

EXHIBIT 94

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U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

NATIONAL SECURITY

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***NATIONAL SECURITY**
TRAINING MODULE**MODULE DESCRIPTION:**

This module provides guidance on the proper adjudication and processing of cases for status-conferring immigration benefits on matters related to national security through legal analysis, including terrorism-related inadmissibility grounds (TRIG), and through the agency's Controlled Application Review and Resolution Program (CARRP). The module provides the context, definitions, explanations of available exemptions, and other tools that will guide in the proper analysis of cases involving national security issues.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing, you (the officer) will conduct appropriate pre-interview preparation to identify national security (NS) indicators and elicit all relevant information from an applicant with regard to national security issues. You will recognize when an applicant's activities or associations render him or her an NS concern, including when NS indicators may establish an articulable link to a TRIG or other security-related inadmissibility grounds or bars. You will be able to properly adjudicate and process the case by identifying the specific TRIG, any exceptions, and available exemptions. You will also recognize non-TRIG NS indicators that may establish an articulable link to an NS concern that requires CARRP vetting. As part of the CARRP process, you will be able to recognize the four stages of CARRP and when deconfliction is necessary and appropriate.

ENABLING PERFORMANCE OBJECTIVE(S)

1. Analyze the general elements of INA § 212(a)(3)(B) TRIG inadmissibilities and bars
2. Explain the appropriate INA ground under which the alien is inadmissible/barred from the immigration benefit being sought
3. Analyze whether a group could be identified as an undesignated terrorist organization ("Tier III")

4. Explain statutory exceptions to TRIG
5. Explain the exemptions available for TRIG inadmissibilities
6. Analyze in a written assessment, notes, and/or a § 212(a)(3)(B) Exemption Worksheet, a proper discretionary determination for an exemption on a case involving TRIG
7. Apply the appropriate exemption to the case, if eligibility for an exemption has been established
8. Explain when a TRIG case needs to be placed on hold, recorded, and/or submitted to Headquarters
9. Explain the purpose of the CARRP process
10. Explain the steps involved in processing national security cases
11. Analyze fact patterns to determine if a national security concern exists

INSTRUCTIONAL METHODS

- Interactive presentation
- Discussion
- Practical exercises

METHOD(S) OF EVALUATION

- Multiple-choice exam
- Observed practical exercises

REQUIRED READING

1. INA 212(a)(3)(B).
2. “Policy for Vetting and Adjudicating Cases with National Security Concerns” Memo, Jonathan R. Scharfen, Deputy Director (April 11, 2008) and accompanying Attachment A - Guidance for Identifying National Security Concerns”.

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum DivisionDivision-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. See ECN TRIG site under “Guidance” for memos, legal guidance, legislation and other national security-related resources.
2. See TRIG ECN Home Page for TRIG Exemption Worksheet.
3. “Handling Potential National Security Concerns with No Identifiable Records” Memo, Steve Bucher, Associate Director of Refugee, Asylum and International Operations (August 29, 2012).
4. “Updated Instructions for Handling LE Memo, Office of the Director (May 23, 2012).
5. “Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases” Memo, Office of the Director (November 20, 2011).
6. “Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists” Memo, Office of the Director (July 26, 2011).
7. Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases” Memo, Michael Aytes, Acting Deputy Director (February 13, 2009).
8. “Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns” Memo, Michael Aytes, Acting Deputy Director (February 6, 2009).
9. “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” Memo, Michael L. Aytes, Acting Deputy Director (July 28, 2008).
10. “Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns” Memo, Donald Neufeld, Acting Associate Director of Domestic Operations (April 24, 2008) and accompanying Operational Guidance.
11. “Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups” Memo, Jonathan Scharfen, Deputy Director (March 26, 2008).

12. “Collecting Funds from Others to Pay Ransom to a Terrorist Organization” Memo, Dea Carpenter, Deputy Chief Counsel (February 6, 2008).
13. “Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations” Memo, Jonathan Scharfen, Deputy Director (May 24, 2007).
14. Matter of S-K-, 23 I&N Dec. 936 (BIA 2006).
15. Nicholas J. Perry, “The Breadth and Impact of the Terrorism-Related Grounds of Inadmissibility of the INA,” Immigration Briefings (October 2006).

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR13	Knowledge of inadmissibilities (4)
ILR23	Knowledge of bars to immigration benefits (4)
ILR26	Knowledge of the Controlled Application Review and resolution Program (CARRP) procedures (4)
ILR27	Knowledge of policies and procedures for terrorism-related grounds of inadmissibility (TRIG) (4)
IRK2	Knowledge of the sources of relevant country conditions information (4)
IRK11	Knowledge of the policies and procedures for reporting national security concerns and/or risks (3)
IRK13	Knowledge of internal and external resources for conducting research (4)
TIS2	Knowledge of the ECN/RAIO Virtual Library (4)
TIS3	Knowledge of Customs and Border Protection TECS database (3)
AK14	Knowledge of policies and procedures for preparing summary documents (e.g., fraud or national security leads, research, assessments) (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI6	Skill in identifying information trends and patterns (4)
RI9	Skill in identifying inadmissibilities and bars (4)
RI10	Skill in identifying national security issues (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)

T2	Skill in accessing and navigating ECN/RAIO VL (4)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
AK14	Knowledge of policies and procedures for preparing summary documents (e.g., fraud or national security leads, research, assessments) (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI6	Skill in identifying information trends and patterns (4)
RI9	Skill in identifying inadmissibilities and bars (4)
OK9	Knowledge of Fraud Detection and National Security (FDNS) functions and responsibilities (2)
RI11	Skill in handling, protecting, and disseminating information (e.g., sensitive and confidential information) (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
10/26/15	Throughout document	Updated broken links and citations; added new TRIG exemptions; minor formatting changes; added new case law	RAIO Training, RAIO TRIG Program

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

Since the events of September 11, 2001, the national security landscape has changed significantly. With it, the statutory definitions of terrorist activity and those who engage in such activities broadened to include acts that the general public may not necessarily associate with terrorism.¹ These changes affect the way immigration benefits are processed.

This lesson plan covers the relevant law regarding national security and introduces USCIS's Controlled Application Review and Resolution Program (CARRP), which is the agency's policy for vetting and adjudicating cases with "national security concerns" (a term of art that will be explained below). This lesson plan will delve into some of the most common statutory national security (NS) indicators (also a term of art), including cases involving terrorism-related inadmissibility grounds (TRIG), as well as non-statutory indicators of an NS concern. In doing so, this lesson plan will give you the information you need to understand the CARRP process and, within that process, how to identify cases with NS concerns so that they may be properly adjudicated and processed.

2 NATIONAL SECURITY OVERVIEW

Protecting national security is woven into both the mission and vision of the agency and the RAIO Directorate. In the context of the RAIO mission and overall USCIS values, we are mandated to adjudicate immigration benefits in an accurate, timely manner, always

¹ Perry, Nicholas J., *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails*, Journal of Legislation 30 J. Legis. 249, (2004).

with attention to and emphasis on preserving the integrity of our immigration system and minimizing national security risks and vulnerabilities.

RAIO Mission

RAIO leverages its domestic and overseas presence to provide protection, humanitarian, and other immigrant benefits and services throughout the world, while combating fraud and protecting national security.

RAIO Vision

With a highly dedicated and flexible workforce deployed worldwide, the Refugee, Asylum and International Operations Directorate will excel in advancing U.S. national security and humanitarian interests by providing immigration benefits and services with integrity and vigilance and by leading effective responses to humanitarian and protection needs throughout the world.

The INA contains provisions that prohibit granting most immigration benefits (through either an inadmissibility ground (as adjudicated by Refugee and Overseas Adjudications Officers) or a security/terrorism bar (as adjudicated by Asylum Officers (See also ASM – Supplement 1)) to individuals based on national security reasons. While many immigration statutes at least touch on security concerns, the primary security-related provisions this lesson plan focuses on are found at INA §§ 212(a)(3)(A), (B), and (F) (inadmissibility grounds), and 237(a)(4)(A), (B) (describing classes of deportable aliens).

Security and Terrorism-Related Bars to Asylum

Although asylum applicants do not need to be admissible to be eligible to receive asylum, since INA § 208(b)(2)(A) (listing the bars to asylum) refers to an alien described by certain provisions of the terrorism-related inadmissibility grounds or the terrorist related deportability ground (which in turn refers to all terrorism-related grounds of inadmissibility), all of the terrorism-related inadmissibility grounds are bars to asylum under the terrorist bar.² Additionally, asylum may not be granted if there are reasonable grounds to believe that the applicant is a danger to the security of the United States under the security risk bar.³

Since a central mission of USCIS is to protect the integrity of the U.S. immigration system, national security matters are a primary consideration in USCIS adjudications. As part of the determination of statutory eligibility for an immigration benefit, you must examine each case for NS concerns and determine whether a bar or inadmissibility applies.

3 TYPES OF NATIONAL SECURITY CONCERNS

For the purposes of handling national security issues in USCIS adjudications, the agency categorizes two types of NS concerns:

- Known or Suspected Terrorists (KSTs)
- Non-Known or Suspected Terrorists (non-KSTs)

3.1 KSTs

All KSTs are NS concerns, regardless of any other factors. KSTs are a category of individuals who:

- Have been nominated and accepted for placement in the Terrorist Screening Database (TSDB);
- Are on the Terrorist Watch List; and

² INA § 208(b)(2)(A)(v).

³ INA § 208(b)(2)(A)(iv); *see also Matter of R-S-H-*, 23 I&N Dec. 629, 640 (BIA 2003) (holding that substantial evidence supported the immigration judge's determination that an applicant who co-founded an organization later named as a "Specially Designated Global Terrorist" organization pursuant to Executive Order 13224 was barred from asylum as a security risk).

- Have a specially coded lookout posted in TECS⁴, the National Crime Information Center (NCIC) and/or the State Department's Consular Lookout Automated Support System (CLASS)⁵

KSTs are found through systems checks and their records will show up in one of the following ways:

- In TECS as a [REDACTED] LE KSTs⁶.
 - [REDACTED] LE
- In NCIC as a NIC/T
 - [REDACTED] LE
- In CLASS, certain [REDACTED] LE hits reference KSTs. If a [REDACTED] LE hit is identified, the Terrorist Screening Center (TSC) is contacted to confirm whether the individual matches a record in the TSDB.

Therefore, even if an individual testifies to having committed terrorist acts, but there is no [REDACTED] LE in TECS, NIC/T in NCIC or [REDACTED] LE reference in CLASS, the subject would not be considered a KST at that moment for USCIS national security handling purposes. The only way to become a KST is to be formally nominated.⁷

Individuals are promoted to and demoted from KST status on a daily basis.⁸ Consequently, it is imperative to follow divisional guidance regarding re-running these security checks before any adjudicative action, as a KST hit could have been added or removed.

⁴ Formerly known as the Treasury Enforcement Communications System (TECS)/Interagency Border Inspection System (IBIS), this system is currently known as just TECS. See "Policy for Vetting and Adjudicating Cases with National Security Concerns: Attachment A - Guidance for Identifying National Security Concerns," (April 11, 2008).

⁵ *Id.*

⁶ These [REDACTED] LE cases will be processed like other non-KSTs, except that the FDNS-IO should contact the TSC to confirm the hit. "Updated Instructions for Handling [REDACTED] LE" United States Citizenship and Immigration Services (May 23, 2012).

⁷ "Policy for Vetting and Adjudicating Cases with National Security Concerns: Attachment A - Guidance for Identifying National Security Concerns," (April 11, 2008).

⁸ It is not uncommon to encounter a case in which the subject was a KST at an early stage of the adjudication but by the national security case review stage, the subject was removed from the Terrorist Watch List. "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" (May 14, 2008).

3.2 Non-KSTs

The Non-KST category refers to all other NS concerns, regardless of source.

This category of NS concerns can include but is not limited to⁹:

- Associates of KSTs
- Unindicted co-conspirators
- Terrorist organization members
- Persons involved with providing material support to individuals who are or have been engaged in terrorist activity to terrorist organizations
- Persons involved in other terrorist activity
- Agents of foreign governments

The majority of NS concerns are non-KSTs. Individuals and organizations in the non-KST category may pose an even greater risk than KSTs because even though they may present a national security risk to the United States, they have not been previously identified as such or there is not enough information to nominate them to a watch list.

4 IDENTIFYING NATIONAL SECURITY CONCERNS

As noted above, KST hits automatically indicate the presence of an NS concern. Identifying non-KSTs is more complicated. Agency-wide guidance explains:

An NS concern exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in INA §§ 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B). This includes, but is not limited to, terrorist activity; espionage; sabotage; and the illegal transfer of goods, technology, or sensitive information. . . The officer should consider the *activities, individuals, and organizations* described in INA §§ 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) as examples of indicators of an NS concern and for determining whether an NS concern exists.¹⁰

“Articulable” is defined as capable of being expressed, explained or justified. There must be a *reasonably expressed link* between the individual and the activity. The link must be

⁹ “Policy for Vetting and Adjudicating Cases with National Security Concerns: Attachment A - Guidance for Identifying National Security Concerns,” (April 11, 2008).

¹⁰ “Policy for Vetting and Adjudicating Cases with National Security Concerns: Attachment A - Guidance for Identifying National Security Concerns,” (April 11, 2008).

able to be articulated or explained – it cannot just be a feeling or a hunch. In the event that you identify one or more indicators, you must first confirm whether the indicator relates to the applicant, petitioner, beneficiary or derivative.¹¹ In addition, you must examine the *totality of the circumstances* in determining whether an articulable link exists.¹²

4.1 Indicators of National Security Concerns: Statutory

The statutes that describe activities, individuals and organizations to which an articulable link would render an individual a national security concern are INA §§ 212(a)(3)(A), (B), and (F), and §§ 237(a)(4)(A) and (B). These statutes contain comprehensive definitions of activities, associations, and organizations that indicate an applicant is an NS concern, for example:

- “Terrorist activity” is defined in INA § 212(a)(3)(B)(iii)¹³
- Conduct that constitutes “engaging” in terrorist activity is defined under INA § 212(a)(3)(B)(iv)¹⁴; and
- “Terrorist organizations” are defined in INA § 212(a)(3)(B)(vi).¹⁵

If in the totality of the circumstances, an applicant’s activities or associations establish an articulable link to one of the grounds mentioned above, the result is an NS concern that must be further processed¹⁶ by the adjudicating officer. Section 10 will explain in great detail how some of these statutory NS concerns are vetted and resolved through the available TRIG exemption authorities.

Other sections of the INA which may describe activities that are indicators of NS concerns include:

208(b)(2)(A) Exceptions to Asylum Eligibility
 212(a)(2)(I) Inadmissible Aliens – Money Laundering
 221(i) Issuance of visas – Revocation of visas or other documents
 235(c) Removal of aliens inadmissible on security and related grounds

¹¹ “Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns,” (May 14, 2008).

¹² *Id.* See also “Policy for Vetting and Adjudicating Cases with National Security Concerns: Attachment A – Guidance for Identifying National Security Concerns,” (April 11, 2008).

¹³ For definition, see also section below, “Terrorist Activity” Defined.

¹⁴ For definition, see also section below, “Engage in Terrorist Activity” Defined.

¹⁵ For expanded definition, see also section below, TRIG – “Terrorist Organization” Defined.

¹⁶ The vetting of NS cases through CARRP is a shared responsibility between the adjudicator and FDNS, which varies upon your division.

4.2 Indicators of National Security Concerns: Non-Statutory

In addition to statutory indicators as noted above, there are non-statutory indicators of national security concerns. These non-statutory indicators may not fall squarely under one of the security or terrorism-related inadmissibility grounds, but still may lead to an articulable link with such a ground.



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4.3 Where You May Encounter NS Indicators

NS indicators – either statutory or non-statutory – can arise at any stage of the adjudication process and can emerge from, but are not limited to, the following:



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¹⁷ You cannot issue a final decision to grant an immigration benefit until certain identity and security background checks have been conducted on the applicant. Each Division conducts its own particular checks prior to making a decision on a case. The results of the required identity and security checks may uncover information indicating that the applicant may be ineligible for a benefit due to national security concerns. Some of these checks may include: FBI Name Checks, FBI Fingerprint Checks, TECS, Consular Lookout Automated Support System (CLASS), Department of State Security Advisory Opinions (SAOs), US-VISIT, or other system checks that may connect the applicant to any of the activities or organizations of concern, such as terrorism, counterintelligence, detentions by the United States military, etc. Consult



5 INTERVIEWING CONSIDERATIONS AND PREPARATION

This section provides you with information to help recognize possible NS indicators from an interview or file review. Information about an applicant's activities may not be available from outside sources, and it is likely that only by following up on NS indicators during the interview will you be able to gather information regarding the applicant's involvement in any activities or organizations that may subject him or her to an inadmissibility/bar. It is also important to review relevant country condition materials to be familiar with the circumstances in the country, including information on the kinds of organizations and activities to which a connection may render the applicant an NS concern. You must also be knowledgeable of the legal requirements to establish eligibility while developing lines of questioning that address those elements. Below is a non-exhaustive list¹⁸ of the kinds of issues/factors that may be NS indicators and what to keep in mind if they arise.

5.1 Issues for Examination in the Interview/Analysis

Considering the issues below will not only assist you in developing pertinent lines of questioning for an interview or re-interview, but also in analyzing the facts of the case in order to reach a conclusion about whether there are NS indicators and, if so, whether an NS concern exists based on the totality of the circumstances. Keep in mind that different actions/associations are connected with different grounds of inadmissibility and the language of § 212(a)(3)(B) captures a broad array of activities. Additionally, an exception

your Division's security check procedures for detailed information on processing cases where a security check indicates a national security concern.

