U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS-2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

November 20, 2011 **PM-602-0051**

Policy Memorandum

SUBJECT: Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases

Purpose
This Policy Memorandum (PM) provides updated instruction to all U.S. Citizenship and Immigration Services (USCIS) offices in adjudicating cases in which an applicant is inadmissible under one or more of the terrorism-related inadmissibility grounds (TRIG) set forth in Section 212(a)(3)(B) of the Immigration and Nationality Act (INA). This PM modifies existing hold guidance for cases involving TRIG to allow for the denial of some cases currently on hold in which a TRIG exemption would not be granted to the individual applicant even if an exemption were available.

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

Authority
Section 212(d)(3)(B)(i) of the INA

Background
On February 13, 2009, Acting Deputy Director Michael Aytes issued a memorandum amending the hold policy for cases involving certain categories of applicants ineligible for the benefits sought due to TRIG.[1] Per that memorandum, these hold categories pertain to:

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 undesignated terrorist organization defined under INA Section 212(a)(3)(B)(vi)(III) ("Tier III"), other than those for which an exemption currently exists;

[1] This change was occasioned when the former Secretary of Homeland Security, Michael Chertoff, authorized USCIS, in consultation with ICE, to exercise his exemption authority with regard to material support provided to designated terrorist organizations under INA Sections 212(a)(3)(B)(vi)(I) and (II) under duress whether or not an intelligence community assessment had been prepared for the group in question, as previously had been required.

2. Applicants who are inadmissible under the terrorism-related provisions of the INA, other than material support, 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*;[2]

3. Applicants who voluntarily provided medical care to designated or undesignated terrorist organizations (Tier I, II, or III), to members of terrorist organizations, or to individuals who have engaged in terrorist activity; and

4. Applicants who are inadmissible under INA Section 212(a)(3)(B)(i)(IX) as the spouses or children of aliens described above, whether or not the spouse or parent has applied for an immigration benefit.

Policy

The current hold policy mandates holding all cases in the above categories, even if it is clear that, in the totality of the circumstances, USCIS would not grant the applicant a discretionary exemption if one were available. The revision to the current hold policy only applies to Category 1 and 2 cases described above and allows for denial of such cases if the adjudicator and subsequent reviewers determine that the applicant does not warrant a favorable exercise of discretion, even if a discretionary exemption should be authorized at a future date.

1. Category 1 example: An applicant who voluntarily used bombs on behalf of a Tier III organization to target Coalition Forces in Afghanistan would currently fall under hold Category 1 above, as would a banker who voluntarily assisted in funneling large sums of money to a Tier III undesignated terrorist organization. However, given the totality of the circumstances, it is clear that USCIS would not grant an exemption to such individuals even if an exemption that would apply to the individual in question were to be authorized in the future.

2. Category 2 example: An applicant was a Columbian banker who was threatened with harm if he did not turn over a list of wealthy depositors to the FARC. He turned over the list, which FARC used to target the individuals on it for kidnapping and extortion. Some of the targeted individuals and their kidnapped family members were tortured and killed for resisting the FARC's demands.

Although USCIS does not anticipate many cases will rise to this level, applying a mandatory hold policy to them creates unnecessary delay and needlessly adds to the number of cases on hold.

[2] Since the February 13, 2009 memo was issued, two other activities have received exemptions in addition to material support: military-type training and solicitation of funds or solicitation of individuals for membership on behalf of a terrorist organization.

Implementation
Pursuant to existing guidance, adjudicators must document the nature of the applicant's activities or association with the terrorist organization, the identity and nature of the organization, and the factors that warrant a denial of an exemption in the exercise of discretion.

Use of the 212(a)(3)(B) Exemption Worksheet continues to be required, using appropriate USCIS and component guidance to determine the requisite level/s of review. The Exemption Worksheet has been modified to take into consideration adjudication of exemption denials in cases that otherwise would be subject to the hold policy. Please see the attached amended 212(a)(3)(B) Exemption Worksheet. Page 2 of this document now contains the following choice which adjudicators should select when recommending a discretionary denial in such a case:

> ☐ *The case may be denied as no exemption is currently available and the applicant does not warrant a favorable exercise of discretion based on the totality of the circumstances should any future existing discretionary exemption become available.*

In addition to existing component guidance regarding review and approval of recommended exemption decisions, every recommended discretionary denial of a case that would otherwise be subject to a hold category will receive component HQ review and concurrence. Furthermore, such cases are required to be tracked at the HQ component level and reported no less than quarterly to the USCIS TRIG Working Group. Finally, all recommended discretionary denials under the new policy must be submitted to the USCIS TRIG Working Group for review and concurrence until the Working Group determines that discretionary denials may be reviewed solely by the HQ components for concurrence.

