regimes and what is regarded as and punishable as political or imputed political opinion. Documents from non-governmental organizations (NGOs), other international human rights monitoring groups, and the facts presented by asylee after asylee from certain countries are and should be barometers of truth. On the other hand, asylum seekers from such regimes are expected to respond to our legal system which is alien to them.

The current Immigration and Naturalization Service (INS) system is not one of the United States tradition of basic fairness. At issue is the current Administration’s fast track (particularly as designed for those of the Golden Venture) of determining these cases. This raises many problems. Documentation takes time. Evaluating an asylee’s claim via an interpreter, overcoming language barriers, gaining the person’s trust (a difficult task for those coming from repressive regimes where one trusts no one), and getting to the truth of the matter takes time. Finding pro bono attorneys, yet alone any with immigration experience, in the small towns where the INS places illegal immigrants takes time. The system does not allow even a reasonable time for us in the legal profession to do our job. All of the above play a major role in how illegal aliens will respond to questioning, and how their cases will be presented and adjudicated. This issue becomes clear later when discussing the Immigration and Naturalization Service and judicial process of deciding these cases.

It is unfortunate that history repeats itself. As World War II was igniting, the ship St. Louis was off the United States coast in May 1939. Filled with over 900 Jews fleeing Nazi Germany, the ship’s captain waited for permission to land on our shores. Partly due to strong anti-immigrant feelings, immovable immigration quotas, and political reasons, our government refused entry. The ship with its human cargo was sent back to Europe, and most of those on board perished in Nazi concentration camps – part of the final solution. There was documented knowledge in this country that the Nazis had targeted the Jews. Yet, we did not believe or want to
believe the horror stories of Nazi inhumanity, and our country sent them back.

Fast forward to 1993. Enter the ship *Golden Venture*. A repeat again, with Chinese human cargo this time, of a plea for asylum from illegals, or are they in truth refugees, fleeing persecution. This ship landed off the beach of Long Island on June 6, 1993. On board were nearly 300 exhausted Chinese men and women, arriving illegally on our shores, after a harrowing journey of months on the high seas in a seedy, unseaworthy ship. For many this had been a year-long journey. They were frightened, weary, and sick, yet excited that they finally had reached this land. They had dreamed of and survived a death defying voyage to touch and embrace this nation of freedom. This was not to be.

Most came seeking asylum from China’s coercive and inhumanely executed family planning policies. The policy of forced abortion and forced sterilization and its physically and emotionally brutal execution had *touched* them in persecutive ways. Were it our wives, mothers, or sisters, we would never tolerate the forced or coerced implementation of such a policy or even such a policy itself. In 1995 Congressional committee hearings, during testimony of three *Golden Venture* women, this comment was emphatically stated by members of the committee. They were shocked by what they heard.¹ Yet, our government wants to send and has sent some of those from the *Golden Venture* back to the persecutors from which they had fled. In most cases their actions in protecting their families against the cruelty of this system were regarded by the local Chinese officials as an act of political opinion. The current Administration did not see it that way. Therefore, the joy of being safe and free in this new land was short lived. Within hours, the INS herded them in, processed them as a group and sent them to prisons, most in small towns in Pennsylvania, Mississippi, California, Virginia, and Louisiana. These remote locations alone complicated the adjudication of these cases.

Thus began a legal process that has raised numerous issues about asylum and asylum law as actually practiced in this country. Over three years later, a large group from the *Golden Venture* still remains in York County Prison (Pennsylvania) with a few scattered elsewhere. They have waited and waited to be free, while their cases are debated, disputed, and bandied about by contradictory interests and the bureaucracy of our system *i.e.*, the INS, the Administration, judicial system, politics, a group of attorneys determined to see the real justice of our system prevail by having them set free, lay people organized in their support, members of Congress, and others.

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¹ See discussion *infra* Part VI(D).
Just as those on the ship St. Louis, the only crime committed by those on the Golden Venture was the need to flee quickly. There only was one way out: to pay the real criminals, the smugglers, for passage. This was not unusual. It certainly was true during World War II, during the Cold War, and currently in countries where it is a matter of one's survival. Historically then, many fleeing persecution paid bribes, and still do so, to corrupt government officials, and others. Corruption breeds on the plight of the persecuted. The smuggled are the pawns; yet, the Office of Immigration Litigation (OIL) regards them as criminals and has incarcerated them as criminals. One reason given by the INS regards the sums of money each paid to smugglers to get them out. Something is radically wrong with our system if the illegal alien is deemed a criminal without regard to the facts of his or her case and the conditions of the country from which he has fled. China's flagrant violations of human rights, particularly their methods of implementation of coercive abortion and sterilization, are well documented.

Times have changed. The Cold War is over. Abusive practices such as forced, coercive, and in practice involuntary abortion, sterilization, and genital mutilation/circumcision no longer can be overlooked. They no longer can be rationalized as internal problems as civilized nations conduct business as usual, which belies the "lip service/a slap on the wrist" to countries like the Peoples' Republic of China (PRC) on human rights abuses. It is continually well documented that PRC has one of the worst human rights records in the world. China is a communist/totalitarian regime. Its population control program is state sponsored terrorism. It is carried out through fear, pressure upon pressure on officials to implement the one child per family policy at all levels, and meeting sterilization quotas in disregard of the health of the woman; doing the same with forced implantation of Intra Uterine Device (IUD) and seasonal forced examinations of women to see if the IUD remains. If found removed, even if necessary for the health of the woman, without the Family Planning cadres approval, the woman will be forcibly sterilized. This goes against all international conventions and the United Nations Declaration on Human Rights. It has opened the eyes of the world community to new abuses of human rights as seen in recent nationalistic uprisings.

Unfortunately, current United States immigration law and the laws of other civilized nations have not kept up-to-date with these intolerable human rights issues. Instead, procedures under the new 1996 immigration law further restrict the admission and evaluation of bona fide asylum seekers. Under the new system, many continue to fall through the cracks.
III. BACKGROUND OF UNITED STATES ENFORCEMENT OF ASYLUM CLAIMS BASED UPON CHINA’S COERCIVE FAMILY PLANNING POLICIES

In the mid-1980s the United States began to deal with some asylum claims based on China’s coercive family planning policies. It was only after the June 1989 uprising in Tiananmen Square that led our government and others to recognize the true nature of the inhumane application of these policies and the need for action, particularly in allowing people fleeing this regime asylum. Tiananmen Square resulted in Congressional and Presidential action to change and allow for enhanced consideration for admissibility of these aliens; President Bush’s late 1989 Executive Order 12,711 (Executive Order) states that a person seeking asylum could establish eligibility for asylum by showing he or she had been persecuted or had a well founded fear of persecution based on the PRC’s coerced population control policies. If so, it would be considered that this person could be granted asylum on account of political or imputed political opinion.

However, with the landing of the Golden Venture in June 1993, the May 1989 Board of Immigration Appeals (BIA) decision, In re Chang, was resurrected by the current Administration and implemented by the INS. Executive Order 12,711 still was in effect; however, it was to be ignored. Now those who came fleeing the PRC’s coerced population control policies were summarily denied not just asylum but even parole. Many continue to be incarcerated, as this is written in January 1997.2

The Golden Venture claims have been denied asylum by the Immigration Judges based upon conclusions reached by the BIA in In re Chang.3 The real holding of this case should have been that Chang had not been subjected to forced sterilization or abortion, had not been persecuted for failure to submit to these procedures, nor had he presented any credible evidence of fear of such persecution. In fact, Chang in his testimony “disclaimed any mistreatment by the government and did not refer to any fear stemming from China’s population control measures.”4

Instead, it is the second part of the Chang decision that has been applied to those of the Golden Venture and others with similar claims. This part of the Chang opinion addressed the position that would have been before the BIA had Chang been persecuted because he had refused to comply with this program. In this portion of the opinion, the Board stated:

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2. See discussion below and later the discussion on the question of political influence by the current Administration into the judicial adjudication of the Golden Venture cases.
4. Id. at 12.
that even if enforcement of China's population control program involved coercive measures and even if it violated fundamental human rights, as long as these measures were "solely tied to controlling population, rather than a guise for acting against people for reasons protected by the IIRIRA." This application of Chang precludes the immigration judge hearing each case from considering, as part of his or her decision, whether or how the facts of that case differ from those of Chang and, therefore, should be considered as "fear of persecution on account of political opinion."

