

March 26, 2008

The Honorable Michael Chertoff  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Re: Continuing impact of “material support” and “terrorism” bars on refugees

Dear Secretary Chertoff:

As organizations committed to the protection of refugees, we are writing to express our urgent concern at the continuing failure of the Department of Homeland Security to implement its statutory authority to exempt individuals from bars to admission and refugee protection relating to “material support” and “terrorism,” as those terms are defined by the Immigration and Nationality Act (INA). The lack of effective implementation of the waiver authority delegated to you nearly three years ago, combined with extreme interpretations by DHS of the “terrorism”-related bars themselves, is creating problems for legitimate refugees in the United States that have now reached the point of crisis.

Despite repeated assurances over the course of the past year that a process would soon be implemented to grant waivers to applicants in removal proceedings, DHS is now indicating that it is unable to provide a timeframe for implementation. Meanwhile, DHS has begun to deny permanent residence to refugees previously granted protection. The passage last December of legislation broadening DHS’s statutory waiver authority led to reasonable expectations of progress in mitigating the impact of the “terrorism” bars on refugees and asylum seekers. Instead, DHS appears to be moving backwards.

Over the past month, an alarming number of refugees and asylees have received letters from DHS informing them that they have been denied permanent residence under various “terrorism”-related provisions of the INA. DHS is denying these refugees permanent residence (or, in some cases, family reunification) based on the same facts they themselves described in their applications for refugee or asylum status that were previously granted by the U.S. government. These cases are being denied without having been considered for an exercise of your waiver authority, authority which exists under the statute with respect to all of these cases but has yet to be implemented.

The refugees who have received these denial letters include:

Iraqi refugees and asylees who took part in failed attempts to overthrow Saddam Hussein in the 1990’s. These refugees have now received denials of permanent residence informing them, for example, that “the violent activities of the rebellious uprising against the Iraqi government in Basra City [in 1991] match those described” in the INA’s definition of terrorist activity.

Asylees from Afghanistan who in the 1980’s provided support to the various mujahidin groups that were then fighting the Soviet invasion--groups to which the U.S. government was itself

providing support in the hundreds of millions of dollars. These include a young man denied permanent residence because from the age of 12 until he fled to the United States 20 years ago at the age of 16, he carried supplies for the National Islamic Front of Afghanistan (NIFA). The NIFA no longer exists, and many of its former leaders hold high public office under the government of current President Hamid Karzai.

South Sudanese Christians resettled in the United States as refugees who had provided support to the Sudan People's Liberation Army (SPLA), which in 2005 entered into a peace agreement with the Sudanese government. After disclosing these facts in their refugee interviews, these refugees were resettled here by the U.S. government, under the same statute now being invoked to deny them permanent residence.

A refugee from Cuba denied permanent residence for having been a member of a "counter-revolutionary group" that plotted the overthrow of the Castro regime with "foreign aid" (a fact disclosed in the person's application for refugee status).

Numerous present and former members and associates of the Democratic Unionist Party (DUP), one of the two major democratic political opposition parties in Sudan and a partner in U.S. negotiation in the region. DHS is defining the DUP as a "Tier III" terrorist organization based on the fact that in the late 1980's the DUP joined the National Democratic Alliance (NDA), an umbrella coalition of forces—political and military—opposed to the regime of Omar Al-Bashir. This is a backwards reading of the statutory "Tier III" definition, and is being used against refugees who had merely exercised their rights of free speech and peaceful opposition to that regime.

The attached confidential appendix information provides additional details on these and other such cases recently denied. Please note that this list is merely illustrative of the range of factual and legal issues we are seeing and does not identify the total number of refugees affected.

These decisions are being made in an historical vacuum, often based on no more than an internet search for the name of the group. Moreover, denials are generally being issued with no prior warning to the applicant that the Department of Homeland Security perceives any problem with his or her case. This is particularly disturbing because in many of these cases the denials are simply not supported by the law or the facts. For example, in many cases DHS is invoking the same facts that were fully disclosed as part of the initial application for asylum or refugee status as the basis for denying permanent residence, even though the initial application had been approved under the same law currently in force. We are also seeing application of the INA's definition of a "non-designated" or "Tier III" "terrorist organization" to groups that have not existed in years, to groups that are no longer engaged in any use of violence, and to groups that were not engaged in the use of force at the time the applicant was connected to them. Other legally problematic denials include those where DHS is characterizing as "material support" what would be considered First Amendment protected activity under U.S. law, or is applying the "material support" bar to assistance that refugees provided under duress or as minors.

It has become clear that the ongoing wave of denials is the result of a deliberate decision to deny those cases for which authority to grant waivers exists under the statute but has not yet been

implemented by your office. We are deeply concerned that DHS is making refugees and asylees bear the consequences of DHS's failure to implement statutory waiver authority delegated to DHS since 2005, and just recently expanded, by Congress.

Those receiving these denial letters are vulnerable people who believed, when their applications for refugee protection were granted, that they had finally found security in this country. These refugees now feel that the life they have built for themselves here, and their whole understanding of the way this country operates, has been pulled out from under them. Many of them are unrepresented by counsel and are terrified to be receiving letters from the U.S. Department of Homeland Security out of the blue informing them that they are terrorists and that their applications for permanent residence have been denied with no possibility of appeal. While there is the possibility of filing a motion to reopen or reconsider, the denial letters do not inform applicants of that fact.

We urge that you:

Move forward on a more timely basis to authorize the issuance of waivers to persons subjected to coercion (or exploited in childhood) by "Tier I" and "Tier II" groups, or who had voluntary associations with "Tier III" groups that ought not to be barring them from admission;

Review the interpretations of the statute being applied in these cases, many of which should be granted without requiring any waiver (for example because the person's connection to the group did not constitute "material support" or because the group does not meet the statutory definition of a "terrorist organization");

Instruct all offices adjudicating these cases to cease denying them until DHS has implemented its statutory waiver authority—both the authority available to DHS since the passage of the REAL ID Act in 2005, and the additional authority enacted by the Consolidated Appropriations Act of 2008;

Direct USCIS to reopen those cases already denied, sua sponte and without requiring payment of the \$585 fee that would otherwise apply to a motion to reopen an asylee adjustment case, and to send all such applicants a letter informing them of this in terms intelligible to a layperson;

We also ask you again to make implementation of a waiver process for persons in removal proceedings a matter of priority for your agency.

Thank you for your attention to these urgent concerns.

Sincerely,

[signatory groups]

Sarnata Reynolds, Refugee Program Director  
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Joe Roberson, Director  
*Church World Service, Immigration & Refugee Program*

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Eleanor Acer, Director, Refugee Protection Program  
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*Migration and Refugee Services/U.S. Conference of Catholic Bishops*

Carolyn Makinson, Executive Director  
*Women's Commission for Refugee Women and Children*

Stephan Bauman, Senior Vice President, Programs  
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cc: (with redacted copy of case examples)

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