



June 15, 2014

PM-602-0098

Policy Memorandum

SUBJECT: Implementation of New Discretionary Exemption Under INA Section 212(d)(3)(B)(i) For Activities and Associations Relating to the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)

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 Democratic Movement for the Liberation of Eritrean Kunama (DMLEK).¹ 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 DMLEK.

This policy memorandum (PM) guides U.S. Citizenship and Immigration Services (USCIS) adjudicators on implementation of the Acting Secretary’s exemption.²

Scope

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

¹ 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).

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 21, 2011.

Authorities

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

Background

The DMLEK is a political opposition group founded in 1995 which is engaged in prolonged armed conflict with the Eritrean government. It qualifies as a Tier III terrorist organization under INA section 212(a)(3)(B)(vi)(III) on the basis of its violent activities.

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 DMLEK.

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), 8 U.S.C. § 1182(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 DMLEK

Adjudicators who consider an exemption must familiarize themselves with country conditions information on the relevant country and terrorist organization(s) 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.³ In addition to research products generated by USCIS, open source reference documents produced by other agencies may be available from the U.S. Department of State (DOS) (e.g., the annual [U.S. Dept. of State Country Reports on Human Rights Practices](#)), or through the [DHS Library](#) on the intranet.

³ DHS employees may access the [RAIO-VL's Country of Origin Information Collection](#).

Adjudicators will review for indications in benefit applications, supporting documentation, and testimony, of activities or associations relating to the DMLEK. In all cases, adjudicators will review for and elicit information about all TRIG-related activities or associations.⁴

II. Aliens Whose Inadmissibility for TRIG Activities or Associations Relating to the DMLEK 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 DMLEK; accordingly, with regard to DMLEK, 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 DMLEK. Therefore, earlier exercises of authority which 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 DMLEK, 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;
- 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);⁵

⁴ 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 DMLEK 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.

⁵ 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.

- 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 in the following paragraph.

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 duress-related 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 DMLEK;
- 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 Determination⁶

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.

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 "DMLEK"; and

⁶ 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.

- 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 DMLEK 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 DMLEK 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 the threshold 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 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.

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for the DMLEK

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Attachment

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

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, 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 Democratic Movement for the Liberation of Eritrean Kunama (DMLEK), 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(s) 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



Rand Beers,
Acting Secretary of Homeland Security

Room 6182A, Rockville, MD 20852, Email: IACCPublicInquiries@mail.nih.gov.

By 5:00 p.m. ET on Tuesday, December 10, 2013.

Accommodations Statement:

Individuals who participate by using this conference call service and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice as soon as possible.

This meeting is being published less than 15 days prior to the meeting due to the need of the committee to discuss and vote on the updates of the 2013 IACC Strategic Plan. Information about the IACC and a registration link for this meeting are available on the Web site: www.iacc.hhs.gov. Schedule subject to change.

Dated: November 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-29034 Filed 12-4-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under the Immigration and Nationality Act; Correction

AGENCY: Office of the Secretary, DHS.

ACTION: Notice; correction.

SUMMARY: On November 4, 2013, DHS published a notice in the **Federal Register**, announcing a Secretarial determination under section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(3)(B)(i), as amended. DHS inadvertently omitted three words from that notice. With this document, DHS is making three typographical corrections to that notice: inserting the words "alien," "in," and "or."

FOR FURTHER INFORMATION CONTACT: Nicholas J. Perry, Assistant General Counsel for Immigration Enforcement, (202) 282-9822.

Correction

Correct FR Doc. 2013-26263 as follows:

1. In the **Federal Register** of November 4, 2013, in FR Doc. 2013-26263, on page 66037, in the first column, correct the sixth through ninth lines to read:

respect to an alien for solicitation of funds or other things of value for; solicitation of any individual for membership in; the provision of material support to; or who

Dated: November 29, 2013.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security.

[FR Doc. 2013-29040 Filed 12-4-13; 8:45 am]

BILLING CODE 9110-9M-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2013-0074]

Review and Revision of the National Critical Infrastructure Security and Resilience (NCISR) Research and Development (R&D) Plan Outline and Specific Questions Regarding the Content

AGENCY: National Protection and Programs Directorate, Department of Homeland Security (DHS).

ACTION: Notice and request for comments and answers to specific questions.

SUMMARY: This Request for Information (RFI) notice informs the public that the Department of Homeland Security's (DHS) Science and Technology Directorate (S&T) is currently developing a National Critical Infrastructure Security and Resilience Research and Development Plan (NCISR R&D Plan) to conform to the requirements of Presidential Policy Directive 21, *Critical Infrastructure Security and Resilience*. As part of a comprehensive national review process, DHS solicits public comment on issues or language in the NCISR R&D Plan that need to be included. Critical infrastructure includes both cyber and physical components, systems, and networks for the sixteen established "critical infrastructures".

DATES: Written comments are encouraged and will be accepted until January 6, 2014.

ADDRESSES: Written comments and questions about the NCISR R&D Plan should be forwarded to Kristin Wyckoff, DHS/S&T/RSD, 445 Murray Lane SW., Mail Stop 0208, Washington, DC 20528-0208. Written comments should reach the contact person listed no later than January 6, 2014. Comments must be identified by "DHS-2013-0074" and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Email:* R&DWG@hq.dhs.gov. Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of

Homeland Security" and the docket number for this action. All comments received (via any of the identified methods) will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may submit your comments and material by one of the methods specified in the **FOR FURTHER INFORMATION CONTACT** section. Please submit your comments and material by only one means to avoid the adjudication of duplicate submissions. If you submit comments by mail, your submission should be an unbound document and no larger than 8.5 by 11 inches to enable copying and electronic document management. Please limit submissions to a maximum of 10 pages of text if possible. If you want DHS to acknowledge receipt of comments by mail, include with your comments a self-addressed, stamped postcard that includes the docket number for this action. We will date your postcard and return it to you via regular mail.

Docket: Background documents and comments can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kristin Wyckoff, DHS/S&T/RSD, 445 Murray Lane SW., Mail Stop 0208, Washington, DC 20528-0208.

SUPPLEMENTARY INFORMATION:

I. Public Participation

The Department of Homeland Security (DHS) invites interested persons to contribute highly relevant content for consideration in the development the National Critical Infrastructure Security and Resilience Research and Development (NCISR R&D) Plan. Content can include, but is not limited to, published information and data, technical views, and/or ideas on research and development priorities, unsatisfied requirements or unmet capabilities, and/or current and long-term issues for critical infrastructure. Input is welcome from stakeholder groups, private and public entities, and individuals on content to be included to best fulfill the intended purpose of the plan. Comments that will provide the most assistance to DHS in writing the NCISR R&D Plan will include the reason for the recommended information or topic along with supplemental data, information, or authority that supports such recommendation.

II. Background

On February 12, 2013, President Obama signed Presidential Policy Directive-21¹ (PPD-21), *Critical*

¹ PPD-21 can be found at: <http://www.whitehouse.gov/the-press-office/2013/02/12/>