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 at 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 directed through the component chain of command to the component USCIS TRIG Working Group point of contact.

Attachments
1. 212(a)(3)(B) Exemption Worksheet (Rev. 9/21/2011)

2. Memorandum of February 13, 2009, "Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases"

3. Memorandum of March 26, 2008, "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"

212(a)(3)(B) EXEMPTION WORKSHEET (Rev. 9/21/2011)

I. Alien and Case Information

Full Name:	**DOB:**	**COC:**
Case or A #:	**Benefit/Form Type:** ☐ **I-485** ☐ **I-589** ☐ **I-590** ☐ **I-730** ☐ **Other:**	

II. Threshold Eligibility

☐ Alien is otherwise eligible for the benefit sought, except for a finding(s) of inadmissibility under INA §212(a)(3)(B).
☐ Alien has passed all required background and security checks.
☐ Alien has fully disclosed the nature and circumstances of each activity or association within the scope of INA § 212(a)(3)(B).
☐ Alien poses no danger to the safety or security of the United States.

If alien does not meet one or more of the threshold requirements, explain:

III. Facts of the Case

Describe the actions or associations that make the alien inadmissible. (For example, if an alien is inadmissible for providing material support to a terrorist organization, describe the type of support provided as well as to whom, when, and how often the support was provided.) List the *specific* INA § 212(a)(3)(B) ground(s) under which the alien is inadmissible.

IV. Exemption

☐ **GROUP-BASED EXEMPTION. Group name:** _____
☐ **INDIVIDUAL EXEMPTION AUTHORIZED.** *File contains copy of signed Exercise of Authority* ☐
☐ **SITUATIONAL EXEMPTION.**

☐ Material Support under Duress; ☐ Receipt of Military-Type Training under Duress; ☐ Solicitation of Funds / Other Things of Value under Duress; ☐ Solicitation of Individuals under Duress; ☐ Medical Care;
☐ Other, Explain:

Relevant organization:
☐ Tier I ☐ Tier II ☐ Tier III
Organization name (*insert "unnamed" as applicable*): _____

Description: In this space, briefly describe (1) any relevant duress factors; (2) if no duress, why duress was not present; (3) activities that qualify an unnamed group as a terrorist organization; and (4) any other relevant factors.

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A#/Case#: _____

V. Adjudicator's Recommendation

☐ **GRANT EXEMPTION**— Alien qualifies for and merits an exemption.

☐ **DENY EXEMPTION**—

☐ An exemption is not currently available. *The Secretaries of State and Homeland Security may exempt this activity but have not done so.* (*Explain below and specify what activity is not currently eligible for exemption).*

☐ *Adjudication should continue to be withheld pursuant to agency policy.*
☐ *Adjudication is not subject to agency hold policy and case should be referred or denied.*
☐ *Adjudication is subject to agency hold policy, but as amended, the case may be denied as no exemption is currently available and in the totality of the circumstances, any future existing discretionary exemption would not be granted.*

☐ The alien does not meet the threshold requirements. (*Explain in Section II above*).

☐ The terrorism-related activity was **not under duress** and involved a **Tier I or Tier II** organization. (*Refer or deny AFTER obtaining concurrence from required reviewers*).

