

Fauziya Kassindja had time on her side when she was granted political asylum in June 1996 after escaping female genital mutilation in her native country of Togo.

If she had arrived in the U.S. a year later, she may not have been so lucky.

The new immigration legislation that was signed by President Clinton on Sept. 30, 1996, establishes virtually insurmountable summary procedures for arriving asylum seekers.

"She (Kassindja) didn't come here with proper documents so she would have been expedited under the new law," says Elisa Massimino, acting director of the Lawyers Committee for Human Rights in Washington, D.C., and chair of the IR&R Section's International Human Rights Committee. "Even under the best conditions, it's difficult to obtain asylum. It's likely that Kassindja would not have been accepted into the country and we would have never heard. I'm really concerned that under the new law, we will end up sending people back to persecution."

This stricter policy on asylum seekers and other restrictions on both legal and illegal immigrants, most of which will take effect April 1, 1997, have caused an uproar among those who say the policies went too far.

"The deprivation of life and liberty as a result of Draconian exclusion is not something we should be proud of," says

Mary Pivec, a member of the ABA's Coordinating Committee on Immigration Law and Co-chair of Management in Immigration Law under the ABA's Labor Law Section. "We can't be proud as lawyers when whole populations of people are deprived of access to courts and the opportunity to be represented fairly."

Opponents of the legislation point out that many of the measures go against American tradition and precedent, like stripping away due process and judicial review. Instead of curtailing illegal immigration, the policies close off important avenues for relief.

"The political rhetoric took aim at illegal immigration but some of the shots fired hit due process right in the heart," says Frank Sharry, executive director of the National Immigration Forum. "These laws will discourage people from exercising rights and legalizing status. It will create a marginalized and largely undocumented immigration population. The net effect will be counterproductive."

Boyd Campbell, a member of the ABA's Coordinating Committee on Immigration Law and a partner at Campbell, Warner, McBryar L.L.C in Montgomery, Ala., knows the government may be shooting itself in the foot in some ways. He says the new restrictions are wreaking havoc for some of his business clients who have long-standing trading relations with Canada, and busi-

ness is being hurt by the new policies.

"One of the companies I represent has a salesman in Alberta who comes across the border every week for business purposes," Campbell says. "Now he has to file for special visa petitions and others like him are being turned away. This could have a profound effect on the economy."

Pivec agrees and says the legislation is very shortsighted. She points out the current shortage of workers for basic skill jobs as one way immigrants help the economy. Instead of pushing those jobs to the Third World, Pivec says the government should encourage that work to be handled in the U.S., and a lot of immigrants would take those jobs instead of Americans.

"The answer is so obvious," says Pivec, who serves as special counsel at Proskauer, Rose, Goetz & Mendelsohn in Washington, D.C. "We worry about the aging of America. Immigrants are a very young population and could help support the Social Security system when the baby boomers become eligible for it."

America's image as a melting pot and the land that welcomes immigrants has been severely tainted by the immigration legislation.

"Our image today is we welcome the powerful and rich and everyone else can stay home," Pivec says. "The question is, what are our riches? America can only be better with legal immigrants."

Although politicians voiced concern over curbing illegal immigration, some feel the motivation behind the proposals was a general backlash against immigration rather than wanting to solve the problem.

"There was no question that with the hostility toward immigrants that has been fostered over the past few years that some sort of anti-immigration legislation was going to pass," Sharry says. "There was no way anyone could have stopped the immigration bills given the climate. In more open times, many of the due process restrictions would have been defeated."

And there is a way to alleviate immigration problems while still maintaining the rights that America has historically provided.

"It's not difficult to have a balance between enforcement and human rights," says Warren Leiden, a member of the U.S. Commission on Immigration Reform and partner at Berry, Appleman & Leiden in San Francisco. "The law needs to have effective measures, but normal due process and judicial review ought to be provided. We also have to make sure we aren't returning asylum seekers to persecution."

Roadblocks to Immigration: What to Expect from Reform

By Gina Chon

Sharry says the allowance for judicial review of the INS has implemented illegal practices in the past, such as discrimination against immigrants from Guatemala and El Salvador. Over the years, the courts have barred INS from deliberately discriminatory policies.

The U.S. Supreme Court also held that those who could show they were entitled to amnesty but were put off by the INS rules could file late. Lawsuits involving thousands of people are pending, but the new immigration rules would throw all of those cases out of court.

McCormick says there should be better ways of tracking people who come to the United States on a temporary basis.

"If there was a more effective way of tracing them so that we could notify them that they will be deported if they don't leave at a certain time, we wouldn't have as many people digging in to stay,"

McCormick says. "We should ensure a way so that people are going to depart."

"More enforcement at American borders and a crackdown on employers who deliberately violate labor laws to exploit immigrants would be another effective way of dealing with the problem," Sharry says.

