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## Business of Human Smuggling Tests U.S. Immigration Policies

By Pamela Burdman  
Chronicle Staff Writer

When the *Manyoshi Maru* sailed into San Francisco Bay in December, it brought 171 weary passengers and a vexing dilemma: How can the United States stop the large-scale smuggling of immigrants while upholding its role as a haven for the oppressed people of the world?

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SPECIAL REPORT

Last of four parts

Waves of smuggled Chinese have been landing in New York, Los Angeles and Hawaii, where government officials and community leaders have been shocked by their harrowing stories. While the illegal immigrants have to endure dangerous and sometimes brutal journeys to America and years of hard labor once they arrive, the smugglers are earning millions.

labor once they arrive, the smugglers are earning millions.

"I think the American government needs to send a very clear signal that they are not going to put up with this kind of illegal human trafficking," said Ling-Chi Wang, professor of Asian Ameri-



BY TOM LEVY/THE CHRONICLE

Chinese immigrants crowded into a New York employment agency that caters almost exclusively to expatriate Fujianese

can Studies at the University of California at Berkeley.

"The primary reason to eradicate this sort of crime is the abuse of the individuals who are being trafficked," said Julie Werner-Simon, an assistant U.S. attorney in

Los Angeles who helped prosecute a smuggling crew last year. "These are human beings who are treated as human cargo."

Several hundred thousand Chinese — most from Fujian province

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in southeastern China — have entered the United States illicitly since the early 1980s. The illegal immigrants are just a small portion of the Chinese American population, and they are far outnumbered by Irish and Mexican citizens living here illegally.

Like generations of immigrants before them, they come to make their fortune, and many succeed. What worries many U.S. officials and human rights advocates, though, is that the Fujianese often face extreme perils. An increasing number of adolescents also are making the illegal voyage, and they are especially vulnerable to harsh treatment.

But few are daunted by the dangers; in Fujian, demand for a trip to the United States seems inexhaustible. And the smugglers' success makes clear that the U.S. Immigration and Naturalization Service is ill-equipped to combat the trade.

Although officials have stepped up their enforcement action, they say they need help from foreign governments, harsher penalties, more money and a more stringent political-asylum policy.

"These smugglers are amazingly organized," said Jim Hayes, assistant director for the Los Angeles district of the INS. "And the U.S. is amazingly slow in realizing and only now responding to that."

### **Legal Restrictions**

There is no easy solution.

In most cases, the U.S. government cannot legally board a ship on the high seas even if agents know it is smuggling people. Late last week, the U.S. government received permission from Honduras to board the Honduran-registered *Mermaid 1*, carrying 300 Chinese near the Bahamas, but never before had such a strategy been employed in the open seas.

Even a vessel sailing through U.S. waters has not committed a crime until undocumented immigrants disembark.

The diplomatic approach is also difficult: The Chinese government is embarrassed because some of its citizens are desperate to leave. The United States is embarrassed because its borders are so porous. And after years of pressuring China to allow free movement, the U.S. government is in no position to ask for tighter controls at the Chinese border.

Formally, China voices disdain for the smuggling enterprises.

"The Chinese government opposes the international criminal groups that engage in smuggling of Chinese citizens," said a spokesman at the Chinese embassy in Washington, D.C. "As soon as we discover any groups or individuals that plan this sort of activity, we will punish them vigorously."

But U.S. officials say Beijing has done almost nothing to stanch the outflow.

"They see it as an American problem," said INS investigator Wayne McKenna, who met with Chinese officials last year. "And they're right about that."

Earlier this week, Mexican officials arrested 306 Chinese and the Mexican smugglers who were housing them about two hours south of the border. More often, though, foreign government officials are reluctant to intervene.

Tens of thousands of Chinese have landed in Guatemala, Belize, Mexico and nearby countries, but "no government in this area has enough money to fly all these people back to China," says a U.S. immigration official based in Central America. "What happens is that they eventually make their way to the United States."

### **Mixed Signals**

Immigration experts — and the immigrants themselves — say the United States sends mixed signals to the Chinese travelers.

