Eelam has provided support to a terrorist organisation. So too have the Salvadoran man who avoided execution by allowing FMLN rebels to use his kitchen (and giving them directions when required) and the Colombian businesswoman who provided foodstuffs and supplies from her shop in response to threats by the Revolutionary Armed Forces of Colombia (FARC). Her shop and her hotel were indeed later destroyed by the FARC despite her acceding to their demands. These three individuals were all deemed inadmissible.

In an effort to address the injustice of people being denied humanitarian protection despite posing no real threat to US national security – and in fact being victims of the same terrorist groups we judge as a threat – the INA permits the Secretary of State and the Secretary of Homeland Security to waive the terrorism-related inadmissibility grounds in certain circumstances. Since these waivers are solely discretionary, attempts to appeal Department of Homeland Security (DHS) decisions through the judicial system have been largely unsuccessful. In 2014 the vast majority of material support waivers issued – 816 in total – excused actions taken while the applicant was under duress or coercion. 652 of those waivers went to applicants for resettlement, only 14 to asylum seekers. With US immigration rhetoric so focused on vetting, screening and verifying migrants, it is perhaps unsurprising that where such waivers are granted it tends to be in the context of resettlement, before individuals enter the country.

In the event that the DHS declines to issue a material support waiver, the consequences may be much less acute for a pre-admission applicant who could be redirected for resettlement elsewhere. If an asylum seeker is denied a waiver after they are in the US, they cannot be granted legal admission even if their persecution claims are valid.

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1. www.state.gov/j/ct/rls/other/des/123085.htm
2. All actual cases, not fabricated for illustrative purposes.

Security practices and resettlement

A widely held misconception about the terrorist threat is particularly evident in refugee resettlement practices, where refugees are placed on a security continuum alongside transnational criminals and terrorists. Although refugee protection itself is inscribed in international law, refugee resettlement depends on the discretion of the resettlement country and since 9/11 the United States and major resettlement countries in Europe have increasingly deployed security risk management practices within the resettlement selection process.

Predictions and decisions about the risk a refugee presents are made on the basis of a ‘virtual’ identity assembled through an accumulation of any available electronic records of activities, affiliations and so on. This predictive capacity is highly dependent on technologies that are often unreliable yet which fundamentally affect people’s future mobility prospects. This arbitrarily assembled identity focusing on the possible security threat posed by any particular refugee obscures from view their protection needs as a refugee.

Rather than being terrorists, refugees sometimes have protection needs as a result of terrorism. Keeping these applicants for resettlement away from the West is likely to increase the number of people resorting to illegal means through which to find somewhere safe to live. Ironically, in this way security practices within the resettlement process are themselves likely to produce the so-called threat of ‘illegal’ migration.

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