



Report on the Secretary's Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

Annual Report to Congress
Fiscal Year 2021



Homeland
Security

*U.S. Citizenship and Immigration
Services*

Foreword

I am pleased to present the following report, “Report on the Secretary’s Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act,” prepared by U.S. Citizenship and Immigration Services. The report provides information on the number of non-citizens on whose behalf the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, has determined in his sole unreviewable discretion that section 212(a)(3)(B) of the Immigration and Nationality Act shall not apply. Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Richard Durbin
Chairman, Senate Committee on the Judiciary

The Honorable Chuck Grassley
Ranking Member, Senate Committee on the Judiciary

The Honorable Jerrold Nadler
Chairman, House Committee on the Judiciary

The Honorable Jim Jordan
Ranking Member, House Committee on the Judiciary

The Honorable Bob Menendez
Chairman, Senate Committee on Foreign Relations

The Honorable Jim Risch
Ranking Member, Senate Committee on Foreign Relations

The Honorable Gregory Meeks
Chairman, House Committee on Foreign Affairs

The Honorable Michael McCaul
Ranking Member, House Committee on Foreign Affairs

The Honorable Bennie G. Thompson
Chairman, House Committee on Homeland Security

The Honorable John Katko
Ranking Member, House Committee on Homeland Security

The Honorable Gary C. Peters
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Rob Portman
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

Inquiries relating to this report may be directed to me at (202) 447-5890.

Sincerely,

A handwritten signature in black ink that reads "Alice Lugo". The signature is written in a cursive style with a large, stylized initial "A".

Alice Lugo
Assistant Secretary for Legislative Affairs

Executive Summary

This report was prepared in accordance with section 212(d)(3)(B)(ii) of the Immigration and Nationality Act (INA). As in past reports, it summarizes the total numbers of noncitizens for whom the Secretary of Homeland Security has determined to exercise the discretionary authority provided at INA section 212(d)(3)(B)(i). U.S. Citizenship and Immigration Services (USCIS) applied 191 exemptions to individual applicants during Fiscal Year 2021.



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I. Legislative Language

Section 212(d)(3)(B) of the Immigration and Nationality Act provides:

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged in terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

II. Data Report

During Fiscal Year 2021, USCIS applied 191 exemptions to individual applicants under the Secretary of Homeland Security's exercises of discretionary authority. Of those 191 exemptions:

- 23 were processed for applicants for lawful permanent resident status (Form I-485),
- 18 were processed for asylum applicants (Form I-589),
- 1 was processed for a Nicaraguan Adjustment and Central American Relief Act (NACARA) applicant (Form I-881),
- 142 were processed for refugee applicants (Form I-590),
- 1 was processed for an applicant for Temporary Protected Status (Form I-821),
- 6 were processed for applicants for relief from removal before the U.S. Department of Justice Executive Office for Immigration Review (EOIR).

Regarding the reasons for the 191 exemptions:

- 57 were processed for an applicant's provision of material support, while under duress, to an undesignated terrorist organization as defined at INA section 212(a)(3)(B)(vi)(III), 8 U.S.C. § 1182(a)(3)(B)(vi)(III) (Tier III organizations), under the Secretary's February 26, 2007, exercise of authority relating to undesignated terrorist organizations;
- 28 were processed for an applicant's provision of material support, while under duress, to a designated terrorist organization as defined under INA section 212(a)(3)(B)(vi)(I) and (II), 8 U.S.C. § 1182(a)(3)(B)(vi)(I) and (II) (Tier I or II organizations), under the Secretary's April 27, 2007 exercise of authority relating to designated terrorist organizations;
- 3 were processed for an applicant's receipt of military-type training, while under duress, from a terrorist organization, under the Secretary's January 7, 2011 exercise of authority relating to Tier I, Tier II, and Tier III organizations;
- 3 were processed for an applicant's voluntary provision of medical care to members of a terrorist organization, without assisting in the violent activities of an organization or individual, under the Secretary's October 13, 2011 exercise of authority relating to Tier I, Tier II, and Tier III organizations;
- 1 was processed for an applicant's activities or associations relating to the uprisings against the government of Saddam Hussein in Iraq between March 1 through April 5, 1991 under the Secretary's August 17, 2012 exercise of authority;
- 70 were processed for applicants who provided certain limited material support under the Secretary's February 5, 2014 exercise of authority;
- 11 were processed for applicants who provided insignificant material support under the Secretary's February 5, 2014 exercise of authority;
- 1 was processed for certain qualified aliens with existing immigration benefits under the Limited General Exemption¹ who provided material support to, solicited funds for,

