

Abandoning the Persecuted



*Victims of Terrorism and
Oppression Barred From Asylum*

About Us

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, D.C. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. We accept no government funds.

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The present interpretation of the material support bar has effectively altered U.S. policy so that refugees and asylum seekers who have suffered at the hands of terrorists and despotic regimes are now no longer welcome to the U.S. as our friends.

- Letter to President Bush from leaders of faith-based communities including the National Association of Evangelical Churches, the Southern Baptist Ethics & Religious Liberty Commission, and the U.S. Conference of Catholic Bishops*

The United States has a long history of providing safe haven to refugees escaping political oppression and religious persecution in their homelands. But thousands of vulnerable refugees have been prevented from receiving the protection of this country due to overly broad immigration law definitions contained in the USA PATRIOT Act and the Real ID Act of 2005.

These provisions bar from asylum or resettlement anyone who has provided what the law terms “material support” to “terrorist organizations.” The definitions of these terms in the immigration laws, however, and their application by the Department of Homeland Security (DHS) and the Department of Justice (DOJ), are so exceedingly broad that the bar is, tragically, affecting refugees who do not support terrorism at all.

These refugees include: women who were raped and enslaved by armed militias in Liberia; victims of extortion forced to pay armed terrorists in Colombia to protect their lives and their children; and Cubans who supported a group that took up arms against Fidel Castro in the 1960s.

Many of these refugees are actually the *victims* of terrorist violence and extortion in places like Colombia, Nepal and Sri Lanka. Others have provided support to pro-democracy groups with armed wings that have resisted repressive regimes in places like Burma and Cuba, while some supported groups that fought alongside U.S. forces during the war in Vietnam. The U.S. government does not consider these groups to be terrorist organizations in any other context, but because these groups have used arms, they are categorized as “terrorist organizations” under these immigration law provisions.

The material support bar has crippled the U.S. resettlement program, a unique private-public partnership through which local communities and church groups across the country assist in welcoming refugees. Thousands of refugees have been prevented from resettling in safety in the United States because of these statutory provisions.

Not only are refugees overseas at risk, but so too are many refugees who have already fled to the United States and applied for asylum in this

country. This report addresses the impact of the material support bar on the U.S. asylum system and on refugees who have escaped from persecution and sought asylum in the United States. These refugees have had their asylum requests denied or relegated to a long-term administrative limbo. The time that they have spent in immigration jails – or separated from their families – has been prolonged by months or even years. Among these refugees are:

- A nurse from Colombia who was kidnapped, assaulted and forced to provide medical treatment to terrorists;
- A Christian missionary worker who was beaten and detained by the Burmese military regime and made donations to an armed group that resists the regime and its persecution of Christian minorities;
- A journalist from Nepal who was beaten, threatened and forced to hand over money to Maoists;
- A fisherman from Sri Lanka who was abducted by the Tamil Tigers and forced to pay his own ransom;
- A teacher from Burma who was jailed for two years by the Burmese military after letting three men, who were affiliated with a resistance group, speak in favor of democracy; and
- A student activist and torture survivor who fled Bhutan and was the victim of Maoist extortion while teaching in Nepal.

At the end of this report, we have included profiles of these refugees and others, who – as outlined in this report – have had their requests for asylum denied or put on indefinite administrative hold because of the material support bar.

While refugees continue to suffer, the various agencies and arms of the U.S. government that are responsible for safeguarding the persecuted have

failed to demonstrate the kind of coordination, leadership and commitment that is needed to resolve this problem. As detailed in this report:

- Some refugees have already been denied asylum by U.S. immigration courts based on these provisions. The denial of these asylum requests places these refugees at grave risk of being returned to danger in violation of the 1951 Refugee Convention and its Protocol, treaties United States has pledged to uphold.
- Hundreds of asylum requests have been placed on indefinite hold at the U.S. asylum office as a result of these provisions and the failure of the Department of Homeland Security to set up an effective process for refugees to seek an exemption. This state of limbo has already lasted several years for some asylum seekers. The delay has left many families separated for years, exposing refugee children to more time in difficult and dangerous circumstances abroad.
- The Department of Homeland Security has detained some refugees affected by this bar in U.S. immigration jails for lengthy periods of time. Several refugees profiled in this report were held for seven months or longer in these jails. One Burmese woman was detained for two years in a Texas immigration jail and a Sri Lankan man has been detained for over a year and a half.
- In individual asylum cases, the Department of Homeland Security and the Department of Justice have taken the position that refugees are barred from asylum even if they were forced to provide the “material support” under duress.

- The Department of Homeland Security, which has lead responsibility for asylum seekers, has resisted necessary and targeted changes to the law, failed to advance administrative policies and procedures to protect some of the refugees affected by this bar, and rejected approaches that would, consistent with the current law, recognize protection for refugees who are victims of terrorism.

Addressing the material support problem will require action by both Congress and the administration. A comprehensive set of recommendations is outlined at the end of this report. None of these targeted measures would undermine U.S. security. These measures would, however, ensure that this country does not abandon or deport the victims of political oppression and religious persecution who seek its protection.

The Immigration Definitions: Unintended Consequences

Shockingly, under today's laws, Jews who bravely resisted and survived Nazi terror would be excluded from refuge in the United States. Under current policy, the Warsaw ghetto uprising would have been considered a "terrorist activity" because it involved the use of weapons against persons or property for reasons other than for "mere personal monetary gain."

- Letter to President Bush from leaders of American Jewish community¹

The root of the material support problem stems from two immigration law definitions included in the USA PATRIOT Act and REAL ID Act of 2005, and their current interpretation by some U.S. government immigration officials.

The PATRIOT Act expanded the immigration law's definition of terrorism to cover support to organizations that have engaged in "terrorist activity" which, in turn, was defined to include almost any use of a "weapon" other than for "mere personal monetary gain." The U.S. government has a process for designating groups as terrorist organizations and the Department of State maintains lists of these organizations. But under a literal reading of these definitions, groups are considered terrorist organizations under the immigration law even though they do not appear on these lists, based simply on the fact that they have used armed force. In 2005, the REAL ID Act expanded the definition of these "non-designated" terrorist organizations to cover any group that has a subgroup that uses weapons. A copy of these legal provisions is included as an appendix to this report.

