



August 10, 2022

## Policy Memorandum

SUBJECT: Implementation of the Discretionary Exemption Authority Under Immigration and Nationality Act (INA) § 212(d)(3)(B)(i) for the Provision of Certain Limited or Insignificant Material Support to Designated Organizations

### Purpose

On June 8, 2022, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, exercised their discretionary authority to exempt the application of INA § 212(a)(3)(B), excluding subclause (i)(II),<sup>1</sup> to certain individuals who provided certain limited or insignificant material support to a designated terrorist organization, or to a member of such an organization.

This policy memorandum (PM) guides USCIS adjudicators on the implementation of this Secretarial Exercise of Authority (exemption).

### Scope

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

### Authorities

- INA § 212(d)(3)(B)(i), 8 U.S.C. § 1182(d)(3)(B)(i)
- Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (June 8, 2022)

### Background

The terrorism-related inadmissibility grounds (TRIG) at INA § 212(a)(3)(B) render inadmissible any individual who has engaged in activities or associations described therein. INA § 212(d)(3)(B)(i) authorizes the Secretary of State or the Secretary of Homeland Security, after consultation with each other and the Attorney General, to exempt the application of TRIG in certain cases. On June 8, 2022, the Secretary of Homeland Security and Secretary of State exercised their discretionary authority to permit exemption from the material support

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<sup>1</sup> This Exercise of Authority expressly does not apply to persons whom a U.S. Citizenship and Immigration Services (USCIS) adjudicator knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity.

inadmissibility ground for certain individuals who provided certain limited or insignificant material support to a designated terrorist organization, or to a member of such an organization.<sup>2</sup>

The exemption authorizes USCIS not to apply the material support inadmissibility ground to certain individuals who provided limited or insignificant material support to a designated terrorist organization, a member of such an organization, or to a person the individual knew, or reasonably should have known, had committed or planned to commit a terrorist activity. To qualify as “limited,” the material support must have been in the form of: 1) a certain routine commercial transaction; 2) a certain routine social transaction; 3) certain humanitarian assistance; or 4) material support provided under substantial pressure that does not rise to the level of duress.

This exemption may be applied to immigration benefit applications and protection applications that are subject to INA § 212(a)(3)(B), including, but not limited to, Form I-589, *Application for Asylum and for Withholding of Removal*, Form I-590, *Registration for Classification as Refugee*, Form I-485, *Application to Register Permanent Residence or Adjust Status*, Form I-730, *Refugee/Asylee Relative Petition*, and Form I-821, *Application for Temporary Protected Status*.

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

### **Policy**

Pursuant to the Secretarial Exercise of Authority under INA § 212(d)(3)(B)(i), USCIS will consider whether certain individuals are eligible for and warrant a discretionary exemption from the application of TRIG based on the provision of certain limited or insignificant material support to a designated terrorist organization.

### **Implementation**

#### **I. General Considerations**

##### *A. Identifying Individuals Subject to TRIG Due to the Provision of Certain Limited or Insignificant Material Support*

Adjudicators will review benefit or protection applications, supporting documentation, testimony, and any other relevant information for indications that an applicant’s actions may be described by the inadmissibility ground at INA § 212(a)(3)(B)(iv)(VI), for the provision of material support to a designated terrorist organization, a member of such an organization, or to a person the individual knows, or reasonably should know, has committed or plans to commit a

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<sup>2</sup> This exercise of authority follows two previously issued exercises of authority for provision of certain limited material support and insignificant material support to undesignated terrorist organizations, signed by then-Secretary of Homeland Security Jeh Johnson and then-Secretary of State John Kerry on February 5, 2014.

terrorist activity. If the material support qualifies as merely incidental<sup>3</sup> to certain routine commercial transactions, certain routine social transactions, certain humanitarian assistance, was provided in response to sub-duress pressure, or qualifies as insignificant based upon the analysis described below, adjudicators may consider application of the exemption.

### *B. Country Conditions*

When considering an exemption, adjudicators must familiarize themselves with country conditions information collected by the Research Division within the Refugee, Asylum, and International Operations Directorate and/or research information made available through their Headquarters directorate. In addition to research conducted by USCIS, open-source reference documents produced by other agencies may be available from the U.S. Department of State (*see*, e.g., the annual U.S. Department of State Country Reports on Human Rights Practices), or through the DHS Library.