¹⁸ Many examples of these indicators come from past presentations to asylum officers by the ICE National Security Integration Center (NSIC), Office of Investigations.

may exist or an exemption may be available for certain activities and/or associations. In such cases, consideration of the particular circumstances will be important in determining the existence of an exception or availability of an exemption. When NS indicators arise, you must elicit specific details, including dates, locations, and names of individuals and organizations relevant to the determination and consider questions such as:

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6 THE TERRORISM-RELATED INADMISSIBILITY GROUNDS (TRIG)

As previously noted, the terrorism-related inadmissibility grounds are found at INA § 212(a)(3)(B). This section has a long and complex history, and is the subject of various policy memoranda and determinations by executive branch agencies, as well as decisions by the courts. Because of this complexity, and because TRIG touches upon issues of national security, foreign relations, and interagency cooperation, it is vital for you to properly identify and adjudicate TRIG issues. The purpose of this section is to familiarize you with TRIG generally, so that you can identify TRIG issues in the context of RAIO adjudications. After having done so, you will know how to fully develop the factual record and to properly analyze and adjudicate any applicable TRIG issues.

While all cases in which the INA § 212(a)(3)(B) grounds apply are national security concerns under CARRP, in many instances these concerns may be resolved by the adjudicator and, therefore, the case will not proceed through all four steps of the CARRP process. For example, if through the interview and document review, an exemption is identified for the applicable terrorist related inadmissibility ground and is granted, CARRP processing may cease at that time.

The statute consists of four basic areas: the inadmissibility grounds themselves (INA § 212(a)(3)(B)(i)); the definition of “terrorist activity” (INA § 212(a)(3)(B)(iii)); the definition of “engaging in terrorist activity” (INA § 212(a)(3)(B)(iv)); and the definition of “terrorist organization” (INA § 212(a)(3)(B)(vi)).

This lesson plan will first explore the INA definition of a “terrorist organization.”

7 TRIG – “TERRORIST ORGANIZATION” DEFINED

Many of the general terrorism-related grounds of inadmissibility refer to “terrorist organizations.” There are three categories, or “tiers,” of terrorist organizations defined in the INA.²⁴ These three tiers are explained below.

7.1 Categories or “Tiers” of terrorist organizations

- **Tier I (Foreign Terrorist Organizations (FTO))**²⁵: a foreign organization designated by the Secretary of State under INA § 219 after a finding that the organization engages in terrorist activities or terrorism. In addition, pursuant to legislation, the Taliban is considered to be a Tier I organization for purposes of INA § 212(a)(3)(B);
- **Tier II (Terrorist Exclusion List (TEL))**²⁶: an organization otherwise designated by the Secretary of State as a terrorist organization, after finding that the organization engages in terrorist activities; or
- **Tier III (“Undesignated” Terrorist Organizations)**²⁷: a group of two or more individuals, whether organized or not, that engages in, or has a subgroup²⁸ that “engages in terrorist activities.” (The definition of “engage in terrorist activity” is found at INA § 212(a)(3)(B)(iv) and is discussed below.)

The first two categories of terrorist organizations are straightforward, and easily referenced on State Department websites (noted below). The third is by far the most commonly encountered in adjudications, and it is not listed anywhere, as it is the activities of the group that bring it within the definition of a Tier III terrorist organization.

²⁴ INA § 212(a)(3)(B)(vi).

²⁵ INA § 212(a)(3)(B)(vi)(I). *See also* § 7.2, “Foreign Terrorist Organization Designation under INA § 219 (Tier I)” below for more information.

²⁶ INA § 212(a)(3)(B)(vi)(II). *See also* § 7.3 “Terrorist Exclusion List (Tier II)” below for more information.

²⁷ INA § 212(a)(3)(B)(vi)(III). *See also* § 7.4, “Undesignated Terrorist Organizations,” below, for more information.

²⁸ *See* Department of State guidance on what constitutes a subgroup, [9 FAM 40.32 N2.7](#).

7.2 Foreign Terrorist Organization Designation under INA § 219 (Tier I)

7.2.1 Authority

Under INA § 219, the Secretary of State is authorized to designate an organization as a foreign terrorist organization. The Secretary of State is required to notify congressional leaders in advance of making such a designation.²⁹

The designation does not become effective until its publication in the *Federal Register*, and the designation will remain effective until revoked by an act of Congress or by the Secretary of State.

7.2.2 Definition

The Secretary of State is authorized to designate an organization as a terrorist organization if the Secretary finds that:

- The organization is a foreign organization;
- The organization engages in terrorist activity (as defined in INA § 212(a)(3)(B)) or terrorism (as defined in 22 U.S.C. § 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or terrorism³⁰; and
- The terrorist activity or terrorism of the organization threatens the security of U.S. nationals or the national security of the United States.³¹

7.2.3 Organizations Currently Designated as Foreign Terrorist Organizations (FTOs)³²

On October 8, 1997, the Secretary of State published in the *Federal Register* the first list of Tier I terrorist organizations. Most of the organizations were re-designated in October 1999 and October 2001. The Secretary of State has also designated groups as terrorist organizations in separate *Federal Register* Notices each year since 1999.

²⁹ INA § 219(a)(2)(A)(i).

³⁰ See *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238, 1243-1244 (D.C. Cir. 2003) (finding that an organization's admission to participation in attacks on government buildings and assassinations was sufficient to support a finding that the group was engaged in "terrorist activity")

³¹ INA § 219(a)(1).

³² See US Department of State, Office of Counterterrorism, *Fact Sheet: Foreign Terrorist Organization Designation* (Washington, DC, September 1, 2010).

Foreign terrorist organizations designated by the Secretary of State include, among others, al-Qaeda, Boko Haram, Communist Party of the Philippines/New People's Army (CPP/NPA), Basque Homeland and Freedom (ETA), Hamas, Hezbollah, the Islamic State of Iraq and the Levant (ISIL, ISIS, or IS), Liberation Tigers of Tamil Eelam (LTTE), Revolutionary Armed Forces of Colombia (FARC), and Shining Path.

The current FTO list can be found on the Department of State Bureau of Counterterrorism's homepage at <http://www.state.gov/g/ct/list/index.htm>. This site should be checked on a regular basis for the most current version of the list as additional organizations may be designated at any time.

Although the Taliban is not currently included on the State Department's list of FTOs (because this group was not designated by the State Department under INA § 219), per § 691(b) of Consolidated Appropriations Act, 2008, the Taliban is considered a Tier I terrorist organization.³³

7.3 Terrorist Exclusion List (Tier II)

7.3.1 Authority

The USA PATRIOT Act added, and the REAL ID Act amended, two additional categories of "terrorist organizations" to INA § 212.³⁴ The Secretary of State, in consultation with or upon the request of the Secretary of Homeland Security or the Attorney General, may designate as a terrorist organization an organization that "engages in terrorist activity" as described in INA § 212(a)(3)(B)(iv)(I-VI).

7.3.2 Definition

The Terrorist Exclusion List (TEL) designation is effective upon publication in the *Federal Register*. The organizations that have been designated through this process are referred to collectively as the "Terrorist Exclusion List."

Unlike Tier I organizations, there is no requirement that the organization endangers U.S. nationals or U.S. national security.

There are 58 organizations designated as terrorist organizations under INA § 212(a)(3)(B)(vi)(II).

³³ Note: The Taliban is the only group to date that Congress has designated as a Tier I terrorist organization and the only one that does not appear on the FTO list.

³⁴ INA § 212(a)(3)(B)(vi)(II), (created by § 411(a)(1)(G) of the USA PATRIOT Act of 2001, and amended by § 103(c) of the REAL ID Act).

The Department of State lists the Terrorist Exclusion List at:

<http://www.state.gov/g/ct/rls/other/des/123086.htm>. However, while organizations may be removed from the list, the Department of State is no longer adding organizations to this list.

7.4 Undesignated Terrorist Organizations (Tier III)

Any group of individuals may constitute a “terrorist organization” under the INA even if not designated as such under INA § 219 or listed on the TEL, if they meet the requirements below.

7.4.1 Definition

A group of two or more individuals, whether organized or not, is a “terrorist organization” under the INA if the group engages in terrorist activity, or has a subgroup that engages in terrorist activity.³⁵

For example, looking to the definitions contained in the INA of “engaging in terrorist activity” and “terrorist activity,” an organization is a terrorist organization if it illegally uses explosives, firearms, or other weapons (other than for mere personal monetary gain), with intent to endanger the safety of individuals or to cause substantial damage to property. This broad definition covers most armed resistance groups and makes no exceptions for groups aligned with U.S. interests.³⁶ Note that there is no exception for groups using “justifiable” force. In *Matter of S-K-*, the BIA rejected the applicant’s argument that there is an exception to the “terrorist organization” definition for groups that use justifiable force to repel attacks by forces of an illegitimate regime. The BIA’s review of the statutory language led it to conclude “that Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as ‘freedom fighters,’ and it did not intend to give [the BIA] discretion to create exceptions for members of organizations to which our Government might be sympathetic.”³⁷ Similarly, in *Khan v. Holder*, the Ninth Circuit Court of Appeals considered and rejected the applicant’s argument that the statute contains an exception for organizations that use

³⁵ INA § 212(a)(3)(B)(vi)(III).

³⁶ INA §§ 212(a)(3)(B)(iii) & (iv); See *Matter of S-K-*, 23 I&N Dec. 936, 940 (BIA 2006) (declining to adopt a “totality of circumstances” test to the question of whether a group is engaged in “terrorist activity.”); See sections below “Terrorist Activity” Defined and “Engaging in Terrorist Activity” Defined.

³⁷ *Matter of S-K-*, 23 I&N Dec. 936, 941 (BIA 2006) (upholding the IJ’s determination that the Chin National Front, an armed organization that uses land mines in fighting against the Burmese government, met the INA definition of an undesignated terrorist organization).

force against military targets that is permitted under the international law of armed conflict.³⁸

On the other hand, criminal organizations whose violent activities are motivated purely by a desire for monetary gain are generally not considered Tier III organizations because their activities fall within the statutory exception at INA § 212(a)(3)(B)(iii)(V)(b). If you have any questions regarding whether a criminal gang or other organized criminal group may fall within this exception, please contact your supervisor for referral of the issue to the appropriate contact.³⁹

According to guidance from the Department of State, a group is a “subgroup” of another organization if there are reasonable grounds to believe that either the group as a whole or its members are affiliated with the larger group, for example, where the group is subordinate to or affiliated with the larger group and relies upon it to support or maintain its operations. If there is such a relationship, and the subgroup engages in terrorist activity, then both groups are terrorist organizations.⁴⁰

The Seventh Circuit Court of Appeals has noted, however, that an organization is not a terrorist organization simply because some of its members have engaged in terrorist activity “without direct or indirect authorization.” The activity must be “authorized, ratified, or otherwise approved or condoned by the organization” in order for the organization to be considered to have engaged in terrorist activity.⁴¹

7.5 Groups Excluded from the Tier III Definition by Statute

As a result of the broad reach of the statute and its application to groups either to which the United States is sympathetic or who have assisted the United States in the past, Congress enacted section 691(b) of the Consolidated Appropriations Act (CAA), 2008, which stated that the following groups *shall not be considered to be terrorist organizations* on the basis of any act or event occurring *before* December 26, 2007⁴²:

- Karen National Union/Karen Liberation Army (KNU/KNLA)
- Chin National Front/Chin National Army (CNF/CNA)
- Chin National League for Democracy (CNLD)

³⁸ *Khan v. Holder*, 584 F.3d 774, 784-785 (9th Cir. 2009).

³⁹ INA §212(a)(3)(B)(iii)(II).

⁴⁰ See 9 FAM 40.32 N2.7.

⁴¹ *Hussain v. Mukasey*, 518 F.3d 534, 538 (7th Cir. 2008).

⁴² Section 691(b) Consolidated Appropriations Act, 2008, Pub. L. no. 110-161 (2008).

- Kayan New Land Party (KNLP)
- Arakan Liberation Party (ALP)
- Tibetan Mustangs
- the Cuban Alzados (groups opposed to the Communist government of Cuba)
- Karenni National Progressive Party (KNPP)
- appropriate⁴³ groups affiliated with the Hmong⁴⁴
- appropriate groups affiliated with the Montagnards (includes the Front Unifié de Lutte des Races Opprimées (FULRO)⁴⁵)
- African National Congress (ANC)⁴⁶

(Hereafter, this list will be referred to as the “CAA groups” in this lesson plan.)

In December 2014, Congress enacted section 1264 of the National Defense Authorization Act for Fiscal Year 2015, which provides that the following groups, the two major Kurdish political parties in Iraq, are excluded from the definition of “terrorist organization”⁴⁷:

- Kurdish Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)

This provision is not time-limited. Unlike the CAA groups, the KDP and the PUK are not considered to be terrorist organizations for activities occurring at any time.

7.5.1 Discretionary Exemption Provision for Groups

The INA provides the Secretaries of State and Homeland Security, in consultation with the Attorney General and each other, the authority to conclude, in their sole unreviewable discretion, that an organization should not be considered a terrorist organization under this section.⁴⁸ The Secretary of Homeland Security **may not** exempt a group from the definition of an undesignated terrorist organization if the group:

- engaged in terrorist activity against the United States;

⁴³ Appropriate groups may be established through country condition reports to show that a subgroup is affiliated with the Hmong or Montagnards.

⁴⁴ See also Exercises of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act, October 5, 2007 (FULRO and Hmong).

⁴⁵ Effective Oct. 5, 2007.

⁴⁶ On July 1, 2008, Congress amended the CAA to add the African National Congress. Pub. L. no. 110-257.

⁴⁷ Section 1264(a)(1) National Defense Authorization Act for Fiscal Year 2015, Pub. L. no. 113-291 (2014)

⁴⁸ INA § 212(d)(3)(B)(i).

- engaged in terrorist activity against another democratic country; or
- has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians.

To date, this authority *has not* been exercised. However, as explained in Section 10.4 below, the Secretary of Homeland Security *has* exercised the authority not to apply certain provisions of INA § 212(a)(3)(B) to individual aliens with specific activities or associations with certain groups.

7.5.2 Recognized Foreign Governments not Considered Tier III Organizations

As a general matter, INA § 212(a)(3)(B) does not include activity of a recognized and duly constituted foreign government within the definition of “terrorist activity” or “engaging in terrorist activity.” Political parties that participate in, or have representation in, a government generally are not considered synonymous with the government of a country for purposes of this determination.

Also, entities in *de facto* control of an area may not be recognized as the government of that area.

If you have questions as to whether an entity should be considered the government for purposes of this determination or other questions related to this issue, please contact your supervisor for referral of the issue to the point of contact (POC) for TRIG-related issues for your Division.

8 TERRORISM-RELATED INADMISSIBILITY GROUNDS

8.1 Statute – INA §212(a)(3)(B)(i) – The Inadmissibility Grounds

The inadmissibility grounds themselves related to terrorist activity are found at INA § 212(a)(3)(B)(i) and are described in detail below. The terrorist activity deportability ground at INA § 237(a)(4)(B), as amended by the REAL ID Act of 2005, encompasses all of the inadmissibility provisions in INA § 212(a)(3)(B) (related to terrorist activities) and INA § 212(a)(3)(F) (related to association with terrorist organizations and activities intended to engage in while in the United States).⁴⁹

Therefore, these grounds of inadmissibility are also grounds of deportability.⁵⁰ It is important to note that the actual grounds of inadmissibility are only included in INA §

⁴⁹ INA § 212(a)(3)(F) requires consultation between DHS (given this authority under the Homeland Security Act of 2002) and the Department of State. Therefore USCIS rarely applies this ground of inadmissibility.

⁵⁰ INA § 237(a)(4)(B) (“Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.”) (codified at 8 U.S.C. § 1227(a)(4)(B)).

212(a)(3)(B)(i). Providing material support, for example, is not in and of itself a ground of inadmissibility – it is one of the ways in which an individual may “engage in terrorist activity.” INA § 212(a)(3)(B)(iv)(VI). That is, an individual who has provided material support to a terrorist organization is inadmissible under INA 212(a)(3)(B)(i)(I) as an alien who “has engaged in a terrorist activity.”

The terrorism-related grounds of inadmissibility under INA § 212(a)(3)(B) apply to an alien who:

- Has engaged in terrorist activity – INA § 212(a)(3)(B)(i)(I);⁵¹
- A consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity – INA § 212(a)(3)(B)(i)(II);
- Has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity – INA § 212(a)(3)(B)(i)(III);
- Is a (current) representative⁵² of – INA § 212(a)(3)(B)(i)(IV):
 - A terrorist organization (as defined in INA §212(a)(3)(B)(vi)) – INA § 212(a)(3)(B)(i)(IV)(aa);⁵³ or
 - a political, social, or other group that endorses or espouses terrorist activity – INA § 212(a)(3)(B)(i)(IV)(bb);⁵⁴
- Is a (current) member of a Tier I or II terrorist organization – INA § 212(a)(3)(B)(i)(V);⁵⁵
- Is a (current) member of a Tier III terrorist organization, unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and

⁵¹ See sections below “Terrorist Activity” Defined and “Engaging in Terrorist Activity” Defined.

⁵² For purposes of the terrorist provisions in the INA, “representative” is defined as “an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.” INA § 212(a)(3)(B)(v).

⁵³ See “Terrorist Organization” Defined above.