The law says their actions are illegal. But when a boat full of hungry immigrants is stranded off the coast, U.S. officials typically put humanitarian concerns first.

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Wen Zhengming, a passenger who arrived in San Francisco last year, said in an interview that the sight of Coast Guard officers greeting the hungry passengers with rice, water and cereal convinced her that America was indeed the land of her dreams.

Wen and others caught crossing the U.S. border have a chance to apply for political asylum — a refuge for foreigners who fear political persecution at home.

Since 1988, Chinese asylum applications have shot up 16-fold, to 3,440 last year. Some come from political dissidents fleeing the post-Tiananmen Square crackdown or China's one-child-per-family rule.

Among the smuggled immigrants, though, many are economic opportunity-seekers who claim they will be punished if they are returned. Since the 1989 Tiananmen massacre, 85 to 90 percent of Chinese asylum applications that go to court have been granted.

Most of the applications, though, are mired in the immigration bureaucracy, and that opens another door: Thousands apply for asylum, get their work permits and then disappear while their applications are pending. In 1991, less than half of Chinese asylum applicants in New York showed up for their hearings.

Once beyond the reach of immigration agents, they attract little attention from local officials, even though many work long hours for substandard wages and pay no taxes.

### The Refugee Question

Critics — including some who are sympathetic to the smuggled immigrants — say they are exploiting U.S. good faith with frivolous claims of persecution.

"I think it's absurd to call these people political refugees," said Ling-Chi Wang. "They come from a place (Fujian) not known to have political dissidents at all."

U.N. officials agree: After interviewing the passengers of the East Wood, a ship that broke down en route to Hawaii in late January, investigators decided they were not refugees.

But if the 524 Chinese had touched U.S. soil, like the passengers

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## HOW PROCESS OF POLITICAL ASYLUM WORKS

The Refugee Act of 1980 regulates U.S. asylum policy and governs refugee procedures. There are no legal limits to the number of individuals who may be granted asylum in a given year.

1 If immigrants ask for political asylum, the Immigration and Naturalization Service (INS) will evaluate their claims of fear of persecution in their homeland and decide to place them in custody (often jail) or release them on bail.



2 Hearings are set for all asylum claims. An illegal immigrant may apply for asylum on the basis of past persecution or a well-founded fear of future persecution based on race, nationality, religion, political opinion or membership in a particular social group.<sup>1</sup>

If undocumented immigrants applying for political asylum are not held in custody, they may apply for authorization to work in the United States through the duration of their case.



► At right, an example of an employment authorization card.

3 If the applicants win their petition for political asylum ... They may apply for permanent residence after one year. After 5 years, they can apply to become citizens.

If applicants lose their petition for political asylum, they may ...

- Appeal to the Board of Immigration Appeals in Falls Church, Va.
- After losing that appeal, they could appeal to a federal court of appeals.
- Final appeal would be to the Supreme Court. This process can take years.



◄ At left, an example of a resident alien or "green" card. In reality, the card is pink with a light blue Department of Justice logo in the center.

4 Immigrants who have been living in the United States illegally also may apply to the INS for political asylum. If they lose, however, they face deportation proceedings.

A Presidential Executive Order, issued after the 1989 massacre at Tiananmen Square, protects all mainland Chinese who were in the United States before April 11, 1990, from deportation. An estimated 80,000 Chinese have sought protection under this order. Under the subsequent Chinese Adjustment Act, these Chinese can apply for permanent residence if the president does not certify by July 1 that it is safe for them to return. In any case, the executive order protects them through January 1994.

**A note on Chinese claims**

1 The Northern California INS does not have its own detention facilities; it rents space from local jails. A space in Oakland City Jail costs the INS \$50 per night.  
2 For example, when Chinese have applied for and received political asylum based on claims concerning China's one-child policy, they are regarded as having established a well-founded fear of persecution on account of political opinion. However, refusing to serve in an army because it violates one's moral convictions has been rejected as grounds for asylum.

