

Refugees shut out by war on terrorism

Advocates say U.S. allies and those forced to help armed groups are not security risks and should not be denied asylum.

By Nicole Gaouette, Times Staff Writer
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WASHINGTON — The first time they came for her, the Colombian guerrillas shoved the 31-year-old nurse blindfolded into the back of a green Renault sedan. Her kidnapers took her to a house and forced her to treat one of their commandants, who was writhing in pain from a bullet wound to the leg.

The woman said she was abducted seven more times in 1997 and 1998 to give medical care to Revolutionary Armed Forces of Colombia members. They warned her not to go to the police. "I know you have a daughter," one man said, prodding her with a gun. In 2000, after her cousin was tortured and killed, she fled. Now she is in Northern California, working as a nurse and raising her daughter.

Today, her hopes of staying in the U.S. have run smack into the war on terrorism. The Department of Homeland Security rejected her asylum claim. Their reason: By giving the guerrillas medical care — willingly or not — she was supporting terrorism.

Laws passed after the attacks of Sept. 11, 2001, deny admission to anyone who has provided "material support" — money, food, clothing, advice — to terrorist groups. In the last few years, these provisions and the definition of terrorism have been expanded to the point that they are disqualifying people who even immigration judges agree pose no threat to the U.S.

Refugee advocates cite cases in which the administration has denied asylum to Liberian women forced to cook and clean for rebels who raped them and killed family members. Colombians who paid kidnapers' ransoms to free family members also have been barred for providing material support. So many refugee applicants have been blocked for this reason that last year the United Nations Refugee Agency stopped trying to settle Colombians in the U.S.

Critics of the government's policy, who are pushing for legislation next year to change the system, say that such disqualifications are a big reason why refugee admissions in fiscal 2006 fell to 41,277 from more than 50,000 in each of the two previous years.

The material-support clause has even snared American allies who fought alongside U.S. troops or at the United States' behest. Cubans who tried to overthrow Fidel Castro in the Bay of Pigs uprising are being denied entry, as are Montagnards and Hmong who fought alongside American troops in Vietnam.

About 2,300 former combatants who have been admitted to the U.S. are unable to apply for permanent legal resident status, a step toward citizenship, because they fear that immigration judges would have to deport them under the expanded definition of terrorism, said Cassandra Champion, director of communications for the Lutheran Immigration and Refugee Service.

The administration defines a terrorist organization as any group of two or more people, organized or not, that uses any device or weapon to cause injury to person or property. Motive is not a consideration, the person's frame of mind is not an issue, and no exceptions are made if someone, like the Colombian nurse, helped a designated terrorist group only at gunpoint.

"They knew about my daughter; they knew where my parents are; they can make you disappear, and there's nobody in my country who can help you," said the nurse, now 40, in a phone

interview. She asked that her name not be used because she feared for the safety of family in Colombia. "What would you do? I never did anything because I wanted to."

Unless she wins an appeal in court, she faces deportation.

Administration officials say they are trying to strike a balance between honoring the American tradition of welcoming asylum-seekers and refugees while managing the security risks of a world transformed by Sept. 11. That kind of transition takes time, they say.

"The president has said he wants to let refugees in," said Paul Rosenzweig, a senior policy advisor at the Homeland Security Department. "In the same vein, he's said he doesn't want to let dangerous people in. The conundrum is that this law applies to both, and the process of sorting them out is not as easy as waving a magic wand."

The government's policy has brought opposition from an unlikely alliance of conservatives, refugee advocates and constitutional experts, who say the Bush administration is clinging to the harshest possible interpretation of the laws.

Michael Horowitz, a former Reagan administration official and senior fellow at the conservative Hudson Institute, is critical of the administration's stance — particularly as it applies to "freedom fighters" and the broad definition of terrorism. He notes that, as written, it would apply to Jews who rose up against the Nazis in the Warsaw Ghetto.

"The administration is being undermined by this caricature of conservatism that is victimizing heroes," Horowitz said. "How does it advance national security when we're defining as terrorists people who fought on our side?"

Refugee advocates have been campaigning for change since the provisions were expanded by the Patriot Act in 2001 and the Real ID Act of 2005. Lately, there have been signs that change may be coming.

This month, the administration sent suggested revisions to Republican lawmakers, in the hope that they would be passed before the 109th Congress adjourned. That didn't happen, and now Homeland Security officials say they hope for legislation next year.

The administration's proposals would expand the use of government waivers that allow an otherwise banned group or person into the U.S. Only three such waivers have ever been issued.

Though the waivers can cover people who offered material support to so-called freedom fighters, they do not extend to the fighters themselves. The administration proposes to expand the waivers to include freedom fighters, but only if Homeland Security, the Justice Department and the State Department agree. The administration would be able to revoke the waiver at any time, for any reason.

Advocates say the government's unlimited ability to revoke a waiver means refugees entering the country that way could never feel entirely secure. "They're taking a bad problem and seemingly making it worse," said Melanie Nezer of the Hebrew Immigrant Aid Society.

Rosenzweig said the ability to revoke waivers was to ensure that the government could reverse course if someone did turn out to be a threat.

With Democrats at the helm in Congress, hearings on the topic are likely next year, according to Capitol Hill sources.

Staff for Rep. Joe Pitts (R-Pa.) say he will reintroduce legislation that immigrant advocates strongly support. His bill would amend the definition of terrorism to apply only to those who

threatened the interests of the U.S. or its allies.

"We recognize that there are some people who meet the definition who aren't in actuality a threat," said Rachel Brand, head of the Justice Department's legal policy office. "The answer to that is to waive them in, not change the definition.... Narrowing the definition would make it harder to exclude people who are actual threats."

Refugee advocates say Brand's worries are unfounded. "Refugees already go through so many security checks. They are fingerprinted, run through FBI databases ... they're a very tightly screened group," said Jana Mason of the International Rescue Committee.

The Pitts bill would also address cases like that of the Colombian nurse, making it clear that people coerced into helping terrorists would not be considered supporters of terrorism.

Administration officials say they can't be sure that refugees' tales of coercion are true. They add that accepting such a defense could weaken their terrorism prosecutions if defendants start arguing that they were forced to participate.

Rosenzweig also cited philosophical reasons for rejecting a duress defense. "We should encourage people to oppose terrorist organizations wherever they are," he said.

Refugee advocates say opposing terrorists is not so easy when a loved one has been kidnapped for ransom.

Said Horowitz: "Any one of us would hand over money if someone held a gun to our child's head."

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