As stated in the Introduction, the persecutive and inhumane realities of the PRC's policies for controlling population have been documented over and over again. The Chang opinion excludes this reality. It also overlooks the real question which is that the PRC regards resisters to the population control program as political dissenters and applies harsh and cumulative punishment. Chang was decided in May 1989. Times have changed. At the International Women's Conference held in Beijing, at which Hillary Clinton spoke, she and others deplored the very PRC policies under discussion as unacceptable behavior to civilized nations and recognized that this kind of abuse, particularly of women, cannot be tolerated. This writer and colleagues continued to argue that Chang is bad law.

An overview of the process of these administrative and congressional actions is worth reviewing to show how intertwined and convoluted is the implementation, for example, of administrative policy from the President, who signs the Executive Order, to those delegated to enforce it. There are questions of how and when does it get enforced? What do the regulations say? What is the role of the Attorney General to whom this has been delegated and more?

Executive Order 12,711 was issued pursuant to the inherent policy-making authority of the President. When elevated in matters which concern the country's foreign affairs, this authority includes the admissibility of aliens. The Executive Order's directives to the Attorney General rest upon specific statutory authority set forth in section 103(a) of the Immigration and Nationality Act (INA), written in the early 1980s. This charges the Attorney General with the enforcement and administration of the Act. It also

5. Id.
6. Id.
7. Id.
8. Brief of Immigration and Naturalization Service, Int. Dec No. 3107 (BIA 1989). Brief was written by Grover Joseph Rees III, then-General Counsel of the INS. It is clear that Rees opposed the application of Chang in these cases. This was not to be the case. His legal opinion and sense of justice fell on Administration "deaf ears." He resigned that July.
is equally binding upon subordinate executive officials in the Immigration and Naturalization Service and the Executive Office for Immigration Review (EOIR). The terms of the Executive Order, not being incompatible with the expressed will of Congress, were specifically intended to implement protections for Chinese nationals that had been approved by overwhelming majorities in both houses of Congress.  

The suggestion of the BIA, in a later decision in Matter of Chu, that the Executive Order was not binding because the January 1990 interim regulations on such asylum claims were omitted from a subsequent codification and because no regulations had replaced them.  

Rees noted that the apparent reason for this holding is that the Executive Order is not self-executing and, therefore, not binding upon Department of Justice (DOJ) personnel absent further directives. Rees states that this position was legally and factually untenable. He goes on to note that paragraph four of Executive Order 12,711 was plainly intended to change the policy, reflected in Chang, of denying that persons fleeing forced abortion or sterilization or persecution for resistance to these measures are eligible for protection under United States asylum and refugee laws.

It also was maintained by the DOJ that the term enhanced consideration was too vague to be applied without further direction. Rees indicated that the Executive Order explicitly referred to the January 1990 regulations as the standard for implementing enhanced consideration. He concluded that the Department’s failure to include the January 1990 regulations in a July 1990 codification of the asylum regulations cannot be said to negate either the terms of the Executive Order or the obligation of

10. The provisions of the interim rule, published January 29, 1990; and the Executive Order were adopted from the Emergency Chinese Immigration Relief Act of 1989, H.R. 2712 (1989) (commonly referred to as the Pelosi Bill). The measure included the Armstrong-DeConcini amendment, which its sponsors intended to overrule Chang. The Senate passed this amendment unanimously (July 19-20, 1989). The House instructed its conferees to concur in the amendment (November 2, 1989). The amendment would have required the Attorney General to issue regulations stating that nationals of the PRC who resist the policy of coercive abortion or sterilization shall be viewed as engaging in an act of political defiance sufficient to establish a well-founded fear of persecution. In other words, this kind of action would be viewed as rising to the level of persecution on account of political opinion or, as Mr. Rees argues, imputed political opinion. This is one of the grounds for asylum in the INA. The President pocket vetoed the above Emergency Act. But, at that time, he issued a statement directing the Attorney General and Secretary of State to, inter alia, defer enforced departure of PRC nationals and to provide enhanced consideration under the immigration laws for those fleeing coerced family planning policies. In January 1990, there was an attempted override of the President’s veto. The President had promised to issue an Executive Order establishing all of the protections for PRC nationals included in the Bill. This then accomplished everything the Pelosi bill did. Therefore, the House did vote to override the veto, but the Senate fell three votes short of a two-thirds majority to do so. With the President’s above promise, Congress agreed to accomplish these same goals through Administrative remedies.

Departmental personnel to adhere to it. Paragraph four of the Executive Order directs that enhanced consideration shall be given to those who express a fear of persecution due to coercive family planning policies, a direction not contingent upon the issuance of regulations or subject to the Attorney General’s discretion. Despite the clarity of the President’s directive, unjustified confusion has persisted regarding the meaning of enhanced consideration and its relation to the Executive Order. This confusion ignores some basic and indisputable points.

At the very least this phrase must mean not adhering to the broad dicta in Chang, which would require the denial of virtually all asylum claims by persons fleeing coercive population control policies.\(^\text{12}\) Congress made this clear when it voted overwhelmingly to direct the Attorney General to overturn Chang by regulation. Furthermore, in the President’s veto message on H.R. 2712, he stated in his directions to the Attorney General and Secretary of State, and later incorporated in the Executive Order, “will provide effectively the same protection as would H.R. 2712.”\(^\text{13}\)

As noted before, the Executive Order does not give the Attorney General discretion, but rather directs him or her to provide such enhanced consideration and to do so as implemented by the January 1990 regulations. This does not mean that the current Attorney General or the immigration judges acting under her authority have no discretion in how to apply the substance of the enhanced consideration standard. However, they do not have the discretion to ignore the standard or any standard that cannot reasonably be described as “enhanced consideration . . . as implemented by the Attorney General’s regulation” as stated infra. Rees notes that the basic requirement of the Executive Order, as discussed infra, is not contingent upon continued publication of the January 1990 regulations. Therefore, as long as the Executive Order remains in effect, so does this requirement. Rees points out that the silence of current regulations is just that, silence.

It should be clear, Rees noted, that although enhanced consideration means that persecution for failure to comply with coercive population control policies is to be regarded as persecution “on account of political or imputed political opinion,” it does not mandate that everyone from the PRC should be granted asylum. The applicant must present credible and convincing evidence that this really happened to him or her. The person must show that a reasonable person in his or her circumstances would be afraid. However,

\(^{12}\) This is exactly what has happened in the adjudication of the Golden Venture cases. Even credible claims were summarily denied by the Immigration Judges hearing these cases and then affirmed by the BIA.

\(^{13}\) Mem. of Disapproval, Nov. 30, 1989.
the enhanced consideration of the Executive Order only removes the irrebuttable presumption against such claims as proclaimed in Chang.

**Background Summation**

The interim rule and the Executive Order, an outgrowth of the 1989 Congressional legislation, were also prompted by the narrow construction of the asylum laws adopted by some immigration officials when asylum seekers from the PRC first began making claims based upon forced abortion and sterilization in the early 1980s. It was at this time that the Immigration and Nationality Act was written. When this Act was written “a well-founded fear of forced sterilization or of persecution for refusal to be sterilized, pursuant to a foreign country’s coercive population control policies” was not a consideration. In fact, it was not until this time period that China started full scale and coerced enforcement of this policy.

It was not until after Tiananmen Square that the true character of the coercive nature of this PRC policy gained worldwide attention. Thus, after this event in June 1989, the President and Congress concluded that those seeking asylum because of their opposition to and, therefore, fear of persecutory retribution might, in fact, warrant asylum because of “persecution on account of political or imputed political opinion.” Indeed, in China, this was and is considered a political act, and as we now have documented, severely punished as such.

In mid-January 1993 prior to President Bush leaving the White House, the final rule of the interim rule on the above was signed by then Attorney General Barr. Signed only a few days before the January 20 change of administrations, the final rule did not get published in the Federal Register prior to Clinton being inaugurated. According to Rees’ Brief, as of June 1993 such publication still was pending, waiting for a decision by the current Attorney General on whether the rule should be published. Since the final rule was signed by the Attorney General prior to leaving office, publication really was a technicality. Executive Order 12,711 still continued in force and continued to be enforced under the new Administration.

In June 1993 with the landing of the Golden Venture, the current Administration elected now to ignore the Bush Executive Order. They did not revoke it. In fact, a colleague noticed it finally was not officially revoked until August, 1994, hidden in the INS Memorandum regarding

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14. Immigration and Nationality Act 8 U.S.C. § 1101 (a)(42)(A) of the Act states the five statutory grounds on which one can be granted asylum, “persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

Humanitarian Parole. By then the *Golden Venture* cases based upon coerced family planning had been denied by the Immigration Judges (IJs) and BIA under *Chang*.

