



August 10, 2022

Policy Memorandum

SUBJECT: Implementation of the Discretionary Exemption Authority Under Immigration and Nationality Act (INA) § 212(d)(3)(B)(i) for Afghan Allies

Purpose

On June 8, 2022, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, exercised their discretionary authority to exempt the application of INA § 212(a)(3)(B), excluding subclause (i)(II),¹ to Afghan allies who supported U.S. interests and/or participated in the resistance movement against the Taliban or the Soviet occupation of Afghanistan.

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

Scope

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

Authorities

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

Background

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

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

interests and/or participated in the resistance movement against the Taliban, or against the Soviet occupation of Afghanistan.

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

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

Definitions

The terms "Islamic Republic of Afghanistan" and "Afghan Transitional Authority" refer to the government of Afghanistan in power from the fall of the Taliban until August 15, 2021.

Policy

Pursuant to the Secretary's exercise of authority under INA § 212(d)(3)(B)(i), USCIS will consider whether certain individuals are eligible for and warrant an exemption from terrorism-related inadmissibility grounds.

Implementation

I. Identifying Afghan Allies

Adjudicators will review benefit or protection applications, supporting documentation, testimony, and any other relevant information for indications that an applicant's actions may be described by the inadmissibility grounds at INA § 212(a)(3)(B). When considering an exemption, adjudicators must familiarize themselves with country conditions information collected by the Research Division within the Refugee, Asylum, and International Operations Directorate and/or research information made available through their Headquarters directorate. In addition to research conducted by USCIS, open-source reference documents produced by other agencies may be available from the U.S. Department of State (see, e.g., the annual U.S. Department of State Country Reports on Human Rights Practices), or through the DHS Library.

This exemption may be applied to an individual for activity or association relating to actions:

- (1) Directed against the Afghan Taliban or Afghan Taliban-affiliated militia groups;
- (2) Directed against any other organization that was engaged in violent activities that targeted the United States or allied entities, including
 - (a) any entity or contractor of the United States government or any individual employed by or on behalf of the United States government,
 - (b) the International Security Assistance Force (ISAF) or any successor name of such Force,

- (c) the United Nations, or
- (d) the government of the Islamic Republic of Afghanistan or the Afghan Transitional Authority during the time period from December 22, 2001, to August 15, 2021; or
- (3) Directed against the army of the Union of Soviet Socialist Republics (USSR) or the government of the Democratic Republic of Afghanistan (DRA) between April 27, 1978, and April 28, 1992.

Adjudicators seeking to apply this exemption should determine that the applicant's activities were at all times directed *against* the DRA, the Soviet Army, the Taliban and its affiliated organizations, and/or other insurgent groups actively involved in attacks on the Afghan Transitional Authority, the Islamic Republic of Afghanistan, or its international allies (including the United States, the ISAF, and the NATO-led Resolute Support Mission).

Adjudicators should also be aware that during these conflicts in Afghanistan, many individuals were known to have committed human rights violations, and should verify that the individual to whom the exemption may be applied has not been involved in such activities.

Adjudicators should also be alert for and elicit information about other possible TRIG-related activities or associations that are not covered by this exemption. If other terrorism-related grounds apply, adjudicators should verify whether other exemptions exist for those additional grounds and determine whether the applicant is eligible for those exemptions. If so, adjudicate all appropriate exemptions according to the guidance issued for each exemption. An adjudicator may grant an exemption for participation in these activities only if there are available exemptions for all applicable TRIG-related activities, the applicant has met all requirements for the exemption(s), and the adjudicator has recommended an exemption for each ground of inadmissibility in the totality of the circumstances.

II. Exemption Eligibility

A. Requirements for an Exemption

To be considered for this exemption, an applicant must satisfy the following requirements:

- Establish that they are otherwise eligible for the immigration benefit or protection being sought;
- Undergo and pass all required background and security checks;
- Have fully disclosed, to the best of their knowledge, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of all activities or associations falling within the scope of INA section 212(a)(3)(B), including those relating to organizations and events other than the conflicts and affiliations addressed by this exemption;
- Establish that they have not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

- Establish that they have not engaged in terrorist activity, not otherwise exempted, outside the context of the conflicts and affiliations addressed by this exemption;
- Establish that they have not been indicted by any international tribunal or the International Criminal Court;
- Establish that they have not voluntarily and knowingly engaged in any terrorist activities on behalf of, or provided any material support to any organization which has ever appeared on a list of Designated Terrorist Organizations as described in INA subsection 212(a)(3)(B)(vi)(I) or subsection 212(a)(3)(B)(vi)(II), at any time, including prior to that organization's designation, unless the activities are otherwise exempted;
- Establish that they have not directly engaged in or directly supported acts of torture, as defined in 18 U.S.C. § 2441(d)(1)(A), genocide, as described in 18 U.S.C. § 1091(a), or recruitment, conscription, or training of child soldiers, as described in 18 U.S.C. § 2242;
- Establish that they have not been identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the Specially Designated Nationals List (SDNL), or in lists established by United Nations Security Council Committee pursuant to Resolutions 1267 (1999) or 1988 (2011) concerning Al-Qaida and the Taliban and associated individuals and entities;
- Establish that they pose no danger to the safety and security of the United States; and
- Establish that they warrant an exemption in the totality of the circumstances.

B. Discretion

Factors to consider when determining whether the applicant warrants a discretionary exemption in the totality of the circumstances may include, but are not limited to: the nature of the individual's activities addressed by this exemption; the circumstances under which the participation took place; the nature of the actions by others participating with the individual in undertaking the relevant actions (such as human rights violations); the applicant's awareness of those acts; the individual's conduct since their relevant activities; and any other relevant factors. None of these factors is outcome determinative.

III. Making the Exemption Determination

A. Vetting Cases for Possible National Security Concerns

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

B. Documenting the Exemption Determination

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

C. Record-Keeping Requirements

Relevant USCIS directorates 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.

D. 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.

E. Exemption Denial

If an applicant meets all requirements, but an exemption is denied in the totality of the circumstances, the application or petition should be denied (or, if pertaining to an asylum application, referred to the Department of Justice's Executive Office for Immigration Review, as applicable) after appropriate review in accordance with the above procedures. The applicant may be issued a Notice to Appear (NTA) in removal proceedings, in appropriate cases after review, in accordance with standard operating procedures.

Use

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

Contact Information

Questions should be routed through the directorate chain of command to the directorate's point of contact on the USCIS TRIG Working Group.

Attachment: Exercise of Authority under section 212(d)(3)(B)(i) of the INA (Afghan Allies)