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PM-602-0135

Policy Memorandum

SUBJECT: Implementation of the Discretionary Exemption Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for Certain Burmese Groups

Purpose

On March 11, 2016, the Secretary of Homeland Security (the Secretary), following consultation with the Attorney General and the Secretary of State, exercised his discretionary authority not to apply section 212(a)(3)(B) of the Immigration and Nationality Act (INA), excluding subclause (i)(II)¹, to certain aliens for activities or associations relating to specific groups from Burma. *See* Attachment 1, Exercise of Authority.

These groups include:

- All Burma Muslim Union
- Arakan Army
- Hongsawatoi Restoration Army / Party
- Kachin Independence Army
- Kachin Independence Organization
- Karen National Defense Organization
- Karenni Nationalities People's Liberation Front
- Kawthoolei Muslim Liberation Front
- Kuki National Army
- Mon National Liberation Army
- Mon National Warrior Army
- Myeik-Dawei United Front
- National Democratic Front
- National United Party of Arakan
- New Democratic Army Kachin
- New Mon State Party

¹ This Exercise of Authority expressly does not apply to persons whom a U.S. Citizenship and Immigration Services (USCIS) officer knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity. Section 212(a)(3)(B)(i)(II) of the INA.

- Parliamentary Democracy Party
- People's Democratic Front
- Ramanya Restoration Army
- Shan State Army
- Zomi Reunification Organization/Zomi Revolutionary Army.

This policy memorandum (PM) guides USCIS adjudicators on implementation of the Secretary's Exercise of Authority.²

Scope

Unless specifically exempted herein, this PM applies to and binds all USCIS employees.

Authorities

- Section 212(d)(3)(B)(i) of the Immigration and Nationality Act
- Exercise of Authority Under Section 212(d)(3)(B)(i) of the INA [81 FR 21891] (April 13, 2016)

Background

Section 212(a)(3)(B) of the INA (the "terrorism-related inadmissibility grounds") renders inadmissible an alien who engages in terrorist activity and also defines acts and associations that constitute engaging in terrorist activity. In turn, section 212(d)(3)(B)(i) of the INA authorizes the Secretary of Homeland Security or the Secretary of State, after consultation with one another and the Attorney General, to exempt certain terrorism-related inadmissibility grounds. On April 13, 2016, the exemption signed by the Secretary was published in the Federal Register (FR). The exemption authorizes USCIS, in consultation with U.S. Immigration and Customs Enforcement, not to apply most terrorism-related inadmissibility grounds to certain aliens associated with specific groups from Burma. This exemption may be applied to immigration benefit and protection applications under the INA, including but not limited to asylum, refugee status, adjustment of status, and asylee and refugee following-to-join petitions.

² This PM supplements existing guidance on terrorism-related inadmissibility grounds (TRIG), including Jonathan Scharfen, Deputy Director, USCIS, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007; Michael L. Aytes, Acting Deputy Director, USCIS, "Implementation of Section 691 of Division J of the Consolidated Appropriations Act, 2008, and Updated Processing Requirements for Discretionary Exemptions to Terrorist Activity Inadmissibility Grounds," July 28, 2008; Michael Aytes, Acting Deputy Director, USCIS, "Revised Guidance on the Adjudication of Cases Involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases," February 13, 2009; and PM-602-0051, "Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases," November 20, 2011.

Policy

Pursuant to the Secretary's Exercise of Authority under section 212(d)(3)(B)(i) of the INA, USCIS will consider whether certain aliens are eligible for and warrant a discretionary exemption from application of the terrorism-related inadmissibility grounds. USCIS may consider an exemption only if the threshold requirements are met.

Implementation

I. General Considerations

A. Identifying Individuals Subject to TRIG Due to Activities or Associations with Certain Groups from Burma

Adjudicators will review benefit applications, supporting documentation, and testimony for indications that an applicant's actions may be described by the inadmissibility grounds at section 212(a)(3)(B) of the INA and relates to one or more of the groups named in the Exercise of Authority.

B. Country Conditions

When considering an exemption, adjudicators must familiarize themselves with country conditions information by consulting the [Refugee, Asylum and International Operations Research Unit](#) and/or research information made available through their Headquarters components. In addition to research conducted by USCIS, open-source reference documents produced by other agencies may be available from the U.S. Department of State (e.g., the annual [U.S. Department of State Country Reports on Human Rights Practices](#)), or through the [DHS Library](#) (available on the intranet through DHS Connect).

C. Other Possible TRIG and Applicability of Other Exercises of Exemption Authority

While this exemption is designed to address scenarios involving the groups named in the March 11, 2016 Exercise of Authority, adjudicators will review for, and elicit information about, all TRIG-related activities or associations. If terrorism-related grounds apply in relation to groups not named in the March 11, 2016 Exercise of Authority, adjudicators must verify whether other available exemptions exist and determine whether the applicant is eligible for those exemptions. Earlier exercises of authority that provide for exemption of particular activities or associations remain in effect and may be used as appropriate for activity not covered by this exemption. See relevant implementation guidance for any other applicable exercises of authority.