The INS now began enforcing *Chang* which still was on the books. In essence, no matter how strong the evidence in each *Golden Venture* case and no matter how egregious the PRC government’s conduct underlying the claim, if the asylum claim related to PRC’s population control policy, asylum was denied. In *Chang*, the BIA ruled that the PRC policy of coerced abortion and sterilization did not rise to the level of political opinion, one of the noted five statutory grounds for asylum.

**IV. HOW I GOT INVOLVED**

In late July, 1993, I received my monthly meeting notice from the International Human Rights Committee of the Philadelphia Bar Association. Attached was a request for pro bono attorneys in Lehigh County (Allentown, Pennsylvania). Needing representation were Chinese men who had entered the country illegally on June 6, 1993. Remembering my World War II history, specifically the tragedy of other illegal boat people on the ship *St. Louis*, I called the local attorney in Allentown to offer my services. Another colleague of mine from my locale, Jerilyn Getson, agreed to join me in this effort. We were given a one day background briefing on these cases in Philadelphia.

Although I was not an immigration attorney (not a prerequisite), I had had hands on experience in human rights missions to the Soviet Union in the 1980s and had spent time with friends and pursued legal studies in countries of communist Eastern Europe. These experiences and, therefore, an understanding of the realities of living under these repressive regimes were essential to the successful adjudication of the first case I was given. Knowing the law only would not have won this man’s freedom.

**V. CLIENT ONE: A CASE STUDY**

**A. Case Facts, Preparation and Strategy**

In mid-August 1993, we were assigned the case of Deshui Jiang. He was forty-three years old, married, and the father of three teenage children. He already had gone through master calendar and charging document hearings shortly after his arrival at Lehigh County Prison. He was from Fujian Province, as were his co-passengers. He had paid the *snakeheads* (the smugglers) thirty-thousand dollars to escape from China. This was to be paid by his family to the snakeheads in China in three stages of ten thousand dollars each, first before Jiang left, second on his arrival in
Kenya through a telephone call to his family, and the balance on his arrival in the United States. Later, he explained to us that the money came from many sources, including the greater portion a thirty-six percent interest loan from loan sharks. The snakeheads were hounding his family for payment. After all, he had arrived in the United States. I will go into some detail about this case. It supports some of the concerns expressed in the Introduction regarding case evaluation, preparation and presentation.

What would possess someone of Jiang's age to leave his family and endure a year long journey over land and deadly seas? As his story unfolded, it was clear that his life had been at stake. In initial hearings, Jiang said that he had left due to Chinese coercive sterilization policies. It seems that the smugglers had told all of the Golden Venture passengers to say this if they were caught. Eighty-five percent of other Chinese illegals, who arrived as recently as May 1993, had been granted asylum, under the still in force Executive Order 12,711 on claims of fleeing the persecution of the PRC's coerced family planning policies.

16. For those of the Golden Venture and others who still owe money, it is well documented that the snakehead organization in the United States lie in wait to kidnap these people when they are released from prison. Until that final debt is paid, they work in America's Chinatowns, particularly New York, treated like indentured servants under terrible conditions. This has caused a problem for the INS as well as for those of us representing them. For the few who have been released, we are and continue to be very protective of their whereabouts and have asked the INS to release them only to designated people or their attorneys. Initially, there were problems.

17. It was the sense of Congress, in the post-Tiananmen Square legislation, and of President Bush in issuing Exec. Order 12,711 (1989), that Chinese seeking asylum for the above reasons would be granted asylum if they could prove their claim. It was accepted by our government that protests against this coercive policy and threats or actual imposition of this policy against the asylee applicant or spouse rose, under United States law, to "persecution on account of political or imputed political opinion."

Under section 101(a)(42)(A) of the Immigration and Nationality Act [hereinafter INA] there are five grounds in the Act's refugee definition under which asylum can be granted: persecution on account of race, religion, nationality, membership in a particular social group and political opinion. When the Act was written in the early 1980s, abuse of women, coerced abortion and sterilization as applied today were not issues of world concern. In fact, China was praised for its population control policies. As previously discussed, supra, such acts no longer can be tolerated by civilized nations as internal country affairs. From the Bush to the Clinton Administration and, indeed, until June, 1993, INS trial attorneys so stipulated to the IJ that if the claimant could show that his claim was based on coerced population control policies, a ruling of asylum should be granted. In other words, Exec. Order No. 12,711 (1989) was not challenged nor the 1989 BIA decision, In re Chang, invoked.

After June 6, 1993, this changed with the landing of the Golden Venture. The INS attorneys now challenged these cases, arguing that Chang was ruling law -- that the PRC's coerced family planning policy did not meet one of the five statutory criteria for a grant of asylum. The Chang decision now was included in the legal packets given to the immigration judges brought in to hear these cases. Executive Order 12,711 was not revoked, just ignored. See discussion on historical evolution of these policies, including a court challenge by the Golden Venture attorneys of improper political influence into the judicial arm of the INS (EOIR -
My co-counsel and I had less than two weeks to prepare Jiang's defense before his IJ hearing on the merits. Jiang spoke no English. All of our discussions were through an interpreter. We were fortunate to have two excellent volunteers who were professional men with full time jobs and belonged to the local Chinese church. In over thirty hours of interviewing Jiang and gaining his trust, it became clear that he fled because of religious persecution. Over a period of about six years, Jiang had embraced the philosophy and spirituality of Christianity. This involvement began shortly after the forced sterilization of his wife around 1983. He begged the family planning officials not to sterilize her. The Jiangs already had their family of three children, including a son, all of whom were born in the 1970s. This was prior to the implementation of the family planning policies. Jiang's plea fell on deaf ears. The local officials had a monthly quota to be met for women sterilized. Afterwards, Jiang's wife never was emotionally the same.

Jiang also was a member of a minority group, the Sher. Both his protests regarding his wife's sterilization and his minority status led the local officials to deny him a promotion to captain of the fishing ship, even though his co-workers had elected him. For the same reasons, his older daughter was denied entrance into a preferred school for higher education, even though she qualified and passed all of the examinations.

Despite all of this, Jiang had a good job on a fishing vessel, had a growing family and had no plans to leave China. In December 1991, he was given no choice. He could flee or face harsh and cumulative punishment. Jiang belonged to a household church. These were illegal meetings in people's homes. Bibles and religious books were outlawed in China, except for what was sanctioned by the government for the official churches. However, members of minority groups, such as the Sher, were not allowed to attend or join these churches. In addition, it was dangerous to attend the official church. The ministers, in most cases, were government informers and many of those attending also were informers. Therefore, the household church was Jiang's only choice to meet with

Executive Office of Immigration Review - which oversees the BIA and immigration judges) by the White House and others in the Department of Justice (hereinafter DOJ). Although the judicial and enforcement arms of INS are within the DOJ, they are to be kept separate. At this time, these barriers broke down, which the Golden Venture attorneys alleged influenced the IJ and BIA handling of the Golden Venture cases.

18. We were appalled when Jiang was brought into the room in handcuffs. Even though he had yet to prove his case, was this the way our democratic government treated those seeking asylum from persecution?

19. I witnessed this same thing when, in 1983, I attend the one synagogue allowed in Moscow. This was further confirmed in visits to Soviet refuseniks.


other Christians. His knowledge of Christianity was similar to that of the early Christians, i.e. a philosophy of Christian thinking. There was a special signal to enter. This way those inside would know it was a friend, not the police.

In December 1991, the police, in a lightning attack, broke down the door of this house and arrested the attendees. Jiang was able to jump out of a window and escape. He later heard that those arrested were severely beaten and sent to labor and re-education camps. Those arrested told the police that Jiang was a Christian and had been in the house at the time of the raid. Jiang was a hunted man. He had to get out of China.

The snakeheads, the smugglers, were known in Fujian Province. They were his only way out. Therefore, it was arranged for Jiang to be smuggled out of China. It was not until later that he knew the United States was his final destination. From Voice of America and other broadcasts, he was aware that the United States was “the land of the free.” He longed for such freedom. The saga of his year long journey by land and sea that got him to the United States is a harrowing story by itself. Jiang stated that he was sure those on the Golden Venture would die, particularly in the terrible storms encountered as they sailed around the tip of Africa. He said that it was his faith in Jesus and God that sustained him.

It was this story that he told the IJ at his hearing on the merits. However, there were major obstacles to overcome in presenting his case. Jiang in previous hearings and in his application for asylum (Form 1-589) stated that he left China because of the PRC’s forced family planning policies. Now he was changing his reason for seeking asylum. How would this affect his credibility before the IJ? (This will be addressed later.)

