

February 28, 2006

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

Dear Judge Chertoff:

We write to urge you to resolve as quickly as possible an issue that threatens to thwart U.S. commitment to protection of vulnerable persons fleeing persecution and torture. Specifically, our concern is predicated on the applicability of the “material support” ground of exclusion under Section 212(a)(3)(b)(IV)(VI) of the Immigration and Nationality Act (INA), as amended by the PATRIOT and REAL ID Acts.

Although the PATRIOT Act was passed, over four and a half years ago and the REAL ID Act was passed nine months ago, regulations and guidelines implementing the “material support” provisions of these Acts have not been completed. Until this issue is resolved, many deserving refugees and applicants for asylum fleeing religious, ethnic, or other forms of persecution will be unfairly denied or postponed from achieving safe haven in the United States.

The “material support” provision of the INA is intended, quite rightly, to prevent supporters of terrorism from claiming refugee status or asylum in the U.S. However, it appears the Department of Homeland Security (DHS) is currently interpreting and applying the “material support” provision in an overbroad manner in refugee and asylum cases. Overseas, it appears that the current delay in issuing guidance on “material support” has resulted in the essential suspension of Colombian refugee resettlement to the U.S. The lack of guidelines has already resulted in the suspension of referrals of deserving Burmese refugees in Malaysia, is threatening to thwart this year's planned resettlement of Burmese refugees in Thailand, and may lead to the suspension of resettlement referrals to the U.S. from the United Nations High Commissioner for Refugees (UNHCR), our primary source of referrals for refugees from many regions around the world.

In addition to the delay in issuing guidance on “material support,” we are concerned that the material support provision may be applied by DHS to include any support, *even under duress or threat*, given to groups that fit a very broad definition of terrorism. This is especially problematic because the duress exerted by violent groups is one of the key factors creating refugee populations in many countries and it is a critical factor for many refugees and asylum applicants who qualify for protected status. Such application of the “material support” provision may prevent the admission of Colombian refugees who were victims of extortion by guerrilla groups engaged in terrorism. Moreover, UNHCR is now withholding referral of genuine Colombian refugees to the U.S. since they may possibly be branded as “terrorist supporters.” This withholding, in turn, makes other countries reluctant to accept them for resettlement.

In addition to duress and extortion situations, we are concerned that support to groups that are engaged in resistance against brutal, repressive regimes—even when the support is minimal—may bar a refugee from protection in the United States. This application of material support now threatens the resettlement of Burmese religious and ethnic minorities who in *any way* aided groups, whose members may have engaged in armed resistance to the repressive and illegitimate military junta that rules Burma, an entity that President Bush has repeatedly denounced. The UNHCR in Malaysia has decided to suspend referrals to the U.S. refugee program pending resolution of the material support issue, and may also do so in Thailand, where most Burmese refugees are located. This is particularly troubling given President Bush’s recent meeting with a Burmese ethnic Shan woman campaigning for human rights for Burmese minorities, after which the White House expressed the President’s interest in doing more to help the people of Burma.

Congress provided a solution to avoid this looming crisis. It gave the executive branch discretionary authority to determine that the “material support” bar should not apply in certain cases. The REAL ID Act reaffirmed the authority of the Secretary of Homeland Security and the Secretary of State (after consultation with one another and the Attorney General) to conclude that this ground of inadmissibility should not apply to a particular individual or to a group. It is now crucial for the executive branch to establish a process for exercising this authority, which thus far has not been done. That procedure should ensure that terrorists do not abuse refugee status or the asylum laws of the U.S. However, the procedure should also properly weigh situations in which individuals are acting under duress or are legitimately resisting illegitimate and tyrannical regimes,.

We thank you in advance for your attention to this issue. We know that your agency has been working on this issue for some time. Acting CIS Director Robert Devine discussed material support guidelines in the annual Refugee Program consultation with Members of Congress and Senators in September of 2005. At that time he indicated that guidelines should be forthcoming in the first part of 2006, yet nothing has been released. Please update us on this process immediately and inform us as to when the Congress can expect to review draft guidelines.

The worldwide struggle against terrorism has our fullest support, and we are fully cognizant of the challenges you face in protecting the United States. But the inappropriate application of the “material support” ground of exclusion threatens to undermine U.S. leadership in refugee protection and assistance. We therefore urge you to make this issue a higher priority within the Department so that appropriate guidance can be issued imminently.

Sincerely,

Christopher H. Smith
Co-Chair, House Refugee Caucus

Joe Pitts,
Member of Congress

Cc: Secretary of State Condoleezza Rice
Ellen Sauerbrey, Assistant Secretary, Bureau of Population, Refugees and
Migration, Department of State
Attorney General Alberto Gonzales
Peter Keisler, Civil Division's Assistant Attorney General
Stuart Baker, Assistant Secretary for Policy, Department of Homeland Security
Phil Perry, General Counsel, Department of Homeland Security
Mr. Eduardo Aguirre, Director, Bureau of Citizenship and Immigration Services,
(BCIS), Department of Homeland Security