



Fact Sheet

Nov. 25, 2008

DEPARTMENT OF HOMELAND SECURITY EXERCISE OF AUTHORITY TO EXEMPT PERSONS ASSOCIATED WITH 10 NAMED GROUPS FROM MOST TERRORIST-RELATED INADMISSIBILITY GROUNDS OF THE IMMIGRATION LAW

On June 3, 2008, the Secretaries of State and Homeland Security exercised their discretionary exemption authority under the Immigration and Nationality Act (INA), permitting their respective agencies to exempt persons associated with ten named groups from most of the inadmissibility grounds of the INA related to terrorist activity.¹ Notice of the Secretary's exercise of discretionary authority was published in the Federal Register of June 18, 2008 (pages 34770-34777).

The ten groups covered by the exemption authority are:

- (1) Karen National Union/Karen Liberation Army (KNU/KNLA);
- (2) Chin National Front/Chin National Army (CNF/CNA);
- (3) Chin National League for Democracy (CNLD);
- (4) Kayan New Land Party (KNLP);
- (5) Arakan Liberation Party (ALP);
- (6) Mustangs;
- (7) Alzados;
- (8) Karenni National Progressive Party;
- (9) Appropriate groups affiliated with the Hmong; and
- (10) Appropriate groups affiliated with the Montagnards.

Section 691(b) of Division J of the Consolidated Appropriations Act, 2008 (CAA) provided that the ten groups listed above should no longer be considered "terrorist organizations" under the INA based on actions they had undertaken before the date of the CAA's enactment on December 26, 2007. The new exemption authority complements the relief provided for the ten groups under the CAA. Section 691(a) of that legislation also amended discretionary authority vested in the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, to decline to apply to individuals or to particular groups most of the grounds of

¹ No exemptions may be granted under the CAA to any individual described in INA section 212(a)(3)(B)(i)(II), which bars the admission of any individual who "a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity." Other grounds that do not appear exemptible include: 212(a)(3)(B)(i)(V); 212(a)(3)(B)(i)(IV)(aa); 212(a)(3)(B)(i)(I); 212(a)(3)(B)(i)(VII); 212(a)(3)(B)(i)(VIII);



inadmissibility and deportability related to terrorist activity as that term is defined by the INA.

The removal of these groups from the INA's definition of a "terrorist organization" brought automatic relief to individuals otherwise subject to grounds of inadmissibility or deportability due to the characterization of one of those groups as a "terrorist organization." Thus, for example, a person who provided material support to the Karen National Union/Karen National Army is no longer inadmissible to, or deportable from, the United States for having provided material support to a terrorist organization, since the KNU/KNLA is no longer considered a terrorist organization based on any acts it engaged in prior to the date of enactment. With the enactment of the CAA, a person in this situation is no longer subject to this terrorist-related inadmissibility ground as a matter of law, and no exercise of executive discretion is required for such an individual.

However, the CAA did not provide automatic relief for persons associated with the named groups who were subject to a ground of inadmissibility related to terrorist activity that did not refer to the INA's definition of a "terrorist organization." For example, a person who fought with the Karen Liberation Army remained inadmissible after the passage of the CAA as one who had engaged in "terrorist activity," which is defined under the INA to include the unlawful use of any weapon or dangerous device with intent to endanger the safety of one or more persons or to cause substantial damage for property, for any purpose other than mere personal monetary gain.

The Secretary's June 3, 2008 exercise of authority enables DHS to exempt, in its sole and unreviewable discretion, applicants associated with one of the ten groups who are subject to an inadmissibility ground related to terrorist activity that falls outside the definition of "terrorist organization" and who are therefore not covered by the automatic relief provision of the CAA. The new exemption authority can be exercised in favor of an individual if there is no reason to believe that the relevant activities of the individual or of those on whose behalf the applicant acted were targeted against noncombatants, provided also that the applicant satisfies the relevant agency authority that he or she:

- (a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection sought;
- (b) has undergone and passed relevant background and security checks;
- (c) has fully disclosed, in all relevant applications and interviews with the U.S. government representatives and agents, the nature and circumstances of each activity or association falling within the scope of INA section 212(a)(3)(B);
- (d) poses no danger to the safety and security of the United States; and
- (e) is warranted to be exempted from the relevant inadmissibility provision by the totality of the circumstances.

Implementation of the exemption authority 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



U.S. Citizenship and Immigration Services

ascertain to their satisfaction and in their discretion that the particular applicant meets the criteria set forth above.

This exemption authority can only be applied to individuals whose activities were carried out in connection with one of the 10 groups listed above. On July 1, 2008, Congress amended Section 691(b) of the CAA to add the African National Congress (ANC) to the statutory list of the ten groups. As a result of the amendment, the ANC is no longer considered a “terrorist organization” as a matter of law for certain acts or events occurring before the date of enactment of the CAA [Dec. 26, 2007]. .

USCIS has finalized procedures for the application of this discretionary authority in individual cases; the memorandum outlining those procedures is available at:
http://www.uscis.gov/files/nativedocuments/caa_691_28_july_08.pdf.