We felt he met two of the grounds for which he could qualify for asylum, a history of ethnic discrimination and persecution on account of religion. Even credible cases based on China’s coerced sterilization and abortion policies were being denied, because the IJs automatically applied In re Chang, which the INS attorneys now argued was controlling law. In so doing, it negated any assessment of the facts of each case, how these facts differed from those in Chang, and the fact that Chang did not take account of the evidence that the PRC authorities regard resistance to the population control program as a political offense. Although this was a component of Jiang’s case, this was not going to get him asylum.

First we filed a Motion to Terminate, arguing that Jiang had made an entry into the United States and, therefore, should be in deportation proceedings rather than in exclusion. The INS in its response took the opposite view. For the hearing, we found documentation of on the scene
news reports and other interviews which clearly noted that the *Golden Venture* had not been under constant INS and police surveillance when it entered United States territorial waters and landed on the Long Island beach.\(^{20}\)

My co-counsel and I contacted human rights organizations and others to obtain as much supporting information on religious persecution in the PRC. We also needed to find an expert on the minority group to which Jiang belonged, the Sher. There were many China experts and university professors in Philadelphia, but none knew much about the Sher. Three days before the hearing, after many phone calls and referrals, we finally found an expert not just in ethnic minorities in China, but someone who knew about the Sher. She had just returned from China, was an anthropologist with a focus on China, was a curator of the Asian section of the University Museum of the University of Pennsylvania in Philadelphia.

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20. The following details on the entry issue give the reader an idea of the multiple legal maneuvers taken by Plaintiffs' counsels during these past three and one-half years. If one has entered the United States, then his or her case is heard in deportation hearings. A person in deportation is eligible for immediate parole, can name the country to which he wishes to be deported if not granted asylum, and has greater protection under United States law. On the other hand, if an asylum seeker is deemed not to have entered, he or she is in exclusion and can be deported back to the country from which he or she came at any time (no choice), can not be granted parole and more. Thus the reason why one of the first motions filed is to argue that your client belongs in *deportation* proceedings not in exclusion. Ninety percent of those rounded up that night of June 6 were placed in exclusion. Ten drowned trying to get to the beach. A few wondered off into the local town, before police and INS agents arrived, and later were caught and imprisoned.

There are differing opinions and case law on this issue. Middle District Judge Rambo, as noted below, was asked to decide this question. This was a test case on this issue. Judge Rambo ruled that the petitioner, one of the *Golden Venture* men, had entered when he jumped off the ship into the water. Her decision broadened the scope of entry into United States territory. She ruled that as long as the ship was in United States territorial waters and the tests for entry had been met, they did not, as held by other courts "to be on dry land and venture away from the beach." Under Rambo's holding, an entry had been made by all on the *Golden Venture*. Therefore, they should be in deportation not exclusion proceedings. This, in turn, would make them eligible for immediate parole.

More motions were filed by Plaintiffs' counsels to protect all the detainees. This presented a rash of different issues and the type of motion to be filed. Many individual motions on this issue had not been filed previously based upon the widely held belief that only those who made it to dry land stood a chance of being placed in deportation proceedings. Therefore, it was necessary to determine the location of each of our clients when the ship landed. These different motions and legal maneuvers were made in anticipation of an INS appeal to the Third Circuit.

The INS was determined not to parole these detainees and threw every delay and obstacle in the way. The INS immediately appealed Judge Rambo's decision to the Third Circuit, asking for a temporary stay of parole to keep the Judge from issuing paroles. The stay was granted a few days later, but not before several were paroled.

In May, 1995, the *Golden Venture* Steering Committee went before the Third Circuit. This court reversed Judge Rambo's entry ruling.
and taught Chinese cultural anthropology at the University. She also was aware of the household churches and religious practice there. With the approval of the IJ and the INS attorney, we arranged to depose her on a Friday afternoon. Jiang’s hearing was the following Monday. The IJ agreed that we could deliver the deposition to him first thing on Monday morning, so he could review it before Jiang’s hearing that afternoon.

B. The IJ Hearing on the Merits

My co-counsel and I made an opening statement. We apprised the judge that Jiang really fled the PRC because of religious persecution. It was essential that the IJ understood what it meant to be a Christian in China, and he could not judge the sincerity of Jiang’s beliefs based upon the way Christianity was practiced in the United States. If he questioned Jiang on doctrine, he would not know. It was realistic to ask him about why he embraced Christianity and how he felt about it. I then explained the realities of religious practice in a Communist country and the meaning and dangers of attending the official church. It was here that my first hand experiences in this area in the USSR made a significant difference in educating the IJ. Citing my experiences gave me credibility before the court.21

The IJ indeed was furious that Jiang had changed his reason for seeking asylum. He also was confused as to why Jiang initially had not stated religious persecution. We explained about the snakeheads, but suggested that the IJ ask Jiang directly.22

Two days later, we returned for the IJ’s oral decision. He began by noting that he found Jiang credible. This was an essential element for a favorable decision. He denied Jiang asylum on four counts, including actions against him because of belonging to an ethnic minority. To this point, a half hour had passed. That left only the statutory ground, persecution on account of religion, on which asylum could be granted. After discussing his reasoning on this issue, he rendered his decision granting Jiang asylum. When the interpreter told Jiang the decision, he fell on the floor sobbing. For an Asian man, this outward show of emotion was amazing. Two days later, on September 3, 1993, Jiang was a

21. Recently, I was asked to review certain Golden Venture cases for findings of credibility. I found several cases that clearly were religious persecution cases; yet had been denied or not argued as such. It seems that the IJ’s questioned the asylee on religious doctrine. He, of course, could not respond; therefore, he was deemed incredible and was denied asylum. In some cases, the petitioner appeared pro se because he couldn’t find a lawyer. I hope my colleagues and I will prevail in getting these cases re-opened and re-heard.

22. We anticipated that Jiang’s simple response would help establish his credibility. Jiang replied without hesitation, "because the smugglers told me to."
free man. Jiang was among the first and one of very few *Golden Venture* asylees released.

**C. A “Free Man”**

Jiang was free and safely under the protection of the Chinese interpreters in Allentown, who had become his mentors. Through our efforts and theirs, Jiang got a position working in the freezer in an area meat processing plant. The myth that illegal aliens granted asylum go on welfare and take jobs from American workers for the most part is not true. Jiang was willing to do any kind of work. The job he got was one that most Americans do not want. I see this over and over again. Today, he knows enough English that we can have a reasonable conversation.

I promised to arrange the necessary documents for his family to join him. This was a very involved process, partly because his older daughter was to turn twenty–one within the year. It is too complex to go into here and not the subject of this paper. Suffice it to say, that his wife and two of his children arrived in Allentown on November 14, 1994. Unfortunately, there was a last minute glitch, and his older daughter was left by herself in China. With the assistance of the United States Consulate in Guangzhou, the older daughter got to the Chinese border crossing to enter Hong Kong. She would just come under the wire before she reached twenty–one. After that, under United States immigration policy, her status would change. Her documents were in order, after months of getting them processed in China and in the United States, airline tickets were arranged for her in Hong Kong, and she would be on her way just before her birthday. She got to the Chinese border by train in time. For whatever reason, the Chinese border officials refused to let her cross. Working to reunify her with her family continues.

Jiang’s wife, son, and younger daughter arrived in Allentown on November 14, 1994. My colleague and I and others instrumental in getting them reunited were there, with Jiang, to greet them. Today, his wife and children, when not in school, work in a knitting factory at minimum pay, but grateful to work. His daughter, who spoke some English when she came, became proficient enough in the language to pass the entrance exams for Pennsylvania State University. She has a difficult curriculum, but is doing well. Jiang’s son, who spoke no English when he came, now is in the honors class in high school.

**VI. CLIENT TWO: A CASE STUDY**

In the Spring of 1994, Jiang asked me to represent another *Golden Venture* passenger, Fen-Hou Chen, who still remained in Lehigh County
Prison. It had gotten back to this man’s family in China that Jiang’s attorneys had gotten him asylum. Now Chen’s family persuaded Jiang’s family (still in China) and, by telephone to Jiang, for him to prevail upon me to represent Chen. At that time, I did not plan to take another case, although I continued to review and consult on other Golden Venture cases, and was on the Golden Venture legal team pursuing discovery into the question of administrative political influence in the adjudication of these cases. As a favor to Jiang, I finally agreed in March to represent Chen. However, I asked Jiang to make it clear to Chen’s family that our legal system worked differently and legal procedures must be adhered to; therefore there were no guarantees I could get Chen asylum. This was particularly true since Chen’s case clearly was based on China’s coerced abortion and sterilization policy, and all such claims were being denied.

