

April 11, 2005

Dear Senator:

We, the undersigned faith-based organizations, write to you to ask for your opposition to Section 101 of H.R. 418, the REAL ID Act, which was recently passed by the House of Representatives. Section 101 would both raise the standard for obtaining asylum in this country and increase the evidentiary standards by which applicants must prove their claims.

We oppose these provisions because they will, in our view, deny protection to legitimate asylum-seekers who suffer persecution from their oppressive governments or other actors, including those who flee religious persecution.

Section 101 raises the standard for obtaining asylum by requiring that an applicant prove that one of the five grounds of persecution - religion, nationality, race, social group, or political opinion – was a central reason behind their persecution. Under this standard, an asylum seeker effectively would have to know the mind of her persecutor to prove her claim, an unrealistically high barrier to overcome. Current case law allows for an applicant for asylum to prove that one of the five grounds was one of several possible motivators of the persecutor.

Moreover, Section 101 would require applicants for asylum to provide corroborating evidence to justify their claim if the immigration judge deems it necessary and would permit denial of a claim based on one of several factors relating to an applicant's credibility.

As you know, persons who flee to our nation to escape persecution in the form of rape, torture and other forms of physical violence do so under emergency circumstances and often are emotionally and physically traumatized by their experiences. Although the burden falls on the applicant to prove her claim by communicating a fear of return, she is often unable to provide corroborating evidence, particularly when an applicant has little or no access to legal representation. In addition, a traumatized asylum seeker in a new environment may have difficulty communicating fear in a demonstrative manner, leading to a perception that the applicant is not "credible." In fact, due to their trauma many asylum seekers suffer a "flat" affect, which prevents them from forcefully relating the horrors they have experienced.

As faith-based organizations, we are also particularly aware that people are imperfect and can make mistakes. That is as true of immigration judges as it is of asylum seekers. Shielding the decisions of immigration judges about an asylum applicant's credibility or demeanor from appellate review would inevitably mean that some asylum seekers with valid claims would be denied. Likewise, rejecting an asylum applicant's claim because of immaterial inconsistencies in his or her testimony demands an unreasonable level of perfection in applicants for asylum, especially when they have suffered trauma, incarceration, or other ill effects of persecution.

Given these considerations, we believe that adoption of Section 101 would lead to the deportation of an untold number of bona fide asylum seekers to their persecutors. This could include such cases as Chinese fleeing coercive population policies, Burmese who have suffered under armed militias, Sudanese escaping ethnic cleansing or Colombians targeted by guerilla groups.

While we believe that our asylum system should protect those who flee persecution on any of the relevant grounds, as faith-based organizations we have a special interest in protecting those who flee oppression because of their religious convictions. This concern applies to all of our faith traditions, since religious-based persecution around the world has been and will continue to be directed at Christians, Jews, Muslims, and other faith-based groups. We are deeply troubled that Section 101 could adversely affect such faith groups as Jews departing anti-Semitic persecution in parts of Europe and the former Soviet Union, Christians fleeing China, Burma, and the Middle East, or Muslims seeking protection from dictatorial regimes in Africa.

The proponents of H.R. 418 argue that the provisions of Section 101 would make our nation safer by preventing would-be terrorists from using the asylum system to gain access to our nation and plan attacks on American citizens. We respect the desire of the legislation's proponents to ensure our nation's security; in fact we share that goal. However, we respectfully disagree that Section 101 is the correct approach to that end, especially when the measure undermines our national identity as a safe haven for the oppressed around the world.

Concerns for security in the U.S. asylum system are adequately addressed in current law, in particular laws enacted in 1996 and 1997 which allow for the detention of would-be asylum seekers while they await their hearing. We generally oppose detention of asylum seekers; we acknowledge, however, the necessity of detention in those cases where national security may truly be at issue. The cases cited by proponents in justifying Section 101, including that of Ramzi Yousef, one of the masterminds of the first World Trade Center attack, would have been prevented had regulations and laws adopted in 1995 and 1996 been in effect at the time of the attack. Moreover, the U.S. Commission on International Religious Freedom recently stated that a new law is not needed, having publicly stated that the overlapping and redundant security checks make the asylum process the "least likely" avenue for terrorists to enter the United States.

In conclusion, as representatives of a wide range of faith-based organizations, we ask for your opposition to Section 101 of H.R. 418. In our view, its adoption would severely weaken the U.S. asylum system and fundamentally change our national character as a land of democracy and freedom. As a nation, we cannot credibly promote freedom abroad while denying freedom on our own doorstep.

Thank you for your consideration of our views.

Signatories:

Advocates International
American Jewish Committee
Anti-Defamation League
Episcopal Migration Ministries
Hebrew Immigrant Aid Society
Jesuit Conference
Lutheran Immigration and Refugee Service
Sikh Legal Education and Defense Fund
Southern Baptist Convention
U.S. Conference of Catholic Bishops
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