



November 12, 2012

PM-602-0076

## Policy Memorandum

**SUBJECT:** Implementation of New Exemption Under Immigration and Nationality Act (INA) Section 212(d)(3)(B)(i) for Participation in the Iraqi Uprisings

### **Purpose**

On August 17, 2012, following consultation with the Secretary of State and the Attorney General, the Secretary of Homeland Security (the “Secretary”) exercised her discretionary authority not to apply most<sup>1</sup> terrorism-related inadmissibility grounds to certain aliens for participation in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991. See Attachment 1. This document guides USCIS adjudicators on implementation of the Secretary’s exemption.<sup>2</sup>

### **Scope**

Unless specifically exempted herein, this policy memorandum (PM) applies to and binds all USCIS employees.

### **Authority**

INA section 212(d)(3)(B)(i)

### **Background**

INA section 212(a)(3)(B) renders inadmissible an alien who engages in terrorist activity and also defines acts and associations that constitute engagement in terrorist activity. In turn, INA section 212(d)(3)(B)(i) authorizes the Secretary to exempt certain terrorism-related grounds of inadmissibility. On August 17, 2012, the Secretary issued an exemption that authorizes USCIS, in consultation with Immigration and Customs Enforcement (ICE) and the DHS Office of Intelligence and Analysis, not to apply most terrorism-related grounds of inadmissibility to certain aliens who participated in or were associated with the Iraqi uprisings from March 1 through April 5, 1991. 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.

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<sup>1</sup> The exemption 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. INA section 212(a)(3)(B)(i)(II).

<sup>2</sup> This document 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.

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

### **Definition**

The term "Iraqi uprisings" refers to the period of revolt against Saddam Hussein in Iraq from March 1 through April 5 of 1991, when primarily Shi'a Iraqis in the South and Kurds in the North of Iraq (and others who may have joined) rebelled against the government of Saddam Hussein after the Persian Gulf War, believing that Saddam Hussein and his security forces were vulnerable following their defeat in Kuwait.

### **Policy**

Pursuant to the 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 (TRIG) Due to Participation in the Iraqi Uprisings**

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.<sup>3</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 of State (DOS) (see, for example, the annual [U.S. Dept. of State Country Reports on Human Rights Practices](#)), or through the [DHS Library](#) (available on the intranet through DHS Connect).

While this exemption is limited to activities or associations relating to the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5 of 1991, adjudicators should be alert for and elicit information about all TRIG related activities or associations. If additional terrorism-related grounds apply, verify whether other available exemptions exist for those additional grounds and determine whether the applicant is eligible for those exemptions. If so, adjudicate all appropriate exemptions according to the guidance issued for each exemption. An adjudicator may grant an exemption for participation in or association with the Iraqi uprisings only if there are available exemptions for all applicable TRIG-related activities, and the adjudicator has recommended an exemption for each ground of inadmissibility. If an exemption is not available for each terrorism-related inadmissibility concern, refer the case to the appropriate headquarters program office for further instructions, including on whether to maintain the case on hold.

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

## **II. Participation in the Iraqi Uprisings May Be Exempted as a Matter of Discretion**

### *Requirements for an Exemption*

To be considered for an exemption, an applicant must satisfy the following 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;
- Have 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 all activities or associations falling within the scope of INA section 212(a)(3)(B), including those relating to organizations and events other than the Iraqi uprisings;
- Establish that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons not affiliated with Saddam Hussein's regime from March 1 through April 5 of 1991, or U.S. interests;
- Establish that he or she has not engaged in terrorist activity, not otherwise exempted, outside the context of resistance activities directed against Saddam Hussein's regime from March 1 through April 5 of 1991;
- 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.

### *Discretion*

Factors to consider when determining whether the applicant warrants a discretionary exemption in the totality of the circumstances may include, among others: (1) the purpose, extent, frequency, and nature of the alien's participation in the Iraqi uprisings; (2) the circumstances under which the participation took place; (3) the nature of the actions by others participating with the applicant in the Iraqi uprisings; (4) the applicant's awareness of those activities; (5) whether the applicant participated in any violent activities, and, if so, the nature of such activities; and, (6) the alien's conduct since the Iraqi uprisings; and any other relevant factors.

## **III. Making the Exemption Determination**

### **A. General**

A spouse or child is inadmissible under INA section 212(a)(3)(B)(i)(IX) if the related alien is inadmissible under INA section 212(a)(3)(B) for actions occurring within the last five years, unless the spouse or child qualifies for one of two statutory exceptions.<sup>4</sup> 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. Vetting Cases for Possible Security Risk**

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

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<sup>4</sup> A spouse or child is not inadmissible under INA §212(a)(3)(B)(i)(IX) if (1) s/he 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 § 212(a)(3)(B)(ii).

coordination with local Fraud Detection and National Security Immigration Officers (FDNS-IO), or with the SCOPS Threat Assessment Branch, for possible further review and vetting. Appropriate officers will manage necessary vetting with a record holder as needed, as well as deconfliction with law enforcement or intelligence agencies.

### **C. Documenting the Exemption Determination**

Using the 212(a)(3)(B) Exemption Worksheet (revised September 27, 2012), adjudicators will document exemption determinations as follows:

- Determine threshold eligibility;
- Describe the applicant's associations or activities during the Iraqi uprisings, noting any involvement in violence or other activities of concern;
- In Section IV, check the "Situational Exemption" box and then "Other, Explain:" and then enter "Iraqi uprisings"; 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.

### **D. Record-Keeping Requirements**

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

### **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 Continued Hold of Certain Cases**

If a case involving an applicant to which this exemption applies, or who is the beneficiary of an asylee or refugee following-to-join petition, does not satisfy all applicable criteria for consideration of the exemption, the individual should be referred to the Immigration Court and/or his or her application denied after appropriate review in accordance with the above procedures.

If a case does meet the applicable criteria 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. The availability of a future, group-based exemption would not likely impact USCIS's assessment of the totality of the circumstances.

If it is determined that the case does not meet the applicable criteria listed above, but otherwise meets the criteria enumerated under the current hold policy, the application should continue to remain on hold pending future exercises of the Secretary's discretionary exemption authority.

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### **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 about implementation of this exemption should be forwarded to the appropriate component representative on the USCIS TRIG Working Group.

### **Attachment**

Exercise of Authority under INA section 212(d)(3)(B)(i) of the Immigration and Nationality Act (Iraqi uprisings)

**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 section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply, with respect to an alien, for any activity or association relating to the uprisings against the government of Saddam Hussein in Iraq between March 1 and April 5, 1991, 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 all activities or associations 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 not affiliated with Saddam Hussein's regime from March 1 through April 5 of 1991, or U.S. interests;

(e) has not engaged in terrorist activity, not otherwise exempted, outside the context of resistance activities directed against Saddam Hussein's regime from March 1 through April 5 of 1991;

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

(g) 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), DHS Office of Intelligence and Analysis, 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.

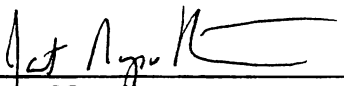
This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in

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: August 17, 2012

  
Janet Napolitano,  
Secretary of Homeland Security