



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Program

NATIONAL SECURITY, PART 2: TERRORISM-RELATED INADMISSIBILITY GROUNDS (TRIG)

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Program*

**NATIONAL SECURITY, PART 2: TERRORISM-RELATED
INADMISSIBILITY GROUNDS (TRIG)
TRAINING MODULE**

MODULE DESCRIPTION:

This module provides an overview of the terrorism-related inadmissibility grounds (TRIG) and their impact on RAIO adjudications.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing and adjudicating cases, you (the officer) will identify terrorism-related inadmissibility grounds (TRIG) indicators, elicit all relevant information from an applicant to correctly determine if the applicant is subject to a TRIG or mandatory bars, where appropriate determine whether an exemption is available, document your findings in the file appropriately, and make a legally sufficient final decision.

ENABLING PERFORMANCE OBJECTIVE(S)

1. Properly identify designated terrorist organizations (“Tier I” and “Tier II”), and analyze whether a group meets the definition of an undesignated terrorist organization (“Tier III”).
2. Apply the INA § 212(a)(3)(B) TRIG inadmissibility grounds/bars.
3. Apply statutory exceptions to TRIG.
4. Explain the exemptions available for TRIG.
5. Analyze the facts and relevant law to make a legally sufficient decision in a case involving TRIG.

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).

Required Reading – International and Refugee Adjudications

Required Reading – Asylum Adjudications

ADDITIONAL RESOURCES

1. See USCIS TRIG ECN site for memos, legal guidance, legislation and other adjudicative resources.
2. Memorandum, 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, Michael L. Aytes, Acting Deputy Director (July 28, 2008).
3. See USCIS TRIG ECN Home Page for TRIG Exemption Worksheet.
4. Memorandum, Collecting Funds from Others to Pay Ransom to a Terrorist Organization, Dea Carpenter, Deputy Chief Counsel (February 6, 2008).
5. Matter of S-K-, 23 I&N Dec. 936 (BIA 2006).
6. Nicholas J. Perry, The Breadth and Impact of the Terrorism-Related Grounds of Inadmissibility of the INA, 06-10 Immigr. Briefings 1, Oct. 2006.

Additional Resources – International and Refugee Adjudications

Additional Resources – Asylum Adjudications

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) |
| 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) |
| IRK13 | Knowledge of internal and external resources for conducting research (4) |
| TIS2 | Knowledge of the USCIS TRIG ECN (4) |
| RI3 | Skill in conducting research (e.g., legal, background, country conditions) (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) |
| ITK4 | Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4) |
| RI6 | Skill in identifying information trends and patterns (4) |
| RI11 OK9 | Skill in handling, protecting, and disseminating information (e.g., sensitive and confidential information) |

SCHEDULE OF REVISIONS

| Date | Section (Number and Name) | Brief Description of Changes | Made By |
|-------------|--|--|----------------------------------|
| 10/26/2015 | Throughout document | Updated broken links and citations; added new TRIG exemptions; minor formatting changes; added new case law | RAIO Training, RAIO TRIG Program |
| 10/22/2018 | Throughout document | Separated TRIG and National Security Lesson Plans; streamlined TRIG sections; added updated case law and policy guidance; fixed links. | RAIO Training; RAIO TRIG Branch |
| 7/22/2019 | Throughout document | Corrected minor typos and formatting issues. | RAIO Training |
| 12/20/2019 | Entire Lesson Plan | Minor edits to reflect changes in organizational structure of RAIO; no substantive updates | RAIO Training |

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Throughout this training module, you will come across references to adjudication-specific supplemental information located at the end of the module, as well as links to documents that contain adjudication-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to the adjudications you will be performing.

For easy reference, supplements for international and refugee adjudications are in pink and supplements for asylum adjudications are in yellow.

You may also encounter references to the legacy Refugee Affairs Division (RAD) and the legacy International Operations Division (IO). RAD has been renamed the International and Refugee Affairs Division (IRAD) and has assumed much of the workload of IO, which is no longer operating as a separate RAIO division.

1 INTRODUCTION

This lesson plan covers the relevant law regarding the terrorism-related inadmissibility grounds (TRIG) as they pertain to RAIO adjudications. In doing so, this lesson plan provides the information you need to understand TRIG, identify cases with TRIG issues, and properly adjudicate and process them.

2 TRIG OVERVIEW

The INA prohibits granting most immigration benefits to individuals with certain associations with terrorist organizations or who have engaged in certain types of activities. Officers overseas encounter these prohibitions directly through the terrorism-related inadmissibility grounds codified at section 212(a)(3)(B) of the Immigration and Nationality Act (INA). Depending upon how an asylum applicant entered the United States, an asylum applicant may be subject to either the section 212 inadmissibility provisions or the section 237 deportability provisions, which incorporate the TRIG provisions by reference. Although an asylum applicant is generally not required to be found admissible to establish eligibility for a grant of asylee status, the mandatory bar to asylum found at INA § 208(b)(2)(A)(v) also incorporates the TRIG provisions by reference, making all of the section 212(a)(3)(B) terrorism-related inadmissibility grounds mandatory bars to asylum. Therefore, this lesson plan focuses on the TRIG provisions codified at INA § 212(a)(3)(B).

USCIS's mission includes protecting the integrity of the U.S. immigration system, which requires careful consideration of TRIG matters. As part of the determination of statutory

eligibility for an immigration benefit, you must examine each case for TRIG issues and determine whether a TRIG bar or inadmissibility applies.

