

# HIAS POLICY RESOLUTION

## *Protecting Political Asylum in America*



Affording refugees the opportunity to seek safe haven in the United States has been a fundamental component of the American humanitarian tradition, international legal principles and HIAS' historic refugee policy grounded in the Jewish tradition of "redemption of the captive." HIAS has long supported political asylum as a key element of refugee protection, advocated for a just and compassionate policy and urged the government to devote sufficient resources to successfully fulfill this crucial undertaking. HIAS' commitment to these principles can also be seen in the thousands of asylum seekers from around the world who have been – and continue to be – advised, assisted and represented by HIAS attorneys and other professionals.

In 1996 the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was enacted containing numerous provisions that threaten the rights and safety of asylum seekers. These provisions include a harsh expedited removal system, arbitrary deadlines for filing asylum claims, and other limitations on asylum seekers' ability to obtain protection in the United States. Fleeing persecution, asylum seekers frequently arrive in the United States without proper documentation. Under IIRIRA these individuals - many of whom have suffered severe trauma in their home countries and are justifiably cautious and frightened when confronted by officials - may be denied entry if they fail to request asylum during an inspection that is conducted under pressured and adverse circumstances immediately after arrival at the port of entry. Those that overcome this initial hurdle must still establish their "credible fear" of persecution in an interview with an asylum adjudicator before they can present a full asylum case. Since this law was passed, HIAS has expressed grave concern that asylum seekers – including religious minorities, victims of gender violence, children and other vulnerable refugees – will be returned to their countries of persecution without having a meaningful opportunity to receive a fair hearing on their claims.

In addition to provisions of IIRIRA, several other U.S. government policies also undermine the protection of asylum seekers. Even after asylum seekers have proven their credible fear of persecution, inconsistent parole policies by Department of Homeland Security (DHS) districts across the country result in the detention of thousands of asylum seekers. Additionally, less restrictive

alternatives to detention are rarely provided for asylum seekers who are found not to be threats to society, but are denied parole. Furthermore, funding provided by Congress to create alternatives to detention programs has been used to create "intensive supervision" programs – including using electronic ankle bracelets – and appears to be resulting in alternatives to parole for otherwise eligible detainees instead of true alternative approaches for those who cannot be paroled.

In the wake of the terrorist attacks of September 11, immigration restrictionist activists and some Members of Congress have launched an aggressive campaign to discredit and undermine the U.S. asylum system. The restrictionists have focused on a handful of cases of terrorists who had applied for asylum even though in none of these cases was the terrorist granted asylum. The restrictionists' approach also ignores the successful Immigration and Naturalization Service reforms of 1995 that addressed the huge backlogs in asylum applications, the categorical disqualification from asylum of terrorists and other foreign nationals who would pose a danger to the United States, and the significant tightening of security reviews in the asylum process. Today, most asylum cases are resolved within five months, and cases that are not granted are immediately referred to the immigration courts for removal proceedings. HIAS is also troubled that legitimate policies designed to bar the admission of individuals who provide "material support" to terrorists are resulting in the denial of protection to bona fide asylees from Colombia, Burma and other countries who made these contributions under duress or have other justifiable explanations for the alleged "material support."

Since HIAS supports both effective immigration enforcement and generous and just refugee protection policies, HIAS strongly opposed efforts in 2004 and 2005 to restrict access to asylum in legislation purporting to enhance U.S. intelligence and other anti-terrorist capabilities. HIAS notes with deep concern that the REAL ID Act, enacted in May 2005, will make it more difficult for asylum seekers to find protection in the United States. One unexpectedly positive outcome of the REAL ID debate, however, was the inclusion of a provision to eliminate the arbitrary annual cap on the number of asylees who may adjust their status to that of a lawful permanent

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resident – a rule that had created an approximately 16 year wait for a greencard.

In February 2005 the United States Commission on International Religious Freedom (USCIRF) issued an important report evaluating DHS' expedited removal program as it relates to asylum seekers. Among the report's findings were criticisms of the implementation of expedited removal by immigration inspectors and immigration judges, improper detention conditions for asylum seekers, and unclear and inconsistent parole policies; all leading to the inappropriate treatment of asylum seekers. The report presented a series of recommendations to enhance the ability of DHS' headquarters officials, immigration inspectors, judges and detention managers to ensure that refugees seeking asylum in the United States receive fair treatment during their proceedings.

As part of a campaign to protect asylum seekers, HIAS has long supported legislation to limit the use of expedited removal to government declared bona fide immigration emergencies; identify categories of potential refugees who should be exempt from the expedited removal system; provide greater protection during the inspection and credible fear processes; enhance the availability of judicial review; clarify the credible fear standard and the right of the Attorney General to parole detained asylum seekers; and eliminate the one year filing deadline for asylum applications.

HIAS is concerned that the United States, contrary to its obligations under international law, has created a system that fails to provide an opportunity for individuals seeking asylum in this country to provide for their material needs while their cases are processed. In September 2001, the Global Consultation on International Refugee Protection concluded that best country practices include "allowing the asylum-seeker residing for some time in the country to obtain a temporary work permit," and "providing asylum-seekers with... financial assistance if their access to employment is restricted." All Western countries, other than the United States, permit asylum seekers to work while their cases are pending, receive public benefits, or both. The U.S. asylum system is flawed due to its lack of humanitarian concern for the needs of asylum seekers, its encouragement of asylum seekers to violate the law in order to provide basic support for themselves and their families, and its chilling effect in discouraging meritorious claims from being filed.

HIAS believes that all people who reach our shores should have access to a meaningful, humane and professional asylum system. Any reluctance on the part of the United States to offer safe

haven would be inconsistent with international law and sends a dangerous message to countries around the world that are likely to follow our lead and further diminish refugee protection. This unfortunate approach demonstrates that the tragic lessons of closed borders during the Holocaust have not been learned and directly contradicts a core national value in the encouragement of international human rights.

## RESOLUTIONS

HIAS affirms the value of political asylum as an essential form of refugee protection that is consistent with U.S. national security interests.

HIAS urges Congress at the earliest opportunity to enact legislation to enhance the protection of asylum seekers.

HIAS encourages the Administration and Congress and to take immediate steps to ensure that legitimate asylum seekers are not prevented from receiving protection through the "material support" provisions of law.

HIAS calls on DHS to give careful review to the USCIRF expedited removal study and to strongly consider their recommendations on expedited removal, detention and parole.

HIAS calls on DHS to expeditiously implement the provision in the REAL ID Act that eliminates the asylum adjustment cap to ensure that asylees can obtain lawful permanent residence status and move toward full integration into the United States as citizens.

HIAS recognizes that the international community has provided useful guidance on the conditions of reception for asylum seekers and urges the United States to consider developing more equitable deterrents to prevent abuse of the asylum system that focus on those few who file baseless claims rather than those in need of refuge from persecution.

HIAS will continue to support asylum seekers through direct legal services and other assistance so that they may find safety and freedom in the United States.

*Approved, HIAS Board of Directors, December 16, 2002; updated, HIAS Public Policy Committee, June 28, 2005.*