A. Chen’s Story

Chen’s story revolves around the birth of his second child, a son. His first child, a girl, was born five years before. It was only after his second child was born that it became known that his wife had had a baby. She was bleeding severely and had to go the hospital. She had managed to hide her pregnancy. Had she been caught, she would have had a forced abortion and additional punishment for removing her IUD without permission. Initially, she did so because the IUD caused her health problems. It has been documented that second babies are killed at birth or forcibly aborted even at the latest stages of development. They not only wanted a second child but also hoped for a son.

Within days after Chen’s wife’s return from the hospital, the local police came to take her to be sterilized. Chen asked for a month’s delay because she was too weak. If she would not go, then they would force Chen to be sterilized. For Chen, this was not an option. He needed his strength to work (in construction) to support his family. He knew of other men sterilized and how it weakened them, physically and emotionally.

He then got into serious trouble with the officials when he dared to question why they, their friends and others whom they favored, were allowed to have more than one child. Clearly, the officials could be as preferential as they wanted as long as they met their monthly quotas of sterilizations and others. The coerced and selective manner in which they

23. See discussion infra Part VI(E).

24. In Chinese culture a son is essential, especially to those who live in the villages. It is the son who takes care of and is responsible for supporting his parents in old age, whose family becomes part of his parents’ family, and more. On the other hand, the daughters become part of their husband’s family.
did so was not to be questioned. The officials were furious that Chen should dispute their authority. They would be back and soon.

That night Chen took his wife and children to hide with family in another village. The next day his neighbor warned him at work that a contingent of police came to find him and were so angry that no one was there that they broke down the door to his house. Chen knew he had to escape. He or his wife faced forced sterilization, no matter what their health, imprisonment and stiff fines equal to a year's salary. To this day, his wife and children remain in hiding. They have no registration or work papers. If they went out, villagers would report them to the police as strangers there.

These actions by Chen were treated, in the PRC, as defiant acts of opposition to an official policy and against those who were to carry out these policies. In the PRC, it has been documented that such actions rise to the level of political opinion, which not only is not tolerated in the PRC, but punishable in the most inhumane and persecutive ways.

B. Initial Legal Procedures

It was mid-March 1994. Timing was crucial. At the end of March, the Third Circuit Court of Appeals hear and render a decision, a class action suit filed on behalf of the *Golden Venture* detainees in York and Allentown. This was an appeal from the Middle District Court, where Judge Sylvia Rambo had denied the suit. The Third Circuit concurred. The INS had agreed to wait for this ruling before proceeding on deportation processing. At this point anyone not protected by a habeas petition was in jeopardy. The INS again set a mid-April deadline to deport the imprisoned *Golden Venture* people, specifically those who had exhausted their administrative remedies. Chen fit into this category. In December, 1993, the BIA denied Chen asylum based upon Chang. This even though they affirmed the IJ’s finding of credibility. Chen’s only means for protection against deportation was to file a writ of habeas corpus before the end of March. I met with him over the March 13th weekend to ascertain the facts of his case. On March 24 1994, the habeas was filed in the United States District Court in Philadelphia.

C. INS Transfers Chen from Allentown to York, Pennsylvania

On April 19, 1994, the INS moved the forty-five *Golden Venture* men in Allentown to join over 100 of their shipmates in York County Prison. The York group was under the jurisdiction of the United States Court of the Middle District of Pennsylvania. Habeas petitions had been filed, and the cases consolidated into one civil action suit. Judge Sylvia
Rambo had notified the INS that none of these men were to be deported without her knowledge and before their individual cases were ruled upon. This gave added protection, which was not a certainty in the Eastern District where Chen's habeas was filed and where his case would be heard. If he were denied asylum, he would be deported back to China.

Only one other District Court, in Virginia, had ruled in favor of a *Golden Venture* petitioner. This was an excellent opinion, which reflected a common sense judge who had knowledge of the human rights realities in imposition of the PRC's family planning policies. In that case, the INS still did not free him. The INS claimed that the BIA's *Chang* decision took precedence, and that the decision of one federal district court did not change this. Therefore, in Chen's case, even a favorable ruling in the Eastern District was no guarantee that he would prevail. Other federal court decisions were mixed, most supporting the position of the INS.

This presented this counsel with a dilemma. Chen's life was at stake if he were deported back to China. Looking at all the factors, this counsel determined that the safest route for Chen was to transfer his case to the Middle District. His case would be consolidated into the Civil Case before Judge Rambo. Here he also would not be isolated from his Chinese friends. On May 2, 1994, Chen's case officially was transferred.

**D. Joining the Nucleus of Golden Venture Legal Team in York: A Concerted Effort and Resulting Congressional Action**

With Chen's transfer to York, I became more deeply involved than I ever anticipated in the plight of the *Golden Venture* detainees and in the legal team. It was only working as a coordinated group that we had any hope of freeing these men. The government was immovable on the implementation of *Chang*.

So begins a remarkable story of a commitment to ideals, fairness, and dedication by lawyers and lay people in rallying around those of the *Golden Venture*. It was this combined effort, including hundreds of hours of pro bono time, that resulted in the inclusion in the 1996 Illegal Immigration and Responsibilities Act of section 601, which amended the INA statute's definition of persecution on account of public opinion to include those seeking asylum from China's coerced population control program. This was one of the few positive aspects of the IIRAIRA. The

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25. The nucleus of the *Golden Venture* Steering Committee, set up by Judge Rambo toward the end of 1993, and the legal team was in York. However, attorneys for these men are in Philadelphia, New York, Pittsburgh and so on.
IIRAIRA was passed by Congress and signed by the President on September 30, 1996.\textsuperscript{26}

This did not mean, however, immediate implementation. There were issues to be resolved. The government was in a dilemma on how to proceed and continues to drag its feet in most cases. Do they parole all of the men or just those whose cases were deemed credible by the IJ and BIA, but who were denied by \textit{Chang}. Not factored into the equation was that many of these cases did not get correct hearings on the facts of each case, or that some had no attorneys because of the fast track expedited nature of the hearings, or that the issue of credibility was not addressed because the case was automatically denied under \textit{Chang}, and on and on. The maneuvering continues.

With the advent of the new law, the next step, as Chen’s attorney, was to file a request for parole and a grant of asylum to the INS District Director in Philadelphia. Chen qualified. However, in August 1994 he also had qualified, under newly announced INS guidelines, for Humanitarian Parole and, again in June 1996, under enhanced procedures/criteria for Humanitarian Parole. Each time, I filed the required requests and supporting documentation. Each time I received a form letter of denial as had my other colleagues.\textsuperscript{21} It seemed clear that the \textit{Golden Venture} people would not be paroled. We kept meeting dead ends.

What would be the reason now under the new legislation for Chen not to be released? This was our best shot yet. After all, Chen’s story had been deemed credible both by the IJ and BIA. So, again, I filed with the District Director a request for Chen, based on the IIRIRA, for a minimum of parole as well as asylum. This was on November 22, 1996. I called daily to inquire on the status of his petition. The response for weeks was, “[w]e’re working on it” or “[w]e are waiting to hear from Washington.” However, by law, it was in the discretion of the District Director to grant parole. This was a familiar pattern and could go on for

\textsuperscript{26} In brief, section 601 of the Illegal Immigration and Immigrant Responsibilities Act amends the INA’s definition of refugee. It recognizes that:

resistance to, failure or refusal of a person to undergo coerced abortion and involuntary sterilization and persecution because of such resistance to a coercive population program and/or a person who has a well founded fear that he/she will be forced to undergo such a procedure shall be deemed to have a well founded fear of persecution on account of political opinion.

The latter is one of the five enumerated grounds for asylum. In some ways this confirms the meaning and application of Exec. Order No. 12,711 (1989).

\textsuperscript{27} In a discussion with one of my colleagues, he noted that hidden in this 1994 memo on Humanitarian Parole was the first formal policy declaration that Executive Order 12,711 (1989) no longer was in force, but \textit{Chang} was. Yet, the IJ’s and BIA had been applying \textit{Chang} for over a year.
months. In the meantime, Chen was facing his fourth Christmas in prison. Emotionally and physically, Chen and the other *Golden Venture* men in York were ready to break. Previously, some had asked to go back to China. Those who have returned have not been heard from.

Therefore, other action was needed to move this along. I contacted my Congressmen and had them call the INS legislative liaisons in Philadelphia and Washington. I contacted the INS General Counsel’s office in Washington. It was his office that issued an internal agency memo on the new law on October 21st and the procedures to be followed in finalizing these cases. The memo concluded that, under the IIRIRA, Chang no longer was valid.