Congress intended the immigration law provisions of the PATRIOT Act and the REAL ID Act to bar from asylum or other relief those who truly mean to provide aid to actual terrorist organizations. Congress clearly did not intend to penalize the victims of terrorists. Supporters of the REAL ID Act, in fact, publicly stated that the law aimed to keep

out those who intended to cause harm to the United States while continuing to give “hope and shelter to people who can legitimately claim and receive asylum.”²

Yet the literal language of these definitions is so broad that groups can be labeled as “terrorist organizations” simply because they have used armed force against the armies of Saddam Hussein or the Burmese military regime.

The immigration law has given the Department of Homeland Security, in consultation with the Department of Justice and the Department of State, the authority to exempt asylum seekers from this bar. The Department of State, in consultation with the other two agencies, has lead responsibility for refugees seeking resettlement in this country.

After several years of interagency meetings, the Department of State exercised this authority in May and August 2006, to allow the resettlement of some ethnic Karen refugees from Burma who have been living in refugee camps in Thailand. Many of these refugees would otherwise be barred from resettlement because of their support of the Karen National Union (KNU), a group that essentially functioned as their government and has used force in resisting the repression of the Burmese regime.

No other exemptions have been issued. Indeed, the Department of Homeland Security has not yet created a procedure for refugees in the asylum process to request an exemption from the bar.

The Refugee Convention and America's Commitment to Refugees

Today is also a time to be reminded of the terrible circumstances that drive people from their homelands in search of freedom and safety. America will always stand firm for the nonnegotiable demands of human dignity and the rule of law.... Today I reaffirm our commitment to protect and assist refugees, promoting their right to seek asylum and provide opportunities for their resettlement as needed.

- President George W. Bush on World Refugee Day 2002

In the wake of World War II, the United States played a leading role in building an international refugee protection regime to ensure that the world's nations would never again refuse to extend shelter to refugees fleeing persecution and harm. The United States has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol – most critically to the promise not to return a refugee to persecution.³

The United States passed the Refugee Act in 1980 in order to bring the country's laws into compliance with the Refugee Convention and Protocol.⁴ The United States has also played a leading role in the resettlement of refugees. This country has brought over 2.6 million refugees to safety here in the last thirty years, and the U.S. resettlement program serves as a unique and effective model to the rest of the world.⁵

The Impact on Asylum Seekers: An Overview

We are finding that a Christian member of the ethnic Chin minority in Burma, who clearly has a well-founded fear of being persecuted by one of the more repressive governments in the world, one that the United States Government views as illegitimate, is ineligible to avail herself of asylum in the United States despite posing no threat to the security of this country [I]t is difficult to conclude that this is what Congress intended.

- *U.S. Board of Immigration Appeals, concurring opinion concluding that statutory language bars refugee from asylum*

Here in the United States, the Department of Homeland Security has put an indefinite hold on the cases of at least 565 asylum seekers because the cases involve the issue of material support. These asylum seekers come from countries where violent groups or repressive regimes terrorize religious and ethnic minorities and other civilians – places like Burma, Colombia, Nepal, and Sri Lanka. Some of these cases have been on hold for several years, and still no timeline exists for the creation of a process for these asylum seekers to request an exemption or “waiver” of the material support bar.⁶ Also on hold are about 700 requests for permanent residency filed by refugees who have previously been granted asylum or refugee status in this country.⁷

Other refugees have already been denied asylum by U.S. immigration courts. These courts have, for instance, denied asylum to:

- An elementary school teacher from Burma who helped feed and house pro-democracy speakers affiliated with an armed group that opposes the Burmese military regime; and
- A farm manager from Colombia who handed over extortion payments to armed terrorists who surrounded the farm with

armed men each time they came to collect the payments.⁸

There is no statistical information revealing how many asylum seekers have already had their claims for protection denied by the immigration courts as a result of the material support bar, or how many asylum cases are currently pending that may be affected by the bar. In fact, the Department of Justice Executive Office for Immigration Review (EOIR), which includes both the immigration courts and the Board of Immigration Appeals (the entity that reviews the decisions of immigration judges), does not track in its database the number of asylum denials that have been made based on this bar to asylum.

On June 8, 2006, the Board of Immigration Appeals issued a “precedent” decision that will guide the determinations of immigration judges in the cases of other refugees affected by the material support bar. The Board ruled that a Baptist woman from Burma’s Chin ethnic minority was barred from asylum because donations she made to the Chin National Front (CNF) constituted “material support” to a “terrorist organization.” The CNF, which has used arms to oppose the Burmese military regime, has not been designated as a terrorist organization by the Department of State; in fact both the president and the Department of State have repeatedly condemned the Burmese regime and its treatment of pro-democracy activists, religious groups and ethnic minorities. The Board did not disagree with the immigration court’s conclusion that the woman was credible and had a well-founded fear of persecution in Burma.

The Board did note that the Secretary of the Department of Homeland Security had the authority to exempt the woman from the bar. However, Department officials have repeatedly advised, in response to many inquiries, that the department has not yet set up a waiver procedure for asylum applicants.

Refugees who are denied asylum risk being sent back to face persecution in violation of this

country's commitments under the 1951 Refugee Convention and its Protocol. Even though the immigration courts have ruled that the deportation of some of these refugees should be deferred because they could face torture, a denial of asylum leaves a refugee at risk of deportation to other countries that could deliver them back into the arms of their persecutors. An asylum denial also leaves a refugee family divided because it prevents a refugee from bringing his or her spouse and children to safety in the United States as "derivative asylees."

The Department of Homeland Security's delay in resolving this issue has left some asylum seekers to facing lengthy detentions in U.S. immigration jails. Five of the refugees profiled in this report were detained by the Department of Homeland Security for seven months or longer. The Burmese Chin woman (mentioned above) was detained for two years in an immigration jail in El Paso, Texas. Like other detained asylum seekers, she was treated like a criminal; she had to wear a prison uniform, was held in a large cell area with many other women, and used showers and toilets that lacked real privacy. She told a Human Rights First staff attorney, who traveled to El Paso to meet with her in May 2006, how it felt to be handcuffed and jailed after she arrived in this country: "I felt so sad. I will never forget that." The woman was finally released from immigration detention in August 2006.

Several other Burmese Chin refugees were detained by the Department of Homeland Security for about seven months. A Sri Lankan fisherman, who was terrorized by the LTTE (Liberation Tigers of Tamil Eelam commonly known as the Tamil Tigers), has been detained now for over a year and a half in another U.S. immigration jail.