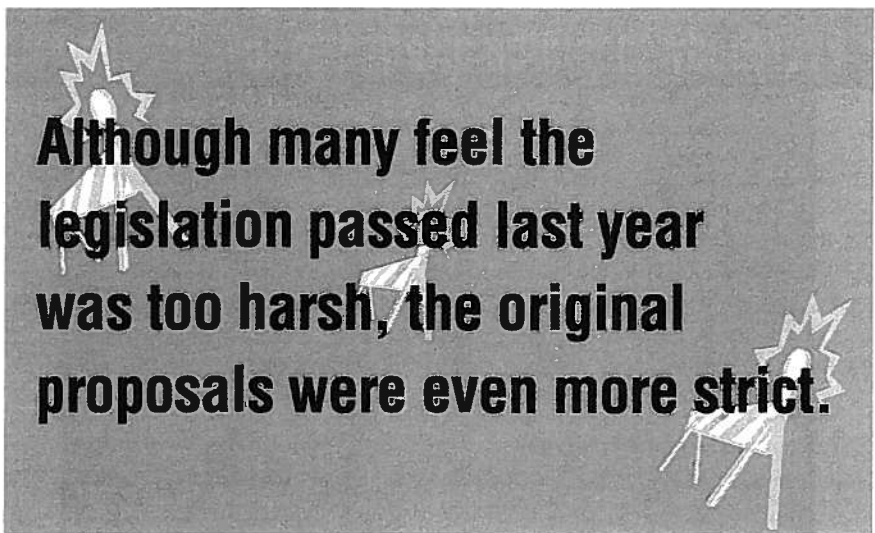
"We have to look at this as a bilateral and multilateral issue," Sharry says. "Ultimately, the cost of keeping everyone out is democracy. We should work out understandings and agreements with the sending countries."

He also notes that the legislation sends the wrong message to European nations that have also allowed asylum seekers in.

"At a time when neo-Nazi and anti-immigration zealots are driving legislation in Europe, it sends a dangerous message," Sharry says. "They can point to us and say that we are doing it too. The U.S. needs to lead in establishing a balance between due process and deterrence/removal because people look to us to set the best standard."

Although many feel the legislation passed last year was too harsh, the original proposals were even more strict. The key supporters of the extreme restrictions were Republican Senators Lamar Smith from Texas and Alan Simpson from Wyoming. Among the bills that were dropped was one that would allow states to deny public schooling to illegal immigrant children, which was proposed by Rep. Elton Gallegly (R-Calif.)

"We were very lucky to defeat the measure to kick kids out of school," Sharry says. "It took Herculean efforts to make sure that part did get put in. It was very difficult because of who was controlling the debate, which were Republican



restrictionists. It was very hard to stop."

And even before the most recent legislation was passed last year, it was already difficult for immigrants to come to the United States. In the Kassindja case, she was incarcerated by the Immigration and Naturalization Service upon her arrival in December 1994. She awaited extradition for 16 months until her case was heard by a Philadelphia immigration judge who deemed her story to be "not credible."

It was only after her case received publicity and drew the attention of powerful advocates like U.S. Rep. Patricia Schroeder that Kassindja was granted asylum from the Board of Immigration Appeals.

For other immigrants, there are different problems. Currently, there is a five year immigration wait for the spouses and children of permanent U.S. residents.

Peggy McCormick says she often tells people that she can't do anything for them. McCormick is president-elect of the American Immigration Lawyers Association and deals solely with immigration law as a partner at Minsky, McCormick & Hallagan in Chicago.

"That reaction is that people get too many chances so now they are stripped of any chance," McCormick says. "Nobody gets to tell their story. I have people who want their sister to come to the U.S. for a wedding and mothers who want to come over because their daughters are having babies. They are not given visas simply because they are single women and there is a fear that this category of people will want to stay in the country illegally. And their cases don't get reviewed."

The past election offers some hope for opponents of the legislation. The Hispanic and Asian communities left the Republican party and voted for Clinton.

This showed that minorities and the newly naturalized citizens are a force to be reckoned with.

"Immigration backing is like drinking," Leiden says. "It's only fun for a little while. In this past election, it came back to haunt the Republicans."

Sen. Spencer Abraham's (R-Mich.) appointment to chair the Senate subcommittee on immigration also was symbolic of a change in the mood toward immigration. Abraham is known for his strong support for legal immigration.

With his worries of re15election over, President Clinton also seems to be changing his view on the immigration bill he signed into law. He recently spoke of changing the law to get rid of some of the extreme restrictions, such as eliminating certain medical benefits for immigrants.

"The President's State of the Union address sent a strong message of diversity," Pivec says. "We have multiple cultures here and our success depends on our ability to live together as one community."

The American Civil Liberties Union and other groups also are looking to challenge the bills through litigation. Specifically, the elimination of due process and judicial review will be contested on the basis that it goes against the system of checks and balances.

And Leiden says the public can be counted on to know what is right.

"Historically, Congress has had Draconian laws and then the human interest stories would come out showing that the politicians made a mistake," Leiden says. "I expect things will change because I don't think the American people will stand for it."

Gina Chon is a writer in Chicago.