☐ An exemption is available, but alien does not merit a discretionary exemption under the totality of the circumstances. (Refer or deny AFTER obtaining concurrence from required reviewers.) (*Explain below*)

Initial Adjudicator's Name/Signature: _____ Date: _____

VI. Reviewer's Decision

First-Line Reviewer: Name/Signature _____ Date: _____
☐ **CONCUR** ☐ **DO NOT CONCUR** *Explain*:

Second-Line Reviewer (if applicable): Name/Signature: _____ Date: _____
☐ **CONCUR** ☐ **DO NOT CONCUR** *Explain*:

VII. Other

Additional notes (any comments for Reviewers):

Final Adjudications Officer Name/Signature (*RAD only*):_____ Date: _____

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U.S. Department of Homeland Security
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Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

HQ 70/2.1

FEB 13 2009

Memorandum

TO: FIELD LEADERSHIP

FROM: Michael Aytes
Acting Deputy Director

SUBJECT: Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases

1. Purpose

This memorandum provides instruction to all field offices to consider and adjudicate cases where an alien provided material support to a terrorist organization described in sections 212(a)(3)(B)(vi)(I) or (II) of the Immigration and Nationality Act (INA). This memo also removes this category of cases from the hold directive established in the March 26, 2008 memo[1] and modifies the hold guidance to allow for certain cases to be elevated for a determination as to whether the hold should be lifted.

2. Background

On April 27, 2007, the Secretary of Homeland Security exercised his discretionary authority under Section 212(d)(3)(B)(i) of the INA not to apply subsection 212(a)(3)(B)(iv)(VI) to certain individuals who have provided material support under duress to certain terrorist organizations described in subsections 212(a)(3)(B)(vi)(I) and (II) (designated terrorist organizations, often referred to as Tier I and Tier II organizations) if warranted by the totality of the circumstances.[2] The authority not to apply subsection 212(a)(3)(B)(iv)(VI) of the INA in certain circumstances was delegated to USCIS in consultation with United States Immigration and Customs Enforcement (ICE). When this exemption authority was exercised, the Department of Homeland

[1] *See* USCIS Memorandum, "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," March 26, 2008.
[2] *See* 72 FR 26138 (May 8, 2007)

Security (DHS) agreed in the interagency process that the exemption authority would be exercised only with respect to applicants who provided material support under duress to specific Tier I or Tier II organizations agreed upon by the interagency after completion of an examination of the national security implications of applying the exemption authority in the case of the specific Tier I or Tier II organization under consideration (i.e., an IC assessment).

On December 19, 2008, the Secretary authorized USCIS, in consultation with ICE, to exercise his exemption authority with respect to material support provided under duress to any Tier I or Tier II organization, regardless of whether an IC assessment has been completed for that group. In cases where insufficient open source information is available to determine the national security implications of applying the exemption authority to a particular Tier I or Tier II organization, USCIS will coordinate with ICE and DHS to obtain additional information on the group to assist in adjudication.

3. Headquarters Review and Oversight Procedures

USCIS continues to require two levels of supervisory review for all duress-based material support exemptions. Each USCIS component will issue component-specific guidance regarding required levels of supervisory review. In order to ensure agency-wide consistency in implementation of the material support duress exemption for cases covered by this memorandum, components may present cases to the material support working group for review and concurrence before proceeding with final adjudication. In addition, the Material Support Working Group may make recommendations to components regarding particular classes of cases to be presented to the Working Group.

4. Revised Hold Policy

As indicated above, it is no longer necessary to hold cases involving individuals who provided material support to a Tier I or Tier II terrorist organization under duress, as previously required by the March 26 memorandum, unless USCIS specifically requests an intelligence community (IC) assessment on a particular organization. Under this revised policy, the following categories of cases must remain or be placed on hold pending further instruction:

1. Applicants who are inadmissible under the terrorist-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[3];

2. Applicants who are inadmissible under the terrorist-related provisions of the INA, other than material support, 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*;

[3] Those groups are: Karen National Union/Karen Liberation Army (KNU/KNLA); Chin National Front/Chin National Army (CNF/CNA); Chin National League for Democracy (CNLD); Kayan New Land Party (KNLP); Arakan Liberation Party (ALP); Tibetan Mustangs; Cuban Alzados; Karenni National Progressive Party (KNPP); appropriate groups affiliated with the Hmong; and appropriate groups affiliated with the Montagnards.

3. Applicants who voluntarily provided medical care to designated or undesignated terrorist organizations (Tier I, II, or III), to members of terrorist organizations, or to individuals who have engaged in terrorist activity; and

4. Applicants who are inadmissible under INA § 212(a)(3)(B)(i)(IX) as the spouses or children of aliens described above, whether or not those aliens have applied for an immigration benefit.