The complications caused by the material support bar have also prolonged the separation of refugee families, in some cases for several years. This delay has left the spouses and children of some of these refugees stranded for long periods of time in vulnerable or dangerous situations abroad. For

example, the wife of a Burmese missionary worker (please see Refugee profiles at the end of this report) and the wife and young children of the Burmese teacher are living in danger and fear in Burma while this issue awaits resolution in the United States.

Victims of Coercion by Terrorists and Other Violent Groups

Denying refugees admission to the United States because they were physically forced against their will to assist a terrorist organization, or because they provided inconsequential support to organizations which oppose particularly repressive regimes, is not only undermining the international leadership of the United States in the field of human rights, it is endangering the lives of innocent refugees who have fled terror or repression.

- U.S. Commission on International Religious Freedom, Annual Report, May 2006

In enacting the material support bar, Congress intended to deny asylum and other immigration relief to people who made a real choice to assist those who engage in terrorist activity. But the Department of Homeland Security and the Department of Justice have argued that there is no requirement that the support provided by a refugee be voluntary. In the cases of individual asylum seekers, the DHS Bureau of Immigration and Customs Enforcement (ICE) and the DOJ Office of Immigration Litigation (OIL) have argued that the material support bar should be applied to refugees who were coerced into providing support to armed groups.

For example, OIL took the position in the case of one Colombian asylum seeker that "there is no element of voluntariness in the definition of material support" and argued that if Congress had wanted to make an exception for involuntary support, it could have explicitly done so. In another case, DHS (ICE) argued that a Nepalese medical worker, who was kidnapped by Maoist rebels and forced at gunpoint to treat injured rebels, was ineligible for asylum, taking the position that by

providing medical treatment, even though he was under threat of summary execution if he refused, the medical worker had provided material support to a terrorist organization.⁹

In another case, involving a Sri Lankan fisherman who paid ransom money to his terrorist kidnappers, DHS (ICE) also took the position that “there is no duress exception to the material support definition.” DHS argued, “had Congress intended to include a duress exception to the material support definition, it could have done so,” and also asserted “any attempt to create such a duress exception would violate congressional intent.”¹⁰

The immigration judge in that case had recognized that the fisherman paid the LTTE (a designated terrorist organization renowned for its ruthless killing of civilians) under coercion. But the Department of Homeland Security argued – and the immigration judge agreed – that the coercion was legally irrelevant because the material support provisions of the law do not explicitly say that there is an exception for duress or coercion. That ruling has been appealed to the Board of Immigration Appeals. Human Rights First submitted a friend of the court brief in this case to address the reasons why duress is indeed an implicit defense to this bar.¹¹

The failure to recognize a duress exception has also adversely affected refugees seeking resettlement in the United States. For example, the refugee resettlement case of a Liberian woman who was gang-raped and held hostage by a violent rebel group (the Liberians United for Reconciliation and Democracy (LURD)) has been placed on indefinite hold based on the determination by DHS that the cooking and washing the rebels forced her to perform constituted “material support” to the rebel group.¹²

The Refugee Council USA, an umbrella organization that includes the country’s leading resettlement organizations, recently reported that the dramatic reduction in the resettlement of Colombian refugees is due almost entirely to the

material support bar. The U.N. High Commissioner for Refugees has reported that at least 70 percent of the refugees who would otherwise be eligible for resettlement in the United States have been coerced to make contributions to terrorist organizations. Those who refuse to make these payments are subjected to harassment, kidnapping and murder.¹³

A fact-finding mission, conducted by Georgetown University Law Center’s Human Rights Institute, has documented the cases of many Colombian refugees who had provided support under duress. In one case, a woman and her husband had repeatedly refused to pay the Revolutionary Armed Forces of Colombia (FARC). They finally yielded to the pressure, but members of the FARC killed the husband because he made the payment late. In another case, a father was forced to pay a ransom to save the life of his six-year-old son. The child had been kidnapped by paramilitaries in retaliation for his mother’s effort to press charges against paramilitaries who had raped her. Yet another case involved a mother who did not dare refuse 14 heavily-armed FARC guerrillas who demanded food when they descended on her farm one night when she was home alone with her children.¹⁴

Victims of Repressive Regimes

It is anathema to U.S. jurisprudence and tradition, as well as to our treaty obligations with regard to the protection of refugees, that groups of persecuted religious and/or ethnic minorities who have banded together to defend themselves against gross and systematic torture, rape, and execution be labeled “terrorist organizations,” and that those who resist their oppressors be barred from seeking asylum.

- *Christian Legal Society and Jubilee Campaign, amici curiae brief in the asylum case of the Baptist Woman from Burma*¹⁵

The overly broad immigration law definitions relating to material support have led many armed groups that are not actually viewed as terrorist organizations to be characterized as terrorist organizations for purposes of this immigration bar. Ironically, these groups include many that have promoted democracy, protected religious or ethnic minorities from persecution, or supported the U.S. government. For instance, because of the material support bar, the resettlement of over 300 Cubans, who assisted anti-Castro forces that were trained by the United States, have been put on hold – as have been the cases of a group of Vietnamese Montagnards who fought alongside U.S. forces during the Vietnam war.¹⁶

Refugees who supported groups like these are now being denied asylum in the United States, even though they present no danger to U.S. security. As noted above, the U.S. Board of Immigration Appeals, in a June 2006 decision, denied asylum to a Burmese woman because of her support to an armed group that opposes the Burmese military regime. In that precedent-setting decision (known as *Matter of S-K-*), the Board concluded that there was no exception for groups that use justifiable force to repel attacks by illegitimate forces or regimes.¹⁷

In that case, the Department of Homeland Security took the position that even an individual who assisted the Northern Alliance in Afghanistan

against the Taliban in the 1990s would be considered to have provided material assistance to a terrorist organization and be barred from asylum – even though the United States supported the Northern Alliance in its struggle against a regime that this country viewed as illegitimate.¹⁸

In the wake of the June 2006 decision in *Matter of S-K-*, the Board has begun to deny asylum to other refugees under the material support bar. For instance, relying on that decision, the Board denied asylum to an elementary school teacher from Burma who had allowed representatives of the Chin National Front (CNF) to speak about democracy. The teacher and other villagers gave the speakers food, and the men stayed at the school for two nights. The Burmese military authorities retaliated quickly. They burned down the teacher's home and chastised him for his belief in democracy. They beat him so severely that he fell unconscious, jailed him for two years and later sent him to a forced labor camp.¹⁹

The Board recognized that the CNF had used violence primarily to defend itself and the Chin ethnic minority against a regime that had systematically persecuted Chin Christians and other Burmese minorities, but concluded that “the statute that we are required to apply mandates that we find the respondent ineligible for asylum.”²⁰

The Impact on Refugee Resettlement

[T]housands of people whose lives are at risk for standing up for freedom will this year be denied help because of a Kafkaesque interpretation of who is deemed a terrorist.