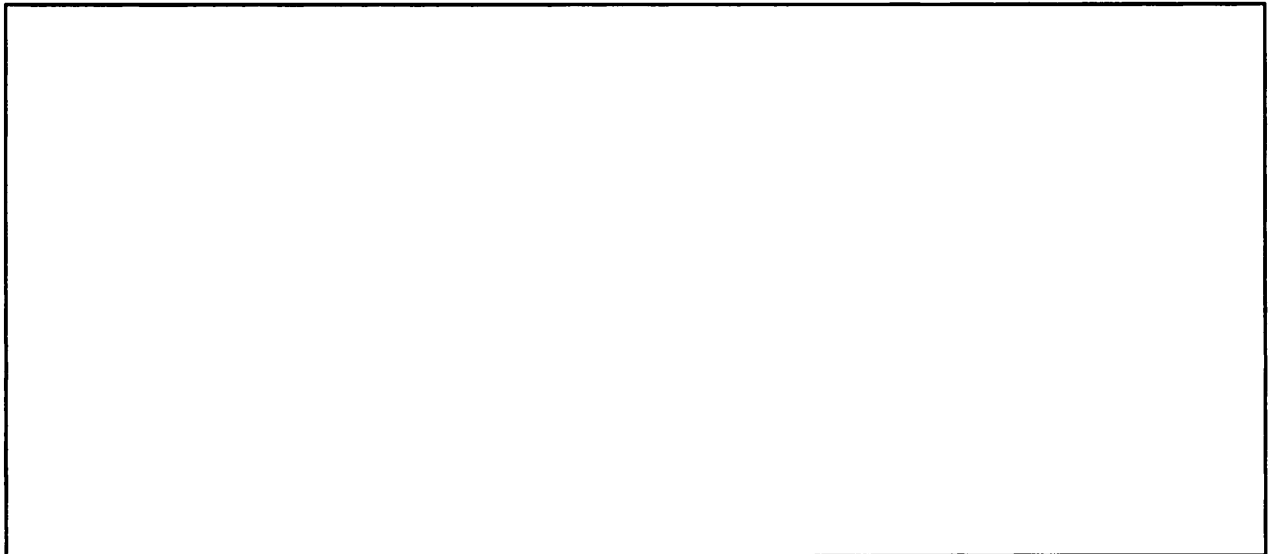
3 IDENTIFYING TRIG ISSUES

As noted above, the terrorism-related inadmissibility grounds are found at INA § 212(a)(3)(B). These grounds include statutory definitions for terrorist activity, engaging in terrorist activity, and terrorist organizations.

- “Terrorist activity” is defined in INA § 212(a)(3)(B)(iii)¹;
- Conduct that constitutes “engag[ing] in terrorist activity” is defined under INA § 212(a)(3)(B)(iv);² and
- “Terrorist organization[s]” are defined in INA § 212(a)(3)(B)(vi).³

3.1 Where You May Encounter TRIG Indicators

TRIG indicators may be encountered at any stage of the adjudication process. The following is a non-exhaustive list of places where TRIG indicators are often encountered: (b)(7)(e)



¹ For definition, see also Section 7.2, below: “Terrorist Activity” Defined.

² For definition, see also Section 7.3, below: “Engage in Terrorist Activity” Defined.

³ For expanded definition, see also Section 6, below: TRIG – “Terrorist Organization” Defined.

4 INTERVIEWING CONSIDERATIONS AND PREPARATION

Relevant Questions

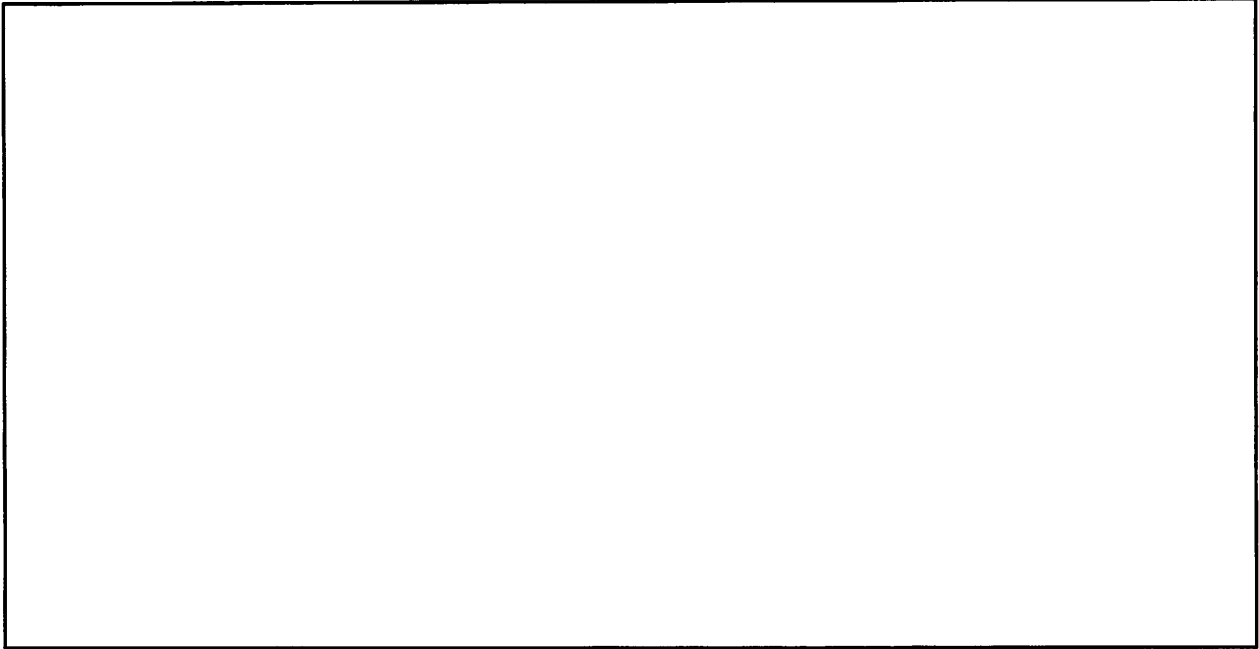
4.1 Association with People/Organizations of Described in INA § 212(a)(3)(B).

- Connection to an unknown political or social organization⁵
- Associated with, or accused of involvement in, a terrorist organization