Sources: David Wheat, San Francisco district director, INS; Mark Sherman, staff attorney for Immigrant Legal Resource Center; "Guide to Immigration Advocacy" by the Immigrant Legal Resource Center, 1991; immigration attorney Jonathan Hirschfeld of Jobe & Hirschfeld, 88 Taft, N.Y.



BY PETER WOOLRICH/SPECIAL TO THE CHRONICLE

Passengers from the East Wood smuggling ship stepped off an airliner at Xiamen airport in Fujian province after being sent back home

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on board the Manyoshi Maru, they could have stayed on by asking for asylum. If detention spaces were low, they would have been released into the country before their asylum claims were heard.

This ease of entry spurred the onset of large-scale smuggling by boat two years ago. As long as the immigrants clear INS hurdles and make it into the country, the smugglers can collect their fees.

"The smugglers suddenly realized, 'Hey, INS can't hold these people — we'll just send them in waves,'" said an immigration lawyer who requested anonymity.

"The U.S. government can't cope with this," said one smuggled immigrant. Yes, he added, his friends back in Fujian would prefer to come legally, but they lack the money and connections.

Other countries on the Pacific

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Rim have been far less welcoming.

In 1989, Japan was visited by 38 boats carrying about 3,000 Chinese who claimed to be Vietnamese boat people. All have been or will be sent back to China. Since then, the numbers have fallen — to 19 boats since 1990. One ship's passengers, anxious to come ashore, staged a hunger strike in October. Eventually, they were allowed into Japan, but the government insists their stay will be temporary.

Australian officials have apprehended five boats in the past two years, and more than half of the 280 passengers have already been sent back. Some have applied for asylum, but less than 10 percent of Chinese asylum applicants are approved, said Irena Omelaniuk, immigration counselor at the Australian embassy in Washington.

U.S. Senator Alan Simpson, a Wyoming Republican who wields broad influence on immigration issues in Congress, favors a similar approach. He is sponsoring a bill to prevent foreign nationals without passports or other travel documents from applying for asylum.

But opposition is strong: Human rights groups say the bill would unfairly deny sanctuary to people in danger, whether they are from China or other countries.

"You shouldn't scapegoat people who are fleeing repression because of unscrupulous people who smuggle people into the United States," said Nick Rizza, national refugee coordinator for Amnesty International.

Those who oppose repatriation cite the harsh penalties imposed on the East Wood passengers, who were returned to China in March. Most were fined the equivalent of \$1,250, and unconfirmed reports said some were forced to labor on a new airport.

U.S. officials and immigrant-rights groups do agree on one mat-

ter: The smugglers should be vigorously prosecuted. Although dozens of crew members have served time, the INS has had only limited success in capturing those who run the smuggling syndicates.

### **Big Immigration Bust**

In 1990, an INS sting operation busted a smuggling ring that allegedly planned to fly more than 20,000 Chinese from Panama to Alabama. One organizer received a two-year sentence; another was sentenced to time served.

Last month, for the first time, organizers of a sea smuggling venture were prosecuted in a New York federal court. George Huang and William Chen, owners of a fishing trawler called the Chin Wing 18, organized a voyage that carried about 150 Chinese men on an agonizing 4½-month journey to North Carolina last year.

They were found guilty of smuggling and are scheduled to be sentenced next month.

Despite the occasional successes, the INS has been criticized for allowing the trade to blossom.

"The INS has been largely reactive rather than pro-active in its response to Chinese alien smuggling," said U.S. Senator William Roth, R-Del., who has led several studies on Asian organized crime.

But Jack Shaw, head of investigations for INS, says that with a shrinking budget, he cannot afford expensive investigations. Each boat arrival costs about \$125,000, not including detention costs of \$50 or more per person per day.