- *George Rupp, International Rescue Committee, which has resettled nearly a half million refugees since World War II*

Thousands of refugees remain at risk due to these immigration definitions, often living in difficult or dangerous situations abroad and urgently in need of resettlement so they can be brought to safety. Among these are refugees who are members of

ethnic and religious minorities who fled Burma but remain stranded in Thailand and Malaysia, where some are at risk of deportation back to danger in Burma. Many Colombian refugees remain at risk in Ecuador, where some continue to be targeted by the very same armed groups they fled. Also affected are refugees from Cuba and Vietnam, as well as victims of rape and kidnapping from Liberia, Sierra Leone, Sudan, and Somalia.

The material support provisions have had a devastating impact on the U.S. resettlement program – and on the lives of the refugees who look to the United States for protection. Despite the president’s target of resettling 70,000 refugees in fiscal year 2006, only 31,912 refugees were brought to safety during this year. These low arrivals – and the even lower arrivals expected for next year – are primarily the result of the increased application of the material support bar. The Refugee Council USA has recently documented the impact of this bar on the U.S. resettlement program - noting that the delay in resolving the material support issue has “nearly shut down” the U.S. refugee admissions program for Colombian refugees and has “resulted in substantial processing delays and a 20 percent rejection rate for thousands of Burmese Karen refugees in Thailand.”²¹

The Bureaucratic Nightmare

The prospect of undergoing a convoluted interagency process in dealing with successive refugee groups to garner a waiver for each one would severely hamper the rescue of thousands.

- Richard Parkins, Chair, Refugee Council USA and Director, Episcopal Migration Ministries, June 2006 Statement on Refugee Admissions

This country’s refugee protection obligations are entrusted to several different arms of the U.S. government: the Department of State, the Department of Homeland Security and the Department of Justice. While the Department of State has taken the lead in trying to navigate the

material support issue for resettled refugees, the Department of Homeland Security must approve refugees for resettlement.

For asylum seekers, an alphabet soup of different agencies and entities are involved. Within DHS, the USCIS (U.S. Citizenship and Immigration Services) Asylum Office oversees affirmative asylum cases and ICE (Immigration and Customs Enforcement) litigates asylum cases before the immigration courts. At DOJ, asylum cases are decided by immigration courts and by the Board of Immigration Appeals (BIA), which are both part of EOIR (the Executive Office for Immigration Review), while OIL (the Office for Immigration Litigation) litigates individual asylum cases before the U.S. federal courts.

Despite scores of meetings both within the government and between various arms of the government and refugee assistance organizations, little progress has been made administratively in addressing the impact of the material support bar on refugees and asylum seekers.

The law gives the U.S. Department of State and the Department of Homeland Security the ability to exempt some refugees from this bar. However, the law makes clear that this “waiver” authority does not cover all the categories of refugees unfairly victimized by the bar. For example, Montagnard refugees who fought alongside U.S. troops during the war in Vietnam, like other refugees who are members of or actually fought with an armed group, cannot be exempted from the bar.

The failure of the various agencies to effectively use their authority to exempt refugees from the bar underscores just how ineffective a “waiver” process would be as a permanent solution to this problem. Exemptions require agreement by the Department of Homeland Security, the Department of Justice and the Department of State. In its 2006 annual report, the U.S. Commission on International Religious Freedom expressed its dissatisfaction at the delay: “After four years of placing refugee cases on indefinite hold... the Administration has

not yet developed any policy or taken any action on such waivers.”²²

In fact, it took nearly a year of meetings and inter-agency discussions before the Department of State was able to issue one waiver for the resettlement of one large group of Burmese refugees living at one particular camp in Thailand. The May 2006 waiver, which allowed for the resettlement of a subset of Karen refugees in one particular camp in Thailand, was extended in August 2006 to cover Karen refugees at other camps in Thailand. These waivers, however, still leave many vulnerable Karen refugees at risk.²³

Despite the exemptions initiated by the Department of State for the Karen refugees – with the approval of the Department of Homeland Security – no exemption process has been created yet for refugees in the United States who are seeking asylum. In fact, at a recent meeting, DHS advised that the waiver for Burmese Karen refugees had no impact on asylum cases. There is not even a timeline for the development of a waiver process for asylum seekers.²⁴ Instead, an on-going “dialogue” continues between the various bureaus and divisions within the Department of Homeland Security. This failure to take steps to ensure the protection of refugees appears to be yet another manifestation of the continued lack of coordination and commitment to refugee protection in areas that involve inter-bureau policy and DHS-wide asylum issues – a problem that was highlighted by the bipartisan U.S. Commission on International Religious Freedom in a major report issued over a year and a half ago.²⁵

While this bureaucratic struggle continues, refugees have been denied asylum by the immigration courts, detained in U.S. immigration jails in some cases, and separated from their families for prolonged periods. In its June 2006 decision denying asylum to the Baptist woman from Burma, the Board of Immigration Appeals assumed that she could be considered for a waiver. In fact, the Department of Homeland Security assured the Board, at oral argument, that

she could.²⁶ But nine months after DHS made that statement to the Board, the woman remains subject to a final order of deportation, and there has been no progress in setting up a process for her and other refugees like her to be considered for an exemption.

DHS should move immediately to set up a “waiver” process, prioritizing those whose cases are in deportation proceedings or otherwise urgent. DHS’s handling of this issue to date makes clear that a legislative change is needed to ensure that these refugees can have their requests for asylum decided in a fair procedure, with essential safeguards like the opportunity to appeal a mistaken decision. A permanent discretionary “waiver” process for such a large number of asylum cases would not only create a duplicative administrative process, but its lack of crucial safeguards would also put the lives of refugees in jeopardy.

Recommendations

The United States should bring its laws and administrative procedures into line with the Refugee Convention and the U.S. tradition of extending protection to those who flee from persecution. Actions are needed by both the Congress and the administration.