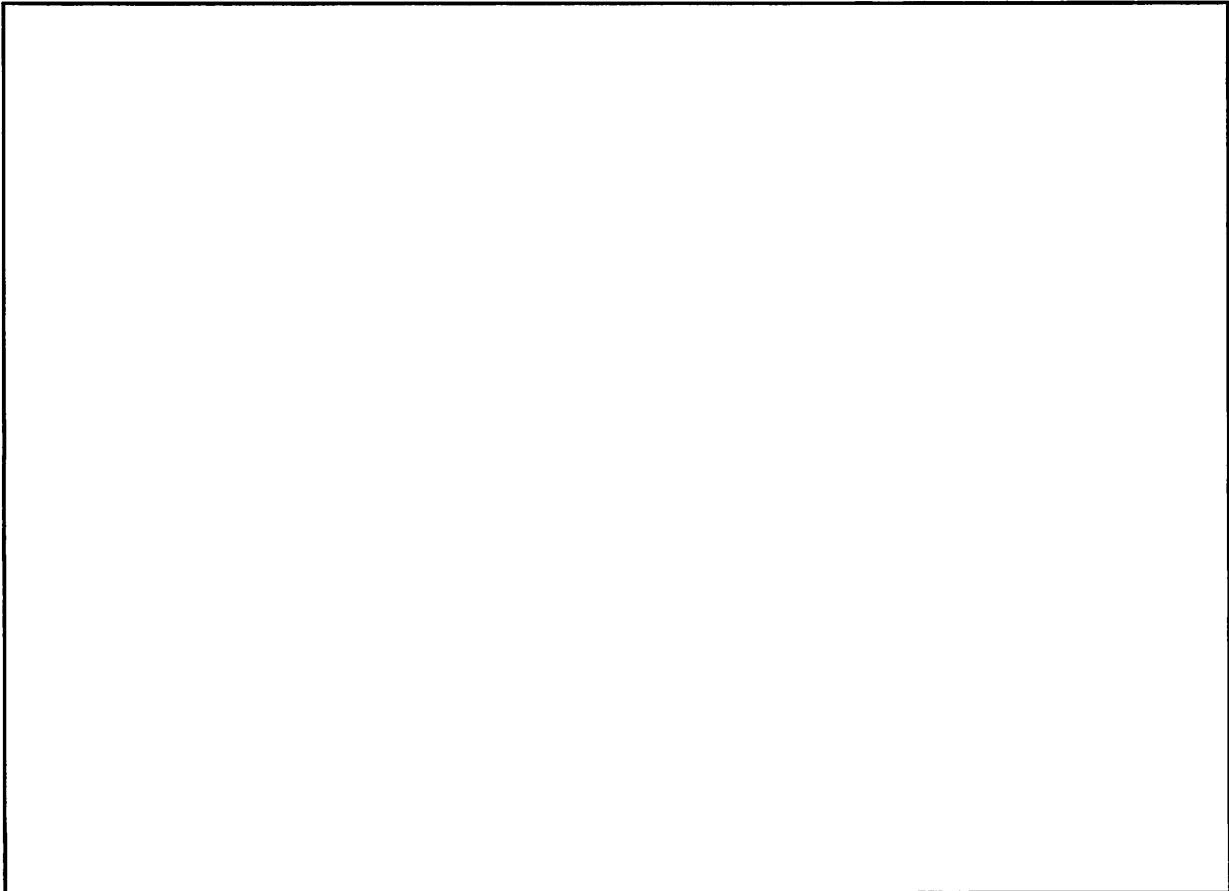
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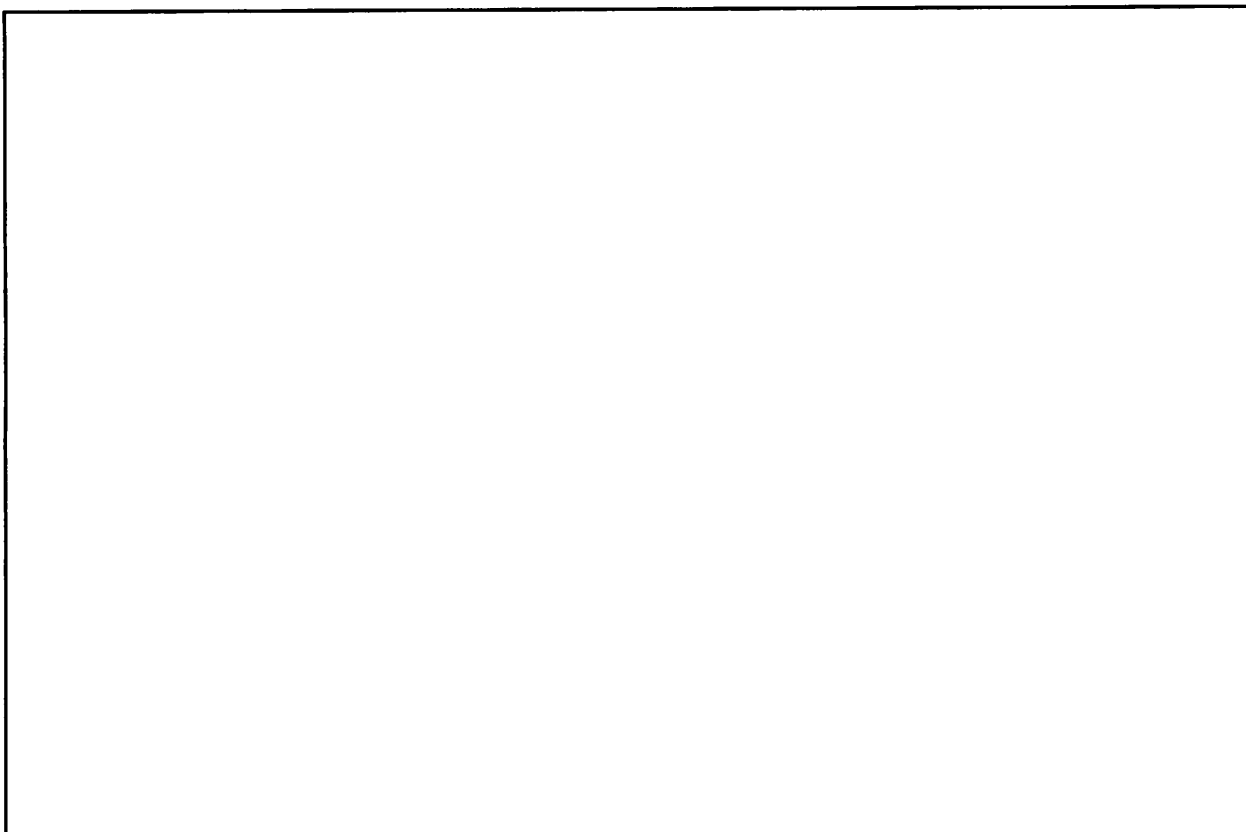
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4.2 Engaged in, or Suspected of Engaging in, Terrorist Activities



