



June 15, 2014

PM-602-0100

## Policy Memorandum

**SUBJECT:** Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) For Activities and Associations Relating to the Ethiopian People’s Revolutionary Party (EPRP)

### Purpose

On October 17, 2013, following consultation with the Secretary of State and the Attorney General, the Acting Secretary of Homeland Security (the “Acting Secretary”) exercised his discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain aliens for voluntary activities or associations relating to the Ethiopian People’s Revolutionary Party (EPRP).<sup>1</sup> See attachment. Specifically, the exercise of authority permits exemption of the following activities:

- Solicitation of funds or other things of value for;
- Solicitation of any individuals for membership in;
- Provision of material support to; or
- Receipt of military-type training from, or on behalf of, the EPRP.<sup>2</sup>

This policy memorandum (PM) guides U.S. Citizenship and Immigration Services (USCIS) adjudicators on implementation of the Acting Secretary’s exemption.<sup>3</sup>

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<sup>1</sup> The EPRP qualifies as a Tier III organization prior to January 1, 1993. An exemption may not be required for applicants who had activities or associations with the EPRP after January 1, 1993. Please consult country conditions.

<sup>2</sup> This PM expressly does not apply to persons whom a USCIS officer knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity. Immigration and Nationality Act (INA) § 212(a)(3)(B)(i)(II), 8 U.S.C § 1182(a)(3)(B)(i)(II).

<sup>3</sup> 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 21, 2011.

## Scope

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

## Authorities

- INA section 212(d)(3)(B)(i)
- 8 U.S.C. § 1182(d)(3)(B)(i)

## Background

The EPRP is a political opposition group founded in 1972. It engaged in armed opposition to successive Ethiopian government regimes. It qualified as a Tier III terrorist organization under INA section 212(a)(3)(B)(vi)(III) on the basis of its violent activities prior to January 1, 1993.

INA section 212(a)(3)(B), 8 U.S.C. § 1182(d)(3)(B), renders inadmissible and ineligible for most immigration benefits an alien who engages in terrorist activity with any organization that, at the time of the interaction, was a terrorist organization. In turn, INA section 212(d)(3)(B)(i), 8 U.S.C. § 1182(d)(3)(B)(i), authorizes the Secretary to exempt such terrorism-related grounds of inadmissibility (TRIG) in certain cases. On October 17, 2013, the Acting Secretary issued an exemption that authorizes USCIS not to apply the terrorism-related inadmissibility grounds to certain qualified aliens who provided material support to, solicited funds or other things of value for, solicited individuals for membership in, or received military-type training from, or on behalf of, the EPRP.

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. USCIS will consider an exemption only if the threshold requirements, listed below and in the Acting Secretary's Exercise of Authority, are met.

## Policy

Pursuant to the Acting Secretary's exercise of authority under INA section 212(d)(3)(B)(i), USCIS will consider whether certain aliens are eligible for and warrant an exemption from terrorism-related inadmissibility grounds.

## Implementation

### I. Identifying Individuals Subject to Terrorism-Related Inadmissibility Grounds Due to Activities or Associations with the EPRP

Adjudicators who consider an exemption must familiarize themselves with country conditions information on Ethiopia related to the EPRP by consulting the [Refugee, Asylum & International Operations Virtual Library \(RAIO-VL\)](#) and/or the research information made available through and authorized by their HQ components.<sup>4</sup> In addition to research products generated by USCIS, open source reference documents produced by other agencies may be available from the U.S. Department

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<sup>4</sup> DHS employees may access the [RAIO-VL's Country of Origin Information Collection](#).

of State (DOS) (see, for example, the annual U.S. Department of State Country [Reports on Human Rights Practices](#)), or through the [DHS Library](#) on the intranet.

Adjudicators will review for indications in benefit applications, supporting documentation, and testimony, of activities or associations relating to the EPRP. In all cases, adjudicators will review and elicit information about all TRIG-related activities or associations.<sup>5</sup>

## **II. Aliens Whose Inadmissibility for TRIG Activities or Associations Relating to the EPRP May Be Exempted as a Matter of Discretion**

### *Applicability of Earlier Exercises of Exemption Authority*

This Exercise of Authority is specifically crafted to exempt certain terrorist activities related to the EPRP; accordingly, with regard to the EPRP, this policy memorandum supersedes the September 26, 2012 policy memorandum regarding implementation of the August 10, 2012 Exercise of Authority for certain aliens with existing immigration benefits (referred to as the “Limited General” Exemption). See 77 Fed.Reg. 49821 (effective August 10, 2012).

Further, this Exercise of Authority is designed to address scenarios involving voluntary activities or associations with EPRP. Therefore, earlier exercises of authority exempted certain terrorist activities if they occurred while under duress remain in effect and may be used as appropriate in cases not covered by this exemption. See 72 Fed.Reg. 9958 (effective March 6, 2007) – material support under duress to Tier III organizations; 72 Fed.Reg. 26138 (effective April 27, 2007) – material support under duress to Tier I and II organizations; 76 Fed.Reg. 14418 (effective January 7, 2011) – receipt of military-type training under duress by or on behalf of a Tier I, Tier II, or Tier III organization; and 76 Fed.Reg. 14419 (effective January 7, 2011) – solicitation of funds or other things of value under duress, or solicitation of individuals for membership under duress, for a Tier I, Tier II, or Tier III organization. Other Exercises of Authority may also be applicable. See relevant implementation guidance.

