



September 26, 2012

PM-602-0073

Policy Memorandum

SUBJECT: Implementation of New “Limited General” Discretionary Exemption Under Immigration and Nationality Act (INA) Section 212(d)(3)(B)(i) for Qualified Applicants with Specified Associations and Activities with Qualified Undesignated, or “Tier III,” Terrorist Organizations

Purpose

On August 10, 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 paragraphs (iv)(IV), (iv)(V), (iv)(VI), and (i)(VIII) of section 212(a)(3)(B) of the INA, 8 U.S.C. § 1182(a)(3)(B), to certain qualified aliens with existing immigration benefits, other than a nonimmigrant visa, who are currently inadmissible under applicable subsections of INA section 212(a)(3)(B)(i) due to prior associations with undesignated, or “Tier III,” terrorist organizations.¹ Specifically, the exercise of authority permits exemption of the following activities:

- Soliciting funds or other things of value for;
- Soliciting any individuals for membership in;
- Providing material support to; or
- Receiving military-type training from, or on behalf of, a qualified Tier III terrorist organization.² See Attachment.

This policy memorandum (PM) guides USCIS adjudicators on implementation of the Secretary’s exemption.³

¹ The present exemption may only be applied to cases involving undesignated, or “Tier III,” terrorist organizations as defined by INA section 212(a)(3)(B)(vi)(III). Cases involving designated “Tier I” or “Tier II” terrorist organizations as defined by INA sections 212(a)(3)(B)(vi)(I) & (II) may not be considered under this exemption.

² This exemption expressly does not apply to any person who a U.S. Citizenship and Immigration Services (USCIS) officer knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity. See INA section 212(a)(3)(B)(i)(II).

³ 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

Scope

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

Authority

INA Section 212(d)(3)(B)(i) of the Immigration and Nationality Act
8 U.S.C. § 1182(d)(3)(B)(i).

Background

INA section 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B), renders inadmissible and ineligible for most immigration benefits an alien who provided material support to, solicited funds for, solicited members for, or received military-type training from 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 in certain cases. On August 10, 2012, the Secretary issued an exemption that authorizes USCIS not to apply the inadmissibility grounds to certain qualified aliens with existing immigration benefits (or their immediate family members) 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, certain qualified Tier III terrorist organizations.

This exemption may be applied to immigration benefit applications under the INA, including, but not limited to, adjustment of status and asylee and refugee following-to-join petitions. The exemption applies to aliens who currently possess lawful status in the United States (i.e., asylee or refugee status, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or a similar immigration benefit other than a nonimmigrant visa) and are not in removal proceedings or subject to a final order of removal. The exemption also applies to beneficiaries of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee. USCIS will consider an exemption only if the individual and group criteria, listed below and in the Secretary’s exercise of authority, are met.

Policy

Pursuant to the 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 the terrorism-related grounds of inadmissibility.

Implementation

I. Identifying Individuals Subject to Terrorism-Related Inadmissibility Grounds Due to Activities or Associations with Tier III Terrorist Organizations

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 \(RAIO-VL\)](#) or the research information made available through and authorized by their headquarters components.⁴ 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](#) (available on the intranet through DHS Connect).

Adjudicators should be alert for indications – in benefit applications, supporting documentation, and testimony – of activities or associations relating to a Tier III terrorist organization. In all cases, adjudicators should be alert for and elicit information about all TRIG-related activities or associations.⁵

II. Aliens Whose Inadmissibility for TRIG Activities or Associations Relating to Qualified Tier III Terrorist Organizations May Be Exempted as a Matter of Discretion

Existing Immigration Benefit or Beneficiary of an I-730

To be eligible for the present exemption, the alien must already have an existing immigration benefit such that the alien:

- On or before August 10, 2012, was admitted as a refugee or granted asylum, temporary protected status (TPS), or adjustment of status under NACARA or HRIFA, or granted a similar immigration benefit other than a nonimmigrant visa; or
- Is the beneficiary of an I-730 Refugee/Asylee Relative Petition filed at any time by a petitioner who was an asylee or refugee on or before August 10, 2012.

