



The Association of the Bar of the City of New York

Statement in Opposition to the REAL ID Act (HR 418)

February 9, 2005

The Association of the Bar of the City of New York writes to express its grave concern over the REAL ID Act (HR 418), introduced on January 26, 2005, by Representative F. James Sensenbrenner. We understand that safeguarding our national security is an urgent issue, and we support measures that act on that concern. However, the proposed law contains a number of troubling provisions that would have exactly the opposite effect.

The Asylum Provisions

Section 101 of the REAL ID Act would increase the evidentiary burden on asylum seekers and do away with most federal court review of asylum claims. Similar provisions were proposed in the Intelligence Reform and Terrorism Prevention Action of 2004, but were dropped from the final version in the face of widespread opposition. Additionally, yesterday's timely release of the U.S. Commission on International Religious Freedom Report on the state of asylum in expedited removal proceedings documents the serious flaws in our current asylum application system, yet, HR 418 seeks to exacerbate those very potentially life-threatening flaws.

The proposed law would require judges to rely on "statements" taken in unreliable circumstances, such as during the entry interview at an airport or border crossing. It is unrealistic to expect individuals who have endured or fear future trauma at the hands of government officials to share personal details of their abuse with government officials when they first arrive in the United States and are still fearful and confused or have not yet received necessary medical attention. This especially puts women and children who are seeking asylum at a disadvantage. The U.S. Commission on International Religious Freedom Report found that these airport statements are "often incomplete and less than reliable." If a person does not give a complete account on first arrival, or does not have the good fortune to have an accurate recording made, they may lose their bid for protection.

One asylum provision would give an immigration officer or immigration judge broad leeway to deny a refugee asylum based on her perceived "demeanor." This ignores the well-established fact that those who suffer from the after-effects of torture, survivors of rape, forced abortions, or similar abuses may appear lacking in emotion or have difficulty making eye contact as a direct result of the trauma they have suffered as well as the elementary principle understood by all who work with asylum seekers that "demeanor" is culturally determined and not universal. This makes "demeanor" a particularly poor indicator of credibility for those asylum seekers.

Under the REAL ID Act, applicants for asylum would be required to provide corroborating evidence, even where the applicant has been determined to be credible, unless the applicant "does not have the evidence or cannot obtain the evidence without departing the United States." Asylum applicants often struggle to obtain documentary evidence in support of their claim, particularly where such evidence must come from the persecuting government. Refugees often flee for their lives in situations that do not allow them to gather "corroborating evidence"

and it is often impossible for them to subsequently track down these kinds of documents. In addition, many asylum applicants are detained during the consideration of their applications and thus are extremely limited in their ability to obtain documents or even communicate effectively with friends and family who might be able to help.

The proposed bill also limits judicial review of asylum applications denied because of a failure to provide corroborating evidence. Under the REAL ID Act, a federal court would be prohibited from reversing a determination regarding the availability of corroborating evidence, “unless the court finds that a reasonable trier of fact is compelled to conclude that such corroborating evidence is *unavailable*.” This standard would be extremely difficult, if not impossible, for an asylum-seeker to meet. A situation commonly encountered in asylum cases is the dilemma of an asylum seeker who can attempt to obtain a corroborating document but by doing so, places a family member back in their country at grave risk of danger. A finding that the document is not “unavailable,” in an otherwise completely credible case, would result in an unreviewable denial of asylum.

The current asylum system already includes safeguards against terrorists abusing the asylum system, including rigorous security checks. Also, the careful scrutiny of the asylum applicant throughout the application procedure also makes it inherently unattractive to terrorists. The changes proposed by the REAL ID Act would not benefit us by making us safer, but would instead place an undue burden on those genuine refugees seeking protection in this country.

The Driver’s License Provisions

The REAL ID Act would require states to verify the lawful immigration status of all drivers’ license applicants prior to issuance. And what should be cause for alarm by all states is the requirement that all documents submitted in support of an application for a driver’s license be independently *verified* with the issuing agency by the state department of motor vehicles (DMV). The law is problematic because it would not achieve the stated aim of enhancing U.S. security and it would be nearly impossible to implement.

Requiring proof of immigration status to obtain a driver’s license does nothing to enhance our security – in fact we would be far less safe as a result. More people would resort to driving without a license or insurance. The demand for fraudulent documents would increase, fueling the black market and creating less certainty about the identity of those with driver’s licenses.

Furthermore, the data collected by state departments of motor vehicles is currently used as a law enforcement tool. With fewer individuals registering themselves in these databases, law enforcement officials will be hampered in their ability to investigate crimes. As immigrants are forced underground, the government’s ability to enforce our laws would be severely curtailed.

Implementation of the law would be impossible for state DMVs. The verification requirement alone would bring the DMV to a grinding halt. This provision mandates that “before issuing a driver’s license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person.”

Under the REAL ID Act, an applicant for a driver’s license who is not a US citizen, lawful permanent resident, asylee or refugee may obtain a “temporary” license, subject to extensive documentary requirements. The requirements would force DMV workers to become experts in immigration laws and regulations as well as in various forms of immigration documentation.

Federal immigration laws have already been shown to be too complicated for employees of state department of motor vehicle offices to apply with accuracy. Some states have already sought to limit driver's license issuance to those with lawful immigration status with disastrous effects. Countless workers, students, professionals, and others with legitimate legal status in the United States have been denied drivers' licenses because of DMV employees' lack of knowledge of immigration laws and procedures.

The REAL ID Act would cause unnecessary problems for many people in lawful status who seek to obtain driver's licenses. Faced with the inability to obtain a license, some may choose to drive without one. Others could be forced to give up their jobs and may lose their legal immigration status altogether. The driver's license provisions of the REAL ID Act would not enhance security and would instead cause great difficulties for foreign nationals lawfully in the United States.

The REAL ID Act attempts to reintroduce legislative reforms that were rejected by Congress at the end of 2004. In addition to the driver's license and asylum provisions discussed above, the REAL ID Act would also expand the definition of "terrorist activity" and "terrorist organization" so that it would be a deportable offense to engage in even lawful, peaceful activity. This "guilty by association" provision could render deportable individuals who provided support to an organization, even though the organization was not a designated terrorist organization.

The bill would *not* enhance US security. Instead, the law would result in more unlicensed, uninsured drivers on our roads and would force those without status in the U.S. underground. It would also erode the long-standing commitment of the U.S. to protect those who flee persecution in their home countries. Congress should, once again, reject these ill-conceived efforts to reform our immigration laws.