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Both international and U.S. law prohibit granting refugee status to anyone who is a terrorist or supports terrorist activity. A person is undeserving of refugee status if they pose a threat to national security. However, recent legislation expanded what constitutes terrorist activity. The USA PATRIOT Act of 2001 broadened the definition of terrorism by expanding the existing government list of terrorist organizations to any organization engaging in “terrorist activity.” “Terrorist activity” is defined under the law as the use of a weapon or “dangerous device” with the intent to endanger the safety of one or more individuals or to cause substantial damage to property, for any motive other than “mere personal monetary gain.” Thus any person providing material support to any organization that took up arms for any reason would be deemed inadmissible or deportable. The REAL ID Act of 2005 further expanded the definition of terrorist organization.

Congress allows the Administration to make exceptions for people who provided material support. The Secretary of State and Secretary of Homeland Security, after consultation with the Attorney General, currently have the authority to waive certain individuals or groups from the material support bar. However, the waivers were quickly recognized as an untenable solution, because they involve a lengthy bureaucratic process, require inter-agency approval, and only cover one specific ethnic group at a time. To date there have been waivers issued for some members of Burmese ethnic groups, Tibetan Mustangs, and Cuban Alzados. These waivers are supposed to be applied to asylum seekers as well, though the Administration has yet to do so. Likewise, the Administration announced that it will exercise its discretionary authority to permit consideration of those who provided “support” under duress, but only to undesignated “terrorist” groups (Tier III) and not to the well-known groups (Tier I, II). Still, thousands do not benefit from these waivers.

For more than two years refugee advocacy organizations have sought legislative and administrative solutions to this problem. On January 11, 2007 the Administration announced a legislative proposal and administrative policy changes to address the problem. While a positive step forward, these measures fall far short of the comprehensive approach required.

The policy changes include (1) an agreement that waivers would now apply not only to refugees – but also to asylum seekers and immigrants; (2) an extension of the waiver to additional Burmese groups, as well as to Tibetan Mustangs and Cuban Alzados, with a promise to expand the waiver to cover Montagnards and Hmong from Vietnam; (3) an *ad hoc* process by which waivers will be more expeditiously considered; and (4) exempting refugees and asylum seekers from the material support bar when the support was given under duress, so long as the “support” was not given to the most notorious terrorist organizations. While these changes mark the most significant progress to date on this issue, many refugees and asylum seekers will continue to be victimized by the material support bar if more is not done.