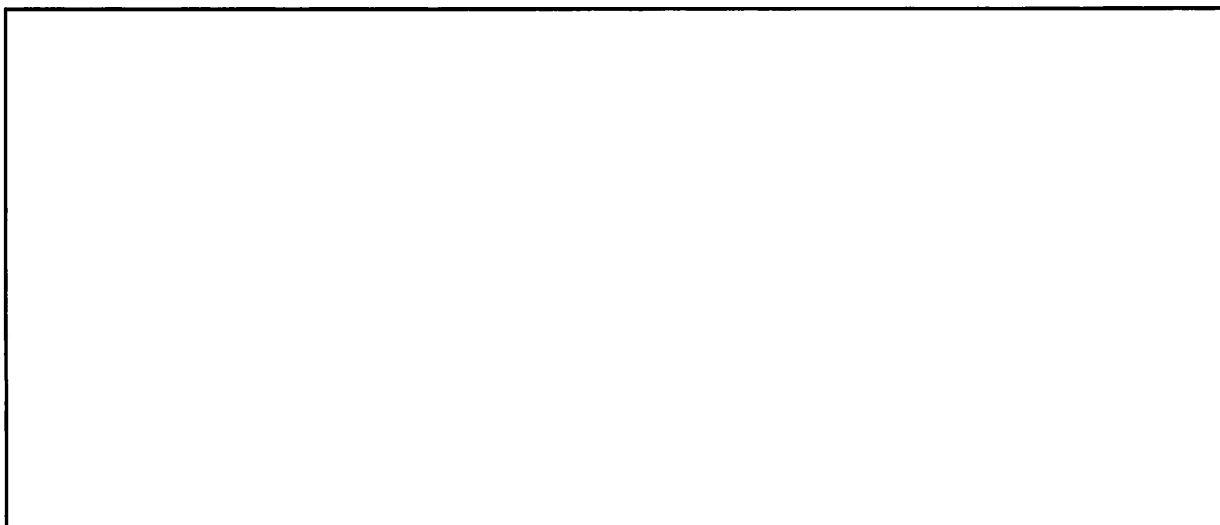
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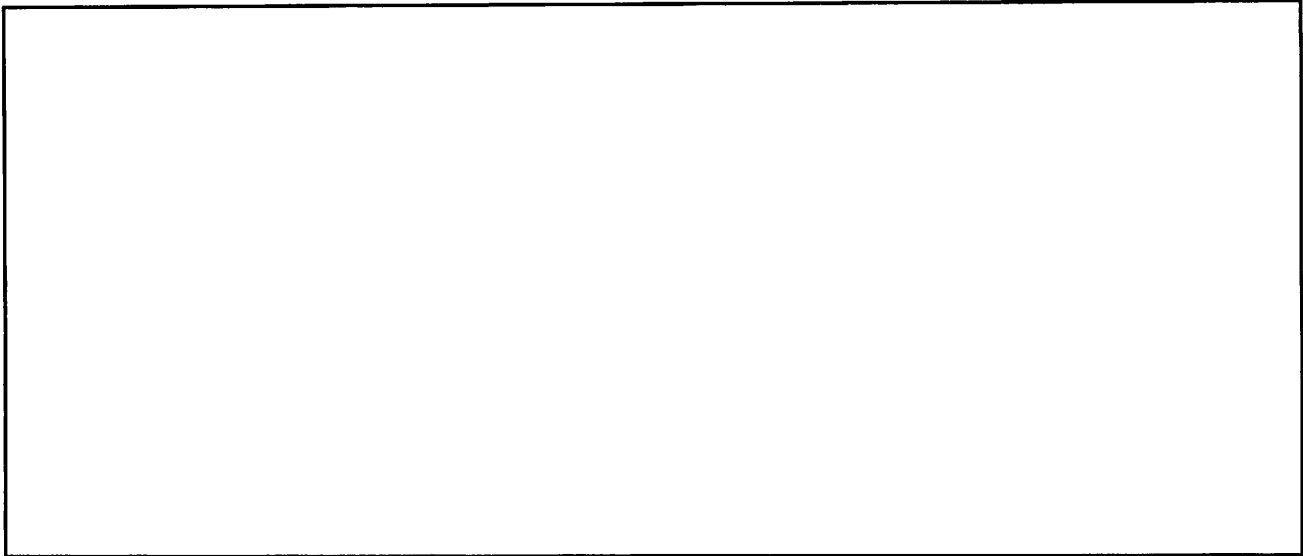
4.3 Connection to Areas Known to Have Terrorist Activity



Relevant Questions



Relevant Questions



5 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.

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

6 TRIG – “TERRORIST ORGANIZATION” DEFINED

Many of the general terrorism-related inadmissibility grounds refer to “terrorist organizations.” There are three categories, or “tiers,” of terrorist organizations defined in the INA.⁶ These three tiers are explained below.

⁶ INA § 212(a)(3)(B)(vi).

6.1 Categories or “Tiers” of Terrorist Organizations

- **Tier I (Foreign Terrorist Organizations (FTO)):**⁷ 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);⁸
- **Tier II (Terrorist Exclusion List (TEL)):**⁹ 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):**¹⁰ a group of two or more individuals, whether organized or not, that engages in, or has a subgroup¹¹ 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.)

(b)(7)(C)

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

6.2.1 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.¹²

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 INA § 212(a)(3)(B)(vi)(I). For more information, see Section 6.2, below: Foreign Terrorist Organization Designation under INA § 219 (Tier I).

⁸ Consolidated Appropriations Act, 2008 (CAA), Pub. L. 110-161, 121 Stat. 1844, Division J, Title VI, § 691(d) (Dec. 26, 2007).

⁹ INA § 212(a)(3)(B)(vi)(II). For more information, see Section 6.3, below: Terrorist Exclusion List (Tier II).

¹⁰ INA § 212(a)(3)(B)(vi)(III). For more information, see Section 6.4, below: Undesignated Terrorist Organizations.

¹¹ See Department of State guidance on what constitutes a subgroup, 9 FAM 302.6-2(B)(3)(h).

¹² INA § 219(a)(2)(A)(i).

6.2.2 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 terrorism¹³; and
- The terrorist activity or terrorism of the organization threatens the security of U.S. nationals or the national security of the United States.¹⁴

6.2.3 Organizations Currently Designated as Foreign Terrorist Organizations (FTOs)¹⁵

On October 8, 1997, the Secretary of State published the first list of Tier I terrorist organizations in the *Federal Register*. 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.

Foreign terrorist organizations designated by the Secretary of State include, among others, al-Qa'ida, Boko Haram, Communist Party of the Philippines/New People's Army (CPP/NPA), Basque Homeland and Freedom (ETA), Hamas, Hizballah, 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 <https://www.state.gov/j/ct/list/index.htm>. You should check this site on a regular basis for the most current version of the list as additional organizations may be designated at any time.

The Taliban is not listed as an FTO on the State Department's website because it was not designated by the State Department under INA § 219. Rather, under § 691(b) of the Consolidated Appropriations Act, 2008, Congress provided that the Taliban shall be considered to be a Tier I terrorist organization.¹⁶

¹³ 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.")

¹⁴ INA § 219(a)(1).

¹⁵ See U.S. Department of State, Office of Counterterrorism, Fact Sheet: Foreign Terrorist Organization Designation (Washington, DC, September 1, 2010).

¹⁶ Consolidated Appropriations Act, 2008, *supra*, note 8. The Taliban is the only group to date that Congress has stated shall be considered as a Tier I terrorist organization and the only one that does not appear on the FTO list.

6.3 Terrorist Exclusion List (Tier II)

6.3.1 Authority

The USA PATRIOT Act added, and the REAL ID Act amended, two additional categories of “terrorist organizations” to INA § 212.¹⁷ 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). Unlike Tier I organizations, there is no requirement that the organization endanger U.S. nationals or U.S. national security.

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.”

6.3.2 Organizations Currently Designated on the Terrorist Exclusion List (Tier II)

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

The Department of State maintains the Terrorist Exclusion List at: <https://www.state.gov/j/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.

6.4 Undesignated Terrorist Organizations (Tier III)

Any group of two or more 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.

6.4.1 Definition

Under INA § 212(a)(3)(B)(vi)(III), a group of two or more individuals, whether organized or not, meets the definition of a “terrorist organization” if the group engages in terrorist activity, or has a subgroup that engages in terrorist activity.

