Admitting North Korean Refugees to the United States: Obstacles and Opportunities

By Roberta Cohen

“The numbers are too small,” a Korean American told me, referring to the fact that the United States has admitted only 122 North Korean refugees to this country since the adoption of the North Korea Human Rights Act (NKHRA) in 2004, and that only an estimated 25 have received political asylum.¹ His remark reflected the view of Korean Americans who would like to see more North Koreans find refuge in the United States after the brutality, oppression, and economic hardship to which they have been subjected.

North Korea is one of the few countries in the world where permission to leave is highly restricted, making it incredibly risky for its citizens to seek refuge abroad. Despite this, tens of thousands have managed to cross into China where they are in hiding, more than 22,000 have made their way to South Korea, and at least 2,000 have reached countries in Europe and Asia.² Why haven’t more gained entry to the United States?

In adopting the NKHRA, members of Congress recognized that despite the difficulty of affecting change inside North Korea, something should be done to help those who manage to escape. The act sought to facilitate the entry of “acutely vulnerable” North Koreans to the United States, calling for “a credible number” to come in as refugees, while recognizing South Korea’s “principal responsibility” for their resettlement.³

Nonetheless, major obstacles continue to block their admission to the United States. To be sure, there has been progress since the adoption of the NKHRA—more than 20 North Koreans began to be admitted as refugees each year. Yet it is also true that the U.S. has the largest refugee resettlement program in the world and that of 73,293 refugees brought into the country in 2010, only 25 came from North Korea, whereas 18,016 came from Iraq, 16,693 from Burma, 12,363 from Bhutan, followed by Somalia (4,884), Cuba (4,818), Iran (3,543), Democratic Republic of Congo (3,174), Eritrea (2,570), Vietnam (873) and Ethiopia (668).⁴

The first obstacle to North Koreans’ gaining refugee admission to the United States is attitude, namely the view that they belong in South Korea. North Koreans share a common ethnicity, language and culture with those in the South and receive generous benefits upon arrival. The Department of State reflected this view in pointing out that South Korea is “the resettlement country of choice in virtually all cases.”⁵

In adopting the NKHRA, Congress nonetheless sought to facilitate the entry of North Koreans into this country. America, after all, is home to the largest Korean population outside of Northeast Asia and many in the two million strong Korean-American community have family ties to North Korea.⁶ Members of Congress expressed “deep concern” to the Secretary of State in 2008 over the lack of implementation of the NKHRA, “particularly the lack of North Korean refugee admissions to the United States.”⁷

A second but equally formidable obstacle is a legal one. Under South Korea’s Constitution, North Koreans have the right to citizenship in the South. For many years, the U.S. interpreted this to mean that just about all departing North Koreans were ineligible for U.S. refugee status because they could enjoy the protection of the Republic of Korea. But as the U.S. Government Accounting Office pointed out, this was an “erroneous opinion” since not all North Koreans “are able or willing to relocate in South Korea.”⁸ As a result, the NKHRA asserted that North Koreans could apply for refugee status or asylum in the United States unless they avail themselves of their right to citizenship in South Korea. It made a distinction between having a legal right to citizenship and availing oneself of that right.

The NKHRA, however, has been applied only in countries other than South Korea. This is because North Koreans, upon arrival in the South, become citizens almost automatically (in some cases even before they arrive) and the window of opportunity for becoming a refugee in the United States closes. A recent ruling by the Board of Immigration Appeals (BIA) seeks to narrow that space even further. It argues that the mere availability of permanent resident status in another country (whether or not acted upon) “may be sufficient” to prove that the person is firmly resettled and therefore ineligible for refugee or asylum status in the U.S.⁹

Most North Koreans prefer to go to the South, but some would like to go to the U.S. because of its varied economic and educational opportunities. Others may wish to get away from the discrimination regularly reported in the South where some North Koreans, to fit in, even hide their identity.¹⁰ Still other North Koreans fear that in South Korea information about them could more easily reach the North and harm their families, friends, and professional associates.¹¹ When the NKHRA was reauthorized in 2008, it called on the U.S. government to explore “new opportunities” with South Korea for resettling North Koreans who express a wish to resettle in the United States but who have not yet become South Korean citizens.

http://38north.org/2011/09/rcohen092011/
The new BIA ruling fails to take into account the special circumstances of North Koreans. Unlike other asylum seekers, they have long been isolated from and uninformed about the outside world. They have also been indoctrinated against the United States. Prior to their arrival in South Korea or other countries, most if not all have been subject to brutal treatment, are exhausted from a harrowing journey, separated from their families, and in need of funds for “brokers” who arranged their escape. They hardly can be expected to make informed choices about their future. By the time they realize they might prefer to go to the United States, they may no longer be eligible for refugee status.