Group Eligibility

USCIS may only consider a discretionary exemption for those cases ineligible solely because of TRIG-related activities or associations relating to qualified Tier III organizations. Qualified Tier III organizations are defined by INA section 212(a)(3)(B)(vi)(III), 8 U.S.C. § 1182(a)(3)(B)(vi)(III), and further delimited in the exemption. Specifically, the Tier III organization(s) at issue must not have at any time:

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

⁵ 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 under this “limited general” authority only if there are available exemptions for all applicable TRIG-related activities and the adjudicator has recommended an exemption for each ground of inadmissibility.

- Targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons;
- Engaged in a pattern or practice of torture, as defined in 18 U.S.C. § 2441(d)(1)(A), genocide, as described in 18 U.S.C. § 1091(a), or the use of child soldiers, as described in 18 U.S.C. § 2242;
- Been identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the [Specially Designated Nationals List \(SDNL\)](#), or in lists established by United Nations Security Council Committee pursuant to Resolutions [1267](#) (1999) or [1988](#) (2011) concerning Al-Qaida and the Taliban and associated individuals and entities; or
- Been designated as a [Tier I](#) or [Tier II](#) terrorist organization as described in sections 212(a)(3)(B)(vi)(I) and (II) of the INA, 8 U.S.C. §§ 1182(a)(3)(B)(vi)(I) or (II).

Individual Eligibility

In addition to the above group qualifications under this exemption, an individual applicant must, to the satisfaction of the adjudicator:

- 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);⁶
- Establish that he or she has not knowingly provided material support to any terrorist activities that targeted noncombatant persons or U.S. interests;
- Establish that he or she has not received training that itself poses a risk to the United States or U.S. interests (such as training on the production or use of a weapon of mass destruction, as defined by 18 U.S.C. § 2332a(c)(2), torture or espionage);
- Establish that he or she is not in removal proceedings or subject to a final order of removal, unless the applicant is the beneficiary of an I-730 Refugee/Asylee Relative Petition;
- Have been associated with a qualified group as set forth in the Group Eligibility paragraph;
- 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.

⁶ 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.

Discretion

For those applicants who have met all other individual and group criteria, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of the circumstances. When considering the totality of the circumstances, factors to be considered, in addition to the group and individual factors stated above, may include, among others: (1) the length and nature of any TRIG-related activity; (2) the amount, type, and frequency of the applicant’s activity; (3) the nature of the organization’s terrorist activities and the alien’s awareness of those activities; (4) the alien’s conduct since entering the United States; (5) the length of time that has elapsed since the alien engaged in the TRIG-related activity; (6) 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), 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.⁷ 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 risk arises during the course of the adjudication, including through security checks. These procedures include coordination with local Fraud Detection and National Security Immigration Officers (FDNS-IOs), or with the Service Center Operations (SCOPS) Threat Assessment Branch, for possible further review and vetting. Appropriate officers will manage necessary vetting with a record holder, as well as deconfliction with law enforcement or intelligence agencies.

C. Reviewing Applicants/Organizations for Special Designations

Adjudicators will follow component specific procedures to ensure that an individual or organization is not identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the [SDNL](#), or in lists established by United Nations Security Council Committee pursuant to Resolutions [1267](#) (1999) or [1988](#) (2011) concerning Al-Qaida and the Taliban and associated individuals and entities. Adjudicators will also review organizations to determine whether the organization with which a particular applicant has associations has itself at any time targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons;

⁷ 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).

engaged in a pattern or practice of torture, as defined in 18 U.S.C. § 2441(d)(1)(A), genocide, as described in 18 U.S.C. § 1091(a), or the use of child soldiers, as described in 18 U.S.C. § 2242; or, been designated a terrorist organization as described in sections 212(a)(3)(B)(vi)(I) and (II) of the INA, 8 U.S.C. §§ 1182(a)(3)(B)(vi)(I) and (II). All initial findings for an organization’s eligibility for the exemption will be submitted to the USCIS TRIG Working Group for review and concurrence. An officer will not grant an exemption as an exercise of this discretionary exemption authority without having consulted component-specific guidance.