### *C. Other Possible TRIG and Applicability of Other Exercises of Exemption Authority*

While this exemption is designed to address scenarios involving the provision of certain limited and/or insignificant material support, adjudicators will review for, and elicit information about, all TRIG-related activities or associations. If additional terrorism-related grounds apply, adjudicators must verify whether other available exemptions exist for those other grounds and determine whether the applicant is eligible for those exemptions. Other Exercises of Authority that provide for exemption of particular activities or associations remain in effect and may be used as appropriate for activity not covered by this exemption. *See* relevant implementation guidance for any other applicable Exercises of Authority.

All applicable exemptions must be adjudicated according to the guidance issued for each exemption. An adjudicator may grant an exemption for the provision of certain limited or insignificant material support under this policy memo only if there are available exemptions for all applicable TRIG-related activities, and the adjudicator has recommended an exemption for each inadmissibility ground.

## **II. Exemption Eligibility**

### *A. Requirements for an Exemption*

To be considered for an exemption of the certain limited or insignificant material support exemption, an applicant must satisfy the following requirements:

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<sup>3</sup> Incidental means support that occurs as an unintended collateral result of routine conduct. It does not mean that the material support must have been trivial (either in quantity or in nature) to either the donor or the recipient.

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- Establish that they did not voluntarily and knowingly engage in terrorist activity on behalf of a designated terrorist organization as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II);
- Establish that they are otherwise eligible for the benefit or protection being sought;
- Undergo and pass all relevant background and security checks;
- Fully disclose, to the best of their knowledge, in all relevant applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of any material support provided and any other activity or association falling within the scope of INA section 212(a)(3)(B) as well as all contact with a terrorist organization and its members;
- Establish that they have not provided the material support with any intent or desire to assist any terrorist organization or terrorist activity<sup>4</sup>;
- Establish that they have not provided material support that they knew or reasonably should have known could directly be used to engage in terrorist or violent activity<sup>5</sup>;
- Establish that they have not provided material support to terrorist activities that they knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests;
- Establish that they have not provided material support that they knew or reasonably should have known involved providing weapons, ammunition, explosives, or components thereof, or the transportation or concealment of such items;
- Establish that they are not otherwise inadmissible under section 212(a)(3)(B) of the INA, 8 U.S.C. § 1182(a)(3)(B), for which no exemption applies;
- Establish that they pose no danger to the safety and security of the United States; and
- Warrant an exemption in the totality of the circumstances.

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<sup>4</sup> The applicant must establish that they did not intend to support a designated terrorist organization, or otherwise provide support on behalf of the organization. All indications that an applicant intended to support a designated terrorist organization through the provision of material support giving rise to the bar should be considered. Intent and motive may be inferred from the applicant's statements and surrounding circumstances.

<sup>5</sup> The applicant must establish that they did not know and reasonably should not have known that the support they provided could be directly used to engage in violent or terrorist activity. Some support—such as providing any quantity of weapons, explosives, or ammunition, or any similar military-type equipment or material—is specifically excluded from consideration under this exemption. Additionally, any material support the applicant knew or should have known could be used directly to engage in violent or terrorist activity is also excluded from consideration under this exemption. Some support—for example, providing food, water, or shelter—will generally not disqualify an applicant unless circumstances warrant otherwise.

*B. Activities Constituting Certain Limited or Insignificant Material Support*

The applicant must establish that their provision of material support falls within one of the following five categories<sup>6</sup>:

*i. Routine Commercial Transaction*

For the purposes of this exemption, the phrase “routine commercial transaction” generally means a transaction a person could or would engage in with any individual in the ordinary course of their business. A commercial transaction is routine if the transaction occurred on substantially the same terms as other transactions of the same type, regardless of the parties to the transaction, and the transaction was consistent with established practice. A commercial transaction is not a routine commercial transaction if it is motivated by an individual’s connection to a designated terrorist organization; or conducted outside the course of the applicant’s business activities.