Thecase of Soviet Jews who exited from the Soviet Union in the 1980s may be instructive. The government of Israel offered Soviet Jews automatic citizenship under its Law of Return, but the United States and refugee organizations such as HIAS insisted on their having a choice. At their first stop in Vienna, Soviet Jews could choose to resettle in Israel, the United States, or other countries and they received a lot of information about their options. Those wishing to go the U.S. were brought in with little problem as refugees; in fact, their eligibility for such status was “statutorily eased.”

Of the North Koreans who arrive in Southeast Asia from China, “many” are “usually unaware of the opportunity to go to the U.S. as well as the benefits that are offered.” LNK, an organization which assists them, points out that they also suffer from the “misconception” that after resettling in the South there will still be an opportunity to resettle in the U.S. Once in the South, however, the refugee option closes and only small numbers manage to travel to America to apply for political asylum.

Few North Koreans are actually granted asylum because the applicant often has to demonstrate a credible fear of persecution or torture not only in North Korea but also in South Korea. And the South Korean government has objected to the U.S.’ granting of asylum to North Koreans on the grounds that they face discrimination in the South. North Koreans also may be disqualified for asylum if they crossed into China searching for food. Doing so might not count as persecution even though the reason for their having no food was exclusion from the privileged political elite. As the president of Free North Korea Radio observed, many North Koreans in the South would like to go to the U.S., but “word of mouth ha[s] it that asylum criteria in the U.S. are too strict.”

A third obstacle to North Koreans’ admission as refugees is the long delay the U.S. takes to process North Korean claims. The State Department over the past few years has added staff time and resources to process North Korean cases, pressed Southeast Asian governments to provide exit visas more quickly, and expedited its own security checks. But the process can still take from 6 months to a year and in a small number of cases even two years. As a result, many North Koreans have withdrawn their applications out of discouragement and frustration. From October 2004 to March 2010, 107 of 238 refugee applicants withdrew their applications, heading instead to South Korea, which can receive them in a matter of weeks (the most a month or two) and provide far more generous resettlement aid than the United States.

Still another factor that has worked against the admission of North Koreans is the attitude of other governments. In Southeast Asia, where most go from China, some governments quietly allow North Koreans to go to South Korea and sometimes to the United States but most are not ready to have U.S. resettlement programs for North Koreans set up on their territories. Basically, they do not want to damage their relations with Pyongyang or to become a magnet for refugees. China for its part has adamantly refused to allow U.S. consular officials or UNHCR access to North Koreans in the border areas where they arrive. At times it has permitted North Koreans who have forcibly entered foreign consulates or embassies or managed to reach the UNHCR office in Beijing to depart for foreign countries. In 2006, for instance, three North Korean defectors who had entered the U.S. consulate in Shenyang were allowed to proceed to the United States. But by and large, China is opposed to anything that might cause “instability” in North Korea and abides by its treaty with the North to send back North Koreans even though doing so violates international refugee and human rights law.

Opportunities

In its reports to Congress, the United States government claims to be doing all it can to bring in North Korean refugees. But the discrepancy in numbers between those admitted to the United States and those admitted to other Western countries remains too large to overlook—the United Kingdom has extended humanitarian protection status (covering both refugees and asylum seekers) to more than 500 North Koreans, while Germany has accepted more than 200, not to mention more than 1,000 in Germany under immigration status. Clearly it is possible to do more.

To begin with, the State Department should explore more intensively with South Korea, as requested by Congress, “all possibilities” for resettling North Koreans in the United States prior to their becoming South Korean citizens. U.S. embassies and consulates in Southeast Asian countries could help by featuring prominently on their websites materials in Korean for prospective asylum seekers and refugees so that they are aware of possibilities for resettling in the United States. The “welcome to the U.S.” manual and other such materials should be translated into Korean and disseminated.

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While the current administration seeks to align its policy closely with South Korea’s, it must also reflect U.S. refugee and human rights values. For North Koreans who do become “resettled” in South Korea, a more flexible interpretation of what it means to be “firmly resettled” should be explored. Soviet Jews, it should be recalled, who first moved to Israel and then sought to go the United States, were sometimes able to qualify for refugee admission in the U.S. on the grounds that they were not “firmly resettled” in Israel. North Koreans need the same flexible solutions so that those who have a compelling reason to resettle in the United States can be admitted as refugees even after they settle in South Korea. Otherwise hundreds, if not thousands will continue to make their way to the U.S. and other Western countries by pretending not to be South Korean citizens. “We believe,” said one South Korean government official, “that quite a lot of defectors living abroad hold South Korean citizenship.”