⁵⁴ Note that this ground of inadmissibility is written in the present tense but that prior representation raises the possibility that this ground, or other grounds of inadmissibility, may apply.

⁵⁵ INA § 237(a)(4)(B); see “Terrorist Organization” Defined. Note: The Taliban should be considered a Tier I terrorist organization pursuant to Section 691(d) of the Consolidated Appropriations Act, 2008.

should not reasonably have known, that the organization was a terrorist organization – INA § 212(a)(3)(B)(i)(VI).⁵⁶

NOTE: Several factors may be considered in determining whether an applicant is a member of a terrorist organization. Facts that would support a determination that an applicant is a member would include, but are not limited to:

- Acknowledgment of membership;
- Frequent association with other members;
- Participation in the organization’s activities, even if lawful;
- Actively working to further the organization’s aims and methods in a way suggesting close affiliation constituting membership;
- Occupying a position of trust in the organization, past or present;
- Receiving financial support from the organization, e.g., scholarships, pensions, salary;
- Contributing money to the organization;
- Determination of membership by a competent court;
- Voluntarily displaying symbols of the organization; or
- Receiving honors and awards given by the organization.⁵⁷

An applicant is not required to have been formally inducted into an organization to be considered a member. While only current membership is a basis for inadmissibility under this provision, an alien’s past links to an organization, such as those listed above, may help determine the alien’s current status. Generally, if you can conclude that the alien was a member in the past, current membership can be presumed.⁵⁸ Termination of membership usually will be shown by changes in the person’s attitudes, actions, associations, and activities over time and can be established by credible testimony alone.⁵⁹

- Endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization – INA § 212(a)(3)(B)(i)(VII)⁶⁰;
- Has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization – INA § 212(a)(3)(B)(i)(VIII);

⁵⁶ See “Terrorist Organization” Defined.

⁵⁷ 9 FAM 40.32 b2.4.

⁵⁸ *Id.*

⁵⁹ *Id.*; see also *Yiezas v. Holder*, 699 F.3d 798, 804 (4th Cir. 2012).

⁶⁰ Note that this ground, unlike INA § 212(a)(3)(B)(i)(III), (see subpoint 3 – INA § 212(a)(3)(B)(i)(III), above) *does not* require that the statements be made under circumstances indicating an intention to cause death or serious bodily harm.

“Military-type training” is defined at 18 U.S.C. § 2339D(c)(1) to include: “training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction . . .”⁶¹

NOTE: On January 7, 2011, the Secretary exercised her exemption authority under INA § 212(d)(3)(B)(i) for individuals who have received military-type training *under duress*.⁶²

- Is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years – INA § 212(a)(3)(B)(i)(IX);

To qualify as a “child,” the individual must be unmarried and under 21 years of age.

NOTE: This ground only applies to current spouses and does not apply if the applicant is divorced from the TRIG actor or if the TRIG actor is deceased.

EXCEPTION: The provision above does not apply to a spouse or child – INA § 212(a)(3)(B)(ii):

- who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
- whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section

8.2 “Terrorist Activity” Defined

Many of the general terrorism-related grounds of inadmissibility under INA § 212(a)(3)(B)(i) refer to “terrorist activity” or “engaging in terrorist activity.” Terrorist activity and engaging in terrorist activity are separately defined in the INA, the former at INA § 212(a)(3)(B)(iii) and the latter at INA § 212(a)(3)(B)(iv).

“Terrorist activity” is defined as any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

⁶¹ 18 U.S.C. § 2339D(c)(1).

⁶² See 76 Fed. Reg. 14418-01 (March 16, 2011) and Duress-Based Exemptions.

- The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle) – INA § 212(a)(3)(B)(iii)(I);
- The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained – INA § 212(a)(3)(B)(iii)(II);
- A violent attack on an internationally protected person or upon the liberty of such person– INA § 212(a)(3)(B)(iii)(III);

An internationally protected person is defined at 18 U.S.C. § 116(b)(4) as a:

- head of state or a foreign minister and accompanying family members when outside of own country;
- any other representative, officer, employee, or agent of the U.S. or other government, or international organization or family member when protected by international law (usually when out of own country);⁶³
- An assassination – INA § 212(a)(3)(B)(iii)(IV);
- The use of any
 - Biological, chemical, or nuclear weapons – INA § 212(a)(3)(B)(iii)(V)(a); or
 - Explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) – INA § 212(a)(3)(B)(iii)(V)(b)

With intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property – INA § 212(a)(3)(B)(iii)(V)

- A threat, attempt, or conspiracy to do any of the above – INA § 212(a)(3)(B)(iii)(VI)

8.3 “Engage in Terrorist Activity” Defined

“Engaging in terrorist activity” means, in an individual capacity or as a member of an organization:

⁶³ 18 U.S.C. § 1116(b)(4).

- To commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity – INA § 212(a)(3)(B)(iv)(I);
- To prepare or plan a terrorist activity – INA § 212(a)(3)(B)(iv)(II);
- To gather information on potential targets for terrorist activity – INA § 212(a)(3)(B)(iv)(III);
- To solicit funds or other things of value for – INA § 212(a)(3)(B)(iv)(IV):
 - a terrorist activity – INA § 212(a)(3)(B)(iv)(IV)(aa);
 - a Tier I or Tier II terrorist organization – INA § 212(a)(3)(B)(iv)(IV)(bb)⁶⁴; or
 - a Tier III (undesignated) terrorist organization that is a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity, unless the solicitor can demonstrate by clear and convincing evidence that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization – INA § 212(a)(3)(B)(iv)(IV)(cc)⁶⁵;

NOTE: *Collecting* funds or other items of value from others in order to pay ransom to a terrorist or a terrorist organization, in order to obtain the release of a third person, does not constitute solicitation of funds for a terrorist activity or for an organization. However, payment of ransom to a terrorist organization generally has been considered to fall under the material support ground of inadmissibility (discussed below).⁶⁶

- To solicit any individual:
 - To engage in conduct otherwise described as engaging in terrorist activity – INA § 212(a)(3)(B)(iv)(V)(aa);
 - for membership in a Tier I or Tier II terrorist organization - INA § 212(a)(3)(B)(iv)(V)(bb); or

⁶⁴ Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(I) and (II).

⁶⁵ Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(III).

⁶⁶ Memorandum from Dea Carpenter, Deputy Chief Counsel USCIS to Lori Scialabba on Collecting Funds from Others to Pay Ransom to a Terrorist Organization (February 6, 2008).

- for membership in a Tier III (undesignated) terrorist organization (a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization - INA § 212(a)(3)(B)(iv)(V)(cc); or
- To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds, or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training:
 - For the commission of a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(aa);
 - To any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(bb);
 - To a Tier I or Tier II terrorist organization - INA § 212(a)(3)(B)(iv)(VI)(cc);
 - To a Tier III (undesignated) terrorist organization (a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization - INA § 212(a)(3)(B)(iv)(VI)(dd).

By statute, an alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization (PLO) is considered to be engaged in terrorist activity.⁶⁷

Additional Guidance: Self-defense

USCIS interprets INA 212(a)(3)(b) not to include *lawful* actions taken in self-defense under threat of imminent harm, provided the action was considered lawful under the law of the country where it occurred, *and* under U.S. and states' laws. The analysis is complicated and requires research of foreign laws. If you have a case in which the self-defense exception may apply, please contact your Division POC for TRIG-related issues. If this issue arises at interview, you should elicit as much detail as possible about the

⁶⁷ INA § 212(a)(3)(B)(i).

incident in question, including what kind of force the applicant used, why he or she believed such force was necessary, and other relevant circumstances of the incident and include that information in your query to your Division POC, who will work with the TRIG Working Group to provide further guidance.

9 TRIG - MATERIAL SUPPORT

The terrorism-related ground of inadmissibility you will encounter most often in your adjudications is engaging in terrorist activity through the provision of material support to an individual who has committed or will commit a terrorist activity, or to a terrorist organization.

9.1 Statutory Examples of Material Support

The INA provides the following non-exhaustive list of examples which would constitute “material support”⁶⁸:

- Safe house
- Transportation
- Communications
- Funds
- Transfer of funds or other material financial benefit
- False documentation or identification
- Weapons (including chemical, biological, or radiological weapons)
- Explosives
- Training

Beyond these examples, the INA does not define the meaning of “affords material support.”

The statutory list is not an exhaustive list of what constitutes material support.⁶⁹

⁶⁸ INA § 212(a)(3)(B)(iv)(VI).

⁶⁹ *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004) (“Use of the term ‘including’ suggests that Congress intended to illustrate a broad concept rather than narrowly circumscribe a term with exclusive categories.”).

9.2 Factors Relating to “Material Support”

9.2.1 Amount of Support

The amount of support provided need not be large or significant. For example, in *Singh-Kaur v. Ashcroft*, the U.S. Court of Appeals for the Third Circuit upheld the BIA’s determination that a Sikh applicant who gave food to and helped to set up tents for a Tier III terrorist organization had provided “material support” under INA § 212(a)(3)(B)(iv)(VI).⁷⁰

The court looked to the plain meaning of the terms “material” (“[h]aving some logical connection with the consequential facts;” “significant” or “essential”) and “support” (“[s]ustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed”) when evaluating the BIA’s interpretation of the statute. Based on the plain language of the terms and the non-exhaustive nature of the list of examples provided in the statute, the court found that the BIA’s interpretation that the definition of “material support” included the provision of food and setting up tents was not manifestly contrary to the statute.⁷¹

The U.S. Court of Appeals for the Fourth Circuit in *Viegas v. Holder* found that “there is no question that the type of activity in which Viegas engaged comes within the statutory definition of material support. The issue is whether Viegas’s activities qualify as “material.”⁷² The court went on to hold that the petitioner’s support (paying dues monthly for four years and hanging posters) was sufficiently substantial standing alone to have some effect on the ability of the FLEC to accomplish its goals.⁷³

In *Alturo v. U.S. Att’y Gen.*, the U.S. Court of Appeals for the Eleventh Circuit upheld the BIA’s determination that an applicant who had given annual payments of \$300 to the United Self-Defense Forces of Colombia (AUC), a Tier I terrorist organization, had provided material support. The Court explained, “The BIA’s legal determination[] that the funds provided by Alturo constitute ‘material support’ [is a] permissible construction[] of the INA to which we must defer. The INA broadly defines ‘material support’ to include the provision of ‘a safe house, transportation, communications, *funds*, transfer of funds, or other material financial benefit, false documentation or identification, weapons...explosives, or training,’ and the BIA reasonably concluded that

⁷⁰ *Singh-Kaur*, 385 F.3d at 300-301.

⁷¹ *Id.* at 298 (quoting *Black’s Law Dictionary* (7th ed. 1999)). In reaching this conclusion, the court noted that the BIA reasonably interpreted the terrorist grounds of inadmissibility to cover a wider range of actions than do the criminal provisions regarding material support to a terrorist organization codified at 18 U.S.C. § 2339A. *See id.* at 298.

⁷² *Viegas*, 699 F.3d at 803..

⁷³ *Id.*

annual payments of \$300 over a period of six years was not so insignificant as to fall outside that definition.”⁷⁴

Although the courts that have considered the issue have generally agreed with the government’s position that there is no exception for insignificant or “de minimis” material support implicit in the statute, certain applicants who have provided “limited” or “insignificant” material support to a Tier III organization may be eligible for an exemption. *See* Section 10.5.5, Situational Exemptions – Certain Limited Material Support and Insignificant Material Support.

9.2.2 To Whom/For What the Material Support was Provided

The material support provision applies when the individual afforded material support for the commission of a “terrorist activity,” to someone who has committed or plans to commit a terrorist activity, or to a terrorist organization.⁷⁵

9.2.3 Use of Support

How the terrorist organization uses the support provided by the applicant is irrelevant to the determination as to whether the support is material. For example, in *Matter of S-K-*, the BIA found that Congress did not give adjudicators discretion to consider whether an applicant’s donation or support to a terrorist or terrorist organization was used to further terrorist activities.⁷⁶ It may, however, be relevant to the application of an exemption.

9.2.4 Applicant’s Intent

The applicant’s intent in providing the material support to an individual or terrorist organization is irrelevant to the determination as to whether the support is material.⁷⁷ It may, however, be relevant to the application of an exemption.

⁷⁴ *Alturo v. U.S. Att’y Gen.*, 716 F.3d 1310, 1314 (11th Cir. 2013).

⁷⁵ *See Singh-Kaur*, 385 F.3d at 298 (3d Cir. 2004); INA § 212 (a)(3)(B)(iv)(VI)(aa) – (dd)).

⁷⁶ *Matter of S-K-*, 23 I&N Dec. 936, 944 (BIA 2006).

⁷⁷ *Id.* at 943 (pointing out that the statute requires only that the applicant provide material support to a terrorist organization, without requiring an intent on the part of the provider).

9.2.5 Relationship of Material Support Provision to Membership in a Terrorist Organization

Current membership in a terrorist organization is a distinct ground of inadmissibility, and is not, in and of itself, equivalent to the provision of material support.⁷⁸ While a member of a terrorist organization may have committed an act that amounts to material support to that group (such as paying dues), membership and support are two distinct grounds that should be analyzed separately.

9.2.6 Household Chores

Household chores undertaken for any member of the applicant's household do not constitute the provision of material support. Household chores are chores undertaken to maintain the household. They may include, but are not limited to, activities such as cleaning, cooking, serving food and drink (to other household members), repairs, and other labor such as farm work or care of animals. Household members include spouses, parents or step-parents of minor children, parents or step-parents of adult children, natural or adopted children, siblings, and other relatives by blood or marriage who reside in the household full-time.

Household chores do not include chores that are undertaken for any reason other than maintenance of the applicant's household or for the benefit of a non-household member or a household guest. These chores would constitute the provision of material support (e.g. serving tea to one's brother's friends at the direction of one's brother). This type of support may constitute a routine social transaction, however, and applicants who are inadmissible for the provision of such material support may be eligible for the Certain Limited Material Support Exemption. See Section 10.5.5, Situational Exemptions – Certain Limited Material Support and Insignificant Material Support.

9.2.7 Duress

Some advocates have argued that there is an implicit exception in the statute for individuals who provided material support to a terrorist organization under duress – that is, that individuals who were forced to give material support to a terrorist organization are not inadmissible. DHS has taken the position, based on the plain language of the statute and the exemption authority given to the Secretary of State and the Secretary of Homeland Security, that there is no statutory duress exception. Since early 2007, though, an exemption has been available for certain applicants who have provided material

⁷⁸ INA §§ 212(a)(3)(B)(i)(V)-(VI).

support under duress – that is, these applicants are inadmissible, but DHS may decide to exempt the ground of inadmissibility that applies to them.⁷⁹

Four circuit courts of appeals have upheld BIA decisions holding that the statute does not contain a duress exception. In *Annachamy v. Holder*, the U.S. Court of Appeals for the Ninth Circuit held that “the statutory framework makes clear that no exception was intended.” The Court noted that the text of the statute does contain an explicit exception for those applicants who did not know or should not reasonably have known that the organization to which they provided material support was a Tier III terrorist organization and that the inadmissibility ground for membership in the Communist party contains an explicit exception; thus, the Court reasoned, if Congress had intended the statute to contain a duress exception to the material support provision, it would have explicitly included one.⁸⁰ Likewise, the Third, Fourth and Eleventh Circuit Courts of Appeals have found that the BIA’s construction of the statute to include material support provided under duress was permissible and deferred to its interpretation.⁸¹

In *Ay v. Holder*, however, the U.S. Court of Appeals for the Second Circuit declined to defer to an unpublished BIA decision holding that the statute does not contain an implicit duress exception. The Second Circuit found that the statute was silent on this issue and therefore, as the Supreme Court had held when considering the “persecutor bar” provision in *Negusie v. Holder*, ambiguous. It therefore remanded the case to the BIA for consideration of the issue.⁸²

No court has determined that the statute does contain a duress exception. In cases where you find that an applicant has provided material support to a terrorist organization under duress, you must find that this ground of inadmissibility does apply but consider whether the applicant has established his or her eligibility for the situational exemption. For more information, see [Section 10.5.1. Situational Exemptions – Duress-Based](#).

9.3 Lack of Knowledge Exceptions

9.3.1 Exception for Tier IIIs Only (membership, solicitation and material support)

There is an exception for some of the TRIG provisions related to Tier III organizations if the applicant can “demonstrate by clear and convincing evidence that he did not know,

⁷⁹ Exemptions are also available for military-type training under duress and solicitation under duress. See [Section 10.5.1. Situational Exemptions – Duress-Based](#), below.

⁸⁰ *Annachamy v. Holder*, 733 F.3d 254, 260-261 (9th Cir. 2012).

⁸¹ *Barahona v. Holder*, 691 F.3d 349, 353 (4th Cir. 2012); *Alturo v. U.S. Att’y Gen.*, 716 F.3d 1310, 1314 (11th Cir. 2013); *Sesay v. Att’y Gen. of U.S.*, 787 F.3d 215, 222 (3d Cir. 2015).

⁸² *Ay v. Holder*, 743 F.3d 317, 320 (2d Cir. 2014).

and reasonably should not have known, that the organization was a terrorist organization.”⁸³ This lack of knowledge exception refers to knowledge of the group’s activities, and in particular knowledge that the group engages in activities of the type that qualify as “engaging in terrorist activity” under INA § 212(a)(3)(B)(iv). The applicant does not, however, need to know that the group meets the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III).⁸⁴

This exception applies to:

- members of;
- those who solicit funds, things of value or members for; and
- those who provide material support to,

Tier III (undesignated) terrorist organizations only.