D. 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 and group 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 “Situational Exemption” box and then the “Other, Explain” box and enter “Limited General;”
 - Check the “Tier III” box and enter the name of the group(s); 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.

E. Record-Keeping Requirements

USCIS will maintain records on the number of cases considered under the Limited General Exemption and the cases’ outcomes, 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.

F. 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.

G. Processing or Continued Hold of Certain Cases

If a case involving an applicant or beneficiary considered under the Limited General Exemption does not satisfy all individual or group criteria for consideration of the exemption and does not meet the requirements of the hold policy, the individual should be denied or issued a Notice to Appear after appropriate review in accordance with the above procedures.

If a case does meet the individual or group 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 impact USCIS’s assessment of the totality of the circumstances.

If it is determined that the case does not meet the individual or group 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. This would include cases being held under the current hold policy involving applicants who do not qualify for this exercise of the exemption authority because they do not have an existing immigration benefit and are not the beneficiaries of asylee or refugee following-to-join petitions.

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 by 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 should be directed through the component chain of command to the component USCIS TRIG Working Group point of contact.

Attachment

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

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 (iv)(IV), (iv)(V), (iv)(VI), and (i)(VIII) 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 not otherwise covered by the automatic relief provisions of section 691(b) of the Consolidated Appropriations Act, 2008 or by a more specific Exercise of Authority under section 212(d)(3)(B)(i) of the INA, 8 U.S.C. 1182(d)(3)(B)(i), who meets the specifications of paragraphs (a) through (d) of this determination.

(a) Alien Qualification: To qualify under this determination, an alien must have:

- (1) solicited funds or other things of value for;
- (2) solicited any individual for membership in;
- (3) provided material support to; or
- (4) received military-type training from, or on behalf of,

an organization described in paragraph (b).

(b) Organization Qualification. An organization meets the specifications of paragraph (a) of this determination if, at any time during the alien's activities discussed in paragraph (a), it was a terrorist organization as described in subsection 212(a)(3)(B)(vi)(III), 8 U.S.C. 1182(a)(3)(B)(vi)(III), insofar as that organization:

(1) is not identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the Specially Designated Nationals List (SDNL), or in lists established by United Nations Security Council Committee pursuant to Resolutions 1267 (1999) or 1988 (2011) concerning Al-Qaida and the Taliban and associated individuals and entities; and

(2) has at no time targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons; engaged in a pattern or practice of torture, as defined in 18 U.S.C. 2441(d)(1)(A), genocide, as described in 18 U.S.C. 1091(a), or the use of child soldiers, as described in 18 U.S.C. 2242; or been designated a terrorist organization as described in subsections 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II).

(c) Additional Qualifications. To meet the requirements of this determination, the alien must also meet the following specifications:

(1) on or before the date of this Exercise of Authority, was admitted as a refugee or granted asylum, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or granted a similar immigration benefit other than a non-immigrant visa; or

(2) is the beneficiary of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee.

(d) Evidentiary Requirements. An alien must satisfy the relevant agency authority that the alien:

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

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

(3) 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 solicitation, material support, and military-type training, 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);

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

(5) has not received training that itself poses a risk to the United States or United States interests (e.g., training on production or use of a weapon of mass destruction, as defined by 18 U.S.C. Section 2332a(c)(2), torture, or espionage);

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

(7) is not in removal proceedings or subject to a final order of removal, unless the alien is the beneficiary of an I-730 Refugee/Asylee Relative Petition; and

(8) 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), which shall ascertain, to its satisfaction and in its discretion, that the particular applicant meets each of the criteria set forth above.

When considering the totality of the circumstances, factors to be considered may include, among others: the nature of the activities committed by the terrorist organization, including the extent to which the activities have targeted noncombatant persons; the alien's awareness of those activities; the amount, type, and frequency of material support or solicitation provided; the length and nature of military-type training provided; the length of time since material support or solicitation was provided, or military-type training was received, and the alien's conduct since that time; and any other relevant factor.

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, 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: **AUG 10** 2012


Janet Napolitano,
Secretary of Homeland Security