



May 8, 2015

PM-602-0112

Policy Memorandum

SUBJECT: Implementation of the Discretionary Exemption Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support

Purpose

On February 5, 2014, the Secretary of Homeland Security and the Secretary of State (the “Secretaries”), following consultation with the Attorney General, exercised their discretionary authority not to apply the material support inadmissibility ground to certain aliens who provided certain limited material support to an undesignated terrorist organization, or to a member of such an organization. *See* attachment.

Specifically, the Exercise of Authority permits exemption of the following activities:

- Certain routine commercial transactions;
- Certain routine social transactions;
- Certain humanitarian assistance; and
- Material Support provided under substantial pressure that does not rise to the level of duress (“sub-duress pressure”).¹

This policy memorandum (PM) guides U.S. Citizenship and Immigration Services (USCIS) adjudicators on implementation of the Secretaries’ Exercise of Authority.²

¹ This Exercise of Authority expressly does not apply to persons whom a USCIS officer knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity. Section 212(a)(3)(B)(i)(II) of the Immigration and Nationality Act.

² This PM supplements existing guidance on terrorism-related inadmissibility grounds (TRIG), including Jonathan Scharfen, Deputy Director, USCIS, “Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations,” May 24, 2007; Michael L. Aytes, Acting Deputy Director, USCIS, “Implementation of Section 691 of Division J of the Consolidated Appropriations Act, 2008, and Updated Processing Requirements for Discretionary Exemptions to Terrorist Activity Inadmissibility Grounds,” July 28, 2008; Michael Aytes, Acting Deputy Director, USCIS, “Revised Guidance on the Adjudication of Cases Involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases,” February 13, 2009; and PM-602-0051, “Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases,” November 20, 2011.

Scope

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

Authorities

- Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA).
- Exercise of Authority under Section 212(d)(3)(B)(i) of the INA [79 FR 6914] (Feb. 5, 2014).

Background

Section 212(a)(3)(B) of the INA, *inter alia*, renders inadmissible an alien who provides material support, including limited material support, to an undesignated terrorist organization, a member of such an organization, or to an individual the alien knows, or reasonably should know, has committed or plans to commit a terrorist activity. In turn, section 212(d)(3)(B)(i) of the INA authorizes the Secretaries to exempt certain terrorism-related inadmissibility grounds (TRIG). On February 5, 2014, the exemption signed by the Secretaries was published in the Federal Register (FR).

The exemption authorizes USCIS, in consultation with U.S. Immigration and Customs Enforcement (ICE), not to apply the material support inadmissibility grounds to certain aliens who provided limited material support to an undesignated terrorist organization, a member of such an organization, or to an individual the alien knew, or reasonably should have known, had committed or planned to commit a terrorist activity. This limited material support must have been in the form of: 1) a certain routine commercial transaction; 2) a certain routine social transaction; 3) certain humanitarian assistance; or 4) material support provided under substantial pressure that does not rise to the level of duress. This exemption may be applied to immigration benefit and protection applications under the INA, including but not limited to asylum, refugee status, adjustment of status, and asylee and refugee following-to-join petitions.

Policy

Pursuant to the Secretaries' Exercise of Authority under section 212(d)(3)(B)(i) of the INA, USCIS will consider whether certain aliens are eligible for and warrant a discretionary exemption from the application of the material support inadmissibility ground for the provision of the following types of certain limited material support: certain routine commercial transactions; certain routine social transactions; certain humanitarian assistance; or material support provided under sub-duress pressure. USCIS may consider an exemption if the threshold requirements are met.

Implementation

I. General Considerations

A. Identifying Individuals Subject to TRIG Due to the Provision of Certain Limited Material Support

Adjudicators will review benefit applications, supporting documentation, and testimony for indications that an applicant's actions may be described by the inadmissibility ground at section

212(a)(3)(B)(iv)(VI) of the INA, for the provision of material support to an undesignated terrorist organization, a member of such an organization, or to an individual the alien knows, or reasonably should know, has committed or plans to commit a terrorist activity. If the material support qualifies as merely incidental³ to certain routine commercial transactions, certain routine social transactions, or certain humanitarian assistance, or was provided in response to sub-duress pressure based upon the analysis described below, adjudicators may consider application of the exemption.

B. Country Conditions

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

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

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

All applicable exemptions must be adjudicated according to the guidance issued for each exemption. An adjudicator may grant an exemption for the provision of insignificant material support under this policy memo only if there are available exemptions for all applicable TRIG-related activities, and the adjudicator has recommended an exemption for each inadmissibility ground. If an exemption is not available for each inadmissibility ground, the adjudicator should refer the case to the appropriate Headquarters Division for further instructions, including whether to place the case on hold.

II. Specific Considerations for the Certain Limited Material Support Exemption

A. Threshold Requirements

To be eligible for consideration for the certain limited material support exemption, an applicant must satisfy the following threshold requirements:

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

- Establish that he or she is otherwise eligible for the immigration benefit or protection being sought;
- Undergo and pass all relevant background and security checks;
- Fully disclose, in all relevant applications and/or interviews with U.S. Government representatives and agents, the nature and circumstances of any material support provided and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, as well as all contact with a terrorist organization and its members;
- Establish that he or she has not provided material support to any individual who the alien knew or reasonably should have known had committed or planned to commit a terrorist activity on behalf of a designated (Tier I or II) terrorist organization, as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, for which no other exemption applies;
- Establish that he or she has not provided material support to terrorist activities that he or she knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests;
- Establish that he or she has not provided material support that the alien knew or reasonably should have known involved providing weapons, ammunition, explosives, or components thereof, or the transportation or concealment of such items;
- Establish that he or she has not provided material support in the form of military-type training [as defined in Title 18, United States Code, section 2339D(c)(1)], for which no other exemption applies;
- Establish that he or she has not engaged in any other terrorist activity, including but not limited to providing material support to a designated (Tier I or II) terrorist organization, as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, for which no other exemption applies; and
- Establish that he or she poses no danger to the safety and security of the United States.