For example, looking to the definitions contained in the INA of “engaging in terrorist activity” and “terrorist activity,” an organization meets the definition of 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

¹⁷ 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).

groups and makes no exceptions for groups aligned with U.S. interests.¹⁸ 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.”¹⁹ Similarly, in *Khan v. Holder*, the U.S. Court of Appeals for the Ninth Circuit considered and rejected the applicant’s argument that the statute contains an exception for organizations that use force against military targets that is permitted under the international law of armed conflict.²⁰

On the other hand, organizations whose violent activities include the use of weapons or dangerous devices solely for mere personal monetary gain fall within the statutory exception at INA § 212(a)(3)(B)(iii)(V)(b).

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, and the group relies upon the larger group, in whole or in part, for support or to maintain its operations. If there is such a relationship, and the subgroup engages in terrorist activity, then both groups are terrorist organizations.²¹

However, the U.S. Court of Appeals for the Third Circuit has held that an entity may not be deemed a Tier III terrorist organization unless its leaders authorized terrorist activity committed by its members.²² Evidence of authorization may be direct or circumstantial, and authorization may be reasonably inferred from, among other things, the fact that most of an organization’s members commit terrorist activity or from a failure of a group’s

¹⁸ INA §§ 212(a)(3)(B)(iii) and (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 also Sections 7.2 and 7.3, below: “Terrorist Activity” Defined and “Engaging in Terrorist Activity” Defined.

¹⁹ *Matter of S-K-*, 23 I&N Dec. at 941 (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).

²⁰ *Khan v. Holder*, 584 F.3d 774, 784-785 (9th Cir. 2009).

²¹ See 9 FAM 302.6-2(B)(3)(h).

²² *Uddin v. Attorney General*, 870 F.3d 282, 289-90 (3rd Cir. 2017). The ruling in *Uddin* involved a group which is a major political party in the country at issue, and which does not have an armed wing. However, significant political violence in the country at issue is common, and multiple political parties in that country are implicated in violent activity carried out by members. The nature of the group at issue in *Uddin* likely influenced the court’s ruling. The issue of authorization will be less problematic with a group whose aims clearly included the use of violence, such as a group which was largely made up of individuals who engaged in combat, or a group which had an armed wing.

leadership to condemn or curtail its members' terrorist acts.²³ Similarly, the U.S. Court of Appeals for the Seventh Circuit has noted that an organization is not a terrorist organization simply because some of its members have engaged in terrorist activity "without direct or indirect authorization."²⁴ 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.²⁵

6.5 Groups Excluded from the Tier III Definition by Statute

As a result of the broad reach of the statute and its application to groups that are sympathetic to the United States or that have previously assisted the United States, Congress enacted section 691(b) of the Consolidated Appropriations Act, 2008 (CAA). The CAA 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, 2007:²⁶

- Karen National Union/Karen National 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 (groups opposed to the Communist government of Cuba)
- Karenni National Progressive Party (KNPP)
- appropriate groups affiliated with the Hmong²⁷

²³ *Uddin*, 870 F.3d at 292. The court noted that conclusive proof that the leaders of a group explicitly sign off on each individual terrorist act at issue is not required.

²⁴ *Hussain v. Mukasey*, 518 F.3d 534, 538 (7th Cir. 2008).

²⁵ *Id.*

²⁶ *Consolidated Appropriations Act, 2008*, *supra*, note 8, § 691(b).

²⁷ Appropriate groups may be established through country condition reports to show that a subgroup is affiliated with the Hmong or Montagnards. *See also* Exercises of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act, October 5, 2007 (FULRO and Hmong).

- appropriate groups affiliated with the Montagnards (includes the Front Unifié de Lutte des Races Opprimées (FULRO))²⁸
- African National Congress (ANC)²⁹

(Hereinafter, 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 (NDAA) for Fiscal Year 2015, which provides that two major Kurdish political parties in Iraq are excluded from the definition of “terrorist organization”:³⁰

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

The NDAA provision is not time-limited. As a result, unlike the CAA groups, the KDP and the PUK are not considered to be terrorist organizations for activities occurring *at any time*.

In August 2018, Congress enacted the John S. McCain National Defense Authorization Act for Fiscal Year 2019.³¹ Pursuant to the 2019 NDAA, the Rwandan Patriotic Front (RPF)/Rwandan Patriotic Army (RPA) are excluded from the definition of an undesignated (Tier III) terrorist organization for any period before August 1, 1994, and INA § 212(a)(3)(B) shall not apply to an alien with respect to any activity by the alien in association with the RPF/RPA before August 1, 1994. Thus, there is no time period during which RPF/RPA is considered a Tier III organization.

6.5.1 Discretionary Exemption Provision for Terrorist Organizations

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 and unreviewable discretion, that an organization will not be considered a terrorist organization under INA § 212(d)(3)(B)(i). However, 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;

²⁸ Consolidated Appropriations Act, 2008, *supra*, note 8, § 691(b).

²⁹ On July 1, 2008, Congress amended the CAA to add the African National Congress. Pub. L. no. 110-257.

³⁰ National Defense Authorization Act for Fiscal Year 2015, Pub. L. no. 113-291, 128 Stat. 3292, § 1264(a)(1) (2014).

³¹ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. no. 115-232, 132 Stat. 1636 (Aug. 13, 2018).

- 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 9 below, TRIG Exemption Authority, the Secretary of Homeland Security *has* exercised the authority not to apply certain *provisions* of INA § 212(a)(3)(B) to individual aliens based on specific activities or associations with certain groups.

6.5.2 Recognized Foreign Governments Not Considered Tier III Organizations

As a general matter, INA § 212(a)(3)(B) does not apply to 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 are not considered synonymous with the government of a country for purposes of this determination.

Also, entities in *de facto* control of an area are not recognized as the government of that area for the purposes of TRIG.

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 TRIG point of contact (POC) for your Division.