Congress should clarify the overly broad immigration law definitions contained in the USA PATRIOT Act and the REAL ID Act to ensure that refugees who have fled oppression and terror - and who pose no threat to the security of the United States - can receive this country's protection. These limited and targeted corrections to the immigration statute would not alter criminal or other liability for those who intentionally and voluntarily provide material support to terrorist organizations.

In addition, and without further delay, the Department of Homeland Security, Department of Justice and Department of State should promptly implement a series of administrative measures, outlined below, to ensure that refugees who are victims of terrorism and oppression are not barred from asylum or resettlement in this country.

Specific recommendations for both Congress and the administration are listed below. None of these targeted reforms would undermine U.S. security. Indeed, U.S. law clearly bars from asylum – and would require the denial of asylum or resettlement to – anyone who is a threat to the security of the United States. In addition, U.S. law bars from asylum and other relief anyone who engages in terrorist activities, espouses terrorism, incites terrorism, receives military training from a designated terrorist organization, solicits others to join a designated terrorist organization, or associates with, joined, or represented a terrorist organization. Finally, anyone who has persecuted people or committed serious crimes is inadmissible and ineligible for asylum.²⁸

Congress

Congress should clarify immigration law definitions to:

- Provide that refugees who assist groups that would not meet the criteria for designation as foreign terrorist organizations or placement on the Terrorist Exclusion List and that do not present a threat to the security of the United States are not subject to the material support bar. This would ensure the protection of refugees who have supported groups that have resisted the Burmese and other repressive regimes, as well as refugees like the Montagnards, who fought along U.S. troops in Vietnam;
- Specify that only those who are a danger to the national security of the United States, its people or allies are barred; and
- Explicitly recognize that duress is a defense to the material support bar, if the Department of Homeland Security and Department of Justice should fail to recognize the defense implicit in the current statute.

The Administration

The administration should support the needed statutory changes and ensure that the Department of Homeland Security, the Department of Justice and the Department of State promptly take all steps necessary to implement the following recommendations:

Refugee Victims of Duress: The Department of Homeland Security and the Department of Justice should recognize that duress is indeed an implicit defense to the “material support” provisions of the immigration laws. This recognition will ensure that qualified refugees who are the victims of coercion can be granted asylum or resettled in the United States.

- The Departments of Homeland Security and Justice – which have opposed grants of asylum to refugees who have been victims of duress - should ensure that their current and future asylum litigation positions are consistent with this recognition.
- The Departments of Homeland Security and State should, based on this recognition, proceed with the resettlement of vulnerable refugees who have been victimized by terrorists and other violent groups. The Department of Homeland Security’s Asylum Office should proceed to adjudicate cases involving asylum seekers who have been the victims of duress.

Refugee Victims of Oppression: The Department of Homeland Security, the Department of Justice and the Department of State should take several steps to ensure that refugees who are the victims of repressive regimes are not wrongly denied asylum or resettlement in this country. Specifically, these departments should:

- Create a process for refugees seeking asylum or resettlement to receive exemptions from the “material support” provisions, using the existing authority in the Immigration and Nationality Act (INA), until these flawed provisions can be corrected in statute. For asylum seekers, this exemption process is most pressing for those who are in immigration court proceedings, detained or separated from their families.
- Recognize that the law does not bar people based on “de minimus” contributions.
- Release from detention asylum seekers affected by the bar, who pose no risk to security and have been found otherwise eligible for asylum and/or release on parole. Refugees should not be detained in U.S. immigration jails for many months or years because DHS has not yet set up a process for requesting and granting waivers.

Refugees Affected by the Material Support Bar

The following pages include profiles of refugees who have been denied asylum or have had their asylum cases left in limbo - put on an extended and indefinite “hold” - because of the material support provisions of the immigration laws.

The information below has been obtained from the refugees, from their attorneys, from decisions of U.S. immigration courts and from legal briefs filed in litigation by the Department of Homeland Security and Department of Justice. Human Rights First has provided some of these refugees with pro bono representation and filed amicus briefs in order to address the legal issues relating to material support in some of these cases. Given their fears for the safety of family members back home, and the danger that could face those mistakenly labeled as “terrorists,” these refugees have asked that their names be maintained in confidence. Several have consented to the use of their first names only.

Elementary School Teacher from Burma

An elementary school teacher from Burma, who was severely beaten and jailed for two years by the Burmese military regime, was denied asylum by U.S. immigration courts based on the material support provisions. While working at a primary school in Burma, the teacher was approached by three men who asked if they could speak about democracy at the school. The men, who wore plain clothes, were from the Chin National Front (CNF).

A believer in democracy and freedom, the teacher permitted these men to speak to his village about democracy. The men stayed at the school for two nights while they addressed the village, and the teacher and the other villagers gave the speakers food and refreshments.

The Burmese military regime retaliated quickly – burning down the teacher’s home, chastising him for his belief in democracy and beating him so severely

that he fell unconscious. The Burmese government imprisoned the teacher for two years in a local jail and later in a forced labor camp. The teacher was eventually able to escape from Burma and he sought refuge in the United States. He was detained by DHS immigration officers when he requested asylum at a border entry post.

The Department of Homeland Security argued that, by feeding the three speakers and letting them sleep at the school, the teacher had provided material support to a terrorist organization. The CNF has never been designated as a terrorist organization by the U.S. government. In fact the president and Department of State have repeatedly condemned the Burmese regime’s disregard for democracy and mistreatment of religious minorities. But because the group has used arms against the Burmese regime, it is labeled as a “terrorist organization” under the immigration law.

The immigration judge agreed with DHS's interpretation of the law and found that the teacher was not eligible for asylum based on this bar. The immigration judge concluded that the teacher's "removal" should be deferred because of the risk that he would face torture in Burma. The Department of Justice Board of Immigration Appeals affirmed the immigration judge's decision to deny asylum. The Board wrote :

We recognize that the respondent is a Christian member of the ethnic Chin minority in Burma and that he clearly has a well-founded fear of being persecuted by one of the more repressive governments in the world, one that the United States government views as illegitimate It may be that Congress intended the material support bar to apply very broadly. However, when the bar is applied to cases such as this, it is difficult to conclude that this is what Congress truly intended.