B. Qualifying Criteria

Additionally, to be considered for this exemption, an applicant must satisfy the following qualifying criteria:

1. Knowledge

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

2. Intent

The applicant must establish that he or she did not intend to support an undesignated terrorist organization. All indications that an applicant intended to support an undesignated terrorist organization through the provision of material support giving rise to the bar should be considered. Intent and motive may be inferred from the applicant's statements and surrounding circumstances.

3. Activities Constituting Certain Limited Material Support

The applicant must establish that his or her provision of material support falls within any of the following categories:

i. Routine Commercial Transaction

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

ii. Routine Social Transaction

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

iii. Certain Humanitarian Assistance

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

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

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

Applicants considered for an exemption for the provision of material support in the form of certain humanitarian assistance may include employees, volunteers, and individuals in service of humanitarian organizations, as well as individuals who have independently provided humanitarian assistance.

iv. Material Support Provided under Sub-Duress Pressure

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

Pressure may be considered sub-duress pressure if providing the support is the only reasonable means by which the applicant may carry out important activities of his or her daily life.⁴ This pressure must come from the same undesignated terrorist organization to which the applicant provided support, either fully or partially in combination with external factors, and the applicant must have actually felt sufficient pressure that left him or her no reasonable alternative to providing the material support.⁵

C. Discretion

For those applicants whose support qualifies as limited material support and who have met all other requirements for this exemption, adjudicators will consider the nature, amount, duration, and frequency of the support provided. Additionally, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of the circumstances. Factors to be considered include but are not limited to the nature of the activities committed by the organization or individual receiving the support, and any other relevant factor.

III. Making the Exemption Determination

A. Family Members

The inadmissibility of family members should be reviewed in accordance with existing law and agency policies. Under section 212(a)(3)(B)(i)(IX) of the INA, a spouse or child is inadmissible if the related alien is inadmissible under section 212(a)(3)(B) of the INA for actions occurring within the last 5 years, unless the spouse or child qualifies for one of two statutory exceptions.⁶ In accordance with agency policy, a spouse or child may be considered for an exemption if the

⁴ Important activities of daily life include education, employment, and meeting the basic needs of oneself or one’s family.

⁵ An immediate or direct threat of violence or retribution is not required. As noted in Section I.D., certain terrorist-related activity is exempted if the activity took place under duress. These duress-based exemptions remain in effect and may be used for activity that does not fall under this exemption, as appropriate.

⁶ A spouse or child is not inadmissible under section 212(a)(3)(B)(i)(IX) of the INA if: (1) he or she did not know or should not reasonably have known of the TRIG activity; or (2) an adjudicator has reasonable grounds to believe that the spouse or child has renounced the TRIG activity. Section 212(a)(3)(B)(ii) of the INA.

activity of the related alien may be exempted, even if the related alien is not seeking a benefit or protection from USCIS. Furthermore, a spouse or child does not require an exemption relative to any acts for which the related alien has already been or is being exempted.⁷

B. Vetting Cases for Possible National Security Concerns

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

C. Documenting the Exemption Determination

Using the 212(a)(3)(B) Exemption Worksheet (revised 2015-04-13), adjudicators will document exemption determinations as follows:

- Determine threshold eligibility;
- Describe the applicant's associations or activities with the group, noting any involvement in violence or other activities of concern;
- Provide relevant information in Section IV.C., "Eligibility for the Certain Limited Material Support Exemption"; and
- In Section V., indicate whether the adjudicator recommends granting or denying the exemption.

Each Division will instruct its adjudicators on the requisite levels of review.

D. Record-Keeping Requirements

USCIS will maintain records on the number of cases considered under this exemption and their outcome. Statistics will be consolidated on a quarterly basis, at a minimum. These statistics will be used to provide information to interagency partners and to stakeholders, as well as to inform the content of the required annual report to Congress.⁸

E. Effect of Exemption on Future Adjudications

An exemption determination made under this Exercise of Authority can inform, but shall not control, a decision regarding any subsequent benefit or protection application.

F. Processing or Placement on Hold of Certain Cases

If a case involving an applicant or beneficiary considered under the exemption does not satisfy all threshold requirements for consideration of the exemption and does not meet the requirements of the hold policy, the requested benefit should be denied. The applicant may be issued a Notice to Appear (NTA) in appropriate cases after review, in accordance with standard operating procedures, including USCIS' NTA policy.

⁷ See Jonathan Scharfen, Deputy Director, USCIS, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007.

⁸ Adjudicators will report statistics according to procedures directed by their Division.

If a case meets all other the requirements, but an exemption is denied in the totality of the circumstances, the application should be denied (or, if pertaining to an asylum application, referred as applicable) after appropriate review in accordance with the above procedures. The applicant may be issued an NTA in appropriate cases after review, in accordance with standard operating procedures, including USCIS' NTA policy.

If it is determined that the case does not meet the requirements listed above, but otherwise meets the criteria enumerated under the current hold policy, the application should be placed on hold pending future exercises of the Secretaries' discretionary exemption authority. This includes placement on hold of cases involving applicants who do not qualify for this exemption. The applicant may be issued an NTA in appropriate cases after review, in accordance with standard operating procedures, including USCIS' NTA policy.

Use

This policy memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions relating to this PM must be directed through the component chain of command to the component TRIG Working Group point of contact.

Attachment:

1. Exercise of Authority under section 212(d)(3)(B)(i) of the INA (Certain Limited Material Support).