If the applicant can show by “clear and convincing” evidence that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization⁸⁵, these grounds of inadmissibility do not apply.

“Clear and convincing” evidence is that degree of proof, that, though not necessarily conclusive, will produce a “firm belief or conviction” in the mind of the adjudicator.⁸⁶ It is higher than the preponderance of the evidence, and lower than beyond a reasonable doubt.⁸⁷

This exception does not apply to Tier I or Tier II organizations. This exception also does not apply to “representatives” of undesignated terrorist organizations.⁸⁸

⁸³ INA § 212(a)(3)(B)(i)(VI), (B)(iv)(IV)(cc), (B)(iv)(V)(cc), (B)(iv)(VI)(dd).

⁸⁴ *American Academy of Religion v. Napolitano*, 573 F.3d 115, 132 (2d. Cir. 2009).

⁸⁵ INA § 212 (a)(3)(B)(iv)(VI)(dd); *See Section 7.4 Undesignated Terrorist Organization (Tier III); see also Matter of S.-K.*, 23 I&N Dec. 936, 941-942; *Viegas*, 699 F.3d at 802-803 (upholding the BIA’s finding that the applicant “reasonably should have known” his organization was engaged in violent activities despite his lack of specific information about his own faction); *Khan*, 584 F.3d at 785 (holding that the applicant’s admission that he knew that a wing of his organization was dedicated to armed struggle and evidence of media reports of violent attacks committed by his organization were sufficient to support a finding that he knew or reasonably should have known it was a terrorist organization).

⁸⁶ *Matter of Carrubba*, 11 I&N Dec. 914, 917-18 (BIA 1966); *see also Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988).

⁸⁷ Note that there is both a subjective (did not know) and an objective (should not reasonably have known) component to this exception.

⁸⁸ INA § 212(a)(3)(B)(v) – “Representative” defined.

In order to determine whether a lack of knowledge is reasonable, you must consider:

- What the individual knew about the group
- Whether the group made clear what the support would be used for
- The context and relevant country conditions information
- The individual's age and/or other mental capacity
- Any other relevant information.

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9.3.2 Exception for All Tiers (material support only)

Additionally, under the material support provision, INA § 212(a)(3)(B)(iv)(VI), there is an exception that if the applicant did not know or reasonably should not have known that he or she *afforded material support*, the applicant would not be inadmissible.

As a practical matter, this means that if the applicant did not know that the person he or she gave support to belonged to some type of organization/group, then he or she would not be inadmissible. Likewise, if the applicant did not know, and should not reasonably have known that the person otherwise fell within INA § 212(a)(3)(B)(iv)(VI), (such as by having carried out terrorist activities) he or she would not be inadmissible.

However, if the applicant did know that those to whom he provided material support belonged to a Tier I or II (regardless of whether the applicant knew that the organization was a terrorist organization) or a Tier III (and knew or should have reasonably known that it was a terrorist organization) or had carried out acts that would otherwise bring

them within INA § 212 (a)(3)(B)(iv)(VI) he would be inadmissible under INA § 212 (a)(3)(B)(iv)(VI).



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10 TRIG EXEMPTION AUTHORITY

10.1 General

INA § 212(d)(3)(B)(i), as created by the 2005 REAL ID Act and revised by the Consolidated Appropriations Act, 2008, includes a discretionary exemption provision for certain grounds of inadmissibility under INA § 212(a)(3)(B). This exemption authority can be exercised by the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General.⁸⁹

Exemptions to date fall into one of three categories: “group-based” exemptions, which pertain to associations or activities with a particular group or groups; “situational” exemptions, which pertain to a certain activity, such as providing material support or medical care; and “individual” exemptions, which pertain to a specific applicant.

Once the Secretary of Homeland Security signs a new exemption authority, USCIS releases (via email and on the USCIS Intranet) the exemption document along with a corresponding

⁸⁹ INA §212(d)(3)(B)(i). For some specific examples of the Secretary’s exercise of discretion under this provision, see USCIS [Fact Sheets](#).

policy memorandum, which provide further guidance to adjudicators on implementing the new discretionary exemption.

In each of the exercises of exemption authority to date that apply to more than one individual, the Secretary of Homeland Security delegated to USCIS the authority to determine whether a particular alien meets the criteria required for the exercise of the exemption.

10.2 Criteria

In order to be eligible for an exemption, all applicants must meet specific criteria that are divided into three categories: (1) certain threshold requirements; (2) the specific exemption criteria and (3) the factors to consider in the totality of the circumstances. The implementation guidance for each exemption sets forth the applicable criteria and should be consulted when adjudicating exemptions.

10.2.1 Threshold Requirements

In order to be *considered* for an existing exemption from one of the terrorism-related grounds of inadmissibility, an applicant must at a minimum:

- Establish that he or she is otherwise eligible for a visa or the immigration benefit or protection being sought
- Undergo and pass all required background and security checks
- Fully disclose, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of material support
- Establish that he or she poses no danger to the safety and security of the United States⁹⁰

10.2.2 Exemption Requirements

If the applicant meets the threshold requirements, then the next step is to consider whether the applicant meets the requirements of the exemption itself. Each exemption authority differs and should be carefully reviewed for applicability to the case at hand.

⁹⁰ If an adjudicator has questions on whether an applicant poses a danger to the safety and security of the U.S., consult with local FDNS IO and/or supervisor in accordance with local operating procedures.

10.2.3 Totality of the Circumstances

After you have determined that an applicant meets the requirements of an individual exemption, you must consider whether the applicant merits an exemption in the totality of the circumstances. This is a general discretionary analysis that takes into account any and all relevant factors in considering whether an exemption is warranted. A non-exhaustive list of appropriate factors includes:

- The nature of the TRIG activity, (e.g., the amount and type of support provided, and its frequency);
- The nature of activities committed by the terrorist organization;
- The applicant's awareness of those activities;
- The length of time that has passed since support was provided;
- The applicant's conduct since support was provided;
- Any other relevant factor.

10.3 Restrictions on Exemptions

No exemption is possible, regardless of the circumstances, for an individual who is inadmissible under INA § 212(a)(3)(B)(i)(II) (relating to aliens known or reasonably believed to be engaged in or likely to engage after entry in any terrorist activity) or for 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 Tier I or Tier II terrorist organization.⁹¹

10.4 Group-Based Exemptions

10.4.1 CAA Groups (2008) and NDAA Groups (2014)

Aliens encountered in connection with the organizations covered in the CAA receive “automatic relief” for activities described in INA § 212(a)(3)(B) in which “terrorist

⁹¹ INA § 212(d)(3)(B)(i).

organization” is a part, and thus are not inadmissible under INA § 212(a)(3)(B) for activities or associations prior to December 26, 2007. This is because under the CAA the groups are not considered “terrorist organizations.” with regard to activities occurring before this date. Likewise, groups listed under NDAA are not considered to be terrorist organizations. As such, no TRIG Exemption Worksheet is required by adjudicators to process these claims and such applications can proceed through the standard field level review.⁹² If, however, an applicant is inadmissible under the TRIG grounds for activities or associations where “terrorist organization” is not a necessary element, or if an applicant has activities with a CAA group that has engaged in terrorist activity since December 26, 2007, there is an exemption available and an Exemption Worksheet should be completed. The exemptions for each of the CAA groups may be applied to applicants not otherwise covered by the automatic relief provisions of the CAA. Please note that if one of the CAA groups commits terrorist activity after December 26, 2007, the group will be considered a Tier III organization after that date. Country conditions information supports that two Burmese groups fall into this category.⁹³ The two NDAA groups, by contrast, are not considered to be Tier III organizations under any circumstances.

To clarify, the “automatic relief” provisions of the CAA and NDAA only apply to TRIG grounds in which a terrorist organization is a necessary element. For example, an individual who provided material support to the KNLA (a CAA group) in 2005 would be given “automatic relief” and would therefore no longer be inadmissible since the KNLA is no longer considered a “terrorist organization” under the INA. However, the CAA and NDAA did not provide “automatic relief” for persons associated with the named groups who were subject to a ground of inadmissibility related to terrorist activity that did not refer to the INA’s definition of a “terrorist organization.” For example, an individual who fought with KNLA (used weapons) remained inadmissible after the passage of the CAA as one who engaged in “terrorist activity,” which is defined to include the unlawful use of an explosive, firearm, or weapon or dangerous device with intent to harm or cause serious damage to property (except for pure monetary gain). In this scenario, since this definition of “engaging in terrorist activity” does not refer to a “terrorist organization,” the individual would remain inadmissible.

In order to address this scenario (as well as to address CAA groups that might again engage in terrorist activity after the CAA effective date of 12/26/07), on June 3, 2008, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, exercised their authority not to apply many of the provisions of INA § 212(a)(3)(B) to individuals for activities and associations connected to each of the ten groups listed in § 691(b) of CAA (for activities engaged in *after*

⁹² See 73 Fed. Reg. 34770-34777 (June 18, 2008); see also 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, Memorandum to Associate Directors, et al. (July 28, 2008).

⁹³ The KNU/KNLA and KNPP have re-engaged in terrorist activity after December 26, 2007.

December 26, 2007), but that were not otherwise covered by the automatic relief provisions.⁹⁴ Similarly, after the passage of the NDAA in 2014, USCIS determined that the previously-issued exemption for activities associated with the NDAA groups (noted below) may still be applied to those individuals who are inadmissible for terrorist activities that do not refer to the INA's definition of a "terrorist organization."⁹⁵

As long as there is no intent to engage in terrorist activities after entry to the United States, any activity or association with the ten CAA groups or the two NDAA groups is either not a terrorism-related ground of inadmissibility (because of "automatic relief"), or can be exempted. It is important to recognize the difference in a particular case, as in the first instance the terrorism-related grounds of inadmissibility do not apply at all, and in the second, an exemption is available that will need to be properly adjudicated.

10.4.2 Iraqi Groups

On September 21, 2009, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, authorized an exemption for all activities and associations (except for future intent to engage) involving the:

- Iraqi National Congress (INC)
- Kurdish Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)⁹⁶

The INC meets the definition of Tier III terrorist organizations due to its activities in opposition to Saddam Hussein and Baath Party rule, as did the KDP and PUK prior to their statutory exclusion from the definition by the NDAA. Although the KDP and PUK are no longer considered to be terrorist organizations, as explained above, this exemption may still be applied to applicants who are inadmissible for activities involving the KDP and PUK under the grounds that do not refer to the definition of the "terrorist organization."⁹⁷

⁹⁴ See Exercise of Authority Under INA § 212(d)(3)(B)(i), 73 Fed. Reg. 34770-34776 (June 18, 2008).

⁹⁵ "Implementation of Section 1264(a)(1), Subtitle E, Title XII, of the National Defense Authorization Act for Fiscal Year 2015, and Updated Processing Requirements for Discretionary Exemptions to Terrorism-Related Inadmissibility Grounds for Activities and Associations Relating to the Kurdistan Democratic Party and the Patriotic Union of Kurdistan," USCIS Policy Memorandum (March 13, 2015).

⁹⁶ See "Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities Related to the INC, KDP, and PUK," Memorandum to USCIS Field Leadership, Lauren Kielsmeier, Acting Deputy Director, USCIS (January 2010).

⁹⁷ "Implementation of Section 1264(a)(1), Subtitle E, Title XII, of the National Defense Authorization Act for Fiscal Year 2015, and Updated Processing Requirements for Discretionary Exemptions to Terrorism-Related Inadmissibility Grounds for Activities and Associations Relating to the Kurdistan Democratic Party and the Patriotic Union of Kurdistan," USCIS Policy Memorandum (March 13, 2015).

In addition to the threshold requirements listed in Section 10.2.1, this exemption also has an additional threshold requirement that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons.

10.4.3 All Burma Students' Democratic Front (ABSDF)

On December 16, 2010, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for all activities and/or associations (except for current engagement or future intent to engage in terrorist activity) with the All Burma Students' Democratic Front (ABSDF).⁹⁸

The ABSDF has operated for many years in defiance of Burma's military government by armed rebellion. Due to activities carried out by the organization, the ABSDF meets the definition of a Tier III organization.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.

10.4.4 Kosovo Liberation Army (KLA)

On June 4, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens who have certain voluntary, non-violent associations or activities with the Kosovo Liberation Army (KLA) as described in INA § 212(a)(3)(B).

The KLA was an Albanian insurgent organization which sought the separation of Kosovo from Yugoslavia in the 1990s. Due to its activities, the KLA meets the definition of Tier III terrorist organization.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also has two additional threshold requirements: first, that the applicant not have not participated in, or knowingly provided material support to, terrorist activities that targeted

⁹⁸ Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act, December 16, 2010 (All Burma Students' Democratic Front, 76 Fed. Reg. 2131-01 (January 12, 2011); see also "Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the All Burma Students' Democratic Front (ABSDF)," USCIS Policy Memorandum (December 29, 2010).

noncombatant persons or U.S. interests; and second, that the applicant not have been subject to an indictment by an international tribunal.

10.4.5 AISSF-Bittu Faction

On October 18, 2010, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for individuals who provided material support to All India Sikh Students Federation-Bittu Faction (AISSF-Bittu Faction).

The AISSF was initially formed in the early 1940s to help promote the Sikh religion and to establish an independent Sikh nation. The AISSF-Bittu Faction transformed itself from a militant outfit during the Sikh insurgency of the 1980s and early 1990s into something akin to an interest or lobbying group. Due to the violent activities carried out by the organization, the AISSF-Bittu Faction meets the definition of a Tier III organization.

This exemption does not require duress and is only applicable to the provision of material support.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also has an additional threshold requirement that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.⁹⁹

10.4.6 Farabundo Marti National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA)

On April 3, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for all activities and/or associations (except for current engagement or future intent to engage in terrorist activity) with the Farabundo Marti National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA).

The FMLN was formed in 1980 as a left-wing armed guerrilla movement, while the ARENA was formed in 1981 as a right-wing political party that used death squads to support its agenda. The two movements fought on opposite sides of the Salvadoran civil war, and due to their violent activities, they met the definition of Tier III organizations during that time.

⁹⁹ See Exercise of Authority Under INA § 212(d)(3)(B)(i), 76 Fed. Reg. 2130-02 (January 12, 2011).

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests and that he or she not have engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Salvadoran government.¹⁰⁰

10.4.7 Oromo Liberation Front (OLF)

On October 2, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Oromo Liberation Front (OLF).

The OLF is an opposition group founded in 1973 engaged in violent conflict with the Ethiopian government. It falls within the definition of a Tier III organization because of its violent activities.

This exemption applies to solicitation, material support, and military-type training.

This exemption is only available to an applicant who was admitted as a refugee, granted asylum, or had an asylum or refugee application pending on or before October 2, 2013, or is the beneficiary of an I-730 Refugee/Asylum Refugee Petition filed at any time by a petitioner who was an asylee or refugee on or before October 2, 2013.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests and that he or she not have engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Ethiopian government.¹⁰¹

10.4.8 Tigray People's Liberation Front (TPLF)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Tigray People's Liberation Front (TPLF).

¹⁰⁰ See Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed Reg. 24225-01, 02 (April 24, 2013).

¹⁰¹ See Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Oromo Liberation Front (OLF), USCIS Policy Memorandum (December 31, 2013).

The TPLF is a political party founded in 1975 in Ethiopia, as an opposition group. It was engaged in violent conflict with the Ethiopian government from then until 1991. It qualified as a Tier III organization during that period because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

On May 27, 1991, the TPLF, with other parties, succeeded in overthrowing the Ethiopian government and became part of the ruling coalition in the new government. Since that time, its activities would likely not fall within the Tier III definition. Therefore, after that date, an exemption may not be required. Officers should consult COI to verify if this is the case..

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.¹⁰²

10.4.9 Ethiopian People's Revolutionary Party (EPRP)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Ethiopian People's Revolutionary Party (EPRP).

The EPRP is a leftist political party founded in 1972 in Ethiopia. It was engaged in violent conflict with successive Ethiopian governments and other parties from then until 1993. It qualified as a Tier III organization during that period because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

Although the EPRP continues to oppose the Ethiopian government, it has not engaged in any documented acts of violence since approximately January 1, 1993, and would not be likely to fall within the definition of a Tier III terrorist organization after that date. Thus, the exemption may not be necessary for later associations or activities, although officers should consult COI to verify if this is the case.

¹⁰² See Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Tigrayan People's Liberation Front (TPLF), USCIS Policy Memorandum (June 15, 2014).

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.¹⁰³

10.4.10 Eritrean Liberation Front (ELF)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Eritrean Liberation Front (ELF).¹⁰⁴

The ELF is a leftist political party founded in 1960 in Ethiopia with the goal of achieving independence for Eritrean independence. It was engaged in violent conflict with successive Ethiopian governments and other parties from then through 1991. It met the definition of a Tier III organization during that period because of its violent activities.¹⁰⁵

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

The ELF no longer operates, and it has not engaged in any documented acts of violence since approximately January 1, 1992. Therefore, it generally is not considered a Tier III organization after that date. Thus, the exemption may not be necessary for later associations or activities, although officers should consult COI to verify if this is the case.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests. Furthermore, if the applicant's activity or association with the ELF occurred prior to January 1, 1980, the applicant must have been admitted as a refugee, been granted asylum, or had an asylum or refugee application pending on or before October 17, 2013, or be the beneficiary of an I-730 Refugee/Asylum Refugee Petition filed at any time by a petitioner who was an asylee or refugee on or before October 17, 2013.¹⁰⁶

¹⁰³ See Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Ethiopian People's Revolutionary Party (EPRP) (June 15, 2014).

