



U.S. Citizenship
and Immigration
Services

HQ 70/2.1

December 31, 2008

Memorandum

TO: FIELD LEADERSHIP

FROM: Lori Scialabba /s/
Associate Director
Refugee, Asylum, and International Operations Directorate

Donald Neufeld /s/
Acting Associate Director
Domestic Operations

SUBJECT: Initial Information Concerning the Child Soldiers Accountability Act, Public Law
No. 110-340

1. Purpose

This memorandum provides notification and a brief overview of the provisions of the Child Soldiers Accountability Act of 2008 (CSAA), Public Law 110-340, which was signed into law and became effective on October 3, 2008.

2. Background

The CSAA creates both criminal and immigration prohibitions on the recruitment or use of child soldiers. Specifically, the CSAA establishes a ground of inadmissibility at section 212(a)(3)(G) of the Immigration and Nationality Act (the Act) and a ground of removability at section 237(a)(4)(F) of the Act. CSAA, sec. 2(b)-(c). These parallel grounds set forth that “[a]ny alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code” (U.S.C.) is inadmissible and is removable. Id.

The CSAA creates a new criminal offense, codified in section 18 U.S.C. § 2442, which applies to whoever knowingly:

- (1) recruits, enlists, or conscripts a person to serve while such person is under 15 years of age in an armed force or group; or
- (2) uses a person under 15 years of age to participate actively in hostilities.

The criminal offense also applies to individuals who attempt or conspire to violate 18 U.S.C. § 2442(a). 18 U.S.C. § 2442(b).

The CSAA defines “armed force or group” as “any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association.” 18 U.S.C. § 2442(d)(2). The CSAA also defines “participate actively in hostilities” to mean “taking part in...combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or...direct support functions related to combat, including transporting supplies or providing other services.” 18 U.S.C. § 2442(d)(1).

In addition, the CSAA requires the Secretary of Homeland Security and the Attorney General to promulgate final regulations within 60 days of the CSAA’s enactment, addressing the bars to asylum or withholding of removal. CSAA, sec. 2(d)(1). Specifically, an alien who is subject to these grounds of inadmissibility or removability “shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime,” and is therefore ineligible for asylum pursuant to section 208(b)(2)(A)(iii) of the Act or withholding of removal pursuant to section 241(b)(3)(B)(iii) of the Act, CSAA, sec. 2(d)(1). USCIS is currently working with others within DHS and DOJ to promulgate these regulations.

3. Field Guidance

USCIS is working on more detailed guidance on the applicability of the CSAA provisions, given that several issues of statutory interpretation and policy guidance need to be considered. Until the regulations are amended and further guidance is disseminated, USCIS adjudicators should notify the appropriate directorate point-of-contact below of any cases involving applicants of any age who may have recruited or used child soldiers.

4. Contact Information

Questions and notifications of relevant cases should be directed through your chain of command to your respective point of contact listed below:

- Asylum Division: Rebecca Tanner;
- Refugee Affairs: Policy and Analysis Section mailbox;
- International Operations, if this is not a refugee matter: Tom Curley;
- Domestic Operations: Susan Arroyo;
- Office of Policy and Strategy: Roselyn Brown-Frei.

Distribution List:

Refugee Directors
Asylum Directors
Regional Directors
District Directors
Service Center Directors
National Benefits Center Directors
Field Office Directors