### **Plan of Attack**

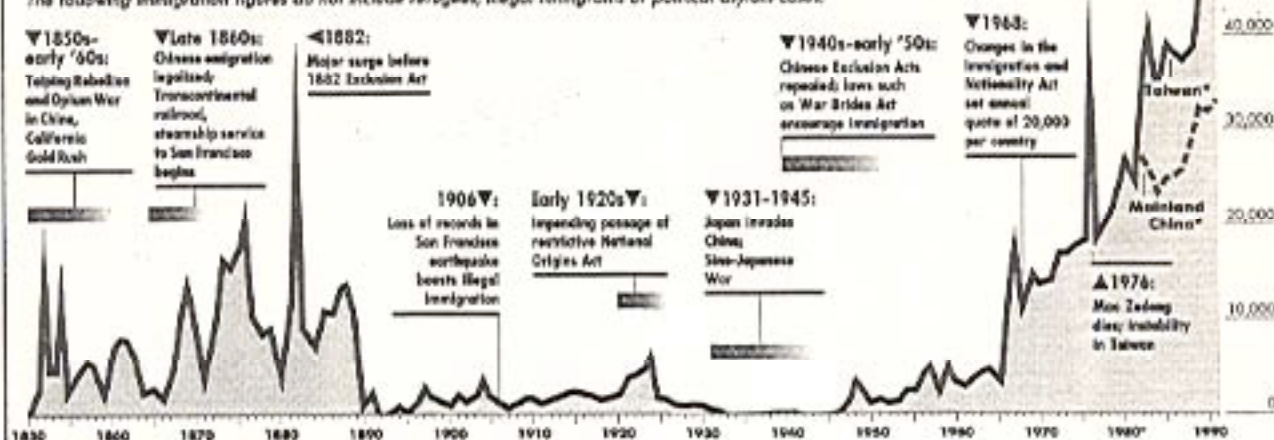
In an attempt to focus on Chinese boat smuggling, Shaw recently re-assigned 16 agents to the detail in San Francisco and other areas. He is asking the INS for an additional \$2 million for anti-smuggling programs, and he hopes that Congress will approve higher penalties for smuggling.

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## TRENDS IN LEGAL CHINESE IMMIGRATION TO THE U.S.

The earliest Chinese immigrants come to America hoping to escape difficult conditions in China and to make fortunes in the gold mines of California. Later, they worked on the railroads and in agriculture and established their own businesses. Welcomed at first as cheap and efficient sources of labor, they were later persecuted for the same reason when economic depression hit the United States. The Exclusion Act of 1882 severely curtailed immigration opportunities. Some Chinese entered the United States illegally; some left America and returned to China. Since the 1950s, more than half of all Chinese immigrants have entered as relatives of Chinese who were already U.S. residents, putting them in a category not included in quotas.

The following immigration figures do not include refugees, illegal immigrants or political asylum cases.



Note: 1992 figure unavailable. \*In 1982, U.S. formally recognized mainland China and began keeping separate immigration figures for China and Taiwan.  
Sources: "Chinese Immigration," by Henry Cordes; Historical Demos, U.S. Census; PBS Statistics Division; "Chinese Emigration into the U.S., 1853-1990," by Young Zou; Chinese Immigration into the U.S.: Analysis of Changes in Immigration Policies (doctoral dissertation), Helen Chen

PHOTOGRAPH BY ALAN DINEEN/CONCEPT

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Most smugglers receive sentences of six months. One of the longest sentences to date — 21 months — went to Wang Herng Sing, who captained the *New Star*, a fishing boat that nearly sank while attempting to ferry 160 Chinese passengers to Long Beach last fall. If Wang's cargo had been drugs, he would have been jailed for a minimum of 10 years.

According to many immigration experts, from government officials to Chinatown social service workers, the Chinese will continue to risk their lives until the smuggling trade is shut down. Many, therefore, see stepped-up enforcement and harsher penalties as the best way to protect them.

Others worry that with more entrepreneurs going into the smug-

gling business and more Fujianese anxious to leave, those moves offer too little, too late.

The *Manyoshi Maru* and earlier boats were just "the tip of the iceberg," said David Ilchert, the INS district director for San Francisco. "I think they (the smugglers) are gearing up for many more adventures across the ocean."

But without new asylum policies, higher penalties and more money, INS officials say they will have little hope of containing the smuggling syndicates.

"It's going to reach the point where we may appear impotent," said Shaw. "If it becomes clear to the smugglers that there's a limited response, I suspect it will spur them on."