7 TERRORISM-RELATED INADMISSIBILITY GROUNDS

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

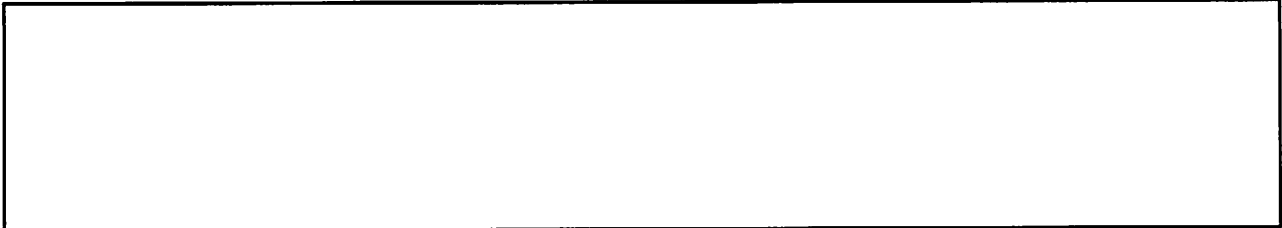
The terrorism-related inadmissibility grounds (TRIG) are found at INA § 212(a)(3)(B)(i) and are described in detail below. The terrorism related deportability ground at INA § 237(a)(4)(B), as amended by the REAL ID Act of 2005, incorporates all of the terrorism-related inadmissibility grounds at INA § 212(a)(3)(B) and INA § 212(a)(3)(F) (related to association with terrorist organizations and an intent while in the United States to engage in activities that could endanger the welfare, safety or security of the United States).³² Therefore, these grounds of inadmissibility are also grounds of deportability.³³

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

³² 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.

³³ 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)).

- I. Has engaged in terrorist activity – INA § 212(a)(3)(B)(i)(I);³⁴
- II. 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);
- III. Has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity – INA § 212(a)(3)(B)(i)(III);³⁵
- IV. Is a [current] representative³⁶ of – INA § 212(a)(3)(B)(i)(IV):
 - (aa) A terrorist organization (as defined in INA §212(a)(3)(B)(vi)) – INA § 212(a)(3)(B)(i)(IV)(aa);³⁷ or
 - (bb) A political, social, or other group that endorses or espouses terrorist activity – INA § 212(a)(3)(B)(i)(IV)(bb);³⁸
- V. Is a [current] member of a Tier I or II terrorist organization – INA § 212(a)(3)(B)(i)(V);³⁹
- VI. 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 should not reasonably have known, that the organization was a terrorist organization – INA § 212(a)(3)(B)(i)(VI).⁴⁰ (b)(7)(e)



³⁴ See Sections 7.2 and 7.3, below: “Terrorist Activity” Defined and “Engaging in Terrorist Activity” Defined.

³⁵ See 9 FAM 302.6-2(B)(3)(f).

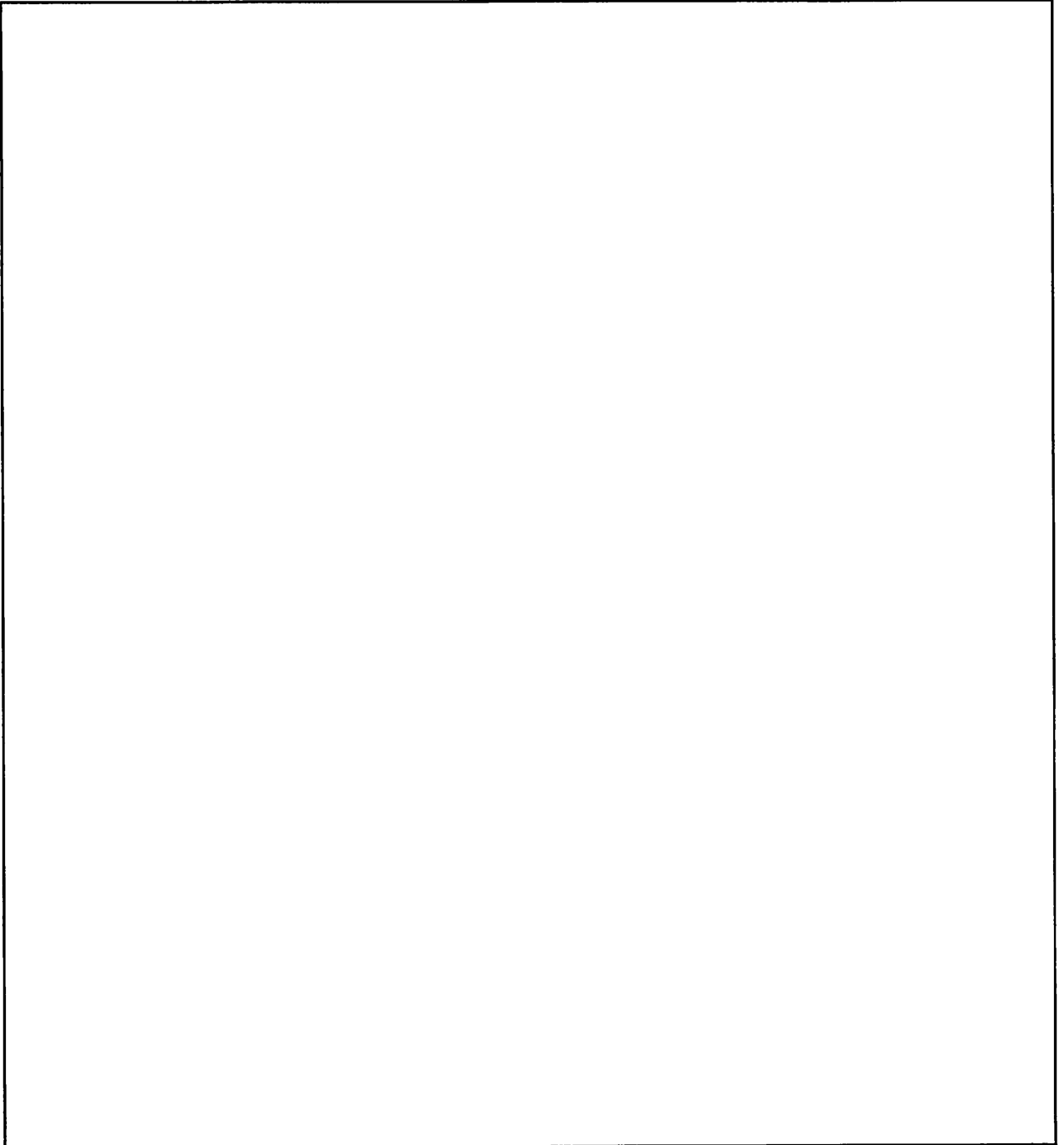
³⁶ For purposes of the terrorist provisions in the INA, “representative” is defined as “an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.” INA § 212(a)(3)(B)(v).

³⁷ See Section 6, above: “Terrorist Organization” Defined.

³⁸ 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.

³⁹ INA § 237(a)(4)(B); see Section 6, above: “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.

⁴⁰ See Section 6, above: “Terrorist Organization” Defined.



⁴¹ 9 FAM 302.6-2(B)(3)(e).

⁴² *Id.*; see also *Viegas v. Holder*, 699 F.3d 798, 804 (4th Cir. 2012).

⁴⁴ See Section 7.3, below: “Engage in Terrorist Activity” Defined.

