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NEARLY 12 YEARS AFTER 9/11 APPLICANTS PERCEIVED AS MUSLIMS STILL TARGETED UNDER A SECRET IMMIGRATION PROGRAM

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After the 9/11 attacks, anything and everything concerning immigration has been viewed through the prism of national security. Even a straightforward bona fide marriage between a US citizen and foreign national spouse will only be approved after every aspect of the spouse's information is extensively checked against humongous and error-prone national data bases. In the immediate aftermath of 9/11, immigrants from mainly Muslim countries were detained and deported in secret. Although they were detained because of immigration violations, it was under the pretext of investigating them for suspected links to terrorism. In the end, the 1000+ immigrants who were detained and deported in secret were not charged or convicted of terrorism.

The Bush Administration in 2003 implemented Special Registration, which applied to males from 26 countries, 25 of which had significant Islamic populations. Dutifully, 85,000 people lined up to register, thinking that they should cooperate with the government. 13,000 men who were found to have immigration violations, many of whom may have been on the path to getting green cards, were placed in deportation proceedings. Those who failed to register during the filing window continue to be affected even today, and may be unable to apply for an immigration benefit even through marriage to a US citizen.

One would like to think that in 2013, this wholesale profiling against people because of their nationality or religion would have stopped, but a little known program known as Controlled Application Review and Resolution Program or CARRP since 2008 has been targeting some applicants who are Muslim or perceived as Muslim for immigration benefits from Arab, Middle Eastern,

Muslim and South Asian communities, resulting in their applications languishing in limbo or being denied for reasons other than merit. Immigration attorneys have always suspected this all along, but thanks to the ACLU, there is now a damming report that has unearthed the workings of CARRP, which according to the ACLU is code for "Muslims Need Not Apply."

CAARP essentially discourages the granting of an application, whether it is for citizenship or for another immigration benefit, to anyone who presents a national security concern. CAARP, an unusual acronym in its own right has engendered other peculiar acronyms and terms, many with devastating consequences for the applicant. An applicant may be identified as a national security concern if she is a Known or Suspected Terrorist (KST) or a Non-Known or Suspected Terrorist (Non-KST). A KST is someone whose name has been thrown into the over-inclusive Terrorist Watch List. One need not be suspected of terrorist activity for one's name to be included in the Terrorist Watch List.

If the person is not a KST, then CARRP directs immigration officers to look to any other relevant sources to find whether an applicant is a national security concern, and thus a Non-KST. First, CAARP directs officers to examine the security and terrorism grounds of inadmissibility and deportability under INA Sections 212(a)(3)(A), (B), (F) and 237(a)(4)(A) and (B) to determine whether the applicant's association with any persons or associations can render him a Non-KST. Second, CAARP instructs that the assessment under these overbroad INA provisions do not need to satisfy the legal standard for determining admissibility or removability in order to designate an applicant as a national security concern. As a result of this directive, many Muslim applicants who may have given donations to charitable organizations that have later been designated as terrorist organizations have become national security concerns even though they did not know of the designation. Such a person cannot have provided "material support" to a terrorist organization if he or she "did not know or should not have reasonably known" of it and cannot be found inadmissible or removable. Still, CAARP allows officers to implicate applicants under these provisions as national security concerns even though they are not technically admissible or removable.

CAARP allows officers to even look beyond the parameters of these provisions through "other suspicious activities" such as unusual travel patterns, large scale transfers or receipt of funds, or membership or participation in organizations outlined in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA.

Finally CAARP allows officers to wander much further to look at whether the applicant has a family member or "close associate" who is a national security concern. Such a "close associate" could be a roommate, co-worker, employee, owner, partner, affiliate or friend.

Once an applicant is designated as a national security concern, CAARP introduces another strange term, but again with adverse consequences for the applicant, called "Deconfliction." Deconfliction means coordination between USCIS and any investigative agency, which is the owner of the national security information "to ensure that planned adjudicative activities (e.g. interview, request for evidence, site visit, decision to grant or deny a benefit or timing of the decision) do not compromise or impede an ongoing investigation." This subjects the application to even more mind boggling bureaucratic procedures reflective of a post 9/11 paranoid national security apparatus such as internal vetting/eligibility assessment, external vetting and adjudication (aka denial). It is not difficult to imagine that "Deconfliction" allows another agency such as the FBI to control the adjudicative process, resulting in the pretextual denial of the immigration benefit if the national security concern is not resolved. Attorneys have seen denials of naturalization applications, especially involving Muslims, where the applicant has not listed "membership" or "association" with every organization or group. The overbroad question on the Form N-400 asks –"Have you ever been a member of or associated with any organization, association, fund, foundation, party, club, society or similar group in the United States or in any other place?" It is likely that a Muslim applicant could get denied for inadvertently failing to list his association with a religious group, but a Christian applicant may not face a similar denial for failing to list her church.

With the revelation of CAARP, attorneys can explain to clients why applications have been delayed for so long, as well as take steps to protect their clients from pretextual denials if they have been designated as national security concerns. It would be worthwhile to accompany all clients for interviews who could be potentially CAARPed as well as insist that the USCIS video tape their interviews. It is also incumbent to advise the client on how to answer the overbroad question regarding his or her membership in associations or organizations on the Form N-400 or other applications, and it is best to err on the side of caution and interpret this question broadly to also include organizations to which the applicant may have made a charitable contribution. If the client forgets to provide information at the interview, it is important to provide that information

as soon as possible in order to avoid a denial based on a misrepresentation to obtain benefits. An attorney can also challenge a denial if the client was not provided adverse information prior to the denial or for not being given the opportunity to contest a CARRP determination. Finally, an applicant subject to CAARP will not only face a denial, but the government may also find a way to place her in removal proceedings or even initiate a criminal prosecution. It is important to protect the client by being familiar with her history, and to pay attention to irregularities, which even if minor and may be overlooked for others, could result in the institution of removal proceedings or criminal proceedings.

While there are still legitimate concerns regarding national security, our government should not be encouraged to use secret programs like CAARP to deny the legitimate and meritorious applications of certain people applying for citizenship, green cards and other benefits for which they are legally eligible. If there is truly a national security concern, the non-citizen should be charged with removability or inadmissibility under Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the INA. Moreover, it the government has evidence, it also has the tools to criminally prosecute an individual. The reason for not doing so is that the government does not have sufficient evidence, and instead, delays or denies the application for an immigration benefit. Such policies do not in any way prevent terrorism; rather they alienate communities and people who are aspiring to become Americans. Just like Special Registration turned out to be a colossal failure and waste of government money, CAARP too is heading that way. The USCIS should cancel this program and ensure that all applications be adjudicated in conformance with existing immigration law, as well as adhere to basic standards of fairness and due process.