

*Immigration Act*

that transcript and any other evidence it may have that bears on the truth or falseness of his claim, evidence which is unknown to the claimant. He does not know what other evidence is being heard before the committee because he is not present at the hearing of the committee which decides his fate. The committee decides on his fate without ever hearing, meeting or seeing the man or woman whose fate they are deciding. I use the word "fate" because when a person is claiming refugee status, he is claiming that if he returns to his home he will be persecuted. Under our law, if he is judged a refugee, he is a person with a well-founded fear of persecution. This means he could well be killed. We are dealing with someone whose life is in danger. Under our present system, that person does not have a chance to stand before the people who are making a life-and-death decision. That person is normally not considered a criminal. There may be a few cases where a refugee applicant is alleged to have done something that places him possibly in a criminal category. I am speaking of the great majority against whom no criminal accusation is made. An innocent person may be judged in such a way as to be sent to his or her death by people who never lay eyes on that person, never hear that person speak, never have a chance to ask that person questions or never give that person a chance to correct any misunderstandings.

That is easy enough when it is all in one language, but some of these people do not speak English and have to work through interpreters. The Refugee Status Advisory Committee does not have a chance to make its own judgment as to whether or not that person is speaking the truth. This puts both the refugee claimant and the advisory committee in a very unjust situation. It is a situation which goes against the principle in our law which is that an accused person, in this case not accused but treated like an accused, has the right to stand before his or her judge and be seen directly. That is fundamental in our court procedure. It should be fundamental in dealing with usually innocent refugees who, if the decision goes against them, may be sent back to persecution, torture or death.

There are some safeguards. There is the Immigration Appeal Board. The refugee claimant who loses his case before the Refugee Status Advisory Committee may appeal to the IAB. If he loses there, he may appeal to the Federal Court of Appeal, or even to the Supreme Court, provided those courts give permission for the appeal to be made. The problem is that even there he will not be able to appear in his own cause. Those courts will examine only the transcript and documentary evidence put before them, usually by those who disagree with the person whose claim has already been judged unfounded.

We have a system which has grown up little by little and has become congealed into law which is not in keeping with the justice of our court system. The system has two main faults. I have described one, that the claimant goes unheard by his or her judges. I can put the word "judges" in quotation marks. They are not formally judges, but they act like judges in this case. He or she has no chance to answer, correct misunderstandings or be directly judged as to truthfulness and untruth-

fulness. There is a denial of what we consider to be natural justice. That is one fault. The other fault is that the system is amazingly slow. It takes about a year and a half on average from the time the refugee is first examined under oath until the time when the Minister makes the determination on the recommendation of the committee. In the meantime, the refugee claimant is in limbo. He or she does not know what will happen. Refugee claimants may be allowed to work by being given work permits, but their status is very unclear. The status of their spouses and children is very unclear as well. They live for a year and a half in a kind of purgatory or limbo.

● (1610)

On the other hand, there are the cumbersome procedures within our Immigration Department such as the writing of transcripts by contract groups, the distribution and reading of those transcripts and so on. As I said, even with the best will in the world, this process takes an average of a year and a half to resolve.

For several years many requests have been made that this process be speeded up through the use of oral hearings. Amnesty International, a highly respected body with which the Government works closely, has asked for such a procedure. The Inter-Church Committee on Human Rights in Latin America, which is concerned with many, many refugee claimants from Latin American countries, has asked for this procedure. The Inter-Church Committee on Refugees has asked for it as well. In particular, the Government's own report of 1981 has asked for this procedure. I refer to the report entitled *The Refugee Status Determination Process*, a report of the task force on immigration practices and procedures established by the then Minister of Employment and Immigration in September, 1980. The task force reported 14 months later in November, 1981 under the signature of the chairman, W. G. Robinson, a highly respected lawyer who has the confidence of the Government. I shall quote from page xvi of the introduction. It reads:

Independent material should not be weighed against the claimant unless it has been expressly brought to his attention either at the examination or at a re-examination and he has had the opportunity to respond to it.

That could be carried out in the course of an oral examination. Otherwise we would not know if that was carried out. Further, and this can happen at a refugee claimant hearing:

A person whose credibility is being impeached should be put on notice and given the opportunity of explaining.

Again, that follows naturally from an oral hearing and would otherwise be very uncertain. The final recommendation is this:

A refugee claimant should be entitled to a hearing in every case where the RSAC is not prepared to make a positive recommendation on the basis of the transcript. The claimant who is granted a hearing should be given notice of the substance of the objections to his claim. At the hearing, the transcript of the examination should be taken as having been "read in" to evidence.

In other words, Mr. Speaker, for nearly four years this request for oral hearings has been before the Government. This request has been made by the most responsible citizens in the country who deal with refugee matters.