The asylum denial has now been appealed to a federal court. DHS detained the teacher in an immigration jail for seven months before finally releasing him. DHS has not created a process for asylum seekers to request an exemption from this bar. Meanwhile, the teacher's wife and two young children remain in danger in Burma.

Nurse from Colombia

A nurse from Colombia, who was kidnapped and assaulted by terrorists, had her asylum request rejected in the United States based on the material support provisions. In Colombia, the nurse was kidnapped and physically assaulted by communist terrorist guerrillas calling themselves the Revolutionary Armed Forces of Colombia (FARC). The FARC has been designated as a terrorist organization by the Department of State.

The FARC threatened the nurse's life and threatened the lives of her family members. The FARC kidnapped the nurse and forced her, often at gunpoint, to give medical treatment to their members. The Department of State has confirmed that the FARC is responsible for "attacks and threats, killing, kidnapping, [and] extorting."

The nurse could no longer live safely in Colombia because of the kidnappings, assaults and threats to her life. Seeking refuge, she fled with her young daughter to the United States. She filed a request for asylum with the U.S. government.

The Department of Homeland Security rejected her claim for asylum, stating that she "had provided material support to those who engage in terrorist activity." The Department then initiated deportation proceedings against the nurse. Her request for asylum is now pending before the U.S. immigration courts. Deportation back to Colombia could literally be a death sentence for this woman and her twelve-year-old daughter.

Journalist from Nepal

A journalist from Nepal, who was beaten and forced to turn over money to violent Maoist rebels, has had his asylum case impacted by the material support bar. The journalist worked in Nepal for an English-language newspaper and served on the newspaper's editorial board. In that capacity, he wrote editorials that were critical of human rights violations by the notorious Maoist rebels. The Maoists have been placed on the official terrorist exclusion list by the Department of State.

The Maoists began threatening the journalist daily. He received threats after each new edition of the newspaper came out. The Maoists threatened to torture, maim or kill him if he did not stop writing pieces that were critical of their conduct. The Maoists also threatened his parents.

While the journalist was visiting his parents, a group of Maoists barged into the family's home and ordered the family to feed them. When the Maoists learned that he was the journalist who had written the editorials criticizing them, the Maoists beat him. Next, the Maoists began to follow him and they demanded that he give them money.

The journalist was finally able to flee Nepal and come to the United States. Not only is the Nepali government unable to protect people from the Maoists, but the journalist had also been threatened by the government after he had written editorials criticizing the government.

The journalist applied for asylum in the United States but his asylum request has not been granted. Asylum cases like his, that involve payments made to violent groups, have been put on an extended administrative hold at the Department of Homeland Security

Missionary Worker from Burma

A Christian Chin missionary worker, who was arrested, beaten and jailed by the Burmese military regime, has been denied asylum by U.S. immigration courts based on the material support provisions.

In Burma, the worker was arrested, beaten and jailed for three days by the Burmese military intelligence service after he returned from a trip to India, where he had attended Bible college. He then worked for a Christian missionary as an interpreter, caring for children and giving them Christian religious instruction. The Burmese government accused the missionary of trying to convert children to Christianity and ordered that the mission's orphanage be closed.

The missionary worker was warned that he would be arrested because of his work at the mission orphanage, because he attempted to convert children to Christianity and because he gave a pair of binoculars to the Chin National Front (CNF). Fearing for his safety and freedom, the missionary worker fled the country and sought asylum in the United States. He was detained by DHS immigration officers when he requested asylum at a U.S. border post.

At his asylum hearing, the Department of Homeland Security argued that the missionary worker had provided material support to a terrorist organization by donating the binoculars as well as some money. The CNF has not been designated as a terrorist organization, but has used force against the Burmese military. The immigration court ruled that the worker was barred from asylum, finding that it was forced to construe the law to cover even a minimal contribution. The immigration judge recognized that the worker would be in danger of torture in Burma, so he ordered that the worker's deportation be deferred. The Board of Immigration Appeals, in a September 14, 2006 decision, upheld the decision to bar the refugee from asylum under the material support provisions.

The asylum denial will now be appealed to a federal court. The DHS detained the worker in an immigration jail for about seven months before finally

releasing him. Meanwhile, the missionary worker's wife cannot be brought to safety in the United States as an asylee. And unless asylum is granted, the worker remains at risk of being deported to other countries which could send him back to danger in Burma.

Fisherman from Sri Lanka

A Sri Lankan fisherman, who was a victim of kidnapping by terrorists, has been denied asylum by a U.S. immigration court. The fisherman was targeted by the Liberation Tigers of Tamil Eelam (LTTE), which has been designated as a terrorist organization by the Department of State. This group is commonly known as the "Tamil Tigers."

In late 2004, LTTE members, one of them carrying a large gun, came to the fisherman's home and demanded his boat. The fisherman refused. Three days later, the LTTE kidnapped him from the seashore. The LTTE members took the fisherman to their camp and detained him in a dark room until he agreed to pay 100,000 rupees for his own ransom. After being released, he handed over 50,000 of that sum, and was ordered to pay the remainder.

The fisherman feared that if he did not comply, the LTTE would come back, kidnap him again, detain him at their camp, and torture him. In fact, the Department of State has confirmed that the LTTE is notorious for committing human rights abuses, including arbitrary detention, torture, politically motivated killings, and disappearances. At the end of December 2004, the tsunami hit Sri Lanka, destroying the fisherman's boat, his house, and his livelihood. The fisherman was terrified that he would be killed by the LTTE because he would now be unable to pay them the remainder of his ransom.

The fisherman was afraid to seek protection from the government. The fisherman feared that the LTTE would kill him if he filed a complaint about their conduct. Moreover, the fisherman had been the victim of torture after a round-up of Tamil men by the

Sri Lankan army several years earlier. The Department of State reports confirm the use of torture and other abusive practices by the Sri Lankan government.

Given the danger he faced in Sri Lanka, the fisherman fled the country hoping to find safety in Canada or in the United States. When he arrived in this country, he was detained by U.S. immigration authorities. The fisherman has now been detained by the Department of Homeland Security in a U.S. immigration jail for over a year and a half. A U.S. immigration judge recognized that the fisherman assisted the LTTE under coercion, but ruled - and the Department of Homeland Security has argued - that the material support provisions do not provide an explicit exception for duress or coercion. The fisherman is currently awaiting a decision from the Board of Immigration Appeals.