If there is political will, there are certainly ample precedents to explore. The Attorney General’s parole authority, for example, might enable more North Koreans to come to the United States on humanitarian grounds because of their extraordinary circumstances. Or special immigrant visas might be issued to North Koreans, which would avoid the resettlement debate. Or U.S. embassies might make recommendations for resettlement on special grounds. A team of independent immigration and asylum lawyers should be formed to look into a more robust use of these different authorities to enable greater numbers of North Korean refugees and asylum seekers to resettle in the United States. Their work should also include a commentary on the BIA ruling and its applicability to North Koreans given the NKHRA, and whether it could have the overall effect of coercing North Koreans to resettle in the South, requiring new legislation. The team’s review of these questions would be in line with the urging of the U.S. Commission on International Religious Freedom that the government “remove legal obstacles to North Korean refugee resettlement in the United States.”

The NKHRA Reauthorization Act has called upon the U.S. to work with other governments to facilitate the resettlement of North Koreans in the United States. To achieve this, the act called for “persistent diplomacy by senior officials.” Discussions have been productive with some Southeast Asian countries. With China, it has been more difficult. In 2011, President Obama raised North Korean refugees with President Hu Jintao, but it is unclear that steps have been taken to back up this bilateral intercession or to offer a concerted multilateral strategy. Several years ago, UNHCR proposed to China a special humanitarian status for North Koreans, which would enable them to obtain temporary documentation, access to services, and protection from forced return. A group of states should be mobilized to jointly advocate for the UNHCR proposal at the United Nations and in any Six Party Talks on a security framework for Northeast Asia. It is, after all, in China’s interest to more effectively manage the North Korean exodus into its country.

In the case of Russia, where North Korea has sent tens of thousands of loggers and construction workers, there may be room for greater U.S. engagement. In 2010, two North Koreans in Vladivostok fled their workplace and sought to go to the United States, where they gained admission as refugees. While some Russian officials are said to help North Koreans who flee their workplaces, others deport them. The human rights organization Memorial and UNHCR have taken up cases of North Koreans trying to reach South Korea from Russia. The U.S. should certainly support such endeavors.

There are steps to be taken at home as well. With due attention to security concerns, the U.S. government should continue to try to reduce the lengthy wait time North Koreans endure to come to the United States. Some argue such delays are unavoidable, given the Department of Homeland Security’s regulations and the policies of foreign governments. But there is always something more to try. And while North Koreans wait, the U.S. government could use NKHRA program funds to provide training in the English language, in computer and vocational skills, and in adapting to life in America. To its credit, the State Department is currently considering providing language training to refugees overseas.

To help North Korean refugees more smoothly resettle in the United States, the government should undertake a review of how North Koreans are faring under its current resettlement program. South Korea has regularly evaluated its programs whereas the United States has not yet done so. Given the small numbers, it should not be difficult. In doing so, the government might find that North Korean refugees suffer from post-traumatic stress disorders in need of treatment and that North Korean women trafficked in China and other countries need special attention. The refugees are also reported to have problems with English language skills, access to jobs, and places of resettlement. A government review could not only improve the lives of North Koreans already here but could help in planning for larger numbers, especially if there is a collapse in North Korea and a need for international burden sharing. If that should happen, it is frequently suggested that Asian countries provide temporary first asylum on the understanding that the North Koreans will be permanently resettled in South Korea or other countries like the United States. These arrangements are modeled after those adopted for the Vietnamese boat people.

Whatever strategies are adopted, there is no room for complacency in trying to help persecuted and impoverished North Koreans who are ready to risk their lives to escape one of the most repressive regimes on this planet. The United States could and should do more.
See Migration Information Source: US in Focus, August 2011 and note 4 below. Unlike refugees, asylum seekers apply for asylum while in the United States, or at a port of entry. Statistics on asylum seekers vary even within the U.S. government.


7 Ibid, pp. 5-6.


9 Board of Immigration Appeals Interim Decision 3713, May 12, 2011.


11 There have been cases of North Korean defectors suing the South Korean government on this score.


14 GAO report, supra note 8, pp. 24-5.


17 GAO report, supra note 8, pp.14-17.

18 H. Song, supra note 13, p. 84.

19 Ibid, p. 84.

20 Each defector in South Korea receives an initial payment of $5,600 plus benefits that could add up to $23,000 and a great deal of additional attention whereas a refugee in the United States receives $1,800 (half of which goes to the institution helping the refugee) plus eligibility for cash assistance for 8 months and small welfare benefits in different states.

21 Ibid, p. 12.


23 GAO report, supra note 8, pp. 48-9; UNHCR, supra note 4; and Chosun Ilbo, supra note 16.

24 Chosun Ilbo, supra note 16.


26 Report to accompany Reauthorization Act, supra note 6, p.6.


31 Interviews with Korean Americans, July 2011. Although there are programs for women trafficked within the U.S., or for North Korean women trafficked outside the U.S., women refugees inside the U.S. who were sexually assaulted and trafficked abroad do not receive needed attention.

32 H. Song, supra note 13, p. 87.

33 See Committee for Human Rights in North Korea, at www.rnk.org/ten_points.htm.