

The Exemption Worksheet (EWS)

Section IV Exemption Eligibility: Group-Based Exemptions must include the following:

- The organization name and if Tier III, why it qualifies as such
- A description of how the applicant's activities qualify them for the group-based exemption based on the additional requirements listed in the exemption's exercise of authority (i.e. certain activities, dates, cannot have targeted U.S. persons or interests, etc.)
- Whether an exemption is warranted in the totality of the circumstances.



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The Consolidated Appropriations Act (CAA)

- Enacted 12/26/07
- Includes 10 groups that are not to be considered Tier III “terrorist organizations” as long as they do not re-engage in terrorist activities
- Provides “automatic relief” (no exemption/worksheet needed) for certain TRIG activities and associations undertaken prior to 12/26/07 in which “terrorist organization” is an element
 - Secretaries authorized group based exemption for activities not eligible for automatic relief (worksheet needed).
- African National Congress was later added to the list of “10 named groups”



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Groups Named in CAA

- ▣ Karen National Union/Karen National Army (KNU/KNLA)* (*Burma*)
- ▣ Karenni National Progressive Party (KNPP)* (*Burma*)
- ▣ Chin National Front/Chin National Army (CNF/CNA) (*Burma*)
- ▣ Chin National League for Democracy (CNLD) (*Burma*)
- ▣ Kayan New Land Party (KNLP) (*Burma*)
- ▣ Arakan Liberation Party (ALP) (*Burma*)
- ▣ Mustangs (*Tibet*)
- ▣ Alzados (*Cuba*)
- ▣ Hmong groups (*primarily Laos*)
- ▣ Montagnard groups (*Vietnam*)
- ▣ African National Congress (*added in 7/08*) (*South Africa*)

- ▣ * HAVE REENAGED and considered Tier III as of 12/26/07



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KDP & PUK Exceptions and Exemptions

- Per FY15 National Defense Authorization Act, the KDP and PUK are excluded from the definition of a Tier III terrorist organization (no time limitation).
- Similar to the CAA, provides “automatic relief” (no exemption/worksheet needed) for certain TRIG activities and associations in which “terrorist organization” is an element.
- ALL other activities associated with KDP/PUK except for intent to engage in terrorist activity in the future are exemptible, but require an exemption worksheet as relief is not “automatic”.



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Let's Practice - Is applicant inadmissible?

- Applicant received military type-training from the KNU in 2006. (Same, but in 2008.)
- Applicant engaged in combat with the KNPP in 2006. (Same, but in 2008.)
- Applicant sabotaged government equipment with the Cuban Alzados in 1965.
- Applicant provided food to the KDP in 2015.



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TRIG?

Based on your understanding after reviewing the TRIG exemptions, are these activities covered by an exemption? Are there any activities that are not covered by an exemption?

- 1) Applicant is a young girl who was kidnapped and held captive by members of an armed group at their camp in the bush. While suffering extreme abuse and rape, she was forced to gather firewood, cook, and clean.
- 2) Applicant is a subsistence farmer. One day, uniformed rebel soldiers passed by and asked him for water. He gave them each one glass of water.
- 3) Applicant is a doctor who provided treatment to anyone who came to his clinic. During the revolution in his country, he stitched and dressed the wounds of some rebel soldiers.
- 4) Applicant is a small boy who was kidnapped by a rebel group and forced to undergo combat training and fight for the group before he managed to escape.



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Totality of the Circumstances Analysis

Factors to consider:

- ▣ Amount and type
- ▣ Frequency
- ▣ Length of time that has passed
- ▣ Nature of applicant's activities
- ▣ Nature of activities committed by the terrorist organization
- ▣ Applicant's awareness of those activities
- ▣ Applicant's conduct since TRIG/support
- ▣ Any other relevant factor(s)



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The Exemption Worksheet (EWS)

Section V. Adjudicator's Recommendation

V. Adjudicator's Recommendation

- GRANT EXEMPTION:** Alien qualifies for and merits an exemption.
- DENY EXEMPTION:** The alien does not meet the eligibility requirements. *Explain in Section II above.*
- The exemptions considered were found not to apply. *Refer or deny AFTER obtaining concurrence from required reviewers.*
 - An exemption may be applicable, 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.*
 - An exemption is not currently available, and the adjudication may be subject to USCIS hold policy, but under the hold policy guidance, in the totality of the circumstances, any future existing discretionary exemption would not be granted. *Explain below.*
- HOLD:** An exemption is not currently available, and the adjudication is subject to the USCIS hold policy. *The Secretaries of Homeland Security and State may exempt this activity but have not done so. Explain below and specify activity that is not currently eligible for exemption.*