Finally, on January 3, 1997, Chen was one of two granted a sixty day parole from York County Prison. This would be extended to a year once I filed a Motion to Re-Open or Remand. This has been done in a joint motion with the Office of Immigration Litigation to the BIA. It now is up to the BIA to evaluate Chen’s request for asylum under the new law and, as I expect, to grant him asylum.

There are others who are credible; yet they still remain in prison. Why remains a mystery. The maneuvering for their release continues as do I as a member of the *Golden Venture* legal team.

**E. The Formation of the "People of the Golden Vision:" An Interfaith Coalition For Immigrants’ Rights**

In August 1993 a rash of IJ decisions on the York cases came down. All were denied. One of the York pro bono attorneys for the 100 plus *Golden Venture* men, Craig Trebilcock, was so incensed that he called a press conference the next day. After reading this news story in the local paper, Joan Maruskin, an area pastor contacted Trebilcock to see how she could help. This also was the beginning of nationwide media coverage of the plight of the men and women of the *Golden Venture*.

This was the commencement of People of the Golden Vision (Golden Vision), under the dynamic leadership of Pastor Joan Maruskin (Pastor Joan). This grass roots group started out with weekly protests outside York County Prison, which included prayer services entitled Services of Exodus, Freedom, and Justice. At this writing, these gatherings are in their 180th week. This organization, now in its fourth year, will continue until the last person of the *Golden Venture* is released from detention. The nucleus of the group is in York but it has grown to include people nationwide.

One of the heartwarming results of the formation of the Golden Vision is its diverse composition of lay people and attorneys, conservatives
and liberals, pro-choice and pro-life, people of color, people of different religions, and on and on. It has made activists out of people who do not get involved in issues. The Golden Vision has aroused the interest and support of the entire York community. Under Pastor Joan’s leadership, they have made their voices heard in the media, in the halls of Congress, at the White House, and elsewhere. They have raised money to pay for supportive services for the defense of these men, including art sales of their intricate freedom paper sculptures. A significant percentage of these proceeds has been placed in a central account. These funds are used to give each of the men spending money while in detention and resettlement money upon release.28

The bottom line of the People of the Golden Vision and subsequent activities of this group, indicate that most Americans, whatever their views on the moral and political questions surrounding abortion and related human rights issues, regard coerced abortion and sterilization as ghastly violations of fundamental human rights. As a global issue, it should be noted that forced abortion and related acts were considered a crime against humanity at the Nuremberg War Crimes Tribunal, and by other international treaties, and United Nations documents.

An outgrowth of the plight of the Golden Vision has been a Golden Vision sub-group, spearheaded by Pastor Joan, to look into prison conditions for those incarcerated while seeking asylum. It was a revelation of institutional abuse and inhumane treatment. We found this varied from prison to prison. However, in each detention facility, the Golden Venture asylees were in the criminal category.

As part of this sub-group, I attended meetings in New York and with West Coast human rights groups. While in Los Angeles, Pastor Joan and I visited the Golden Venture women incarcerated in the Lerdo Facility in Bakersfield, California, a deportation holding center. I was appalled at the conditions there. This could have been a third world prison. There were slits for windows, covered with what looked like plastic wrap; the water was not drinkable; the women, for example, reported that they could get only one sanitary napkin at a time and not always when needed; breakfast was served at 4 a.m., lunch at 10 a.m. and dinner at 4 p.m. The women reported that they went outside for air maybe twice a week. They were put into isolation or severely reprimanded for infractions as minor as talking too loud, laughing or crying. I had seen other prisons, but Bakersfield was a shock. Even though I was an attorney, I could speak to only one woman at a time, and this by telephone through a glass wall. The English speaking Golden Venture woman was not allowed to stay to

28. See discussion on Golden Venture.
translate for one who spoke only Chinese. Therefore, I was precluded from talking with her. Pastor Joan was with me, only she had to wait until my visit was over before she could go in.

Later, Pastor Joan agreed that the treatment in Bakersfield was horrendous, but that it was absolutely inhumane when these same women were incarcerated in New Orleans (prior to being shipped to California). She tried to visit them at the New Orleans facility, but found that these thirteen Chinese asylees were not allowed visitors. Even their attorneys most times were denied admittance. Somehow she managed to speak with them. Pastor Joan noted that these women were treated with all kinds of abuse and lived under hellish conditions. This was affirmed in letters which these women sent to members of the Golden Vision in York. They pleaded for help. So this is how we treat those fleeing persecution!

In contrast, at York Prison, I could meet with my client in person or join my other colleagues for a group meeting with the men. My client could bring an English speaking *Golden Venture* person with him to act as translator. The men no longer were handcuffed within the prison. Within the confines of being in prison, these Chinese men were treated as human beings. However, their spirit is broken and some, because of the prison diet which is not digestible by them, have developed serious illnesses. For some, the stress of waiting and confinement were too much, and they asked to go back to China.29

Through our investigations into prison conditions for those requesting asylum, we have learned that our government pays more than twice as much per day to the prisons for illegal aliens than the prisons get for real criminals. This is big business for local prisons with, it seems, very little federal control. In the final analysis, it is our tax dollars that pay for this and that perpetuate this unjust system of justice of the free to the persecuted who come here because we are a nation of freedom.

**F. Congressional Hearings**

The plight of the detained *Golden Venture* asylees finally reached the halls of Congress. In May, June, and July, 1995, the House Subcommittee on International Relations and Human Rights of the Committee on International Relations held hearings on coercive population control in China. After several promises and canceled sessions, the INS finally brought several of the Bakersfield women to testify. The chair of this committee was the Honorable Christopher Smith of New Jersey, whose legal counsel was former INS General Counsel, Grover Joseph

29. *See discussion infra* Part VI(E).
Rees. After much discussion, the committee denied DOJ’s request for a closed hearing. The public had a right to know what these women had to say.

Representatives Smith, Hyde, Goodling (from York County), and others on the committee were incensed when the women were brought in handcuffed. They were told by the INS security people that these women were considered prisoners; therefore, the rules had to be followed. The handcuffs finally were removed. This, however, set the tone for their dramatic testimony of involuntary sterilization, forced abortion of a late term pregnancy, forced implementation and life threatening infections from IUDs, fines equal to a year’s salary because of non-compliance, and much more. Those on the Subcommittee were shocked. They were incensed not only by the testimony of these women but also by the cruel way in which they were being treated in detention here worse than common criminals in a country that prides itself on being just and free. During their discussions, the overwhelming feeling of the committee was that these women and others on the *Golden Venture* should be treated as refugees, not as illegal immigrants.

Congresspeople, too, needed this kind of a reality check. It belies the myths perpetrated on illegal immigrants from certain countries. It was a real education on the way we treat those who have fled persecution to come here and are again persecuted.

The outgrowth of these hearings, with continued pressure by the Golden Vision group and *Golden Venture* lawyers, was section 601 of the IIRAIRA.\(^\text{30}\)

\section*{G. Charges Against the Administration of Political Influence}

In November 1993, the first writs of habeas corpus were filed by York attorney, Craig Trebilcock, and others on behalf of those *Golden Venture* men who already had been denied asylum by the BIA. He felt there was something more behind the Administration’s decision, after the landing of the *Golden Venture*, to suddenly begin to be apply *Chang* to this group as a denial of asylum versus Executive Order 12,711, under which they would have and had been grated asylum. The latter had been applied since June 1989 and as recently as May 1993 to those seeking asylum because of recognition that China’s coerced population control programs were the worst kind of human rights violations.

Trebilcock’s interest in what seemed to be the possibility of political influence in the adjudication of the *Golden Venture* cases peeked

in the Fall of 1993. As he read through some of the IJ merit hearing transcripts and oral decisions, he noted judge’s comments regarding “expedited hearings, fast track adjudication for the Golden Venture cases.” This was substantiated further by a conversation pro bono attorney Ann Carr had in July 1993 with a clerk in the Baltimore Immigration Court, a field office of EOIR. Carr called the court office to inquire if she had any other options to get a continuance for her Golden Venture client’s hearing on the merits. She just had been given, by the IJ, only four days from an initial hearing to the merits hearing although she had explained that she just had been given this client. To prepare even a reasonable defense on such short notice was hampered further by having to work through a translator, around cultural barriers, prison regulations, and more. The IJ made it clear that no further continuances in these cases would be granted. This was true of others as well.

