

April 20, 2010

Re: Eliminate the Arbitrary One-Year Bar to Asylum: Co-Sponsor the Restoring Protection to Victims of Persecution Act (H.R. 4800)

Dear Member of Congress,

We, the undersigned 87 faith-based, human rights, legal services and refugee assistance organizations and 81 individual asylum law practitioners, pro bono attorneys, law professors and other experts, urge you to support H.R. 4800, the Restoring Protection to Victims of Persecution Act. This bill would eliminate the one-year deadline for filing asylum applications, a technical requirement that has led to the denial, rejection, or delay of thousands of requests for asylum protection in the United States. Elimination of the deadline has already been included in other pieces of legislation, such as the CIR ASAP Act of 2009 (H.R. 4321); Refugee Protection Act of 2010 (S. 3113); and the Refugee Protection Act of 2001 (S. 1311), which received bipartisan support in the Senate.

Congress enacted the one-year deadline as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Deadline proponents were concerned at that time about the filing of fraudulent claims to delay deportation. However, in 1995 reforms had already been initiated by U.S. immigration authorities to address those concerns and to counter abuse and backlogs in the asylum system. Even though these reforms had a dramatic impact, IIRIRA was still passed with the filing deadline included.¹ That said, even key proponents of the deadline stressed that it was not intended to impede legitimate asylum seekers.² Thirteen years later, it is now clear that the deadline – ironically – has led the United States to deny asylum to *credible refugees* with well-founded fears of persecution irrespective of how compelling or meritorious their asylum claims are. Meanwhile, the immigration and asylum systems have many other mechanisms in place that are actually designed to counter attempted fraud.³

¹ After the 1995 INS reforms, official immigration statistics documented a sharp drop in asylum filings and an improved pace of adjudication – meaning that unsuccessful applicants were put into deportation proceedings much more quickly. Then-INS Commissioner Doris Meissner described the reforms as a “dramatic success” that had “fixed a broken system.” Five years later, the INS provided statistics confirming that the reforms were still working. William Branigin, *Year-Long Campaign Slashes New Claims by 57%*, WASH. POST, Jan. 5, 1996, at A2; *INS Announces Progress Five Years Into Asylum Reform*, 77 INTERPRETER RELEASES 186, Feb. 7, 2000.

² For example, Sen. Orrin Hatch assured that asylum protection would be “available for those with legitimate claims of asylum,” and that he was “committed to ensuring that those with legitimate claims of asylum are not returned to persecution, particularly for technical deficiencies.” 142 CONG. REC. S11840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).

³ Asylum applications and testimony are provided under penalty of perjury; applicants who provide false information can be prosecuted and permanently barred from receiving any immigration benefits in the future; original documents submitted as evidence regularly undergo forensic testing to help identify document fraud; and the Department of Homeland Security subjects asylum applicants, as it does all potential immigrants to the United States, to extensive security procedures, including FBI biometric (fingerprint) testing and identity checks through multiple intelligence databases.

The deadline has also added unnecessary inefficiencies into the asylum system. Credible refugees who could be granted asylum at the Asylum Office are shifted into the immigration courts, wasting scarce government resources. At both stages, investigating compliance with the filing deadline or eligibility for an exception is often time-consuming for adjudicators who are already notoriously overloaded – especially Immigration Judges⁴ – and diverts time away from evaluating the merits of the asylum case.

The deadline bars an applicant from asylum if she cannot demonstrate by “clear and convincing evidence” that her application was filed within one year of her arrival in the United States, absent a finding of “changed” or “extraordinary” circumstances that would excuse her delayed filing.⁵ Although Congress stressed that the statutory exceptions should guard against the exclusion of bona fide refugees, these exceptions have not prevented refugees with well-founded fears of persecution from being denied asylum or being ordered deported. In many cases, the exceptions have been applied narrowly or inconsistently with Congressional intent, failing to account for many understandable reasons why bona fide applicants would not file within one year. For example, adjudicators have denied exceptions to refugees who suffer from post-traumatic stress disorder (PTSD) and other psychological conditions that occur as a result of trauma, even though these conditions can make it very difficult for refugees to provide a detailed explanation of their past in an asylum application. Refugees with claims based on domestic or sexual abuse, sexual orientation, HIV+ status, rape, female genital mutilation, forced marriage or other highly personal situations may initially avoid applying for asylum out of fear of stigmatization, and/or because asylum may mean not only severing their ties with country, but also with family and community members. In addition, exceptions are not usually recognized when applicants did not know about asylum or about the filing deadline, or were unable to find affordable legal representation. In all of these cases, the filing deadline has denied asylum protection to legitimate refugees for reasons largely outside of their control and having nothing to do with the merits of their case.