### *Threshold Eligibility*

USCIS may only consider a discretionary exemption for those cases on hold solely because of TRIG-related activities or associations relating to EPRP, regardless of whether such conduct occurred under duress. To be considered for an 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 required background and security checks;

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<sup>5</sup> If additional terrorism-related grounds apply, adjudicators should determine whether there are available exemptions for those additional grounds and determine whether the applicant is eligible for those exemptions. If so, adjudicators should adjudicate all appropriate exemptions according to the guidance issued for each exemption. An adjudicator may grant an exemption for activities or associations relating to EPRP only if there are available exemptions for all applicable TRIG-related activities, and if the adjudicator has recommended an exemption for each ground of inadmissibility.

- Fully disclose, to the best of his or her knowledge, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of all activities or associations falling within the scope of INA section 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B);<sup>6</sup>
- 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 in the totality of the circumstances as discussed below.

Questions relating to the threshold requirements for this exercise of the exemption authority must be directed through the component chain of command to the component TRIG Working Group point of contact for possible referral to the Senior Policy Council as appropriate.

#### *Discretion*

For those applicants who have met all other threshold requirements, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of circumstances. When considering the totality of the circumstances, factors to be considered, in addition to the threshold factors stated above, may include, among others:

- The length and nature of the TRIG-related activity;
- The amount, type, frequency, and nature of the applicant's activity;
- The nature of the organization's terrorist activities and the applicant's awareness of those activities;
- The applicant's conduct since the association with the EPRP;
- The length of time that has elapsed since the applicant engaged in the TRIG-related activity; and
- Any other relevant factors.

### **III. Making the Exemption Determination<sup>7</sup>**

#### **A. Vetting Cases for Possible National Security Concern**

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

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<sup>6</sup> To fully disclose TRIG-related activities and associations entails credible, persuasive, consistent and complete representations by the applicant of all involvement in such activities. If this level of disclosure has not been provided, the applicant has failed to meet this threshold criterion and is ineligible for exemption consideration.

<sup>7</sup> A spouse or child is inadmissible under INA section 212(a)(3)(B)(i)(IX), 8 U.S.C. § 1182(a)(3)(B)(i)(IX), if the related alien is inadmissible under INA section 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B), for actions occurring within the last five years, unless the spouse or child qualifies for one of two statutory exceptions. A spouse or child is not inadmissible under INA section 212(a)(3)(B)(i)(IX) 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, INA section 212(a)(3)(B)(ii), 8 U.S.C. § 1182(a)(3)(B)(ii). If the activity of the related alien may be exempted, USCIS may also consider an exemption for the spouse or child, even if the related alien is not also seeking admission or a benefit from USCIS.

## **B. Documenting the Exemption Determination**

Using the 212(a)(3)(B) Exemption Worksheet (revised August 10, 2012), adjudicators will document exemption determinations as follows:

- Determine individual threshold eligibility;
- Describe the applicant's associations or activities with the group, noting any involvement in violence or other activities of concern;
- In Section IV, check the "Group Based Exemption" box and enter "EPRP"; and
- In Section V, indicate whether the adjudicator recommends granting or denying the exemption.

Each Division will instruct its adjudicators on the requisite levels of review.

## **C. Record-Keeping Requirements**

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

## **D. 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.

## **E. Processing or Continued Hold of Certain Cases**

If a case involving an applicant or beneficiary considered under the EPRP 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. The applicant should be issued a Notice to Appear (NTA) in appropriate cases after review in accordance with standard operating procedures, including USCIS's NTA policy.

If a case does meet threshold requirements, but an exemption is considered and denied in the totality of the circumstances, the application should be denied (or, if pertaining to an asylum application, referred as appropriate) after appropriate review in accordance with the above procedures.

If it is determined that the case does not meet the threshold requirements listed above, but otherwise meets the criteria enumerated under the current hold policy, the application should remain on hold pending future exercises of the Secretary's discretionary exemption authority. This includes cases being held under the current hold policy involving applicants who do not qualify for this exercise of the exemption authority.

## **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 at 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 relating to this exercise of the exemption authority must be directed through the component chain of command to the component TRIG Working Group point of contact for possible referral to the Senior Policy Council as appropriate.

**Attachment**

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (EPRP)

**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

**Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act**

**AGENCY:** Office of the Secretary, DHS

**ACTION:** Notice of determination

**Authority:** 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C.

1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that paragraphs (i)(VIII), (iv)(IV), (iv)(V), and (iv)(VI) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply, with respect to an alien, for solicitation of funds or other things of value for; solicitation of any individual for membership; the provision of material support to; who received military-type training from or on behalf of the Ethiopia People's Revolutionary Party (EPRP), provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature

and circumstances of each instance of military-type training, solicitation, and material support, and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or

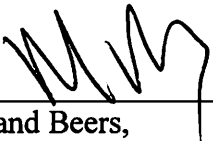


benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: 10/17/13

  
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Rand Beers,  
Acting Secretary of Homeland Security