Political Activist from Nepal

Binod, a political activist from Nepal who was brutally attacked by Maoist rebels, has had his asylum case adversely affected by the material support bar. In Nepal, Binod was a member of an active political party and even ran for local office at one point. He also became a trekking guide and started his own trekking business.

One day, while Binod was visiting his father's home, a group of about 50 Maoists surrounded the house. The Maoists have been officially placed on the terrorist exclusion list by the Department of State. Ten of the Maoists, five of whom had weapons, took Binod and his father inside the house. The leader of the group told Binod that they knew about his political party background and his trekking business. The leader demanded that Binod join their movement and also give them money.

Binod refused. He told them he was against the Maoists. The Maoists' leader ordered the others to tie Binod up and kill him. They hit him, punched him and beat him with their rifle butts. Binod bled, and thought he was going to die. He finally said he would do what they wanted to get them to stop. He gave them the money he had with him. The Maoists threatened that if he didn't give them more money in a month, they would kill him and his wife. A month later, the Maoists came looking for Binod again. Fearing they would be killed, Binod and his wife fled the country and sought refuge in the United States.

Binod applied for asylum in August 2002. His asylum officer interview went well, but his attorney was subsequently informed that the case was "on review" at DHS headquarters, as are the cases of other refugees who were forced to make payments to violent groups. Three years later, his case is still in this administrative limbo.

Victim of Terrorist Extortion from Colombia

A farmer was denied asylum and deported back to Colombia after coerced payments he made on behalf of the farm's owner were deemed to constitute "material support" to a terrorist organization. In Colombia, the FARC, a militant group that has been designated as a terrorist organization by the Department of State, routinely targets civilians for extortion and views those who refuse to pay as enemies.

The farmer was directed to hand over payments to the FARC – which surrounded the farm with armed men each time they came to collect the payments. At his asylum hearing, the farmer explained that the FARC would have harmed or killed him if he had refused to pay them.

The farmer later fled the country after paramilitaries began killing those who had been pressed into providing payments to the FARC. He applied for asylum in the United States and was represented pro bono by the Hebrew Immigrant Aid Society. The farmer was denied asylum by the immigration court and the Board of Immigration Appeals, and barred from all forms of refugee protection because the payments he made to the armed men who demanded them were deemed to constitute "material support" to FARC.

In this case, the Department of Justice's Office of Immigration Litigation (OIL) took the position that "there is no element of voluntariness in the definition of material support" and in addition, successfully argued to a federal court that the payments were made "voluntarily."

The farmer, who was detained in a U.S. immigration jail for one year, was deported back to danger in Colombia by the U.S. Department of Homeland Security.

Nepali Teenager Enslaved by Maoists

Nishesh, a Nepali teenager, who was kidnapped and brutally beaten by violent Maoists, has had his asylum case affected by the material support bar. In October 2001, the 18-year-old had recently graduated from high school and decided to go camping with some friends. A group of about 25 to 30 Maoists carrying large knives surrounded Nishesh and his friends. Nishesh was detained by the Maoists for several weeks.

The Maoists threatened to kill Nishesh and they beat him repeatedly. They locked him up and forced him to act as a porter. The captives were prevented from escaping by Maoists who were armed with guns. When the Maoists told Nishesh he would have to join their movement, he refused and told them he disagreed with them. The Maoists beat him again. They also forced their prisoners to undergo rifle training, though no bullets were used. One night Nishesh was able to escape with the help of his friends who distracted the Maoists.

The Maoists continued to look for Nishesh after he escaped, and they even blew up a pipe bomb outside his grandfather's home. Nishesh was able to escape to the United States and seek asylum. His file indicates that the asylum office was prepared to recommend that his asylum case be approved, but like other cases involving those who are the victims of violent groups, the case has been on an extended hold for "review" at the Department of Homeland Security's headquarters.

Student Activist from Bhutan

A student activist and survivor of torture, who was the victim of terrorist extortion, has had his asylum case put on an extended hold by the material support bar. In Bhutan, the student was active in a student organization that sought to advance equal rights for members of his ethnic and religious group. Because of these activities, the Bhutanese government arrested and tortured the student. Fearing that he would be arrested and harmed again, the student fled Bhutan. He continued his human rights advocacy while in exile in neighboring India and Nepal. He urged the release of political detainees in Bhutan, organized protests and worked with various organizations that assisted Bhutanese refugees.

But the student continued to face other danger. While in Nepal, he was the victim of extortion by Maoist rebels who targeted him and others who were working as teachers at a school. The Maoists made it clear that the student (now a teacher) would be terribly harmed if he did not pay. The Maoists publicly beat the school's principal, put black paint on her face and burned her car.

In search of safety and protection from being sent back to Bhutan, the student came to the United States and applied for asylum. The student's asylum case has not been granted, and has been sent to the Department of Homeland Security's headquarters for review, as have the cases of other refugees who were forced to make payments to armed groups.

Baptist Chin Woman from Burma

"Lam Kim,"²⁷ a Baptist Chin refugee, who supports democracy in Burma, has been denied asylum by U.S. immigration courts. In Burma, she had peacefully protested against the Burmese military regime. She wanted a democratically elected government and equal treatment for ethnic and religious minorities – of which she, as an ethnic Chin Christian, was a member.

After the Burmese military junta violently repressed the democracy protests, she made donations to an ethnic Chin political movement that includes an armed wing. The movement has not been designated as a terrorist group by the Department of State. In fact the United States has condemned the Burmese military regime and its treatment of ethnic and religious minorities. As President Bush said last November, "The people of Burma live in the darkness of tyranny; but the light of freedom shines in their hearts." He stressed that: "They want their liberty and, one day, they will have it."

Fearing persecution in Burma, Kim sought refuge in the United States. Like other asylum seekers who request protection at U.S. airports and borders, she

was handcuffed, given a prison uniform and jailed while her request for asylum was considered. The Department of Homeland Security argued that she was barred from asylum under the material support provisions of the immigration laws. In June 2006, the Department of Justice's Board of Immigration Appeals (which reviews decisions of immigration judges), ruled that the 46-year-old former teacher is barred from asylum under these provisions.

Neither the Board nor the Department of Homeland Security contest that Kim could be tortured if returned to Burma. In fact, they agree that she should not be deported because she could face torture in Burma. Rather, they contend that she is barred from asylum because her donations to the Chin movement constitute "material support" to a terrorist organization under the immigration provisions of the PATRIOT Act and REAL ID Acts.

