



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 Civil Servants

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 certain individuals who were employed as civil servants in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter.²

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

Scope

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

Authorities

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

Background

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

¹ This Exercise of Authority expressly does not apply to individuals 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.

² This exercise of authority supersedes a similar exercise of authority by then-Secretary of Homeland Security Jeh Johnson and then-Secretary of State John Kerry, signed on January 18, 2017. This exercise of authority expands the covered time period of employment to include the period from “August 15, 2021, or thereafter,” in addition to the period from September 27, 1996 to December 22, 2001.

exempt the application of TRIG resulting from employment as civil servants in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter, subject to certain limitations.

Many individuals who worked in civil service positions in Afghanistan prior to September 27, 1996, continued to do so thereafter. Many did so under duress or other situations of hardship. In other instances, individuals used their positions in humanitarian capacities to mitigate the repressive actions of the Taliban³ regime, often at great personal risk. Some of these civil servants subsequently worked for, or gave assistance to, the International Security Assistance Force, the United States government, or the Afghan government that was established after December 22, 2001. Some of these individuals continued providing essential government services even after the collapse of the Kabul government on August 15, 2021. This exemption allows the use of discretion to address these and related issues in individual adjudications, and to fulfill the United States' humanitarian obligations while ensuring the security and integrity of the U.S. immigration system.

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

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

Policy

Pursuant to the Secretarial Exercise of Authority under INA § 212(d)(3)(B)(i), USCIS will consider whether certain individuals are eligible for and warrant a discretionary exemption from the application of TRIG based on actions performed in the course of fulfilling their job duties as Afghan civil servants.

Implementation

I. Identifying Individuals Subject to TRIG Due to Employment as a Civil Servant in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter

³ Although the Taliban has not been designated as a Foreign Terrorist Organization pursuant to INA § 219, Congress passed legislation stating that, for immigration purposes, the Taliban must be treated as a Tier I terrorist organization described in INA § 212(a)(3)(B)(vi)(I). Consolidated Appropriations Act (CAA), 2008, Pub. L. 110-161, 121 Stat. 1844, Division J, Title VI, § 691(d) (Dec. 26, 2007). Additionally, Congress provided in § 691(f), that this provision applies in removal proceedings instituted on, before, or after the date of enactment of the CAA; and to acts and conditions constituting a ground of inadmissibility occurring or existing on, before, or after the date of enactment of the CAA. **Thus, for adjudications on or after December 26, 2007, the Taliban must be considered a Tier I terrorist organization.** In adjudications completed prior to that date, the Taliban, due to its use of violence and having engaged in combat, met the definition of an undesignated terrorist organization, as described at INA § 212(a)(3)(B)(vi)(III).

Adjudicators will review benefit or protection applications, supporting documentation, testimony, and any other relevant information for indications that an individual's employment as a civil servant may have occurred within the time frame and geographic area under the control of the Taliban. If the applicant meets the exemption requirements outlined below, adjudicators may consider application of the exemption.

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.

All applicable exemptions must be adjudicated according to the guidance issued for each exemption. An adjudicator may grant an exemption for TRIG resulting from employment as a civil servant in Afghanistan under this policy memo only if there are available exemptions for all applicable TRIG-related activities, and the adjudicator has recommended an exemption for each inadmissibility ground.

II. Exemption Eligibility

A. Requirements for an Exemption

To be considered for an exemption for activities or associations relating to employment as a civil servant in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter, an individual must establish that they did not voluntarily and knowingly engage in terrorist activity on behalf of the Taliban, and that they:

- Are otherwise eligible for the immigration benefit or protection being sought;
- Have undergone and passed all relevant 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 § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B);
- Have not participated in, or provided material support for the commission of, a terrorist activity that they knew or reasonably should have known targeted noncombatant persons or U.S. interests;
- Are not otherwise inadmissible under INA section 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B), for which no exemption applies;
- Pose no danger to the safety and security of the United States; and

- Warrant an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

B. Discretion

For those individuals who have met all eligibility requirements, adjudicators will consider whether the applicant merits a discretionary exemption in the totality of the circumstances. When considering the totality of the circumstances, factors to be considered may include the nature and duration of the activities undertaken in the course of employment, or any other relevant factor. None of these factors is outcome determinative.

III. Making the Exemption Determination

Vetting Cases for Possible National Security Concerns

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

Documenting the Exemption Determination

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

Record-Keeping Requirements

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

Effect of Exemption on Future Adjudications

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

Exemption Denial

If an individual 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 individual 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

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benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

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

Attachment: Exercise of Authority under section 212(d)(3)(B)(i) of the INA (Afghan Civil Servants 2022)