¹⁰⁴ See Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Eritrean Liberation Front (ELF) USCIS Policy Memorandum (June 15, 2014).

¹⁰⁵ See Haile v. Holder, 658 F.3d 1122, 1127 (9th Cir. 2011) (upholding an Immigration Judge's finding that the ELF constituted a terrorist organization). Note that the applicant in this case testified that the ELF continued to engage in violent activities at least up to 2002.

¹⁰⁶ See Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed. Reg. 66037-01 (November 4, 2013).

10.4.11 Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK).¹⁰⁷

The DMLEK is an armed group in Eritrea founded in 1995 in opposition to the Eritrean government. It has been engaged in violent conflict with that government since its founding. It qualifies as a Tier III organization because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.¹⁰⁸

10.5 Situational Exemptions

“Situational” exemptions apply to specified activities with a terrorist organization.

10.5.1 Duress-Based

Some situational exemptions require that the activity have taken place under duress and require an examination into the duress factors to determine eligibility for the exemption.

If duress is required for exemption eligibility, then all duress factors will be elicited and analyzed. Duress has been defined, at minimum, as a reasonably-perceived threat of serious harm under which the material support was provided.¹⁰⁹ In general, the duress factors require consideration of the following issues:

- Whether the applicant could have reasonably avoided the TRIG activity (e.g., providing material support);

¹⁰⁷ See Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK), USCIS Policy Memorandum (June 15, 2014).

¹⁰⁸ See Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed. Reg. 66037-02 (November 4, 2013).

¹⁰⁹ “Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations” Memo, Jonathan Scharfen, Deputy Director (May 24, 2007).

- The severity and type of harm inflicted or threatened;
- To whom the threat of harm was directed (e.g., the applicant, the applicant's family, the applicant's community, etc.);
- The perceived imminence of the harm threatened;
- The perceived likelihood that the threatened harm would be carried out (e.g., based on instances of past harm to the applicant, to the applicant's family, to the applicant's community, and the manner in which harm was threatened, etc.). Applicable country conditions will play a significant role in this determination. (For example, if a group's atrocities against those it perceives as resisting its demands is well known, then overt threats of violence are not required.); and
- Any steps the applicant took to avoid the TRIG activity (e.g., moving, escape, reporting to authorities, etc.). While this is a factor to consider, please note that there is no requirement that an applicant attempted to escape or take other similar actions. Adjudicators must also be cognizant that in some circumstances it may be extremely difficult for an applicant take such action, and in some cases actions such as those noted could make the threatened harm more likely and/or more severe.
- Any other relevant factor regarding the circumstances under which the applicant provided the material support.

There are now three types of duress-based exemptions available to applicants who meet their particular criteria:

Material Support under Duress – INA § 212(a)(3)(B)(VI)

The material support under duress exemption is by far the most commonly encountered exemption in USCIS adjudications. As noted above, material support is defined broadly and even small amounts of food, supplies, etc. constitute material support.¹¹⁰

The Secretary of Homeland Security signed this exemption authority with respect to material support provided under duress to Tier III terrorist organizations on February 26, 2007, and with respect to Tier I and II terrorist organizations on April 27, 2007.¹¹¹ Therefore, material support under duress to Tier I, II or III terrorist organizations may be exempted.

¹¹⁰ See Section 9, TRIG – Material Support.

¹¹¹ See Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 72 Fed. Reg. 9958-01 (February 26, 2007); Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 72 Fed. Reg. 26138-02 (April 27, 2007).

Military-Type Training under Duress – INA § 212(a)(3)(B)(i)(VIII)

An exemption is available for applicants who received military-type training under duress from or on behalf of any organization that, at the time the training was received, was a terrorist organization. The Secretary of Homeland Security signed this exemption authority on January 7, 2011. Military-type training under duress may be exempted if it is from or on behalf of a Tier I, II or III terrorist organizations. You must analyze the organization's activities to determine whether it was a terrorist organization at the time the alien received the training.¹¹²

18 U.S.C. § 2339D(c)(1) states that “military-type training” includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm, or other weapon, including any weapon of mass destruction (as defined in 18 U.S.C § 2232a(c)(2)). Please note that marching in formation and physical exercising do not meet the statutory definition.

In addition to the threshold requirements listed in Section 10.2.1, an applicant must establish that he or she has not received training that poses a risk to the U.S. or U.S. interests (e.g. training on production or use of a weapon of mass destruction, torture, or espionage).

This exemption does not apply to the use of weapons (combat activities). If an alien received military-type training under duress and also used weapons, he or she would not be eligible for this exemption, even if the combat took place under duress as well.

Solicitation under Duress – INA § 212(a)(3)(B)(iv)(IV)(bb) and (cc) only and INA 212(a)(3)(B)(iv)(V)(cc) and (dd) only

Activities under this exemption category are limited to solicitation of funds or other things of value for a terrorist organization and/or for solicitation of any individual for membership in a terrorist organization. These activities must be conducted under duress.

10.5.2 Voluntary Activity

Medical Care

¹¹² “Implementation of New Discretionary Exemption Under INA Section 212(d)(3)(B)(i) for the Receipt of Military-Type Training Under Duress” USCIS Memo, Office of the Director (Feb. 23, 2011).

Medical care provided to individuals engaged in terrorist activities or to terrorist organizations or members of such organizations is a form of material support. As such, those who provided medical care to members of a terrorist organization, to a terrorist organization, or to an individual the alien knows or reasonably should have known¹¹³ has committed or plans to commit a terrorist activity, would be inadmissible in spite of the oaths of commitment to serve patients that are often taken by medical professionals. (For those individuals who provided medical care under duress, utilize the exercise of authority described above that exempts provisions of material support under duress (see Section 10.5.1 Duress-Based)).

To address this situation, on October 13, 2011, the Secretary of Homeland Security signed this exercise of exemption authority to allow USCIS to not apply the material support inadmissibility grounds to certain aliens who provided medical care to persons associated with terrorist organizations or the members of such organizations. This exemption is specifically for the voluntary provision of medical care, which includes:

- Services provided by and in the capacity of a medical professional, such as physician, nurse, dentist, psychiatrist or other mental health care provider, emergency room technician, ambulance technician, medical lab technician, or other medical-related occupation; and
- Related assistance by non-medical professionals providing, for example, emergency first aid services to persons who have engaged in terrorist activity (e.g., Good Samaritans and first aid givers).

This exemption does not apply to medical supplies provided independent of medical care. Provision of medical supplies would fall under the provision of material support.

Medical care on behalf of a Tier I or II Organization: INA § 212(d)(3)(B)(i) explicitly prohibits the exercise of exemption authority for aliens who “voluntarily and knowingly engaged in...terrorist activity *on behalf of*” a Tier I or II organization (emphasis added). Therefore, medical care cannot be exempted when the applicant provided the care voluntarily and knowingly on behalf of a Tier I or II organization. For example, this would include situations in which a medical provider serves as a staff physician for a Tier I or II organization, or provides medical care to an organization’s members in order to abet the group’s pursuit of its terrorist aims.

This statutory restriction would not apply to an alien who provided medical care on behalf of an undesignated, Tier III terrorist organization. However, the role of the medical care provider and the activities of the group involved should be carefully

¹¹³ If the medical professional did not and reasonably should not have known that the patient he or she was treating was a member of a terrorist organization or involved in terrorist activities, then the inadmissibility/bar would not arise.

considered in determining whether to grant a discretionary exemption to an individual who has provided medical care on behalf of a Tier III organization. The fact that a group engaged in violent activities against civilians, for example, or later was designated as a terrorist organization after the applicant's association with the group, would weigh heavily towards a denial of this exemption and likely the underlying immigration benefit.

10.5.3 Limited General Exemption

On August 10, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for certain aliens with existing immigration benefits who are currently inadmissible under INA section 212(a)(3)(B)(i). Applicants eligible for this exemption must have only select voluntary, non-violent, associations or activities with certain undesignated terrorist organizations. This exemption applies to certain aliens who have already been granted an immigration benefit 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 or Haitian Refugee Immigration Fairness Act, or similar immigration benefit other than a non-immigrant visa), and to beneficiaries of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee.

Cases being held under the current hold policy involving applicants who do not have an existing immigration benefit, or who are not the beneficiaries of asylee or refugee following-to-join petitions, who have committed activities that are not exemptible under this exercise of the exemption authority, or who have activities and associations with groups that are not eligible for consideration under this exercise of the exemption authority, should continue to remain on hold pending future exercises of the Secretary's discretionary exemption authority.

In order to qualify for this exemption, the undesignated terrorist organization that the applicant is associated must not at any time have:

- 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 under 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 subsections 212(a)(3)(B)(vi)(I) or (II) of the INA.

In addition to the threshold requirements listed in Section 10.2.1, and the group qualifications described above, an applicant must establish that

- he or she has not knowingly provided material support to terrorist activities that targeted noncombatant persons, U.S. citizens or U.S. interests;
- he or she has not received training that itself poses a risk to the United States or United States interests (such as 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);
- 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.¹¹⁴

10.5.4 Iraqi Uprisings

On August 17, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General authorized an exemption for individuals who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991.¹¹⁵

The “Iraqi Uprisings” is a term used to refer to a period of revolt in southern and northern Iraq between March 1 and April 5, 1991.¹¹⁶ The uprisings in the south and north are popularly referred to as the Shi’a and Kurdish uprisings, respectively. Although these groups are different, their rebellion was fueled by the common belief that Saddam Hussein and his security forces were vulnerable following defeat to the allied forces in the Persian Gulf War.¹¹⁷ Despite achieving momentary victories, government forces led by the Republican Guard rapidly controlled the rebels.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires two additional threshold requirements: first, 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; and second, that he or she has not engaged in

¹¹⁴ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 77 Fed. Reg. 49821-02 (August 17, 2012).

¹¹⁵ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 77 Fed. Reg. 51545-02 (August 24, 2012).

¹¹⁶ Human Rights Watch, *Endless Torment: The 1991 Uprising in Iraq and its Aftermath* (1992).

¹¹⁷ *Id.*

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.

10.5.5 Exemptions for Certain Limited Material Support (CLMS) and Insignificant Material Support (IMS)

On February 5, 2014, the Secretary of Homeland Security and the Secretary of State, in consultation with the Attorney General, authorized two new exemptions for certain aliens who have provided material support to Tier III organizations. These exemptions are known as the Certain Limited Material Support (CLMS) exemption and the Insignificant Material Support (IMS) exemption.¹¹⁸

Both exemptions contain provisions specifying that the applicant must not have provided material support to activities that he or she knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests or involved the provision, transportation, or concealment of weapons.¹¹⁹

Both exemptions also require that the applicant must not have provided material support that he or she knew or reasonably should have known could be used **directly** to engage in violent or terrorist activity. Therefore, if an applicant has provided any quantity of weapons, explosives, ammunition, military-type training, or other types of support that is generally understood to be used for violent or terrorist activity, the applicant will, in general not be eligible for either the CLMS or the IMS exemption. On the other hand, providing such support such as food, water, or shelter that is generally not directly used for violent activity will usually not disqualify an applicant from consideration for these exemptions.¹²⁰

The CLMS exemption is intended to cover otherwise eligible applicants for visas or immigration benefits who provided certain types of **limited** material support to an undesigned (Tier III) terrorist organization as defined in INA § 212(a)(3)(B)(vi)(III), or to a member of such an organization, or to an individual the applicant knew or reasonably should have known has committed or plans to commit a terrorist activity. The support provided must have been **incidental to routine commercial transactions, routine social transactions, certain humanitarian assistance, or in response to substantial pressure that does not rise to the level of duress (“sub-duress pressure”)**.¹²¹

¹¹⁸ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014); Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6913-02 (February 5, 2014).

¹¹⁹ *Id.*

¹²⁰ “Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support,” USCIS Policy Memorandum (May 8, 2015); “Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Insignificant Material Support,” USCIS Policy Memorandum (May 8, 2015).

¹²¹ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014).

Routine commercial transactions are transactions in which the applicant could or would engage in the ordinary course of business. To be a routine commercial transaction, the transaction must have occurred on substantially the same terms of other transactions of the same type regardless of the parties to the transaction. A commercial transaction is not routine if it is motivated by the status, goals, or methods of the organization or the applicant's connection to the organization or conducted outside the course of the applicant's business activities.¹²²

Routine social transactions are transactions that satisfy and are motivated by specific, compelling, and well-established family, social, or cultural obligations or expectations. A routine social transaction is not motivated by a generalized desire to "help society" or "do good." It involves support no different than the support that the applicant would provide under similar circumstances to others who were not members of undesignated terrorist organizations.¹²³

Certain humanitarian assistance is aid provided with the purpose of saving lives and alleviating suffering, on the basis of need and according to principles of universality, impartiality, and human dignity. It seeks to address basic and urgent needs such as food, water, temporary shelter, and hygiene, and it is generally triggered by emergency situations or protracted situations of conflict or displacement. It does not include development assistance that seeks the long-term improvement of a country's economic prospects and chronic problems such as poverty, inadequate infrastructure, or underdeveloped health systems.¹²⁴

When an applicant has provided material support that may be considered "certain humanitarian assistance" in association with a humanitarian organization, vetting of that organization may be required. If you interview an applicant who has provided "certain humanitarian assistance" in conjunction with a humanitarian organization, you should elicit as much detail as possible about the activity in question, including the time and location of the activity, as well as name and location of the organization. You must discuss the case with your supervisor, who will then raise the case to your Division's TRIG POC, before you proceed with the adjudication.

Sub-duress pressure is 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

¹²² "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support," USCIS Policy Memorandum (May 8, 2015).

¹²³ *Id.*

¹²⁴ *Id.*

her daily life. The pressure must come, either entirely or in combination with other factors, from the organization to which the applicant provided support.¹²⁵

In order for the CLMS exemption to apply, the applicant must not have intended or desired to assist any terrorist organization or terrorist activity.¹²⁶

The IMS exemption is intended to cover otherwise eligible applicants for visas or immigration benefits who provided **insignificant** amounts of material support to an undesignated (Tier III terrorist organization as defined in INA § 212(a)(3)(B)(vi)(III), or to a member of such an organization, or to an individual the applicant knew or reasonably should have known has committed or plans to commit a terrorist activity.

Insignificant material support is support that (1) is minimal in amount and (2) the applicant reasonably believed would be inconsequential in effect. In order to determine whether support is minimal, you must consider and evaluate its relative value, fungibility, quantity and volume, and duration and frequency.¹²⁷ Material support is “inconsequential in effect” if the actual or reasonably foreseeable impact of the support and the extent to which it enabled the organization or individual to continue its mission or his or her violent or terrorist activity was, at most, insignificant. It is not “inconsequential in effect” if it could prove vital to furthering the aims of an organization by meeting a particularized need at the time the support was provided or involved more than very small amounts of fungible support given with the intention of supporting non-violent ends.

For the IMS exemption to apply, the applicant must not have provided the material support with the intent of furthering the terrorist or violent activities of the individual or organization.¹²⁸

For additional guidance on the application of the CLMS and IMS exemptions, contact your your Division’s TRIG POC.

10.6 Expanded Exemption Authority under CAA and USCIS Hold Policy

As discussed above, section 691(a) of the CAA broadly amended the Secretary of State and Homeland Security’s discretionary exemption authority, now allowing the Secretaries to exempt almost all activities or associations with terrorist organizations. Because additional exemptions are under consideration and may be issued in the future,

¹²⁵ “Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support,” USCIS Policy Memorandum (May 8, 2015).

¹²⁶ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014).

¹²⁷ “Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Insignificant Material Support,” USCIS Policy Memorandum (May 8, 2015).

¹²⁸ Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6913-02 (February 5, 2014).

USCIS, in consultation with DHS, has established a policy to hold the vast majority of applications involving terrorist-related bars in expectation that future exemptions may become available.

Currently, the following categories of cases are subject to this hold policy:

- Category 1: Applicants who are inadmissible under the terrorism-related provisions of the INA based on any activity or association that was *not under duress* relating to any Tier III organization, other than those for which an exemption currently exists;
- Category 2: Applicants who are inadmissible under the terrorism-related provisions of the INA, for activities **other than** material support, military-type training, and solicitation of funds or members, based on any activity or association related to a designated (Tier I or Tier II) or undesignated (Tier III) terrorist organization where the activity or association was *under duress* (i.e., combat by child soldiers);
- Category 3: Applicants who are inadmissible as spouses or children of aliens described in categories 1 or 2, whether or not the inadmissible alien is applying for an immigration benefit.

An exception exists to the above hold policy if an applicant would not merit the favorable exercise of discretion even if an exemption were available. This exception is reserved for cases involving highly negative discretionary factors. All such cases also must be submitted to the USCIS TRIG Working Group for review prior to denial. If you believe you have such a case, consult your supervisor for further guidance.

10.7 Procedures

10.7.1 212(a)(3)(B) Exemption Worksheet

If you determine that the case under review involves TRIG activities, you must fill out the 212(a)(3)(B) Exemption Worksheet. You must identify on the worksheet the organization and its tier and describe in detail the TRIG-related activity.

10.7.2 Processing Cases

More than One Terrorism-Related Ground of Inadmissibility

If more than one terrorism-related ground of inadmissibility applies, you should determine whether there are exemptions for those grounds and adjudicate all exemptions in accordance with the criteria listed in this module or other guidance issued for the exemption. You must make a determination for each applicable ground. Even if the applicant is not otherwise eligible, your findings on the TRIG are important if there is subsequent action on the case (such as a Request for Review, appeal or review before an Immigration Judge).