- VII. 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);⁴⁴
- VIII. 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);
- “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 . . . ”⁴⁵
 - **NOTE:** On January 7, 2011, the Secretary exercised her discretionary authority under INA § 212(d)(3)(B)(i) to exempt individuals who have received military-type training *under duress* from the application of this ground of inadmissibility.⁴⁶
- IX. 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)⁴⁷;

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.

⁴⁴ Note that this ground, unlike INA § 212(a)(3)(B)(i)(III), *does not* require that the statements be made under circumstances indicating an intention to cause death or serious bodily harm.

⁴⁵ 18 U.S.C. § 2339D(c)(1).

⁴⁶ See 76 Fed. Reg. 14418-01 (March 16, 2011) and Section 9.4.1, below: Situational Exemptions – Duress-Based.

⁴⁷ In addition, under this provision, an alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization (PLO) is considered to be *engaged in terrorist activity*.

7.2 “Terrorist Activity” Defined

Many of the terrorism-related inadmissibility grounds 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 at INA §§ 212(a)(3)(B)(iii) and (iv), respectively.

“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:

- 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 by statute as:

- a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or
- any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization, who at the time and place concerned is entitled pursuant to international law to special protection against attack on his person, freedom, or dignity, and any member of his family then forming part of his household;⁴⁸
- An assassination – INA § 212(a)(3)(B)(iii)(IV);
- The use of any – INA § 212(a)(3)(B)(iii)(V):
 - Biological, chemical, or nuclear weapon – 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);

⁴⁸ 18 U.S.C. § 1116(b)(4).

With intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property;

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

7.3 “Engage in Terrorist Activity” Defined

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

- 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);⁴⁹ or
 - a Tier III (undesignated) terrorist organization, 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);⁵⁰

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).⁵¹

- To solicit any individual:
 - To engage in conduct otherwise described as engaging in terrorist activity – INA § 212(a)(3)(B)(iv)(V)(aa);

⁴⁹ Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(I) and (II).

⁵⁰ Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(III).

⁵¹ Memorandum, Collecting Funds from Others to Pay Ransom to a Terrorist Organization, Dea Carpenter, USCIS Deputy Chief Counsel, to Lori Scialabba, RAIO Associate Director (Feb. 6, 2008).

- for membership in a Tier I or Tier II terrorist organization – INA § 212(a)(3)(B)(iv)(V)(bb); or
- for membership in a Tier III (undesigned) terrorist organization, 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 – INA § 212(a)(3)(B)(iv)(VI):
 - 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 (undesigned) 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).

Guidance on 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. federal and state 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 during your interview, you should elicit as much detail as possible about the 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. You should include this information in your query to your Division POC, who will provide further guidance.

8 TRIG - MATERIAL SUPPORT

Providing material support 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” under INA § 212(a)(3)(B)(iv) (specifically, 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,” as described in INA § 212(a)(3)(B)(iv)(VI).

8.1 Statutory Examples of Material Support

The INA provides the following non-exhaustive list of examples which would constitute “material support”:⁵²

- 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.⁵³

8.2 Factors Relating to “Material Support”

8.2.1 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).⁵⁴

⁵² INA § 212(a)(3)(B)(iv)(VI).

⁵³ *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.”).

⁵⁴ *Singh-Kaur*, 385 F.3d at 300-301.

The court looked to the plain meaning of the terms “material” (“[h]aving some logical connection with the consequential facts” or “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.⁵⁵

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 was whether Viegas’s activities qualified as “material.”⁵⁶ 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 Front for the Liberation of the Enclave of Cabinda, an undesignated terrorist organization, to accomplish its goals.⁵⁷

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 at the time of the payments, 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 annual payments of \$300 over a period of six years was not so insignificant as to fall outside that definition.”⁵⁸

Although the courts that have considered the issue have generally agreed with the government’s position that there is no exception for minor 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 9.4.5, below: Situational Exemptions – Certain Limited Material Support and Insignificant Material Support.

⁵⁵ *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.*

⁵⁶ *Viegas*, 699 F.3d at 803.

⁵⁷ *Id.*

⁵⁸ *Alturo v. U.S. Att’y Gen.*, 716 F.3d 1310, 1314 (11th Cir. 2013).

8.2.2 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.⁵⁹

8.2.3 Use of Support

How the terrorist organization uses the support provided by the applicant is irrelevant to the determination of 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.⁶⁰ It may, however, be relevant to the application of an exemption.

8.2.4 Applicant’s Intent

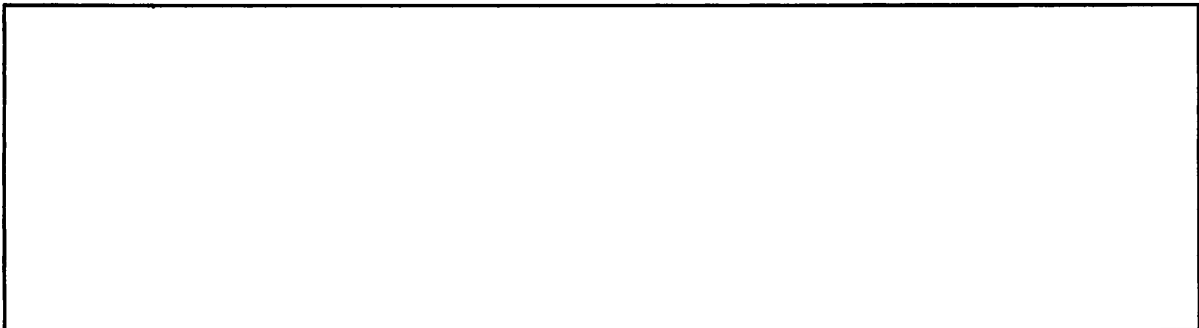
The applicant’s intent in providing the material support to an individual or terrorist organization is also irrelevant to the determination of whether the support is material.⁶¹ It may, however, be relevant to the application of an exemption.

8.2.5 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.⁶² 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.

8.2.6 Household Chores

(b)(7)(e)



⁵⁹ See *Singh-Kaur*, 385 F.3d at 298; INA §§ 212(a)(3)(B)(iv)(VI)(aa)-(dd).

⁶⁰ *Matter of S-K-*, 23 I&N Dec. at 944.

⁶¹ *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).

⁶² INA §§ 212(a)(3)(B)(i)(V)-(VI).

8.2.7 Ransom

Payment of ransom to a terrorist organization is considered material support, and any applicant who directly contributed to the ransom will be inadmissible. However, some of the acts or activities that often occur in response to a terrorist organization's demand for a ransom payment are not considered material support. The following are some examples that make this distinction:

Activity that is considered material support:

- Payment or contributing items of value toward the ransom payment (e.g., giving money or selling jewelry), either directly or through an intermediary
- Delivering the ransom payment

Activity that, in and of itself, is not considered material support:

- While being held captive, calling others to ask them to pay the terrorist organization in exchange for release
- While being held captive, giving phone numbers of friends or relatives to the captors, so that the captors could call and make demands for ransom payment
- Negotiating the ransom amount
- Collecting contributions toward the ransom payment from others

As noted previously in Section 7.3, the act of collecting contributions toward the ransom is also not considered solicitation under INA § 212(a)(3)(B)(iv)(IV). To be inadmissible for solicitation, the activities must be *for* a terrorist activity or *for* a terrorist organization,

⁶³ See *Matter of A-C-M-*, 27 I&N Dec. 303 (BIA 2018).

which is distinct from requesting or collecting ransom money to secure the release of the individual held captive.

