

# REFUGEE COUNCIL USA

3211 4<sup>TH</sup> Street, NE Washington, DC 20017-1194

Tel: 202-541-5402/04 Fax: 202-722-8737 [www.refugeecouncilusa.org](http://www.refugeecouncilusa.org)

## Material Support Backgrounder

### **Problem**

The U.S. government is denying protection to refugees and asylum seekers deserving of our protection. Under a relatively new policy, the “material support” to terrorists ground of inadmissibility is being applied to individuals who are refugees and asylees as defined by §101(a)(42) of the INA who are not terrorists and urgently require protection. Ironically, for many of these refugees, the very circumstances that form the basis of their refugee/asylum claim have been interpreted in a way that has made them ineligible for refugee or asylum status in the United States. For example, refugees and asylum seekers who are coerced or who have acted under duress are being denied protection by the U.S. government regardless of whether or not the payment to the alleged or known terrorist group was voluntary.

The delay in addressing this problem has nearly shut down the U.S. refugee admissions program for Colombians and threatens to do the same to the approximately 9,000 ethnic and religious minority refugees from Burma who are ready to begin the process for resettlement in the U.S. It is likely to have the same impact on other refugee populations. In addition, hundreds of asylum seekers with legitimate claims whose cases are complicated by material support issues are waiting for final decisions on their cases. In some cases immigration judges have been denying asylum applications on these grounds.

### **Background**

Both international and U.S. law prohibit granting refugee status to anyone who is a terrorist or supports terrorist activity. The underlying purpose of this bar is that this person is undeserving of protection and/or the individual seeking protection poses a threat to national security.

Recent legislation, including the USA PATRIOT Act<sup>1</sup> and the REAL ID Act of 2005<sup>2</sup>, contained provisions that expanded an already broad definition of terrorism and what constitutes terrorist activity. For example, the USA PATRIOT Act expanded the reach of the terrorism definition mainly by broadening the grounds of inadmissibility and deportability based on “material support” to terrorism to include support provided to organizations that were not designated as terrorist organizations under the immigration statute or through publication in the Federal Register, but were deemed to be “terrorist organizations” because they engaged in “terrorist activity” – a concept which includes any use of a weapon or “dangerous device” (or threat, attempt, or conspiracy to do the same) with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, for any motive other than “mere personal monetary gain.” Further, the REAL ID Act greatly expanded the definition of “non-designated” terrorist organization to include a “group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in “any form of “terrorist activity.”

---

<sup>1</sup> The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 [hereinafter the USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 412, 115 Stat. 272 (codified at INA § 236A(a)(3))].

<sup>2</sup> INA § 212(d)(3) as amended by the REAL ID Act, Pub. L. No. 109-13 § 103.

## **Who is being affected?**

The USA PATRIOT Act and the REAL ID Act were meant to protect America from genuine terrorist threats. They were not meant to exclude refugees and asylum seekers who have been victims of terrorism or oppressed by brutal regimes. However, the following groups of refugees have been denied protection because of the overly broad interpretation of the new terrorism definition:

- **Colombian refugees**, many of whom have been coerced under extreme duress to make payments to armed groups on the State Department's list of foreign terrorist organizations (FTOs). The United Self-Defense Forces of Colombia (AUC), the Revolutionary Armed Forces of Colombia (FARC), and the National Liberation Army (ELN) pervade nearly all aspects of Colombian life, and payments to these groups, often made under threat of torture or death to oneself or a loved one, are a necessity of survival for many Colombians. UNHCR estimates that at least 70 percent of the Colombian refugees that would otherwise be suitable for referral to the U.S. refugee program have been forced by the FARC or other designated FTO to pay "taxes" or other types of coerced payments.
- More recently, the "material support" bar to admissibility has been applied to **ethnic minority refugees and asylum seekers from Burma**, many of whom are fleeing religious persecution. These refugees have been denied protection because they have contributed to ethnic and religious organizations that may be associated with sub-groups that oppose the repressive Burmese authorities. While these parent groups and sub-groups are not designated by the State Department as FTOs, the activities of certain associated sub-groups that advocate the overthrow of the military rulers of Burma have been construed as "terrorist activity" as broadly interpreted from the INA definition modified by the REAL ID Act.

## **Solution**

Congress in fact created an exception to the material support ground of inadmissibility in the INA.

Recently, 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 the material support ground of inadmissibility "should not apply" to an alien who may otherwise fall under this ground of inadmissibility or to a group solely by virtue of having a subgroup engaged in terrorist activity. While lawyers for the three designated agencies have been meeting regularly, the government has not yet established a process for exercising this authority. As a result of this delay, more and more refugees and asylum seekers are being denied access to the safety of the U.S.

In order to solve this problem without changing existing law and to restore access to protection for legitimate refugees and asylum seekers, the Administration must 1) develop a legal interpretation of the "material support" ground of inadmissibility that is in line with a plain reading of the statute and excludes actions that are coerced or made under duress or could not constitute support because the contributions were one-off or irregular payments of little significance and 2) quickly establish a process—as statutorily authorized by INA §212(d)(3) as amended by the REAL ID Act<sup>3</sup>—for facilitating the admission of refugees and for granting asylum where the circumstances under which the alleged support provided is involuntary, inadvertent, or otherwise excusable.

---

<sup>3</sup> INA § 212(d)(3) as amended by the REAL ID Act, Pub. L. No. 109-13 § 104.