Initial Adjudicator's Name/Signature: J. Leigh

Date: 1/1/2017



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Hold Categories

- Voluntary activity/association with Tier III (where no exemption currently exists)
- Activities/associations under duress, related to any “terrorist organization” (where no exemption currently exists, i.e., activities other than material support, military-type training and solicitation under duress)
- Spouses or children of aliens subject to above two categories

***The USCIS Hold Policy does not apply to refugee (I-590) or asylum (I-589) case adjudications**



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Denials

Mandatory:

- ☐ Voluntary activities/associations for Tier I and II organizations
 - Except for medical care

Discretionary:

- ☐ Exemption exists, but applicant does not merit exemption based on totality of circumstances.
- ☐ Subject to hold policy as no exemption exists, but even if an exemption that would apply were to become available in the future applicant would not merit an exemption in the totality of the circumstances do not recommend even if exemption available.

If an exemption is denied, the case is denied.



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Terrorism-Related Inadmissibility Grounds (TRIG)

February 2017
RAIO TRIG Program Branch



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TRIG?

Based on your current understanding, have these applicants committed terrorist activity?

- 1) Applicant is a young girl who was kidnapped and held captive by members of an armed group at their camp in the bush. While suffering extreme abuse, including rape, she was forced to gather firewood, cook, and clean.
- 2) Applicant is a subsistence farmer. One day, uniformed rebel soldiers passed by and asked him for water. He gave them each one glass of water.
- 3) Applicant is a doctor who provided treatment to anyone who came to his clinic. During the revolution in his country, he stitched and dressed the wounds of some rebel soldiers.
- 4) Applicant is a small boy who was kidnapped by a rebel group and forced to undergo combat training and fight for the group before he managed to escape.



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Benefits Affected

INA § 212(a)(3)(B) TRIG applies to any benefit subject to the INA § 212 inadmissibility provisions, including:

- Refugee admission
- Asylum

TRIG is a mandatory bar to asylum under INA § 208(b)(2)(A)(v). The § 208(b)(2)(A)(v) mandatory TRIG bar and the § 237(a)(4)(B) deportability ground for terrorist activities both incorporate § 212(a)(3)(B) TRIG.

- Adjustment of status, follow to join refugee/asylee status, and Temporary Protected Status (TPS)



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TRIG Involves Multiple Parts

INA § 212(a)(3)(B) involves multiple, interrelated sections that work together:

- Nine grounds of inadmissibility: INA §§ 212(a)(3)(B)(i)(I)-(IX)
- Statutory definitions to interpret these nine inadmissibility grounds:
 - Three types of organizations are defined as terrorist organizations: INA §§ 212(a)(3)(B)(v)(I)-(III)
 - Six categories of activity are defined as terrorist activity: INA §§ 212(a)(3)(B)(iii)(I)-(VI)
 - Six categories of activity are defined as engaging in terrorist activity: INA §§ 212(a)(3)(B)(iv)(I)-(VI)



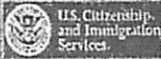
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What is a "terrorist organization"?

INA § 212(a)(3)(B)(vi)



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What is a "terrorist organization"?

Three categories of terrorist organizations defined in INA § 212(a)(3)(B)(vi)

- Tier I: Designated Foreign Terrorist Organizations
- Tier II: Designated Terrorist Exclusion List
- Tier III: Undesignated Terrorist Organizations



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Tier I Terrorist Organizations

A Foreign Terrorist Organization (FTO) is designated under INA § 219 by the Secretary of State.

- List of FTOs can be found at: <http://www.state.gov/p/af/e/other/af/123015.htm>
- Although the Taliban is not included on the Department of States FTO list, Congress has legislatively designated the Taliban as a Tier I terrorist organization for purposes of INA § 212(a)(3)(B).



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Tier II Terrorist Organizations

Terrorist Exclusion List (TEL) – an organization designated by the Secretary of State in consultation with or at the request of DHS or DOJ after finding that it engages in terrorist activity.