8.2.8 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. However, since early 2007, a secretarial exemption has been available for certain applicants who have provided material support under duress. While these applicants are inadmissible, DHS may decide not to apply the ground of inadmissibility that pertains to them as a matter of discretion.⁶⁴

Four circuit courts of appeals have upheld unpublished BIA decisions holding that the statute does not contain an implied 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.⁶⁵ Likewise, the U.S. Courts of Appeals for the Third, Fourth, and Eleventh Circuits have found that the BIA’s construction of the statute to include material support provided under duress was permissible and deferred to its interpretation.⁶⁶

In *Matter of M-H-Z-*, the BIA clarified that, under its interpretation of the statute, both *voluntary and involuntary* conduct fall under the definition of “material support,” and held that there is no implied duress exception.⁶⁷ The BIA’s decision is controlling on this issue. In its review of *Matter of M-H-Z-*, the U.S. Court of Appeals for the Second Circuit held that the BIA’s interpretation of the material support bar was permissible and

⁶⁴ Exemptions are also available for military-type training under duress and solicitation under duress. See Section 9.4.1, below: [Situational Exemptions – Duress-Based](#).

⁶⁵ *Annachamy v. Holder*, 733 F.3d 254, 260-261 (9th Cir. 2013), *amending and superseding Annachamy v. Holder*, 686 F.3d 729 (9th Cir. 2012), *overruled on other grounds by Abdisalan v. Holder*, 774 F.3d 517 (9th Cir. 2014).

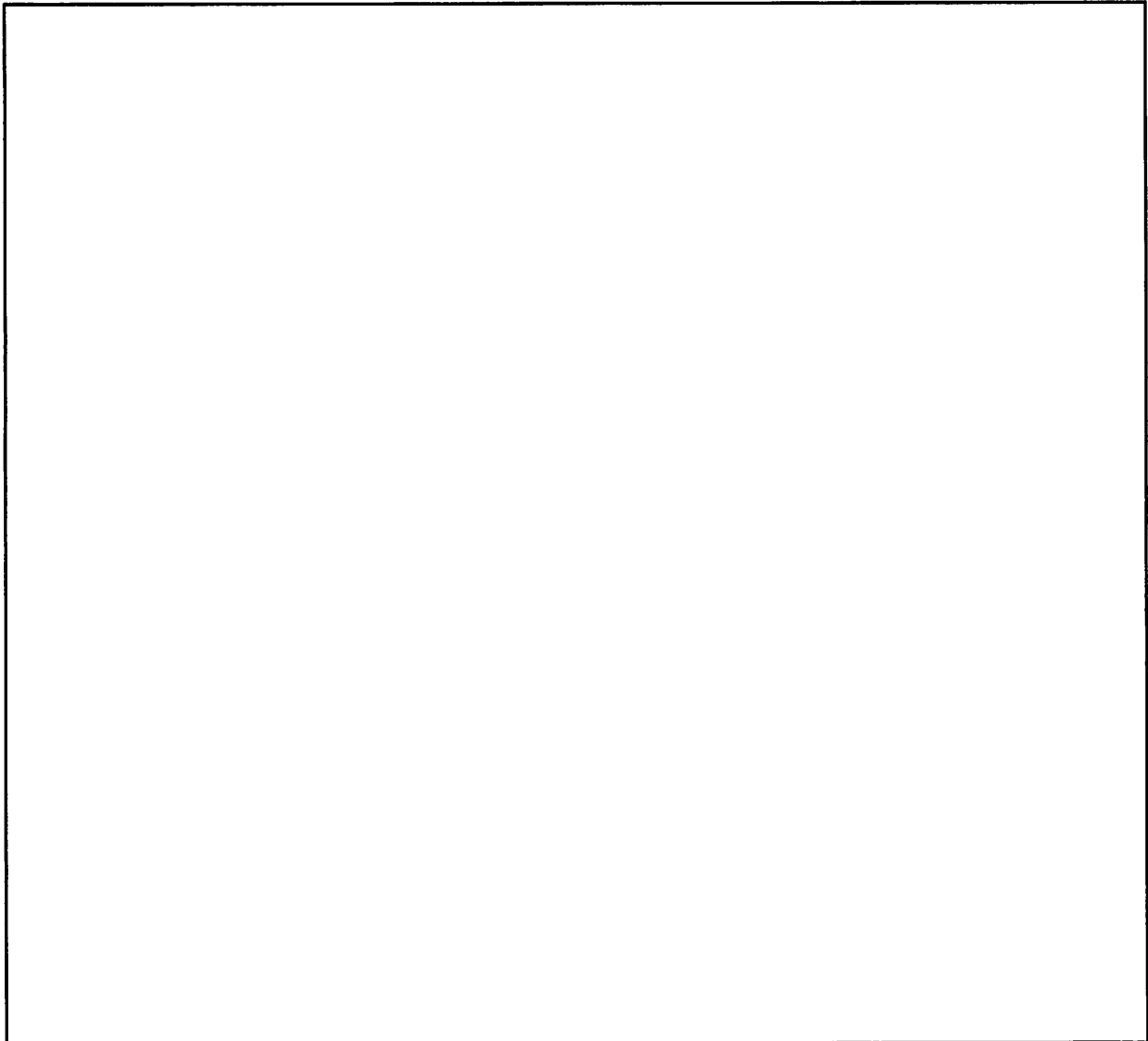
⁶⁶ *Barahona v. Holder*, 691 F.3d 349, 353 (4th Cir. 2012); *Alturo v. U.S. Att’y Gen.*, 716 F.3d 1310, 1314 (11th Cir. 2013); *Sesay v. Att’y Gen. of U.S.*, 787 F.3d 215, 222 (3d Cir. 2015).

⁶⁷ *Matter of M-H-Z-*, 26 I&N Dec. 757 (BIA 2016).

deferred to the Board’s interpretation that the material support bar does not contain an explicit or an implied duress exemption.⁶⁸

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 duress exemption. For more information, see Section 9.4.1, below, Situational Exemptions – Duress-Based.

8.2.9 Material Support Lines of Inquiry



⁶⁸ *Hernandez v. Sessions*, 884 F.3d 107, 109 (2d Cir. 2018).