Ms. Carr asked the Immigration Court Clerk why no extensions were being granted on hearings on the merits. The clerk replied: “[T]he Clinton White House had personally called this Immigration Court and asked that all the Chinese detainee cases be expedited and that no continuances be granted.” Trebilcock presented Ann Carr’s affidavit and other evidence discussed, supra, to Middle District Judge Sylvia Rambo. He requested a court order to allow him, on behalf of all petitioners, to proceed with discovery of certain INS, DOJ, EOIR, White House, and other relevant documents. These might shed light on this question of possible political influence, specifically in the adjudication of the Golden Venture cases. Judge Rambo saw enough evidence to warrant granting this order. She set up a Petitioners’ Steering Committee as a liaison to the Court for all of the Golden Venture attorneys, with Trebilcock as Chairman.

Government compliance with Judge Rambo’s order was fraught with all kinds of delays, citing confidentiality and security reasons for non-release of certain documents, answers of petitioners’ interrogatories and more. Eventually, Trebilcock and others of us on the designated Discovery Team conducted depositions with members of the White House staff, including members of the National Security Council (NSC) and of a committee organized by the NSC, the Border Control Working Group (BCWG), those working under the Attorney General, the Counsel to the Director of EOIR (EOIR Counsel), and others. The EOIR director, to whom the EOIR Counsel reported and advised on legal issues, also was the Chairman of the BIA.

31. This conversation was documented in a affidavit by Ann Carr, dated Sept. 16, 1993.
These depositions took us to Washington, Miami, and elsewhere.\textsuperscript{12} We discovered information about the Border Security Working Group (BCWG) meetings at the White House. Attending some of these meetings was the EOIR Counsel. It was he who was asked, shortly after the arrival of the\textit{Golden Venture}, by the Attorney General’s office to prepare an expedited plan to deal with the detained Chinese asylees, specifically those on the\textit{Golden Venture}. This fast track plan was dated June 15, 1993. Prior to that, he was privy to policy discussions at the White House meetings of the BCWG. This petitioner’s counsel noted was in direct conflict to his role as EOIR Counsel to the BIA. He was well aware from attending these meetings that the Administration wanted a “deterrent to the Chinese smugglers bringing in these people.” It is EOIR that oversees the BIA and immigration judges. Yet here was their counsel being part of the discussion on the need to make an example of the\textit{Golden Venture}. Deny them asylum and perhaps this will stop the smugglers and send a signal back to others in China. It then was decided to implement\textit{Chang} for the first time since it was decided in May 1989.\textsuperscript{33} Clearly this was a radical departure from immediate past procedure, which, infra, had been discussed in great detail at the BCWG White House meetings.

This discovery process indicated that barriers had broken down between INS litigators and judges, \textit{i.e.} the enforcement and judicial arms of DOJ. Ann Carr’s affidavit and the discussion, supra, clearly support this breakdown from the newly expedited hearing policy, the Administration’s policy on setting up the adjudication of the\textit{Golden Venture} cases as a “deterrent effect on smugglers,”\textsuperscript{34} the Office of Immigration Litigation’s (OIL) resurrection of\textit{Chang} as applicable law to accomplish this goal, the conflict of EOIR’s Counsel’s participation in BCWG meetings at the White House, and his position of counselor to the judicial arm responsible for adjudicating these cases. This interference of the White House staff in the judicial process had filtered as far down as the clerical staff at the Office of the Immigration Judge in Baltimore.\textsuperscript{35}

It was clear from the testimony heard that the White House was calling the shots and using the adjudication of the\textit{Golden Venture} cases as an example. This was confirmed in the\textit{New York Times} statement quoted below by special assistant to then-Associate Attorney General, Webster Hubbell. In this September 5, 1993\textit{Times} article, entitled\textit{United States Tightens Asylum Rules for Chinese}, she states, “[w]e’ve made no secret of

\begin{itemize}
\item \textsuperscript{32} Immigration judges who had been brought in to hear these cases were deposed.
\item \textsuperscript{33} \textit{In re Chang}, Int. Dec. No. 3107 (BIA 1989).
\item \textsuperscript{34} See supra note 31.
\item \textsuperscript{35} Id.
\end{itemize}
the fact that these cases be expedited. We want the authentic refugees to be found and others deported to China, as a bit of a signal, especially to the criminals organizing the smuggling." The article goes on to note that not only were these cases being decided faster, but tougher standards (namely, Chang) have meant that the vast majority of the Golden Venture passengers automatically would be denied asylum and deported.

In the name of justice, we attorneys and the People of the Golden Vision are just as determined that they shall never be forced to go back to China. Their fate now will be even more persecutive, partly because of all of the media and other attention which has been focused on these cases. From various sources, we know that each person from the Golden Venture is known to the highest level of the PRC’s government. Unfortunately, some of the men could not take the stress of our prisons, and the excessive waiting. So they asked to go back. They promised to let us know if they were okay. To date, it is no surprise that we have heard from none of them.

H. Fly to Freedom: The Art of the Golden Venture Prisoners

The men of the Golden Venture detained in York County Prison obviously had time on their hands. Almost all were non-English speaking and, therefore, not interested in watching television. One of the men knew a form of Chinese paper folding. He taught a few of the others around him. The first piece he made went to the prison Chaplain’s office. It is the simple figure of a bird reminiscent of Fujianese practice of paper folding folk art called zhizha or huzhi. So, while the men waited they folded.

Prison regulations dictated what tools they could have. They were permitted magazines, legal pads (left by the attorneys during client meetings), and toilet paper. At first no scissors were allowed; but later, they were permitted children’s safety scissors, magic markers, and white glue. The first sculptures were of eagles. They called them freedom birds. They symbolized the men’s dreams of freedom. An eagle less than a foot high could contain over seven hundred or more of individually folded paper, just in the wings and tail alone. Folding not only became a means of passing the time, but the resulting sculptures a means of gratitude for their pro bono attorneys.

Over the three and one-half years of incarceration, these sculptures have become more intricate, a form of Chinese folk art carried to new heights of artistic and creative expression. New techniques were


37. Id.
developed to show texture. The men were divided into pods, and different pods would develop different specialties. Over the years new styles have been added — pineapples, ginger jars, vases, bonsai trees in pots (using individual threads from towels for tree needles), dragons, statues of liberty, seven story towers, and more. The Chaplain’s office and later the Warden became very supportive. They realized that this an excellent way to keep these 100 plus non-English speaking frustrated and bored Chinese prisoners constructively occupied.

Soon these sculptures were seen in lawyer’s offices and elsewhere. People who saw them were astounded by these unique works, the obvious patience and talent it took to fashion them and wanted to know how they could acquire them. The Golden Vision began having art auctions and shows of these works to raise money for the men. The men now had reason to speed up their production, while continuing to refine each hand-crafted piece.

The news media became fascinated by this unprecedented story, the quality of expression of, and the growing excitement over the prison art of the Golden Venture men. Feature articles with photographs appeared in Life Magazine, the Philadelphia Inquirer Sunday Magazine, Folk Art Magazine, and newspapers nationwide. In fact, several have been granted artist visas and more are pending. This is a testimony of the artistry of their art designs and their execution.

VII. CONCLUSIONS

On January 30, 1997, the United States State Department came out with its annual reports on human rights in 193 countries. Cited right at the top of the list for worsening human rights abuses was China. This reaffirms what we attorneys initially believed and came to substantiate over these past three and one-half years as defenders of the passengers of the Golden Venture.

As exemplified by this article, the INS, DOJ, the federal courts, BIA, INS District Directors, the Administration, and others appeared to have put insurmountable obstacles in our way. They thought that, at some point, we attorneys would become frustrated enough and throw in the towel, particularly, since this was and is mainly a pro bono effort. In essence, this would leave the road open for the INS to deport the incarcerated Golden Venture men and women back to China. As noted, supra, over 100 have been sent back. There is no word from any of them, which says it all.

In doing so, it is not China’s coerced family planning policy that is on the lines. It is the very democratic values that we say we cherish and
preach to other countries to embrace. It is our immigration process, and
the manner in which these asylum cases have been adjudicated that is on
the line. It is the manner in which we detain and treat such people when in
detention that is on the line. It is the fact that our government would
change five years of United States policy, i.e. the 1989 Executive Order,
that was dictated by Congressional action in granting asylum to such
Chinese, by imposing a pre-Tiananmen Square BIA decision, Chang,
which automatically denies asylum to those fleeing China's coerced family
planning policies. The criminal act of using this BIA decision as a means
of denying asylum and reason to send those on the Golden Venture back to
China because the Administration wanted this group to serve as a deterrent
to the smugglers who brought them to our shores, and others. It is in these
actions and the real meaning of United States human rights policies that are
on the line.