Lam Kim was detained for two years by the Department of Homeland Security in a U.S. immigration jail in El Paso, Texas – and while she was finally released in late August 2006, the Department of Homeland Security has still not set up a process for exempting refugees like Lam Kim from these provisions. She has appealed the Board's ruling to a U.S. federal court.

Endnotes

* Letter to President George W. Bush, dated August 24, 2006, from the following faith-based communities and individuals: American Values, Becket Fund for Religious Liberty, Center for Religious Freedom, Freedom House, Christian Freedom International, Church World Service, Concerned Women for America, The Episcopal Church, Ethics and Public Policy Center, Hudson Institute, Institute on Religion and Democracy, Institute on Religion and Public Policy, International Christian Concern, Jesuit Conference USA, Jubilee Campaign USA, Leadership Council for Human Rights, Ministerial Alliance of Midland Texas, National Association of Evangelicals, National Council of Churches of Christ, North American Religious Liberty Association, Religious Action Center of Reform Judaism, Religious Freedom Coalition, Southern Baptist Ethics & Religious Liberty Commission, U.S. Conference of Catholic Bishops' Committee on Migration, United Methodist Church, We Care America, and World Evangelical Alliance, available at <http://www.refugeecouncilusa.org/ms-sgnltr-faithorgbush8-24-06.pdf> (accessed September 20, 2006).

¹ Letter to President George W. Bush, dated July 21, 2006, from the following organizations of the Jewish community: American Jewish Committee, Anti-Defamation League (ADL), B'nai B'rith International, Hebrew Immigrant Aid Society (HIAS), HIAS and Council Migration Service of Philadelphia, Jewish Community Action, Jewish Community Relations Council, Jewish Council for Public Affairs, Jewish Funds for Justice, Jewish Labor Committee, Metropolitan Council on Jewish Poverty, National Council of Jewish Women, UJA-Federation of New York, The Workmen's Circle/Arbeter Ring, available at <http://www.refugeecouncilusa.org/ms-ltr-jeucomm-7-21-06.pdf> (accessed September 20, 2006).

² Statement of Rep. Sensenbrenner, 151 Cong. Rec. H550 (Feb. 10, 2005).

³ U.N. Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (July 28, 1951); U.N. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 268 (October 4, 1967).

⁴ The United States acceded to the Refugee Protocol in 1968 and incorporated its provisions into domestic law through the Refugee Act of 1980. Pub. L. No. 96-212, 94 Stat 102 (1980). As the Supreme Court has confirmed, a primary purpose of Congress in passing the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987); see also *INS v. Stevic*, 467 U.S. 407, 416-24 (1984) (providing a history of the incorporation of the Refugee Convention standards into U.S. law through the Refugee Protocol and the Refugee Act of 1980).

⁵ Refugee Council USA, *U.S. Refugee Admission Program for Fiscal Year 2006 and 2007: the Impact of the Material Support Bar--Recommendations of Refugee Council USA* (hereinafter "RCUSA report"), p. 1.

⁶ USCIS Asylum Office Liaison Meeting, September 13, 2006 (these asylum cases include applicants from Colombia, Nepal, and India); USCIS meeting with Director Emilio T. Gonzalez on September 15, 2006; HRF interview with attorneys representing asylum seekers whose cases have been sent to USCIS headquarters for "review."

⁷ RCUSA report, p.17.

⁸ These two cases are profiled at the end of this report.

⁹ Information about this case is on file with Human Rights First.

¹⁰ Brief of Department of Homeland Security in *Matter of R-K-*, filed on August 17, 2006, pp. 2-3 (on file with Human Rights First).

¹¹ Amicus brief of Human Rights First in *Matter of R-K-*, filed on August 17, 2006, available at www.humanrightsfirst.org

¹² Georgetown University Law Center Human Rights Institute, *Unintended Consequences: Refugee Victims of the War on Terror* (May 2006), available at <http://sr.nellco.org/georgetown/cpr/papers/1/> (accessed September 20, 2006).

¹³ RCUSA report, p. 11.

¹⁴ *Id.* at pp. 22-25.

¹⁵ The Christian Legal Society is a non-denominational organization of attorneys, judges, law professors, and law students. The Jubilee Campaign is a non-governmental organization that promotes human rights and religious liberties for ethnic and religious minorities throughout the world. Together, these organizations submitted an amici brief in the case of an asylum-seeker from Burma who had contributed financially to a resistance movement struggling to protect the ethnic Chin minority from torture, rape, and murder. The brief is available at the website of Refugee Council USA, at <http://www.refugeecouncilusa.org/ms-burmamasan-brief.pdf#search=%22Jubilee%20Campaign%20Christian%20Legal%20Society%20Burma%22>

¹⁶ RCUSA report, p. 19-20.

¹⁷ *Matter of S-K-*, 23 I. & N. Dec. 936, 941, 948 (BIA 2006).

¹⁸ *Matter of S-K-*, 23 I. & N. Dec. at 948.

¹⁹ This asylum-seeker's application was denied by the immigration court on February 2, 2005, and that decision was affirmed by the Board of Immigration Appeals on June 19, 2006. The case is profiled at the end of this report.

²⁰ *Id.* (decision on file with Human Rights First).

²¹ RCUSA report, p. 1.

²² Annual Report of the U.S. Commission on International Religious Freedom (May 2006) (hereinafter "USCIRF report"), p. 68.

²³ RCUSA report, p. 16

²⁴ USCIS Asylum Office Liaison Meeting, September 13, 2006.

²⁵ USCIRF report at 63-65 & n.2.

²⁶ *Matter of S-K-*, 23 I. & N. Dec. 936.

²⁷ This refugee has asked that her real name not be revealed for fear of retaliation against her family back home, so this name is a pseudonym. The precedent-setting decision in her asylum case is known as the *Matter of S-K-*, (23 I. & N. Dec. 936.)

²⁸ INA § 208(b)(2)(A)

Appendix: Immigration Law Definitions Relating to Material Support Immigration and Nationality Act (INA) Section 212(a)(3)(B)

(B) Terrorist activities—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity,

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi));

or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible.

(ii) EXCEPTION—Subclause (VII) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this chapter, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist

activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED—As used in clause (i)(VI) and clause (iv), the term ‘terrorist organization’ means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

INA Section 212(d)(3)(B)

(d) *Temporary Admission of Nonimmigrants*

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 240.



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