If the adjudicating office receives a request from the beneficiary and/or attorney of record to adjudicate a case on hold per this policy (including the filing of a mandamus action in federal court), or if it is otherwise determined that a particular case should be considered for adjudication (for example, if there are compelling circumstances surrounding the case), the case should be elevated through the chain of command to appropriate Headquarters personnel. Guidance will be provided by USCIS headquarters on whether or not the case should be adjudicated.

NOTE: Where evidence indicates that the applicant poses a danger to the safety and security of the United States, adjudicators should raise the case through the local chain of command and in accordance with existing security check procedures to appropriate Headquarters personnel for guidance prior to proceeding with adjudication.

Adjudicators will receive additional guidance on continued or lifted holds on these cases as decisions are reached at the DHS level.

4. Contact Information

Questions should be directed through the component chain of command to the Material Support Working Group.

U.S. Department of Homeland Security
Office of the Director
Washington, DC 20529

U.S. Citizenship and Immigration Services

MAR 26 2008

Memorandum

To: Associate Directors
Chief, Office of Administrative Appeals
Chief Counsel

From: Jonathan Scharfen
Deputy Director

Subject: 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

Purpose:

This memorandum instructs adjudicators regarding the withholding of adjudication of certain cases that could benefit from the Secretary's expanded discretionary authority and to initiate a review of prior denials of certain categories of cases decided after the December 26, 2007, effective date of the Consolidated Appropriations Act of 2008, Pub. L. 110-161, 121 Stat. 1844 ("CAA").

Background:

On December 26, 2007, the President signed the Consolidated Appropriations Act of 2008, Pub. L. 110-161, 121 Stat. 1844,("CAA"). The CAA became effective on the date of enactment. Section 691(a) of the CAA amended the discretionary authority of the Secretary of Homeland Security (Secretary) to exempt certain terrorist-related inadmissibility grounds as they relate to undesignated terrorist organizations as defined under Immigration and Nationality Act (INA) section 212(a)(3)(B)(vi)(III) ("Tier III" organizations) or to an individual alien. Section 691(b) of the CAA also named certain groups (all of which the Secretary had previously determined qualified for an exemption under INA section 212(d)(3)(B)) that were not to be considered terrorist organizations under the INA based on activities occurring prior to enactment of the CAA. Detailed guidance regarding the implementation of this legislation is pending clearance and will be issued at the earliest possible juncture.

A. Categories of Cases to be Placed on Hold

The Secretary has not exercised his discretionary authority since passage of the CAA, and the Department of Homeland Security (DHS) currently is considering several groups and categories of cases as possible candidates for additional terrorist-related inadmissibility provision exemptions. Because new exemptions may be issued by the Secretary in the future, until further notice adjudicators are to withhold adjudication of cases in which the only ground(s) for referral or denial is a terrorist-related inadmissibility provision(s) and the applicant falls within one or more of the below categories:

1. Applicants, such as former combatants, associated with the following groups who would remain inadmissible despite the "automatic relief" provision of the CAA (the CAA provides that these groups are no longer to be considered terrorist organizations based on acts or events that occurred before December 26, 2007, but it does not exempt the actions of individuals that may otherwise fall under the inadmissibility provisions at INA § 212(a)(3)(B)):

   Karen National Union/Karen Liberation Army (KNU/KNLA)
   Chin National Front/Chin National Army (CNF/CNA)
   Chin National League for Democracy (CNLD)
   Kayan New Land Party (KNLP)
   Arakan Liberation Party (ALP)
   Tibetan Mustangs
   Cuban Alzados
   Karenni National Progressive Party (KNPP)
   Appropriate groups affiliated with the Hmong[1]
   Appropriate groups affiliated with the Montagnards[2]

2. Applicants who are inadmissible under the terrorist-related provisions of the INA based on any activity or association that was *not under duress* relating to any other Tier III organization;

3. Applicants who are inadmissible under the terrorist-related provisions of the INA, other than material support, 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*[3];

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[1] Appropriate groups affiliated with the Hmong means ethnic Hmong individuals or groups, provided there is no reason to believe that the relevant activities of the recipients were targeted against noncombatants.
[2] Appropriate groups affiliated with the Montagnards means the Front Unifie de Lutte des Races Opprimees (FULRO).
[3] Adjudicators may adjudicate cases in which the applicant qualifies for the existing material support duress exemption for those Tier I or Tier II organizations already identified by the Secretary for consideration: the National Liberation Army of Colombia (ELN) and the Revolutionary Armed Forces of Colombia (FARC).

