

1/9/09: USCIRF Disappointed that DHS Action on Expedited Removal Process Falls Short

FOR IMMEDIATE RELEASE

January 9, 2009

Contact: Communications@uscirf.gov

(202) 523-3240, ext. 114

WASHINGTON -- The United States Commission on International Religious Freedom is seriously concerned that the Department of Homeland Security (DHS) has failed to properly implement many of the recommendations in the Commission's Congressionally-authorized Report on Asylum Seekers in Expedited Removal. Almost four years after the release of that report, the Commission received an official response from DHS to the Commission's findings and recommendations. However, in a letter to DHS released today, the Commission expressed disappointment that many of the actions taken by DHS fail to accurately follow the recommendations or adequately address the problems identified in the report.

In its report, the Commission identified serious flaws in the treatment of refugees and asylum seekers in the expedited removal process and made a series of recommendations to the Departments of Homeland Security and Justice. These recommendations would further the aims of both protecting U.S. borders and ensuring fair and humane treatment for bona fide asylum seekers—two goals of the 1996 Expedited Removal law. However, as found in the report, this policy, as implemented, has put asylum seekers at the risk of being returned to countries where they face persecution.

As explained in the letter responding to DHS below, the Commission is calling on DHS to fully implement the recommendations found in the report:

The Honorable Stewart Baker
Assistant Secretary for Policy
Department of Homeland Security
Washington, D.C. 20528

Dear Assistant Secretary Baker:

Thank you for the official response dated November 28, 2008 from the Department of Homeland Security to the findings and recommendations of the U.S. Commission on International Religious Freedom in our 2005 Report on Asylum Seekers in Expedited Removal ("USCIRF Report"). The USCIRF Report identified serious flaws in the treatment of refugees and asylum seekers in the expedited removal process. To address these flaws, the Commission proposed a series of specific concrete measures to the Department.

I appreciate your description of the actions the Department of Homeland Security has undertaken to implement some of the recommendations in the Report. Few of these actions, however, accurately follow the recommendations or adequately address the problems identified in the USCIRF Report. Consequently, many of the same problems exist in the expedited removal and detention systems today as existed in 2005 when USCIRF issued its report. With the passage of almost four years without adequate action on the part of DHS, we are concerned that due to these systemic flaws, bona fide asylum seekers continue to be at great risk of being returned to countries where they face persecution. There are four areas to which I would specifically like to draw your attention:

- The Special Advisor for Refugees and Asylum Seekers requires greater authority so that s/he can effectively address and coordinate inter-bureau issues relating to asylum;
- Asylum seekers should not continue to be housed in jail-like facilities that create serious risks of psychological harm and significantly impede an asylum seeker's ability to access services and information necessary to present his/her legal case;
- New parole policies are necessary to ensure that asylum seekers who pose no risk of flight or danger are not subject to unnecessary detention; and
- Greater oversight is necessary to ensure qualified asylum seekers are not deported due to improper processing;

The Special Advisor for Refugees and Asylum Seekers Requires Greater Authority

A key USCIRF recommendation was the creation of the position of a high-level refugee coordinator to address the lack of coordination among the DHS agencies that have responsibility for the Expedited Removal process. While we commend Secretary Chertoff for his appointment of a Senior Advisor for Refugee and Asylum Affairs in 2006 to coordinate department policy, the Commission remains concerned that the position does not have the status or resources, including necessary staff, to fully implement reforms and fulfill its responsibilities. Furthermore, the Commission was disappointed to learn that this position was tasked with handling broader immigration policy instead of focusing on refugee and asylum matters. The Commission continues to urge that the Senior Advisor be placed in a high-level position with the requisite staff needed to implement the reforms and coordination called for in the USCIRF Report.

Asylum Seekers should not continue to be housed in Jail-like Facilities

USCIRF also recommended that non-criminal asylum seekers be placed in "non-jail-like" facilities, such as the facility in Broward County, Florida. While we appreciate the new, performance-based standards of detention developed by the U.S. Immigration and Customs Enforcement (ICE) agency, we do not believe that these standards address our concerns or recommendations. These standards, which are not legally binding, rely on correctional standards, which are inappropriate to asylum seekers. Additionally, contrary to USCIRF recommendations, DHS's use of jails and jail-like facilities has increased in the past few years.

New Parole Policies are Necessary

The November 2007 promulgation of new parole criteria contradicts our recommendation that asylum seekers with a credible fear of persecution and who pose neither a flight nor security risk are released from detention. In contrast to our recommendation, the ICE Policy Directive requires that additional hurdles be met for the parole of asylum seekers with a credible fear of persecution and who pose no danger to society.

While USCIRF has credited ICE for its development of a uniform worksheet and review to gather information for parole decisions, we remain concerned that an asylum seeker who meets the original criteria (the credible fear standard, established identity, and who poses neither a security nor a flight risk) must now establish that there are medical reasons that warrant release, that (s)he is a juvenile or a government witness in a legal proceeding, or that release would be "in the public interest." The new ICE directive provides no definition or guidance of what constitutes "the public interest." USCIRF continues to recommend that the ICE Policy Directive initial criteria be implemented and the secondary eligibility criteria be withdrawn.

Greater oversight is Necessary to Ensure Qualified Asylum Seekers Aren't Deported Due to Improper Processing

USCIRF continues to urge the Department to allow asylum officers to grant asylum claims during the credible fear interview and establish more quality assurance procedures, including the videotaping of secondary interviews at all major points of entry. Further, the Commission continues to recommend the use of live testers (actors) who go through the process and report on whether procedures were followed.

In conclusion, allow me to emphasize that the Commission commends DHS on efforts that addressed recommendations articulated in the Report. USCIRF welcomes the efforts by the Department to expand the Legal Orientation Program and partnerships with service providers to ensure that asylum seekers have access to legal assistance during the credible fear stage of the asylum process. We encourage the Department to continue to expand these efforts. We have also welcomed the asylum training course developed by the Office of Civil Rights and Civil Liberties and encourage that this course be made mandatory at IGSAAs.

We look forward to continuing to work with you and the Department to address and implement USCIRF recommendations that have yet to be acted upon. Thank you for your consideration of our concerns.

Sincerely,

Felice D. Gaer

Chair

CC: Secretary Michael Chertoff

Acting Special Advisor for Refugee and Asylum Affairs Brandon Preloger