All applicable exemptions must be adjudicated according to the guidance issued for each exemption. An adjudicator may grant an exemption under this PM only if there are available exemptions for all applicable TRIG-related activities and associations, and the adjudicator has recommended an exemption for each inadmissibility ground. If an exemption is not available for each inadmissibility ground, the adjudicator should refer the case to the appropriate Headquarters Division for further instructions.

II. Specific Considerations for the Exemption for Certain Burmese Groups

A. Threshold Requirements

To be eligible for consideration of this exemption, an applicant must satisfy the following threshold requirements:

- Establish that he or she is otherwise eligible for the immigration benefit or protection being sought;
- Undergo and pass all relevant background and security checks;
- Fully disclose, to the best of his or her knowledge, in all relevant applications and/or interviews with U.S. Government representatives and agents, the nature and circumstances of any material support provided and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, as well as all contact with a terrorist organization and its members;
- Establish that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;
- Establish that he or she poses no danger to the safety and security of the United States; and
- Establish that he or she warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

B. Discretion

Adjudicators will consider whether those applicants who have met all other threshold requirements for this exemption warrant a discretionary exemption in the totality of the circumstances. Factors to be considered include but are not limited to the nature of the activities committed by the organization or individual receiving the support and any other relevant factors.

III. Making the Exemption Determination

A. Family Members

The inadmissibility of family members should be reviewed in accordance with existing law and agency policies. Under section 212(a)(3)(B)(i)(IX) of the INA, a spouse or child is inadmissible if the related alien is inadmissible under section 212(a)(3)(B) of the INA for actions occurring within the last 5 years, unless the spouse or child qualifies for one of two statutory exceptions.³ In accordance with agency policy, a spouse or child may be considered for an exemption if the activity of the related alien may be exempted, even if the related alien is not seeking a benefit or protection from USCIS. Furthermore, a spouse or child does not require an exemption relative to any acts for which the related alien has already been or is being exempted.⁴

³ A spouse or child is not inadmissible under section 212(a)(3)(B)(i)(IX) of the INA if: (1) he or she did not know or should not reasonably have known of the TRIG activity; or (2) an adjudicator has reasonable grounds to believe that the spouse or child has renounced the TRIG activity. Section 212(a)(3)(B)(ii) of the INA.

⁴ See Jonathan Scharfen, Deputy Director, USCIS, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007.

B. Vetting Cases for Possible National Security Concerns

Adjudicators will follow existing agency procedures when a possible national security concern arises during the course of the adjudication, including through security checks.

C. Documenting the Exemption Determination

Using the 212(a)(3)(B) Exemption Worksheet (revised 2015-04-13), adjudicators will document exemption determinations as follows:

- Determine threshold eligibility;
- Describe the applicant's associations or activities with the group, noting any involvement in violence or other activities of concern;
- Check "Group-Based Exemption" in Section IV and write in the group name; and
- Indicate whether the adjudicator recommends granting or denying the exemption.

Each Division will instruct its adjudicators on the requisite levels of review. Agency policy requires a minimum of one level of review for group-based exemptions.

D. Record-Keeping Requirements

USCIS will maintain records on the number of cases considered under this exemption and their outcome. Statistics will be consolidated on a quarterly basis, at a minimum. These statistics will be used to provide information to interagency partners and to stakeholders, as well as to inform the content of the required annual report to Congress.⁵

E. Effect of Exemption on Future Adjudications

An exemption determination made under this Exercise of Authority can inform, but shall not control, a decision regarding any subsequent benefit or protection application.

F. Processing or Placement on Hold of Certain Cases

If a case involving an applicant or beneficiary considered under the exemption does not satisfy all threshold requirements for consideration of the exemption and does not meet the requirements of the hold policy, the requested benefit should be denied or referred, in accordance with each Division's procedures. The applicant may be issued a Notice to Appear (NTA) in appropriate cases after review, in accordance with standard operating procedures, including USCIS' NTA policy.

If a case meets all other requirements, but an exemption is denied in the totality of the circumstances, the application should be denied (or, if pertaining to an asylum application, referred as applicable) after appropriate review in accordance with the above procedures. The applicant may be issued an NTA in appropriate cases after review, in accordance with standard operating procedures, including USCIS' NTA policy.

⁵ Adjudicators will report statistics according to procedures directed by their Division.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions should be directed through the component chain of command to the component USCIS TRIG Working Group point of contact.

Attachment:

1. Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (Certain Burmese Groups, 81 FR 21891, April 13, 2016).