This does not mean that the Administration should not set policies
which would deter such smuggling of human cargo, whether from China
or elsewhere. However, to do so at the expense of those fleeing to our
shores, even illegally, because of China's persecutive human rights
policies cannot be justified. Good policy does not go after the persecuted,
who are the pawns and not the criminals. It finds and prosecutes the
smugglers and others who profit from the persecuted.

It was Congress again, as it had in 1989, that acted to grant those
of the Golden Venture and others asylum, for reasons already noted, by
including section 601 in the 1996 Illegal Immigration Reform and
Immigrant Responsibility Act (1996 Act). Congress had spoken and the
1996 Act was signed into law by the President on September 30, 1996.
However, the actual implementation of this law has been fraught with
delays and seemingly bureaucratic indecision. It should be noted that
section 601 limits to 1,000 persons per year who can be granted asylum
because of coercive family planning. To date, this has not been a problem;
but it could become one in the future. In the meantime, for us as a nation,
it is important that this issue of coercive family planning has shocked the
conscience of our elected officials to the point of such action.

To date, only my client (Fen Hou Chen) and one other have been
released on parole under this new law. My client's claim now has been
remanded, jointly by this attorney and the government attorneys at OIL, to
the BIA for their adjudication. How long this review will take, we do not
know. It could be months; but, at least Chen is free on parole. However,
until he is granted asylum, he cannot apply for his family to join him. It
already has been over four years since he has seen them. In the interim,
his wife, to avoid immediate forced sterilization and to protect their
children, remains in hiding in China. The rest of the Golden Venture
detainees still remain incarcerated. Each day that they continue to sit in prison has become another nail in their coffins. This is a statement of fact.

How can this or any United States Administration expect the Chinese government ever to change its coercive human rights and other such abusive policies, when the procedures and actions of our government plainly show that we have and may still continue to send back to China those persecuted under the PRC’s system? Such United States conduct truly belies the January 30, 1997 State Department Report condemning China’s horrendous human rights policies and the outrage expressed publicly by members of this Administration.

There is more. What messages have United Nations agencies and in turn, the United States Administration, in funding and supporting these agencies, continued to send to China about concern for their human rights policies? For example, the United Nations Agency For International Development’s (UNFPA) Executive Director, as recently as 1991, told a meeting in Washington that the Chinese program was totally voluntary and that China had every reason to feel proud of and pleased with its remarkable achievement in family planning. One can state that the initial concept may have looked good; however, the media, NGOs, the Golden Venture documentation and our own State Department note that the above quoted comments are not and have not been true for over a decade. Despite this, and media reports of rising coercion levels in these Chinese programs as of May of 1993, the United States Administration went ahead with its funding of UNFPA shortly after the June landing of the Golden Venture.

What signal is President Clinton really sending to the Chinese leadership by his extraordinary gesture to China’s president at the November Asia-Pacific Economic Cooperation forum in Manila of an exchange of presidential state visits. This was the first agreed on exchange of presidential visits since 1989? The lack of state visits at this highest level did tell the Chinese that if China wanted such United States recognition, it had to make dramatic changes in its human rights policies. Even the signing by the President of the1996 Act, which clearly recognizes China’s coercive policies, did not stop this invitation. Therefore, China now is getting its wishes without any pre-conditions.

Did our President have to go that far, even for reasons of doing business with China? This lack of such state visits did not stop the growing economic ties between the two countries. My colleagues and I submit, he did not. China needs our business and our markets. To make matters worse, on the January 30th McNeil Lehrer Report, dealing with the just released State Department human rights report, John Shattuck, Assistant Secretary of State, noted that China now has closed down all
dissent. He commented that this and their oppressive human rights policies are of concern; however, in other ways China is making progress. This is even more reason why the presidential visit possibly should be reconsidered. What does such a summit meeting say about the very values for which our nation stands?

In February 1997, the new Secretary of State, Madeleine Albright, will visit China. In a January 31, 1997 *International Herald Tribune* editorial, it stated that Secretary of State Albright’s commitment to human rights and democracy faces its severest test in China. Vice President Al Gore, who plans to play a larger role in China, and the Clinton Administration, will be judged on how they handle China on this issue. To quote the above editorial: “Mr. Clinton’s press conference remarks, read closely, were an argument against pushing China hard on human rights and internal political reform.” The editorial continues,

the problem with this analysis is that it indulges Chinese repression and may be taken by Beijing as a sign of American weakness. But Washington does need to be more assertive about its interests, more demanding of an end to China’s human rights abuses, and less willing to sacrifice American principles for American commerce in China. This is not Berlin and the demise of European communism. There is already abundant evidence suggesting that communism in China is not dying, but is instead mutating into a new form that tolerates economic liberties while still suffocating political freedom.

Why then should China correct its human rights policies? It seems that commercially and otherwise, China gets what it wants without doing so. There may be one very important reason. China does want to join the World Trade Organization (hereinafter WTO). To do so, China will have to make some human rights and other changes to meet WTO’s standards unless in some way, other members of the WTO, including the U.S. decide differently.

The comments of Dr. John Aird at the Subcommittee hearings brought in a most important message. For many years he was the United States Census Bureau’s principal expert on population. In the PRC, he stated, “the United States always has played a major role in promoting the idea of universal human rights, not only through the United Nations but also in its relations with other countries.” But our policies and actions have not always matched our words. Human rights considerations at times come into conflict with various domestic interest groups, who are successful in getting the United States government to strike compromises
that serve their own economic and other ends. This is particularly true with a country like China, which is economically and politically important to the United States and others; yet has one of the worst or worst human rights records in the world. Of course China, as did the former Soviet Union, is a closed society and claims that these are internal issues and are not to be meddled in by the United States or others.

This issue of asylum and asylum law and the broader question of immigrations, legal and illegal, has created much interest in the international law and human rights communities. The Cold War is over. Conflicts within and among regional nations have created the most atrocious violations of human rights and the flight of refugees seeking asylum. This has raised many questions of responsibility and resolution on a global scale, particularly in democratic countries. Ad hoc solutions no longer are workable. In the case of the *Golden Venture*, we have explored the options, including finding third countries that will take them. An indication of this topical significance was its inclusion in the November program of International Law Weekend 1996, an annual event held at the New York City Bar Association. This important conference is presented by the American Branch of the International Law Association in conjunction with other international law organizations. As a member of the planning committee, I suggested this topic and organized the program. The panel was a diverse group, which included this writer, Enid H. Adler; the INS General Counsel, David Martin; Director of Press and Public Affairs, European Commission in New York, Wouter Wilton; the Director of Immigration and Refugee programs at Harvard University Law School, Deborah E. Anker; Counsel, Human Rights Watch/Africa, Binaifer Nowrojee; and the Director of Migration Services, the Open Society Institute, Arthur C. Helton. We each presorted our views to a crowded room. Our intent is to follow-up on this lively discussion and serious issue.

If in this process of the resolution of the *Golden Venture* case, we attorneys, the People of the Golden Vision, and others have been influential in raising the awareness of Congress with the resulting passage of section 601 of the IIRAIRA, all to the good. If in this process, the media has given the plight of the *Golden Venture* nationwide coverage and raised the consciousness of the nation, all to the good. If in this process, those fleeing persecution and seeking asylum on our shores now should be treated with dignity and in non-prison decent facilities, all to the good. If in this process, those writing the immigration policies, overseeing and enforcing our immigration laws will be better trained, educated, and sensitized to the realities from which those seeking asylum fled, the political and legal systems, cultures, fear and lack of trust of government
and other authorities, language misinterpretations and more, all to the good. If in this process, we have shown the real spirit of how a diverse group of Americans can come together and make a difference in our immigration system, changes in the law, and more, all to the good.

The fear that continues today, that millions of Chinese will come to our shores if we opened our doors to those fleeing coerced abortion and sterilization, is a myth. It hasn’t happened and will not. It is so difficult to get out of the PRC, legally or illegally. Clearly, from the saga of the Golden Venture asylees, people usually do not flee their homeland and risk their lives on such a treacherous journey without good cause. To date we are talking about Chinese refugees in the single digits compared to asylum seekers to the United States from other countries. As already stated, the 1996 Act has placed a cap of 1000 such refugees per year.

My colleagues and I have persisted and will continue to do so, not only for those from the Golden Venture but also others from the PRC who have fled to our shores because of China’s persecutive policies, coerced family planning, religious persecution, any political dissent. To allow the INS to send these people back, to face what our own government has documented as the worst kind of human cruelty, would go against our very sense of acceptable human behavior, of justice, and fairness under the law, the right to freedom of expression and the ideals for which we believe our nation stands.