Because of these shortfalls, the filing deadline has disastrous consequences for refugees, for example:

- **Burmese pro-democracy student activist denied asylum even though found credible.** A Burmese student fled to the United States after being jailed for several years for his pro-democracy activities. The student did not know anyone in the United States, did not speak English, and did not learn about asylum until several years later when he met other Burmese refugees who told him how to apply. The Immigration Judge found the student to be credible and to face a clear probability of persecution. However, the judge held that the student’s extreme isolation (from members of society who might have been able to advise him about the asylum

⁴ In 2008, immigration judges issued an average of 1014 decisions per judge, about four decisions per workday. AMERICAN BAR ASSOCIATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL PROCEEDINGS: EXECUTIVE SUMMARY ES-28 (2010), *available at* http://www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf.

⁵ Examples of changed and extraordinary circumstances can be found at 8 C.F.R. § 208.4(a)(4) – (5). Though these lists are not meant to be exhaustive – and plainly say so in the regulations themselves – many adjudicators will not recognize exceptions for situations not delineated therein.

process at an earlier point) did not constitute an exception to the filing deadline and denied asylum. Instead, the student was granted “withholding of removal,” a minimal form of protection which, among other acute disadvantages, will never allow him to become a lawful permanent resident or integrate fully in the United States.

- **Eritrean torture survivor denied asylum.** A young woman from Eritrea was forcibly conscripted into military service, where she was tortured for her Christian beliefs. She applied for asylum four months after arriving in the United States, but the asylum officer rejected her claim and put her into immigration court removal proceedings because she did not have a passport showing her date of entry. In court, the young woman provided three affidavits and documentary evidence to prove that she had been in the United States for less than a year before she filed her application. Though the judge told her that she fit the definition of a refugee, he denied asylum because she had not proved that she timely filed. After three years of adjudication, the judge granted the young woman withholding of removal.
- **Senegalese woman who fled forced marriage and FGM denied asylum and ordered deported.** A Senegalese woman was ordered by her parents to undergo female genital mutilation (FGM) and marry a man 40 years her senior. The woman refused and fled to the United States. For several years, she attempted – to no avail – to change her parents’ minds so she could safely return to Senegal. She finally applied for asylum four years after her arrival in the United States, after learning that her younger sister was forced to undergo FGM. The Immigration Judge found the woman credible and observed there was “a reasonable possibility” that she would be forced to undergo FGM in Senegal. Nevertheless, because of the one-year deadline, she was deemed ineligible for asylum. She was also deemed unable to meet the higher standard of proof applicable to withholding of removal claims. She therefore found herself ineligible for any protection at all, and was ordered deported.

Unwitting failures to comply with a mere technicality, as illustrated above, should not prevent credible refugees from receiving asylum and protection from persecution. An adjudicator should be able to evaluate the facts of each individual asylum case and conclude *based on the merits of the case*, whether the individual is a refugee. This is the foundation of our asylum system, and is consistent with our commitments under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which the United States acceded in 1968.

In order to ensure that refugees with well-founded fears of persecution are not denied asylum or returned to the hands of their persecutors on the basis of a technical procedural barrier, we urge you to cosponsor H.R. 4800, the Restoring Protection to Victims of Persecution Act.

Sincerely,

NATIONAL ORGANIZATIONS

1. American-Arab Anti-Discrimination Committee (ADC)
2. American Immigration Lawyers Association
3. American Jewish Committee
4. Amnesty International USA
5. Asian American Justice Center
6. Chaldean Federation of America
7. Church World Service, Immigration and Refugee Program
8. The Episcopal Church
9. Freedom Network (USA)
10. Global Lawyers and Physicians
11. Hebrew Immigrant Aid Society (HIAS)
12. Human Rights First
13. Human Rights Watch
14. Immigration Equality
15. International Rescue Committee
16. Jesuit Refugee Service/USA
17. Jewish Labor Committee
18. Jubilee Campaign USA
19. Kids in Need of Defense (KIND)
20. The Leadership Conference on Civil and Human Rights
21. Lutheran Immigration and Refugee Service (LIRS)
22. Migration and Refugee Services, United States Conference of Catholic Bishops

23. National Advocacy Center of the Sisters of the Good Shepherd
24. National Immigration Forum
25. NETWORK, A National Catholic Social Justice Lobby
26. Physicians for Human Rights
27. Presbyterian Church USA Office of Immigration Issues
28. Rabbis for Human Rights – North America
29. Refugee and Immigration Ministries of the Christian Church (Disciples of Christ)
30. The Sikh Coalition
31. South Asian Americans Leading Together (SAALT)
32. Union for Reform Judaism
33. Unitarian Universalist Association of Congregations
34. United Sikhs
35. Women of Reform Judaism
36. World Organization for Human Rights USA
37. World Relief

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69. Indo-American Center
70. National Immigrant Justice Center

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