4. Applicants who voluntarily provided medical care to designated or undesignated terrorist organizations (Tier I, II, or III), to members of terrorist organizations, or to individuals who have engaged in terrorist activity; and

5. Applicants who are inadmissible under INA § 212(a)(3)(B)(i)(IX) as the spouses or children of aliens described above, whether or not those aliens have applied for an immigration benefit.

In addition, adjudicators remain under the directive to withhold adjudication of cases in which the applicant is eligible for the benefit sought but for the provision of material support *under duress* to a Tier I or Tier II organization other than those Tier I/II organizations for which DHS has authorized USCIS to consider the existing material support duress exemption.[4] To date, DHS has authorized USCIS to consider the Tier I/II material support duress exemption where the material support was provided to the Revolutionary Armed Forces of Colombia (FARC) or the National Liberation Army of Colombia (ELN).

Adjudicators may move forward with the adjudication, following supervisory review as required by Divisional instructions, of cases that have been considered for and been determined to merit a discretionary exemption under one of the existing material support exemption authorities.

Adjudicators may also raise through their local chain of command to appropriate Headquarters personnel any case which presents compelling circumstances that warrant consideration of a new or individualized exemption that would not otherwise be covered by the above hold instructions.

NOTE: Where evidence indicates that the applicant poses a danger to the safety and security of the United States, adjudicators should raise the case through the local chain of command and in accordance with existing security check procedures to appropriate Headquarters personnel for guidance prior to proceeding with adjudication.

Adjudicators will receive additional guidance on continued or lifted holds on these cases as decisions are reached at the DHS level.

B. Review of Certain Categories of Cases Denied or Referred on or after December 26, 2007

Prior to the issuance of this USCIS-wide hold directive, adjudicators considered and denied or referred, in accordance with existing guidance, the cases of applicants who were found to be inadmissible or ineligible for the benefit sought based on the application of a terrorist-related

[4] See USCIS Memoranda, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007; and "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to the Revolutionary Armed Forces of Colombia (FARC)," September 6, 2007. See also DHS Authorization Document, "Authorization to Process Cases Involving the Provision of Material Support to the ELN," December 18, 2007.

inadmissibility ground for which a material support exemption was not available. Some of these denied cases fall within the above-described hold categories and, therefore, may benefit from future exemptions issued by the Secretary based on the amended exemption authority under the CAA.

Pursuant to this directive, each operational component will review all cases denied or referred on or after December 26, 2007, on the basis of a terrorist-related ground of inadmissibility. Cases that were denied and fall within any of the above hold categories should be reopened on a USCIS motion and placed on hold.[5] Applicants whose cases are reopened should receive notice of the USCIS action.

In addition, should an alien[6] request the reopening or reconsideration of a case denied on or after December 26, 2007, that could benefit from the expanded exemption authority or a case denied at any time that involved one of the 10 groups granted relief by the CAA, the motion and any request for fee waiver should receive favorable consideration. Guidance on consideration of motions filed beyond the normal thirty day period as required by 8 CFR §103.5 as well as issues related to fee waiver consideration should be sought through the local chain of command and directed toward the appropriate Headquarters component.

On a weekly basis, field offices are to provide to Headquarters, through appropriate channels, a summary of cases reviewed and reopened to assist the development of appropriate policies and instructions on next steps in these cases. All Divisions should strive to complete the review of these cases by April 30, 2008.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

[5] Asylum offices will coordinate with the Headquarters Asylum Division to receive guidance on appropriate action to take on any case that falls within the hold categories and was referred to an immigration judge.
[6] In the overseas refugee-processing context, such requests for reconsideration are likely to be raised to USCIS by Department of State or through the existing request for reconsideration process.