*ii. Routine Social Transaction*

For purposes of this exemption, the phrase “routine social transaction” generally means a transaction that both satisfies and is motivated by specific, compelling, and well established or verifiable family, social, or cultural obligation(s) or expectation(s). A routine social transaction is not motivated by a generalized desire to “help society” or “do good.” Routine social transactions involve support no different than support that the applicant, or a similarly situated member of the applicant’s family or community, would provide or did provide under similar circumstances to others who were not members of a designated terrorist organization.

*iii. Certain Humanitarian Assistance*

For purposes of this exemption, the phrase “humanitarian assistance” generally means aid provided with the purpose of saving lives and alleviating suffering. Humanitarian assistance:

- Seeks to address basic and urgent needs such as food, water, temporary shelter, and hygiene;
- Is often short-term and generally triggered by an emergency situation, but also may be provided in protracted situations of conflict or displacement over an extended period of time;
- Is distinct from development assistance which seeks the long-term improvement of a country’s economic prospects and chronic problems such as poverty, inadequate infrastructure, or underdeveloped health systems; and

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<sup>6</sup> These five categories are previously defined in PM-602-0112 (Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the INA for the Provision of Certain Limited Material Support) and PM-602-0113 (Implementation of the Discretionary Exemption Under Section 212(d)(3)(B)(i) of the INA for the Provision of Insignificant Material Support).

- Is provided on the basis of need, according to principles of universality, impartiality, and human dignity.

iv. *Material Support Provided under Sub Duress Pressure*

For purposes of this exemption, the phrase “sub-duress pressure” generally means a reasonably perceived threat of physical or economic harm, restraint, or serious harassment, leaving little or no reasonable alternative to complying with a demand.

Pressure may be considered sub-duress pressure if providing the support is the only reasonable means by which the applicant may carry out important activities of his or her daily life.<sup>7</sup> This pressure must come from the same designated terrorist organization to which the applicant provided support, either fully or partially in combination with external factors, and the applicant must have actually felt sufficient pressure that left no reasonable alternative to providing the material support.<sup>8</sup>

v. *Insignificant Material Support*

Material support is “insignificant” only if: (1) it is minimal in amount; and (2) the applicant reasonably believed that it would be inconsequential in effect. Adjudicators will evaluate whether the material support provided was minimal by considering its relative value, fungibility, quantity and volume, and duration and frequency.

*C. Discretion*

For those individuals whose support qualifies as certain limited or insignificant material support and who have met all other requirements for this exemption, adjudicators will consider the nature, amount, duration, and frequency of the support provided. Additionally, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of the circumstances. Factors to be considered include but are not limited to the nature of the activities committed by the organization or individual receiving the support, and any other relevant factor. None of these factors is outcome determinative.

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

*Vetting Cases for Possible National Security Concerns*

Adjudicators will follow existing agency procedures when a possible national security concern arises during the course of the adjudication, including those identified through security checks or other vetting.

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<sup>7</sup> Important activities of daily life include education, employment, and meeting the basic needs of oneself or one’s family.

<sup>8</sup> An immediate or direct threat of violence or retribution is not required. Certain terrorism-related activity may be exempted, under prior exercises of the exemption authority, if the activity took place under duress.

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*Documenting the Exemption Determination*

Adjudicators will document the exemption determination using the 212(a)(3)(B) Exemption Worksheet. Two levels of review beyond the adjudicator's recommendation are required. Each directorate or division will instruct its adjudicators on the requisite levels of review.

*Record-Keeping Requirements*

Relevant USCIS directorates will maintain records on the number of cases considered under these CLMS or IMS exemptions and their outcome. USCIS will consolidate statistics on a quarterly basis, at a minimum. These statistics will be used to provide information to interagency partners and to stakeholders, as well as to inform the content of the required annual report to Congress.

*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.

*Exemption Denial*

If an applicant meets all 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 to the Department of Justice's Executive Office for Immigration Review, as applicable) after appropriate review in accordance with the above procedures. The applicant may be issued a Notice to Appear (NTA) in removal proceedings, in appropriate cases after review, in accordance with standard operating procedures.

**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**

Direct questions through the directorate chain of command to the directorate's point of command on the USCIS TRIG Working Group.

Attachment: Exercise of Authority under section 212(d)(3)(B)(i) of the INA (Certain Limited Material Support and Insignificant Material Support to Designated Organizations)