

REFUGEE COUNCIL USA

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Application and Implementation of “Material Support” Admissions Bar

PRINCIPLES

Problem: Hundreds of refugees in need of protection, and potentially thousands in the near future, are being denied access to asylum and resettlement in the United States due to the overly broad application of the “material support to terrorist organizations” bar to admission to the United States. This statutory bar has been interpreted to deny refugee protection, for example, to Burmese religious and ethnic minorities who provided support to groups that have resorted to armed opposition to the repressive military regime that has ruled Burma by decree since 1988. Colombian refugees who were victims of extortion by guerrilla groups are likewise being excluded from asylum or the hope of resettlement in the United States. Legislative and administrative action is needed to address this problem.

I. Application of Material Support Bar

Objectives

- ♦ Refugees in need of protection and who pose no threat to the U.S. are not barred from protection in this country on account of the “material support” ground of inadmissibility.
- ♦ In determining whether or not to apply the material support bar in an individual case, or to a group of cases, adjudicators consider all relevant factors.
- ♦ The intent of the law is reflected in the application of the law. The intent of the material support provision is to deny admission to any person who has knowingly and voluntarily supported terrorist activity and/or who otherwise poses a threat to the U.S.

Principles

1. Terrorist Organizations and Terrorist Activity: In determining whether an organization is a “terrorist organization” or has engaged in “terrorist activity,” decision-makers should consider all relevant factors regarding the group’s objectives, conduct and structure, as well as U.S. commitment to refugee protection.
 - ♦ Objectives: The political objectives of the organization should be considered, as well as the availability of peaceful avenues for change in the country.
 - ♦ Activities: The organization’s activities and conduct in pursuing its stated goals should be considered, most notably whether the organization has deliberately targeted or killed civilians or non-combatants.
 - ♦ U.S. Commitment to Refugee Protection: The U.S. has a strong tradition of providing protection to refugees through its asylum and resettlement programs and should continue vigorous protection through these programs. The official designation of a group of refugees for the US resettlement program should be considered.
2. Individual Application of Material Support Bar: Persons in need of and deserving of refugee protection should have access to refugee resettlement or asylum in the U.S. The material support bar should only be applied to persons who have provided meaningful and voluntary assistance to

a terrorist organization. Individual responsibility must be ascertained before denying refugee protection.

- ♦ *Nature of Support:* The actual provision of “material support” must be established. It should be shown that the person actually provided assistance and that the amount and nature of the assistance was significant. Small or one-time payments, of either money or goods, should generally not be considered material support.
- ♦ *Voluntariness and Intent:* Individual responsibility must be established. It must be shown that the individual intended to provide material support to a terrorist organization in furtherance of terrorist activity. The material support bar should not apply to those who acted under duress.
- ♦ *Refugee Claim:* Refugees should not be barred from protection for conduct that was the result of their being victimized by terrorist or government groups in their country of origin.
- ♦ *Application of Other Bars to Admission:* All persons seeking refugee protection in the U.S., either through the resettlement or asylum programs, would continue to be subject to existing bars to protection on criminal or security grounds.

II. Use of Waiver Authority: Operational Issues

Objectives

- ♦ The material support ground of inadmissibility is waived in appropriate cases, as envisioned by Congress.
- ♦ Exercise of the waiver is workable, taking into consideration the realities of resettlement processing overseas and asylum adjudications in the U.S.
- ♦ The waiver is applied consistently, to all eligible individuals, including refugees and asylum-seekers.

Principles

Group v. Individual Waiver: Where large numbers of similarly situated refugees are concerned, a group waiver (regarding a terrorist organization designation) should be preferred over individual waivers (regarding material support).

Delegation & Review: With regard to individual waivers, delegation of the waiver authority should take into account both efficiency and accountability concerns. In the resettlement context, which will potentially involve thousands of individuals, resettlement officers should have decision-making authority without DHS HQ review. HQ guidance should be available, with quality assurance checks occurring throughout. In the asylum context, where the numbers are fewer, delegation to asylum officers and DHS trial attorneys with HQ review may be more reasonable.

Consistency of Application: Any decision to waive a group’s designation as a terrorist organization should extend to all relevant immigration programs when determining a person’s admissibility under the material support bar, (e.g., eligibility for refugee resettlement, asylum, trafficking, adjustment of status and naturalization).

Duration of Waiver: Once exercised, the waiver should continue to apply in later proceedings, absent new information (e.g., applicable at time of adjustment of status and naturalization).

Scope of Waiver: Waiver of the material support bar would not preclude application of any other bars to admission that may apply.

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