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The Material Support (and Related Bars) Problem: Punishing Refugee Victims of Terror

Problem

Since 2004 thousands of persecuted refugees in need of protection, who pose no threat to national security, are being denied access to asylum and resettlement in the United States due to the unintended consequences of the overly-broad application of the “material support to terrorist organizations” bar (and related bars) to admission (§101(a)(42) of the INA).

Examples of Refugees Currently Barred from Entering the U.S.

Pro-Democracy Freedom Fighters:

- Montagnard and Hmong refugees who fought alongside U.S. soldiers in the Vietnam War
- Cuban refugees supported by the United States who fought against Communism
- Burmese refugees who were members of pro-democracy movements

Victims of Terrorism Who Provided “Material Support” Under Duress:

- Colombian farmers who lived in rebel-controlled areas and who were forced to pay a “protection” tax under duress to avoid immediate death
- Liberian refugees who were kidnapped by rebels, tortured, and forced to perform household tasks for their kidnappers (i.e. provide “material support” to a “terrorist organization”)

Refugees and Asylum Seekers on Hold Due to Material Support and Related Bars

Refugees Overseas: There are currently thousands of refugees living in overseas camps and in urban slums that have been placed on hold by DHS and UNHCR until this problem is fixed. The nationalities of those groups affected include Burmese, Colombians, Montagnards, Hmong, Cubans, Liberians, Sierra Leons, Congolese, Eritrean, and Ethiopians.

Asylum Applicants in the United States: There are over 600 known asylum applicants that have been put on hold until this problem is resolved.

Refugee and Asylee Adjustment of Status Cases: There are over 4,000 refugee and asylee cases that have already been admitted to the United States but whose applications for green cards have been put on hold until this problem is resolved.

Family Reunification (1-730 Petitions) Cases: There are over 550 refugees and asylee cases that have already been granted admission into the United States but whose family reunification applications have been put on holds until this problem is resolved.



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Exercise of Discretionary Authority “Waivers”

The Secretary of State has only exercised the waiver for Burmese Karen, Karenni, and Chin and for Tibetan Mustangs and Cuban Alzados. In January 2007 the Secretary of Homeland Security issued waivers for these same groups to be applied in the domestic asylum context.

Problems with the Waiver

- Waiver authority applies only to a portion of refugees, resulting in split families
- Process increases protection problems for those who were excluded
- Process is bureaucratic, time-consuming, and resource intensive

U.S. Government Inter-Agency Work Group on “Material Support”

The NSC, DOJ, DHS, and the DOS recently introduced a legislative initiative to address this problem, yet it falls short in the following areas:

- Fails to address cases where refugees claim duress as the cause of their activities
- Exacerbates bureaucratic inertia by requiring “concurrence” rather than “consultation”
- Leaves applicants in limbo by failing to include timeline requirements
- Fails to resolve the inconsistency in treatment of overseas refugees and domestic asylees
- Raises due process concerns by allowing the government to rescind waivers without notice
- Prevents challenging waiver revocations, leaving asylum seekers without any legal recourse

Comprehensive Solution

Refugees and asylum seekers in need of protection and who pose no threat to the security of the U.S. should not be barred from entry on account of the “material support” and related grounds of inadmissibility. A legislative solution comprised of the following principles is needed:

- The political objectives of the organization should be considered
- The organization’s activities and conduct in pursuing its stated goals should be considered
- The actual provision of “material support” must be established
- Voluntariness and intent to provide support to terrorist activity must be established
- Refugee victims of terrorists and terrorist activity should not be barred entry
- All persons should continue to be subject to existing criminal and security bars