Holding Cases¹²⁹

See section 10.6 above.

Denials / Referrals

If an exemption is available and is adjudicated and denied, the case should be processed according to the Division's denial policy. Cases that are on hold under the USCIS hold policy may not be denied without concurrence from the USCIS TRIG Working Group. In such cases where a denial is being considered, you must coordinate through your chain of command to obtain the necessary concurrence for a denial. Note that the following cannot be exempted and do not fall within the hold policy:

- Applicants known or reasonably believed to be engaged in or likely to engage in terrorist activity after entry
- Members and representatives of Tier I or Tier II terrorist organizations
- Voluntarily and knowingly engaging in terrorist activity on behalf of a Tier I or Tier II terrorist organization
- Voluntarily and knowingly endorsing or espousing terrorist activity or persuading others to do so on behalf of a Tier I or Tier II terrorist organization
- Voluntarily and knowingly receiving military-type training from a Tier I or Tier II terrorist organization

¹³⁰ Cases involving such activity merit mandatory denials or referrals.

11 OTHER SECURITY-RELATED GROUNDS

INA § 212(a)(3)(A) and (F) are also security-related inadmissibility grounds that apply to refugee applicants and other intending immigrants and non-immigrants.

¹²⁹ Memorandum from Jonathan Scharfen to the Associate Directors; Chief, Office of Administrative Appeals; Chief Counsel, "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provisions of Material Support to, Certain Terrorist Organizations or Other Groups" (Mar. 26, 2008). See also Memorandum from Michael Aytes to the Field Leadership, "Revised Guidance on the Adjudication of Cases Involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases" (Feb. 13, 2009). See also Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases (November 20, 2011).

¹³⁰ See Memorandum from Michael L. Aytes to the Associate Directors; Chief of Administrative Appeals; Chief Counsel, "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).

INA § 212(a)(3)(A) applies to any alien a consular officer or DHS/USCIS¹³¹ knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in any of the following proscribed activities. There is no exemption or waiver available for these activities:

Any activity:

To violate any law of the U.S. relating to **espionage**¹³² or **sabotage**¹³³ – INA § 212(a)(3)(A)(i);

To violate or evade any law prohibiting the **export from the U.S. of goods, technology, or sensitive information**¹³⁴ – INA § 212(a)(3)(A)(i);

Any other **unlawful activity**¹³⁵ – INA § 212(a)(3)(A)(ii);

Any activity a purpose of which is the **opposition to, or the control or overthrow of, the Government of the U.S.** by force, violence, or other unlawful means – INA § 212(a)(3)(A)(iii).

Another security-related inadmissibility ground is found at INA § 212(a)(3)(F).¹³⁶ This ground makes inadmissible an alien who either the Secretary of State or Secretary of Homeland Security¹³⁷ (in consultation with the other) determines meets **both** of the

¹³¹ Although the text of the statute states that this ground (at INA § 212(a)(3)(A)) applies to any alien “a consular officer or Attorney General knows, or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in any of the following proscribed activities,” under the Homeland Security Act of 2002, USCIS (not just a consular officer or Attorney General) has the authority to make this determination although the technical corrections relating to references (to the Attorney General) in the INA have not been made in all places. See Homeland Security Act of 2002. Pub. L. no. 296; 116 Stat. 2135 (2002).

¹³² This includes illegally gathering or possessing information and being an unregistered foreign agent.

¹³³ This includes damage to equipment used to defend the U.S.

¹³⁴ This includes trading with the enemy, exporting goods that need permission to export, and releasing sensitive government information.

¹³⁵ The Department of State and DHS have interpreted this ground relatively narrowly, to refer to unlawful activity that has an adverse impact on U.S. national security or public safety.

¹³⁶ INA § 212(a)(3)(B) & (F) are bars to: refugee status, asylum status, withholding of removal, adjustment of status, cancellation of removal; relief under INA § 212(c) and temporary protected status (TPS). INA § 212(a)(3)(B) & (F) do NOT bar: naturalization, employment authorization, visa petitions, Convention Against Torture (CAT) deferral of removal.

¹³⁷ Although a technical correction to the reference in INA § 212(a)(3)(F) (indicating that it is the Secretary of State or Attorney General, in consultation with one another, who would determine that an individual has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States) has not yet been made, under the Homeland Security Act of 2002, DHS has the authority for purposes of making such a determination. See Homeland Security Act of 2002. Pub. L. no. 296; 116 Stat. 2135 (2002).

following criteria: the alien has been associated with a terrorist organization; and while in the U.S., intends to engage in activities which could endanger the welfare, safety, or security of the U.S. This section requires both an association with a terrorist organization **and** an intention to cause harm.

The harm need not occur in the United States, but it must endanger the welfare, safety or security of the United States. Note that the authority to find an alien inadmissible under this section can only be exercised by the Secretary of State or the Secretary of Homeland Security.

Because this inadmissibility ground requires cabinet level concurrence, it is generally not applied. If you have a case in which you believe this ground of inadmissibility may apply, please contact your division's headquarters (HQ) point of contact (POC) for TRIG-related issues.

Although these inadmissibility grounds do not apply to asylum applicants, INA § 208(b)(2)(A)(iv) bars applicants whom there are reasonable grounds for regarding as a danger to the security of the United States from receiving asylum.

In 2005, the Attorney General examined the national security risk bar to asylum in his decision in *Matter of A-H-*, which concerned the application of the exiled leader of an Islamist political party in Algeria who was associated with armed groups that had been involved in persecution and terrorist activities.¹³⁸ Relying on the Immigration and Nationality Act's definition of "national security" and noting that the statute does not specify any particular level of risk, the Attorney General held that the bar applies wherever the evidence in the record supports a reasonable belief that the applicant poses "any nontrivial degree of risk" to the national defense, foreign relations, or economic interests to the United States.¹³⁹ The Attorney General further clarified that the "reasonable grounds for regarding" standard is consistent with the relatively low "probable cause" standard used in other areas of the law and "is satisfied if there is information that would permit a reasonable person to believe that the alien may pose a danger to the national security."¹⁴⁰

In *Malkandi v. Holder*, the U.S. Court of Appeals for the Ninth Circuit considered the case of an Iraqi Kurdish applicant who, according to evidence obtained by the government, had facilitated the issuance of medical documentation to a confessed al-Qaeda operative. The Board of Immigration Appeals, applying the Attorney General's framework, found that the applicant was ineligible for asylum based on the national

¹³⁸ *Matter of A-H-*, 23 I&N Dec. 774 (AG 2005).

¹³⁹ *Id.* at 788.

¹⁴⁰ *Id.* at 788-789.

security risk bar. The Ninth Circuit deferred to the Attorney General's interpretation of the terms of the statute and upheld the Board's determination.¹⁴¹

In *Cheema v. Ashcroft*, the Ninth Circuit viewed favorably the BIA's interpretation (in an unpublished BIA decision) that an alien poses a danger to the security of the United States where the alien acts in a way which:

- Endangers the lives, property, or welfare of United States citizens;
- Compromises the national defense of the United States; or
- Materially damages the foreign relations or economic interests of the United States.¹⁴²

Another example of an individual found to constitute a risk to the security of the United States was Omar Ahmed Ali Abdel-Rahman, a well-known Egyptian cleric, who was found to be a security risk because he is the spiritual guide and founder of an extremist group that has carried out numerous terrorist acts.¹⁴³

12 LEGAL ANALYSIS

12.1 Burden and Standard of Proof

You must evaluate the evidence indicating a security-related bar or inadmissibility by the relevant standard of proof as appropriate for your Division's adjudications, as explained in the relevant supplements (see RAD Supplement – 1).

12.2 Documentation Relating to NS Concerns

You must properly document¹⁴⁴ your NS concerns, in line with your division's policy and guidance (see RAD Supplement – 2).

12.3 Dependents/Derivatives

Inadmissibilities and bars related to national security also apply independently to any relative who is included in an applicant's request for an immigration benefit. In some instances, a principal applicant may be granted and his or her dependent/derivative denied or

¹⁴¹ *Malkandi v. Holder*, 576 F.3d 906, 915-916.

¹⁴² *Cheema v. Ashcroft*, 372 F.3d 1147, 1154 (9th Cir. 2004).

¹⁴³ *Ali v. Reno*, 829 F. Supp. 1415 (S.D.N.Y. 1993), affirmed 22 F.3d 442 (2d Cir. 1994).

¹⁴⁴ In certain circumstances, NS concerns will be documented in FDNS-DS, a system that is owned by USCIS/FDNS and used by FDNS-IOs. The FDNS-DS SOP can be found on the ECN.

referred because the dependent/derivative is inadmissible or barred for a national security-related reason.¹⁴⁵

13 PROCEDURE FOR PROCESSING CASES WITH NATIONAL SECURITY CONCERNS (THE CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM (CARRP))

13.1 The CARRP Process

CARRP is the agency-wide four-step process that provides a disciplined approach to identify, record, vet, and adjudicate applications and petitions with NS concerns. Some procedures are different for the divisions (see RAD Supplement – 2; ASM Supplement - Required Reading, ISCPM, Section VIII, Cases Involving Terrorism or Threats to National Security; IO Supplement -1), but the general CARRP workflow is as follows:

Step 1: Identification of a National Security Concern

Step 2: Internal Vetting & Eligibility Assessment

Step 3: External Vetting

Step 4: Final Adjudication

At any stage of the adjudicative process, deconfliction may be necessary before taking action on a KST or non-KST NS concern. Deconfliction is a term used to describe coordination between USCIS and another government agency owner of NS information (the record owner) to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, and timing of the decision) do not compromise or impede an ongoing investigation or other record owner interest.¹⁴⁶ Under RAIO guidance, when there is no record owner, you or designatdaed officers within your Division must take steps to determine whether there is a pending law enforcement investigation or intelligence interest associated with the applicant.¹⁴⁷ If so, you must deconflict with that agency prior to taking any adjudicative action. If you are unable to identify any pending investigation or intelligence interest, you must perform all required actions pursuant to the four stages of the CARRP process prior to releasing the case for adjudication on the merits, however, deconfliction is not required. HQFDNS will notify ICE of the identified potential NS concerns and adjudicative actions for all such cases.

¹⁴⁵ 8 C.F.R. § 208.21(a); INA § 207(c)(2)(A).

¹⁴⁶ “Policy for Vetting and Adjudicating Cases with National Security Concerns” Memo, Deputy Director Jonathan R. Scharfen (April 11, 2008).

¹⁴⁷ “Handling Potential National Security Concerns with No Identifiable Records” Steve Bucher, Associate Director of Refugee, Asylum and International Security Operations (August 29, 2012).

You will play a major role in step 1 (identification) and step 2 (internal vetting & eligibility assessment). In the asylum context, step 3 (external vetting) will be handled primarily by FDNS-IOs; at RAD Step 3 is handled by RAD's Security Vetting and Program Integrity (SVPI) staff. Step 4 (final adjudication) is completed by the appropriate RAIO adjudicator.

13.1.1 Step 1: Identification of a National Security Concern

As discussed in detail earlier, an NS indicator is any activity, characteristic, or association that may lead to a finding that a national security concern exists.¹⁴⁸ These indicators may be identified at any stage of the adjudication process and through a variety of means including, but not limited to, security and systems checks, file review, in-person interviews, and law enforcement referrals.¹⁴⁹

Possible Procedural & Decisional Outcomes for Step 1:

A. If NS Concern Resolved → Routine Adjudication

B. If NS Concern Remains

- → Notify Designated Officers and conduct Internal Vetting & Eligibility Assessment as appropriate (Step 2)

13.1.2 Step 2: Internal Vetting & Eligibility Assessment

Internal vetting and eligibility assessment is a thorough review of the record associated with the application or petition to determine if the individual is eligible for the benefit sought, to obtain any relevant information to support the adjudication, and in some cases, to further examine the nature of the NS concern.¹⁵⁰

This step may consist of, but is not limited to: systems checks/security checks; open source information (internet, professional journals, other media, etc.); file review; interview/ re-interview; and/or country conditions research. NS information may also be of a restricted or

¹⁴⁸ "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" (May 14, 2008). See also "CARRP Operational Guidance Attachment A - Guidance for Identifying National Security Concerns," (April 11, 2008).

¹⁴⁹ "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" (May 14, 2008)

¹⁵⁰ *Id.*

classified nature.¹⁵¹ When necessary, Designated Officers must also deconflict during this step with all relevant record holders.¹⁵²

Your division may have specific categories of cases that require review by HQ as part of the internal vetting process. (See RAD Supplement – 3). Utilizing all of these tools may lead to resolution of the NS concern, or it may lead to the discovery of additional information regarding eligibility. The purpose of internal vetting is to ensure that valuable time and resources are not unnecessarily expended on external vetting when a case is found to be ineligible for the benefit sought. When this is the case, the application or petition may be denied on any legally sufficient grounds.¹⁵³ However, when the ineligibility is TRIG-based and there is an exemption available and no other NS concerns are identified, the granting of the exemption resolves the NS concern.¹⁵⁴

Possible Procedural & Decisional Outcomes for Step 2:

A. If NS Concern Resolved → Routine Adjudication

B. If NS Concern Remains:

- Possible Outcome 1: Case Otherwise Ineligible for Benefit → Deny/Refer
- Possible Outcome 2: Case Otherwise Eligible → Refer to Designated Officers for External Vetting (Step 3)

¹⁵¹ When an NS concern exists, the NS information may be of a restricted or classified nature. These NS or law enforcement operations-based restrictions are often directly linked to protecting sensitive sources, methods, operations, or other elements critical to national security. Access to this information is therefore limited to those with a direct need to know and, when applicable, appropriate security clearance. “Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns,” (May 14, 2008). Internal vetting and eligibility assessment are not always required prior to review of sensitive or classified information. For details on the use of classified information in your adjudications, see your Division’s national security case processing procedures.

¹⁵² A Designated Officer is an Immigration Analyst, Immigration Officer, Adjudications Officer, Asylum Officer, or Refugee Officer who has been designated by local management to be trained, competent, and knowledgeable in CARRP procedures.

¹⁵³ “Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns,” (May 14, 2008)

¹⁵⁴ *Id.* at 6; Asylum Division *Identity and Security Checks Procedures Manual* (ISCPM) (August 2010) at 73;

13.1.3 Step 3: External Vetting¹⁵⁵

External vetting is primarily conducted by FDNS-IOs located in the field, or at HQ if none are present, for example, in a TDY field location. This may be supported by HQFDNS in certain circumstances.¹⁵⁶

External vetting is conducted when the NS concern remains after internal vetting/eligibility assessment and the application is otherwise approvable. It requires close coordination with law enforcement agencies, the Intelligence Community, and/or other record owners.

The Designated Officer must initiate the external vetting process before the case may proceed to final adjudication if the following three conditions are met:

- The application or petition appears to be otherwise approvable and internal vetting is complete;
- There is an identified record owner in possession of NS information¹⁵⁷; and
- The NS concern remains.¹⁵⁸

If the external vetting process results in a finding that the NS concern no longer exists and if the individual is otherwise eligible for the benefit sought, the application or petition may be approved.¹⁵⁹

¹⁵⁵ Throughout external vetting and deconfliction, officers must adhere to the Third Agency Rule. Under the Third Agency Rule, USCIS may not disclose information provided by the record owner to a third agency without the record owner's prior written authorization. *See Safeguarding Sensitive but Unclassified (For Official Use Only) Information*, DHS Management Directive System, MD Number: 11042.1, section 6.H.8 (January 6, 2005) ("If the information requested or to be discussed belongs to another agency or organization, comply with that agency's policy concerning third party discussion and dissemination."). All DHS components are considered part of one "agency" for information sharing purposes. "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns," (May 14, 2008)). The Third Agency Rule generally no longer applies to dissemination of classified information unless the originating agency (record owner) has determined that prior authorization is required for such dissemination and has marked or indicated such requirement on the medium containing the classified information. *See Executive Order 13526*, Classified National Security Information, section 4.1(i) (December 29, 2009). Throughout CARRP, Officers must also keep in mind that guidelines on confidentiality found at 8 CFR 208.6 apply, per regulation (for asylum) and per policy (for refugee adjudications).

¹⁵⁶ USCIS, Office of the Director, Policy Memorandum, "Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists" (July 26, 2011).

¹⁵⁷ In the Asylum Division, even if there is no record owner, the FDNS-IO may conduct additional systems checks at this point.

¹⁵⁸ "Handling Potential National Security Concerns with No Identifiable Records" Steve Bucher, Associate Director of Refugee, Asylum and International Operations (August 29, 2012).

¹⁵⁹ "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" (May 14, 2008)

Possible Procedural & Decisional Outcomes for Step 3:

- A. If NS Concern Resolved → Routine Adjudication
- B. If NS Concern Remains → Consider the results of the external vetting as it pertains to the adjudication and proceed to Step 4 – Final Adjudication.

13.1.4 Step 4: Final Adjudication

This is the final decision on the case. This determination is made only after all vetting by both the division and HQFDNS, in certain limited circumstances, is complete.

Upon completion of all required vetting, if the NS concern remains, you must:

- Evaluate the results of the vetting as it pertains to the final adjudication;
- Obtain any additional relevant information (e.g., via a request for evidence, an interview, a re-interview, etc.); and
- Determine the individual's eligibility for the benefit sought.¹⁶⁰

The totality of the information obtained during the CARRP process is evaluated to determine if the NS concern has been resolved or confirmed, whether the application/petition should be approved or denied/referred, and when appropriate, whether to proceed with removal, rescission, termination, or revocation of an immigration benefit.