¹ Qualified applicants are those who were granted lawful status in the United States, other than a nonimmigrant visa, on or before to August 10, 2012, and who are not in removal proceedings or subject to a final order of removal,

solicited individuals for membership in, or received military-type training from certain qualified Tier III organizations, under the Secretary’s August 10, 2012 exercise of authority relating to certain Tier III organizations;²

- 17 were processed under group-based exemptions for applicants who had certain activities or affiliations with specific groups which the Secretary, in consultation with the Secretary of State and the Attorney General, has approved for consideration of an exemption.

All applicants considered for exemptions are subject to a thorough security vetting process. USCIS procedures require that the biographic and biometric data of all applicants be screened against a broad array of law enforcement and intelligence community databases which contain information about individuals known to be security threats, including the terrorist watch list. In addition to rigorous background vetting, the Secretary’s discretionary authority is only applied on a case-by-case basis after careful review of all factors and after all security checks have cleared.

Exemptions by Type and Application Type

| FY 2021 Exemption Type by Application Type | |
|---|---|
| Exemption | Application Type (Number of Exemptions per Application Type) |
| Group-based exemption – related to appropriate groups affiliated with the Hmong | I-485 (1) |
| Group-based exemption – related to Karen National Union/Karen National Liberation Army (KNU/KNLA) | I-590 (5) |
| Group-based exemption – related to Farabundo Marti para la Liberacion National (FMLN) | I-485 (1) I-590 (1) |
| Group-based exemption – related to Kosovo Liberation Army (KLA) | I-485 (2) |
| Group-based exemption – related to Oromo Liberation Front (OLF) | I-485 (3) I-589 (2) |

unless the alien is the beneficiary of an I-730 Refugee/Asylee Relative Petition. This exemption also applies to beneficiaries of asylees or refugees for whom a Form I-730 Refugee/Asylee Relative Petition has been filed by a petitioner who was granted asylum or refugee status on or before August 10, 2012. The Limited General Exemption does not apply to applicants for refugee or asylum status.

² Tier III terrorist organizations eligible for the Limited General Exemption are those that have never: (1) targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons; (2) 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. § 2442; (3) have 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, 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 (4) been previously designated or are currently designated as a Tier I or Tier II terrorist organization, as described in sections 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. §§ 1182(a)(3)(B)(vi)(I) or (II).

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| Group-based exemption – related to Tigray People's Liberation Front (TPLF) | I-485 (1) |
| Group-based exemption – related to Kuki National Army | I-590 (1) |
| Limited General Exemption | I-485 (1) |
| Exemption for Certain Limited Material Support | I-485 (2) I-589 (1) I-590 (66) Applicants for relief before EOIR (1) |
| Exemption for Insignificant Material Support | I-589 (1) I-590 (10) |
| Iraqi Uprising Exemption | I-485 (1) |
| Exemption for Material Support to Tier I or II Under Duress | I-485 (3) I-589 (6) I-590 (18) Applicants for relief before EOIR (1) |
| Exemption for Material Support to Tier III Under Duress | I-485 (7) I-589 (6) I-881 (1) I-590 (38) I-821 (1) Applicants for relief before EOIR (4) |
| Exemption for Medical Care | I-589 (2) I-590 (1) |
| Exemption for Receipt of Military Type Training Under Duress from Tier I, II, or III Organization | I-485 (1) I-590 (2) |
| TOTAL EXEMPTIONS | 191 |