

UNHCR News

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UNHCR News Stories



The United States government has exempted ethnic Karens in Thai refugee camps, such as Tham Hin (above), from legislation that would bar them from settling in America. © UNHCR/K.McKinsey

Anti-terrorism legislation delays entry of refugees to United States

WASHINGTON, D.C., United States, September 6 (UNHCR) – Are victims of terrorism being wrongly branded as supporters of it? It's a question that has appeared regularly in the United States media over recent months.

The Washington Post, The New York Times, The Miami Herald, National Public Radio and others have all run stories and editorials questioning aspects of an anti-terror law designed to keep members and supporters of terrorist organisations from entering the United States.

Critics say a series of legislation, culminating in the Real ID Act passed last year, broadens the definitions of terrorism and support for terrorism, while making no clear exception for legitimate armed struggle or for those who have been forced to support a group under duress.

Last year, four members of Myanmar's ethnic Chin community were denied asylum in the United States because of their support for a pro-democracy opposition group. The four, who are also Christian, claimed they had been persecuted for their religion and ethnicity. Three said they had been detained and tortured by the military.

Their asylum applications were rejected because each were deemed to have provided "material support" to the Chin National Front (CNF), an armed group which has not even been designated as a terrorist organisation by the US State Department.

The nature of that support ranged from allowing a CNF member to deliver a speech at a village gathering to providing regular donations to the group amounting to around US\$600 in total. The three torture victims were allowed to remain in the US under the Convention Against Torture. The fourth person, a middle-aged woman and former teacher, has remained in detention in Texas since she entered America from Mexico in 2004 and asked for asylum.

In its ruling on her subsequent appeal, the Board of Immigration Appeals (BIA) upheld the decision to deny her asylum on the grounds that she had provided material support to the CNF. The board's acting vice-chairman agreed that the former teacher had a well-founded fear of persecution if she returned to Myanmar and noted that she posed no threat to the national security of the United States.

The language of the material support statute, however, meant the BIA had no choice but to deny her application. In conclusion, the board member questioned whether this was the result the US Congress intended when it enacted the material support law.

"The law as currently written and interpreted, denied refugee protection to those who are clearly entitled to it under international standards," said Andrew Painter, senior protection officer with UNHCR in Washington. "This places the US at risk of violating its obligations under the refugee treaty that it signed and of returning bona fide refugees to persecution."

In a letter sent by UNHCR to the US administration in August, the refugee agency said the material support bar was forcing it to make adjustments to its resettlement operations. The clause has already resulted in the collapse of the US resettlement programme for Colombian refugees and also seen thousands of Myanmar refugees in Asia having their cases placed on hold.

When a refugee's resettlement application is put on hold for providing material support they are effectively branded as terrorists, potentially undermining both the availability of refugee protection in their first country of asylum and their chances of resettlement to another country. To avoid this, UNHCR wrote, the agency had decided "to refrain from finalising a submission of any group or population to the United States for resettlement that may be subject to a material support bar until the United States issues an effective waiver for them."

UNHCR said that in order "to re-establish a degree of predictability to our joint resettlement efforts," it wanted the United States to indicate in advance which proposed resettlement groups might be subject to a material support bar. Based on that information UNHCR could then "consider other protection alternatives, including referral to other resettlement countries where possible."

In May, one such waiver was issued for 9,500 Karen refugees from Myanmar currently living in a camp in Thailand. Its effectiveness is now being assessed.

Inside the El Paso immigration detention centre, the former school teacher remains hopeful. Later this year her asylum application will move to the Fifth Circuit Court of Appeals, one level below the US Supreme Court. The Department for Homeland Security has agreed she should come under the Convention Against Torture,

meaning she will not be sent back to Myanmar. But even if freed from detention, she could continue to be labelled a terrorist.

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In Washington, D.C., United States*