If the individual is ineligible for the benefit sought, the application or petition must be denied. If the vetting process results in a finding that the NS concern no longer exists, and if the individual is otherwise eligible for the benefit sought, the application or petition may be approved.

Though procedures differ between divisions, in general, cases with unresolved NS concerns cannot be approved without their respective HQ's concurrence, and for KSTs, concurrence of USCIS senior leadership.

Possible Procedural & Decisional Outcomes for Step 4:

- A. If NS Concern Resolved → Routine Adjudication
- B. If NS Concern Remains and External Vetting Reveals Ineligibility → Deny/Refer

¹⁶⁰ *Id.*

- C. If NS Concern Remains, but More Information is Needed → Re-interview or take other steps to gather additional necessary information
- D. If NS Concern Remains & Case is Otherwise Approvable¹⁶¹:
- Likely will remain on hold
 - KSTs → Submit to Division's HQ for review. Can only be approved with USCIS Deputy Director concurrence.
 - Non-KSTs → Can only be approved with concurrence of a senior official (this could be in the field or in your division HQ depending on division-specific procedures).

National Security Vetting Terms¹⁶²

National Counterterrorism Center (NCTC): Established in August 2004 by the President to serve as the primary organization in the United States Government for integrating and analyzing all intelligence pertaining to terrorism and counterterrorism and to conduct strategic operational planning by integrating all instruments of national power. NCTC is a multi-agency organization.

Terrorist Screening Center (TSC): Created in September 2003 to consolidate terrorist watch lists and to provide 24/7 operational support for thousands of federal screeners across the country and around the world. TSC is administered by the FBI.¹⁶³

Terrorist Identities Datamart Environment (TIDE): A database that contains highly classified information provided by members of the Intelligence Community such as the CIA, DIA, FBI, and NSA as well as Law Enforcement Agencies. From this classified database, an unclassified extract is provided to the TSC. This information is then used to compile various watch lists such as the No-Fly list, the State Department's Visa & Passport Database, and the FBI's National Crime Information Center (NCIC) for state and local law enforcement.

National Targeting Center (NTC): Administered by CBP and performs risk analyses and tactical support for the field in identifying individuals who may pose national security threats at ports of entry and other CBP border checkpoints. The

¹⁶¹ Note: RAD has the ability to deny such cases as a matter of discretion at HQ. Asylum also has the ability to deny cases as a matter of discretion. See ASM Supplement.

¹⁶² FDNS-NSB, CARRP Overview for RAIO PowerPoint Presentation, 14 July 2011 (on file with RAIO Training).

¹⁶³ "Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns" Operational Guidance, Donald Neufeld, Acting Associate Director Of Domestic Operations (April 24, 2008).

NTC coordinates with many other federal agencies in coordinating anti-terrorism efforts.¹⁶⁴

Terrorist Screening Database (TSDB): An unclassified database that includes many subset watch lists, such as the No-Fly List and Selectee List.¹⁶⁵

No-Fly List: Individuals who are prohibited from boarding an aircraft.

Selectee List: Individuals who must undergo additional security screening before being permitted to board an aircraft.

FDNS-DS CARRP Terms

Fraud Detection and National Security Data System (FDNS-DS): FDNS-DS is a central repository that permits specially-trained employees to record, track, and manage the background check and adjudicative processes related to immigration applications and petitions with suspected or confirmed fraud, criminal activity, egregious public safety, and/or national security concerns.¹⁶⁶

Background Check and Adjudicative Assessment (BCAA): Worksheet generated from FDNS-DS to document the actions taken by the Designated Officer conducting the eligibility assessment, internal vetting, external vetting, and deconfliction. The BCAA is used to document national security concerns and track actions taken on applications or petitions where such concerns exist.¹⁶⁷

Request for Assistance (RFA): Formal request for assistance from the field to HQFDNS in vetting cases with NS concerns. These are tracked in FDNS-DS.

Statement of Findings (SOF): Upon completion of external vetting, the HQFDNS Officer responds to the RFA from the field by entering an SOF in FDNS-DS which details the results of the external vetting.¹⁶⁸

¹⁶⁴ “Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns.” Operational Guidance, Donald Neufeld, Acting Associate Director Of Domestic Operations (April 24, 2008)..

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

14 CONCLUSION

As the United States continues to face national security threats, RAIO plays a critical role in defending the homeland by maintaining the integrity of our immigration benefits programs. In this regard, it is critical for you to properly assess each case in consideration of possible national security concerns and to follow your division's procedures for processing these cases through CARRP.

15 SUMMARY

U.S. immigration laws contain provisions to prevent individuals who may be threats to national security from receiving immigration benefits. As an adjudicator, you will identify potential NS indicators and concerns and process those cases in accordance with these laws.

15.1 National Security Concerns

There are two kinds of NS concerns: Known or Suspected Terrorists (KSTs) and Non-Known or Suspected Terrorists (non-KSTs). KSTs are identified by specific systems check results. Non-KSTs are NS concerns identified by any other means, including, but not limited to, applicant testimony, file review or country conditions research.

NS indicators may lead to finding an NS concern. NS indicators can be statutory or non-statutory

An NS concern exists if there is an articulable link between the applicant and the activities, associations described in to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in INA §§ 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) (commonly referred to as TRIG), or other non-TRIG matters relating to national security, as described in the CARRP Operational Guidance, Attachment A, discussed above.

15.2 Interviewing National Security Cases

When preparing to interview an applicant, you must be mindful of national security indicators, which might include an applicant's technical training or employment, connection to areas known for terrorist activities, unaccounted for gaps of time, association with questionable groups or involvement in certain criminal activities.

Applicants who may be NS concerns may be motivated to apply for an immigration benefit through fraudulent means.

15.3 Terrorism-Related Inadmissibility Issues

An applicant is ineligible to receive most immigration benefits if the individual is described in any of the terrorism-related inadmissibility grounds unless an exemption is available and granted by USCIS. In addition to rendering inadmissible those seeking admission to the U.S., the terrorism-related inadmissibility grounds are bars to asylum.

15.3.1 Terrorist Organizations

Under the INA, there are three tiers of terrorist organizations. Tier I organizations appear on the Foreign Terrorist Organizations list while Tier II organizations are on the Terrorist Exclusion List (TEL). A Tier III terrorist organization is group of two or more individuals that, whether organized or not, engages in terrorist activity, or has a subgroup¹⁶⁹ that engages in terrorist activity.¹⁷⁰ Depending on the tier of the organization, there are a variety of immigration consequences.

15.3.2 Terrorism-Related Inadmissibility Grounds

The inadmissibility grounds related to terrorist activity are listed at INA § 212(a)(3)(B).

15.3.3 Material Support

The terrorism-related ground of inadmissibility you will encounter most often in your adjudications is engaging in terrorist activity through the provision of material support to an individual who has committed or will commit a terrorist activity, or to a terrorist organization.

- There need not be a large or significant amount of support to be considered material support
- The use of support is irrelevant in determining whether an applicant provided material support
- The applicant's intent in providing material support is irrelevant.

15.3.4 TRIG Exemption Authority

INA § 212(d)(3)(b)(i), as revised by the 2005 REAL ID Act and the Consolidated Appropriations Act, 2008, includes a discretionary exemption provision for certain grounds of inadmissibility under INA § 212(a)(3)(B). This exemption authority can be exercised by

¹⁶⁹ See Department of State guidance on what constitutes a subgroup, [9 FAM 40.32 N2.7](#).

¹⁷⁰ INA § 212(a)(3)(B)(vi)(III).

the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General.¹⁷¹

15.4 CARRP

The Controlled Application Resolution and Review Program (CARRP) is the 4-step process through which USCIS vets and adjudicates national security cases.

The steps of CARRP are: (1) Identify NS Concerns; (2) Internal Vetting and Eligibility Assessment; (3) External Vetting; (4) Final Adjudication.

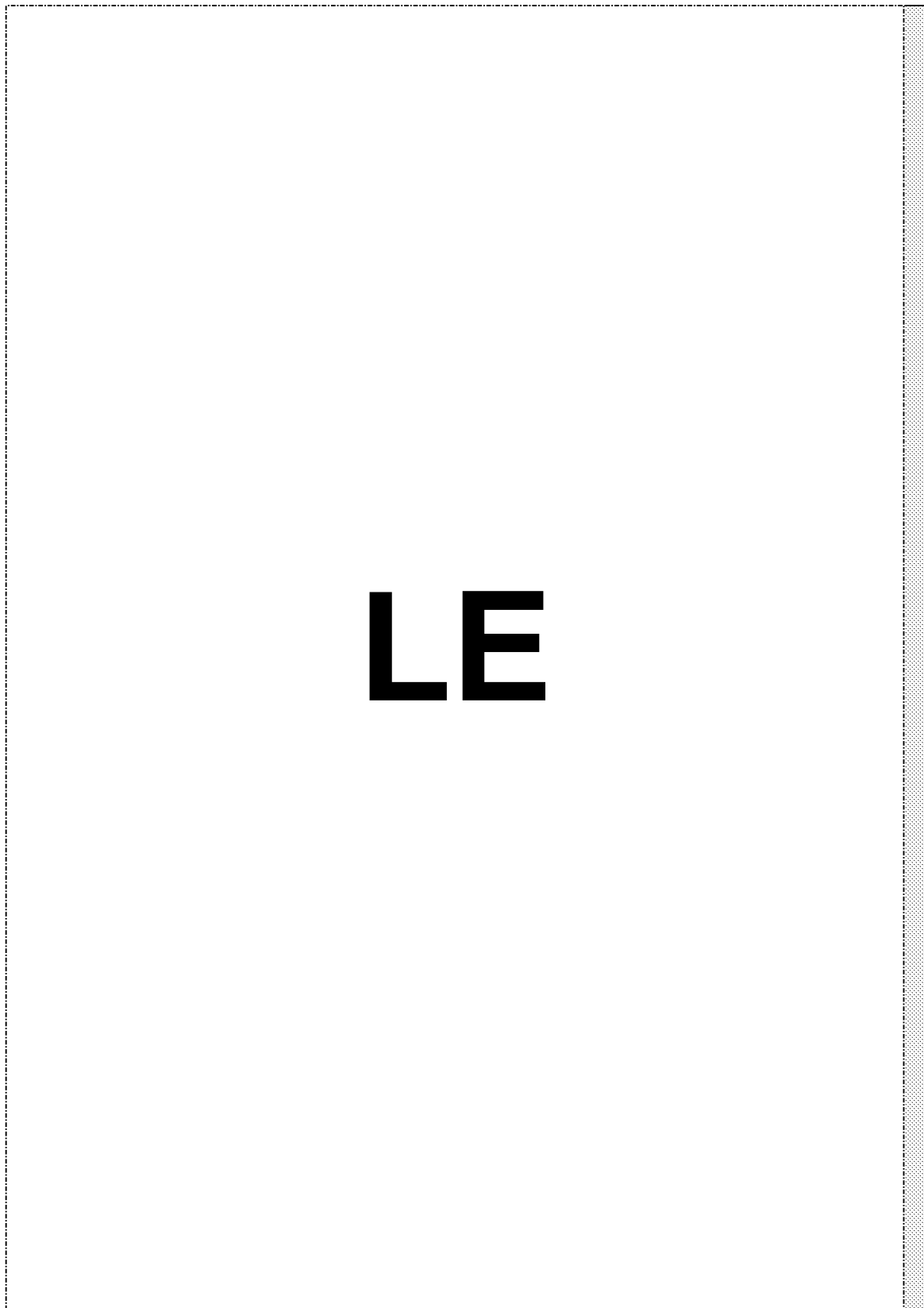
Deconfliction is a term used to describe coordination between USCIS and another government agency owner of NS information (the record owner) to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, and timing of the decision) do not compromise or impede an ongoing investigation or other record owner interest.

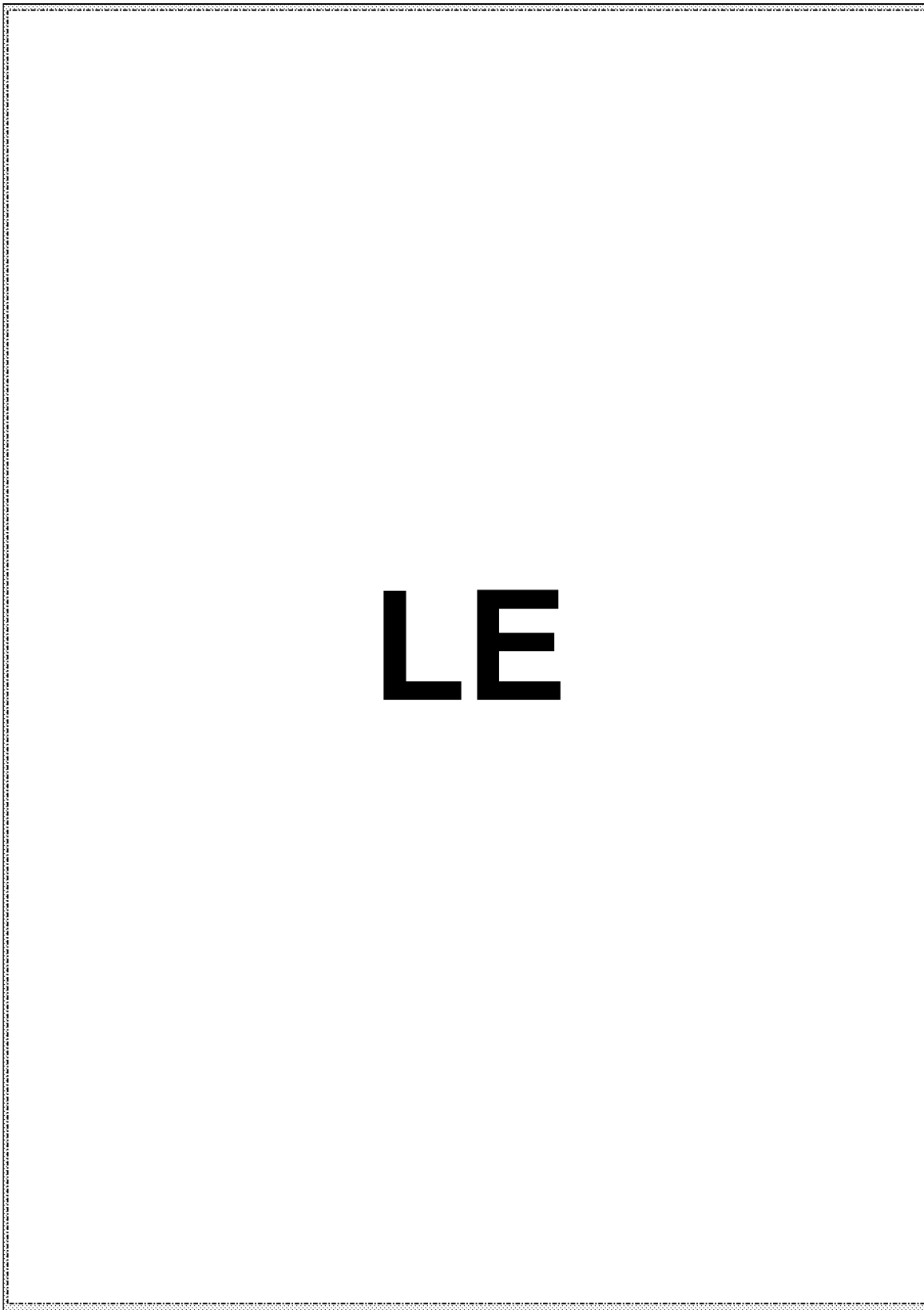
FDNS-IOs play a role in processing and vetting NS concerns; this role varies depending on your division.

¹⁷¹ INA § 212(d)(3)(B)(i). For some specific examples of the Secretary's exercise of discretion under this provision, see USCIS [Fact Sheets](#).

PRACTICAL EXERCISES

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OTHER MATERIALS**16 RESOURCES**

At various points in your interview preparation, red flags may indicate you need to do additional research to make sure you can conduct an informed, thorough interview of a case with potential TRIG or other NS issues. For example, in order to determine if a group is a Tier III organization, you should research the group and assess what kinds of activities it has been involved in. The following resources provide useful information that you should take into consideration when adjudicating cases in which the applicant or a dependent may be barred/inadmissible as an NS concern.

16.1 USCIS Refugee, Asylum and International Operations Research Unit (Research Unit)

The Research Unit's Country of Origin Information (COI) research documents are a primary source of information for officers at RAIO. Research Unit products include specific COI that could be helpful when adjudicating cases involving national security matters. Research Unit products may be accessed through the [RAIO Research Unit ECN Page](#)

In accordance with each Division's established procedures, you may submit queries to the Research Unit (email to RAIOResearch@uscis.dhs.gov) when additional country conditions information is required to reach a decision in a case. Query responses are posted to the RAIO Research Unit ECN page.

16.2 USCIS Fraud Detection and National Security Directorate

In support of the overall USCIS mission, the Fraud Detection and National Security Directorate (FDNS) was created to enhance the integrity of the legal immigration system, detect and deter benefit fraud, and strengthen national security.

FDNS has established a [website](#) on the USCIS intranet that includes in the "Department Resources" section links to information on various databases as well as several websites maintained by other organizations. See also RAIO Intro to Fraud materials.

16.3 Department of State

The Department of State's Office of Counterterrorism maintains a body of resource information on its website, <http://www.state.gov/s/ct/>, which addresses issues of terrorism.

Annual Country Reports on Terrorism

The Department of State is required to submit to Congress an annual report on terrorism each year on April 30. The report includes detailed assessments of foreign countries where significant acts of international terrorism have taken place. Also included is information on the activities of those terrorist groups known to be responsible for the kidnapping or death of an American citizen or financed by a state sponsor of terrorism.

The report is typically divided into three main parts: an overview of terrorism in the year covered by the report; a discussion of the activities relating to terrorism (both in support of, and to combat, terrorism) in particular countries arranged by geographical region; and an overview of those countries designated as state sponsors of terrorism. In addition, the report includes a section that provides background information on foreign terrorist organizations designated under INA § 219, and background information on other terrorist groups.

State Sponsors of Terrorism

As an instrument of foreign policy, the President must impose sanctions on those countries designated as state sponsors of terrorism by the Department of State under § 2405(j) of the Appendix to Title 50 of the United States Code.¹⁷² States designated are those that have "repeatedly provided support for acts of international terrorism."¹⁷³

As of the date of this module (November 10, 2017), there are three designated state sponsors of terrorism: Iran, Sudan, and Syria.¹⁷⁴ Cuba, North Korea, and Libya were recently removed from the list. However, North Korea is being closely monitored to consider re-designation as its current activities and political climate is considered.

For each country, the report provides an overview of the manner in which these states have sponsored terrorist activity.

¹⁷² 50 App. U.S.C.A 2405 (West 2002)

¹⁷³ *Id.*

¹⁷⁴ "Country Reports on Terrorism" Department of State, Bureau of Counterterrorism, 2011 available at <http://www.state.gov/j/ct/rls/crt/2011/index.htm>.

16.4 Department of the Treasury, Executive Order 13224 – Specially Designated Nationals List

On September 23, 2001, President Bush issued Executive Order 13224, which expands the government's authority to designate individuals or organizations that support financially or otherwise, or associate with, terrorists.¹⁷⁵ The executive order also allows the United States Government to block the designees' assets in any U.S. financial institution or held by any U.S. entity.

The Department of the Treasury Office of Foreign Assets Control maintains on its website a list of individuals and groups designated under this executive order – the Specially Designated Nationals List (SDN). The list includes hundreds of groups, entities, and individuals. A link to the list can be found [here](#) (available in pdf, or as listed by program or country), or you can search a specific name or entity under this site: <http://sdnsearch.ofac.treas.gov/>.

You should check the Department of the Treasury website for the most current version of the list as additional individuals or entities may be designated at any time.

NOTE: A designation under this list does not make an organization a designated terrorist organization for immigration purposes under INA § 212(a)(3)(B)(vi)(I)-(II), but it suggests that the organization has engaged in terrorist activity as defined by INA § 212(a)(3)(B)(iv) and therefore may meet the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III).

16.5 United Nations – Al-Qaeda Sanctions List¹⁷⁶

The United Nations Security Council Committee established “the List” in accordance with the UN resolutions 1267 (in 1999) and 1989 (in 2011) that detail individuals, groups, and other entities associated with al Qaeda.

NOTE: While many groups on this list may correspond to the Foreign Terrorist Organization (FTO) list (“Tier I”) or the Terrorist Exclusion List (TEL) (“Tier II”), a group's being otherwise designated under “the List” does not make the organization a designated terrorist organization for immigration purposes under the INA but may suggest that an organization has engaged in terrorist activity as defined by INA § 212(a)(3)(B)(iv) and therefore may meet the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III), as is true for the SDN noted above.

¹⁷⁵ Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

¹⁷⁶ The United Nations, Security Council Committee, Resolution 1267/1989, Al-Qaeda Sanctions List. http://www.un.org/sc/committees/1267/aa_sanctions_list.shtml.

16.6 DHS Intel Fusion

The list of internet links provided by the DHS Office of Operations Intel Fusion website includes links to U.S. Government sites, such as sites for CBP, CIS, and ICE Intelligence, the Central Intelligence Agency, and the Federal Bureau of Investigation, as well as links to international agencies such as Interpol. The main webpage also links to the ICE Forensic Document Laboratory (see below). Under the Reports section on the main page is a link to the Anti-Terrorism site. In it you will find country reports on terrorism, foreign terrorist organizations reports, and other resources that may be valuable for TRIG research. To obtain access to this site, set up your account by following the directions on the sign-in webpage at [REDACTED]. You will need a TECS account to access the website.

16.7 Homeland Security Investigations Forensic Laboratory (HSIFL)

The mission of the HSIFL is to provide a wide variety of forensic document analysis and law enforcement support services for DHS.¹⁷⁷

The HSIFL Forensic Section conducts scientific examinations of documentary evidence and its representatives testify to their findings as expert witnesses in judicial proceedings. On a case-by-case basis, forensic examinations are conducted for other Federal, State, and local law enforcement agencies.

The HSIFL maintains a site within the DHS Intel Fusion website noted above. Under the “Alerts” section of the site, the HSIFL posts documents alerting officers to specific trends in the use of fraudulent documents including exemplars to assist in determining the authenticity of documents received in the adjudication process.

16.8 Liaison with Other DHS Entities

The adjudication of cases involving national security involves a number of parties outside of RAIO. Other entities within USCIS and DHS provide legal guidance and investigative support for these cases. Much of this interaction occurs at the headquarters level, though local offices also engage their ICE counterparts to coordinate action on cases as needed.

¹⁷⁷ Mission Statement, Homeland Security Investigations Forensic Laboratory, ICE Office of Intelligence, available at [REDACTED]

16.8.1 USCIS Fraud Detection and National Security Directorate (FDNS)

The USCIS Fraud Detection and National Security Directorate coordinates the sharing of information and development of policy on the national level regarding fraud and national security. FDNS-IOs assist in the field with internal and external vetting; FDNS HQ is responsible for vetting certain kinds of NS concerns.

16.9 Other Internet Resources

In addition to accessing resources and websites through the U.S. Government sites listed above, other public internet sites provide excellent background information on national security matters.

16.9.1 IHS Jane's: Defense & Security Intelligence & Analysis

Through the DHS Library (select "Jane's" from the right-hand column section titled "Resources A-Z"), you have access to two Jane's Defense & Security Intelligence & Analysis (Jane's Intelligence) databases: the "Military and Security Assessments Intelligence Centre" and the "Terrorism and Insurgency Centre."

NOTE: These accounts are only available by clicking from the DHS intranet. Otherwise, if you find the site from a separate link, you will only have public (limited) access to these sites.

The Security Assessments database brings together news and country conditions relating to the country's military capabilities to respond to threats. Also included are reports detailing the country's infrastructure and economy.

The Terrorism and Insurgency database contains material regarding terrorist activities within a country and analysis of threats to national or regional security.

Both databases will help you make informed determinations as to whether the applicant may be subject to a terrorism-related inadmissibility ground.

16.9.2 Dudley Knox Library of the Naval Postgraduate School

The internet site of the Dudley Knox Library of the Naval Postgraduate School in Monterey, California provides links to internet resource materials organized by topic. The website for the Dudley Knox Library can be accessed at:

<http://www.nps.edu/Library/Research/SubjectGuides/index.html>. Under "Subject Guides," click "Terrorism" under Special Topics and a list of resources are provided – e.g., links to bibliographies on terrorist issues, reports, documents and articles; and government and other NGO websites.

Other Materials

National Security

16.10 TRIG Exemption Matrices

Group-Based Exemptions

Eligibility Requirements	CAA Groups	INC, KDP, PUJK	ABSDF	KLA	AISSF-Bittu	FMLN, ARENA	OLF	TPLF	EPRP	ELF	DMLEK
Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection	X	X	X	X	X	X	X	X	X	X	X
Has undergone and passed all relevant background and security checks	X	X	X	X	X	X	X	X	X	X	X
Has fully disclosed, in all relevant applications and interviews with U.S. government and agents, the nature and circumstances of each activity or association falling within the scope of section 212(a)(3)(b) of the INA	X	X	X	X	X	X	X	X	X	X	X
Poses no danger to the safety and security of the United States	X	X	X	X	X	X	X	X	X	X	X
Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances	X	X	X	X	X	X	X	X	X	X	X
Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests			X	X	X	X	X	X	X	X	X
Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons		X									

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Is not and has not been subject to an indictment by an international tribunal				X						
Has not engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Salvadoran government					X					
Has not engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Ethiopian government						X				
Was admitted as a refugee, granted asylum, or had an asylum or refugee application pending on or before October 2, 2013, or is the beneficiary of an I-730 Refugee/Asylum Refugee Petition filed at any time by a petitioner who was an asylee or refugee on or before October 2, 2013						X				
Is not subject to TRIG for activities other than solicitation, provision of material support, or receipt of military-type training					X		X		X	X

Other Materials

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Situational Exemptions

Eligibility Requirements	Material Support Under Duress	Military-Type Training Under Duress	Solicitation Under Duress	Medical Care	Limited General	Iraqi Uprisings	Certain Limited Material Support	Insignificant Material Support
Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection	X	X	X	X	X	X	X	X
Has undergone and passed all relevant background and security checks	X	X	X	X	X	X	X	X
Has fully disclosed, in all relevant applications and interviews with U.S. government and agents, the nature and circumstances of each activity or association falling within the scope of section 212(a)(3)(B) of the INA	X	X	X	X	X	X	X	X
Poses no danger to the safety and security of the United States	X	X	X	X	X	X	X	X
Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances	X	X	X	X	X	X	X	X
Has not voluntarily and knowingly provided medical care on behalf of a designated terrorist organization, as described in INA section 212(a)(3)(B)(vi)(i) or (ii)				X				
Has not voluntarily and knowingly provided medical care with the intent of furthering the terrorist or otherwise violent activities of an organization or individual				X				

Other Materials

National Security

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 destructions, as defined by 18 U.S.C. Section 2332a(f)(2), torture, or espionage)			X					X				
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								X				
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								X				
Has not provided material support to activities that the applicant knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests or involved the provision, transportation, or concealment of weapons										X		X
Has not provided material support that the applicant knew or reasonably should have known could be used directly to engage in violent or terrorist activity										X		X
Has not intended or desired to assist any terrorist organization or terrorist activity										X		
Has not provided material support with the intent of furthering the terrorist or violent activities of the individual or organization												X

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SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. “Processing of Refugee Cases with National Security Concerns” Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).
2. “Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns” Issued along with Attachment – “Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns” Memo and Operational Guidance, Barbara Strack, Chief of Refugee Affairs Division (May 14, 2008).
3. Summary of Terrorism-Related Inadmissibility Provisions
4. CAA Group Exemptions Chart

ADDITIONAL RESOURCES

1. USCIS Connect, RAD page (contains links to guidance and memos on TRIG, TRIGFAQs and CARRP).

SUPPLEMENTS

RAD Supplement – 1

12.1 Burden and Standard of Proof for TRIG Inadmissibility Grounds

If the evidence indicates that the applicant may be inadmissible to the United States pursuant to INA § 212(a), then the applicant must establish clearly and beyond doubt that the disqualifying issue does not apply in order to be eligible for resettlement in the U.S. as a refugee pursuant to INA § 207(c).¹⁷⁸

¹⁷⁸ INA § 235(b)(2)(A).

For example, if evidence exists that indicates that the applicant may have engaged in a terrorist activity, the officer would not have to establish that the applicant committed the act; instead, the applicant would have to establish clearly and beyond doubt that he or she did not commit that act.

RAD Supplement -- 2

**12.2 Documenting Cases Involving National Security Indicators and Concerns
(CARRP Procedures)¹⁷⁹**

The following examples will illustrate cases in which:

- **NS Indicators that are identified, analyzed and determined not to rise to the level of an NS concern**
- **NS Concerns identified, but may be resolved through use of the Secretary's discretionary exemption authority (TRIG)**
- **NS Concerns identified that cannot be resolved (CARRP)**

**NATIONAL SECURITY CONCERN IDENTIFIED, MAY BE RESOLVED BY
USE OF EXEMPTION AUTHORITY UNDER INA SEC 212(d)(3)(B)**

If an applicant is found to be inadmissible under a security-related ground that is eligible for exemption authority, it should be documented in the same way as all other inadmissibility grounds on the refugee assessment. That is, the officer should check the "Yes" box and provide an explanation of how this decision was reached in the space provided below. The officer should also cite the specific provision(s) of INA Sec. 212(a)(3)(B) under which the applicant was found to be inadmissible. If the bar or inadmissibility applies to any case member who is not the principal, the "Yes" box should be checked and the applicant for whom the finding was made should be clearly identified in the explanation section.

Along with the explanation and citation of the terrorist-related inadmissibility ground, the officer should note that an exemption of the inadmissibility ground is available. When an exemption is granted under INA §212(d)(3)(B), and no other NS concern is identified, the NS concern is considered resolved, and the application will be released for routine adjudication. (See Refugee Adjudication Standard Operating Procedures: Cases Involving National Security Concerns, May 14, 2008 for full discussion of how to

¹⁷⁹ See Refugee Adjudication Standard Operating Procedures: Cases Involving National Security Concerns, (May 14, 2008) for a full discussion of national security policy and procedures.

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document when an exemption has been applied to a particular NS inadmissibility).

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RAD Supplement – 3**13.1.2 The CARRP Process: Internal Vetting and Eligibility Assessment****Cases that Require HQRAD Review¹⁸⁰**

The following kinds of refugee cases must always be forwarded to HQRAD for further review and CARRP vetting before a final decision is made.

1. An individual presents and/or has information regarding a person, family member or group that poses a tangible or imminent threat or risk to the United States or its interests.
2. An individual is otherwise eligible for refugee status and an NS issue remains unresolved.
3. An individual testifies to having been detained or questioned by a competent authority in relation to an issue or suspected incident relevant to U.S. national security or its interests.
4. Cases in which an exemption to a terrorist-related inadmissibility ground (TRIG) has been considered and denied.

¹⁸⁰ “Processing of Refugee Cases with National Security Concerns,” (November 19, 2008). Note, RAD/HQ may discretionarily deny cases with national security concerns.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. “Updated Instructions for Handling LE” Ted H. Kim, Acting Chief, Asylum Division (June 19, 2012).
2. Asylum Division Identity and Security Checks Procedures Manual (ISCPM), especially Section VIII of the ISCPM regarding Cases Involving Terrorism or Threats to National Security.
3. Asylum Division Affirmative Asylum Procedures Manual (AAPM).
4. “Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns” (ISCPM), Joseph Langlois, Chief, Asylum Division (May 14, 2008).

ADDITIONAL RESOURCES

1. ECN Overview for ASM Training.
2. Matter of A-H-, 23 I&N Dec. 774 (AG 2005)
3. Singh-Kaur v. Ashcroft, 385 F.3d 293 (3d Cir. 2004)
4. Matter of R-S-H-, 23 I&N Dec. 629 (BIA 2003)

SUPPLEMENTSASM Supplement – 1**Use of Discretion when a Bar Does Not Apply**

There may be some cases involving a national security matter in which facts fall short of a mandatory bar to asylum but nonetheless warrant the denial or referral of the asylum application as a matter of discretion, even if the applicant has established

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refugee status.¹⁸¹

Asylum officers must bear in mind that the sound exercise of discretion requires a balancing of the fact that the applicant qualifies as a refugee, along with any other positive factors, against any negative factors presented in the case.¹⁸² This should be reflected in the assessment.

The likelihood of future persecution is an important factor in the exercise of discretion. A reasonable possibility of future persecution weighs heavily in favor of exercising discretion to grant asylum. The BIA has held that “the danger of persecution should generally outweigh all but the most egregious of adverse factors.”¹⁸³ All discretionary denials and referrals are submitted to Asylum HQ for review.

ASM Supplement

Note Taking – National Security

Asylum Division procedures require that officers take notes in a sworn statement format when:

- The applicant admits, or there are serious reasons to believe, he or she is associated with an organization included on either the Foreign Terrorist Organizations List or the Terrorist Exclusion List, both of which are compiled by the Department of State and are available at <http://www.state.gov/s/ct/>
- The applicant admits, or there are serious reasons to believe, she or he is involved in terrorist activities
- There are serious reasons for considering the applicant a threat to national security

The use of the sworn statement is crucial because an applicant’s admission may be used as a basis to institute deportation or removal proceedings against him or her,

¹⁸¹ § C.F.R. § 208.14(b); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); *Matter of A-H-*, 23 I&N Dec. 774, 780 (AG 2005); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139 (9th Cir. 2004).

¹⁸² *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

¹⁸³ *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

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or as a basis for DHS to detain the applicant.

For further explanation and requirements, see RAIO Module, *Interviewing - Note-Taking*, including the Asylum Supplement and see the Affirmative Asylum Procedures Manual (AAPM).

Supplement C
International Operations Division

National Security

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. “Guidance for International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns” Memo, Alanna Ow, Acting Director of International Operations (April 28, 2008).
2. “Processing of Refugee Cases with National Security Concerns” Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).

ADDITIONAL RESOURCES

1. “Updated Background Identity and Security Check Requirements for Refugee/Asylee Following-to Join Processing” Memo Joanna Ruppel, Chief, International Operations (March 29, 2011).

SUPPLEMENTS

IO Supplement -1

13.1 The CARRP Process

Non-benefit conferring petitions mainly relate to USCIS applications such as an I-130, *Petition for Alien Relative* in which an applicant is demonstrating a family relationship but not seeking a specific immigration benefit. The International Operations Division primarily encounters and adjudicates these cases in the field. There is instructional operations guidance on how to handle such cases located on the FDNS website: Guidance for the International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns – April 28, 2008. If you encounter an NS concern on a non-benefit conferring petition, you will be required to note in TECS that an inadmissibility under INA § 212 may exist for the beneficiary. However, further CARRP processing is not required.