- Same immigration consequences as Tier I/FTOs
- Terrorist Exclusion List can be found at: <http://www.state.gov/p/af/e/other/af/123015.htm>



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Tier III Terrorist Organizations

Undesignated Terrorist Organization - a group of two or more individuals, whether organized or not, which engages in terrorist activity or has a subgroup that engages in terrorist activity

- Called "undesignated" terrorist organizations because they do not appear on a list
- Can be unnamed/unorganized
- No requirement that the Tier III group endangers U.S. national security

With the broad definition of terrorist activity, armed resistance groups, guerrillas, and freedom fighters may meet the definition of terrorist organizations

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What is "terrorist activity"?

INA § 212(a)(3)(B)(iii)

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What is "terrorist activity"?

Activity that is unlawful and which involves any of the following:

- Hijacking or sabotaging of any conveyance (including an aircraft, vessel, or vehicle)
- The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person to do or abstain from doing an act
- Violent attack on internationally protected person (generally diplomats/government officials outside of their country)
- Assassination

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What is "terrorist activity"?

(V) Use of biological agent, chemical agent, or nuclear weapon or device or any explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) with intent to endanger the safety of individual(s) or to cause substantial property damage

- There is no requirement that the use of weapons target civilians

Even if they were supported by the U.S. government, this brings armed resistance groups under the definition of a terrorist organization

(VI) A threat, attempt, or conspiracy to do any of the foregoing

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Let's Practice – Does the group meet the definition of a "terrorist organization"?

In an effort to gain autonomy, the Jekyll Island Liberation Front attempted to occupy and gain control of police stations and government buildings, therefore endangering the safety of local law enforcement, county employees, and ordinary citizens. During this attack, this group engaged local law enforcement with small arms fire.

Would the JILF be considered a terrorist organization? If so, what type?



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Government Activity vs. Terrorist Organization Activity

INA § 212(a)(3)(B) does not include activity of a recognized and duly constituted government, (such as by the security forces or military) within the definition of "terrorist activity" or "engaging in terrorist activity."

- Entities in *de facto* control of an area may not be recognized as the government.
- In a multi-party system, a political party with representation in the government is not considered the government of a country.

This is a DHS interpretation of the law. Contact your supervisor or TRIG POC with any questions.



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Let's Practice

Does the group meet the definition of a Tier I/Tier II/Tier III terrorist organization?

The Sudan People's Liberation Army (SPLA) was founded in 1983 as an armed guerrilla movement fighting for control of the southern areas of Sudan. Following a 2011 referendum, South Sudan was recognized as a sovereign state. The SPLA became the regular army of the new country of South Sudan.

An applicant had some dealings with the SPLA in (a) 1998, (b) 2012. Which type of terrorist organization (if any) was he dealing with?

The Mujahedin e-Khalq (MEK) an Iranian resistance organization founded in 1965, engaged government soldiers in armed skirmishes. It was designated as a Foreign Terrorist Organization on October 8, 1997. It was de-listed on September 28, 2012.

An applicant had some dealings with the MEK in (a) 1995, (b) 2000 (c) 2013. Which type of terrorist organization was he dealing with?



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What is to "engage in terrorist activity"?

INA § 212(a)(3)(B)(iv)



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What is to "engage in terrorist activity"?

Engage in terrorist activity means, in an individual capacity or as a member of an organization, to:

- (I) commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
- (II) prepare or plan a terrorist activity;
- (III) gather information on potential targets for terrorist activity;

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What is to "engage in terrorist activity"?

(IV) solicit funds or other things of value for:

- (aa) a terrorist activity;
- (bb) a designated terrorist organization (Tier I/II) or
- (cc) an undesignated terrorist organization (Tier III) unless the alien can show by clear and convincing evidence that he/she did not know and reasonably should not have known it was a terrorist organization;

(V) solicit any individual:

- (aa) to engage in a terrorist activity;
- (bb) to join a designated terrorist organization (Tier I/II) or
- (cc) to join an undesignated terrorist organization (Tier III) unless the alien can show by clear and convincing evidence that he/she did not know and reasonably should not have known it was a terrorist organization;

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What is to "engage in terrorist activity"?

(VI) Commit an act which the alien knows or reasonably should know affords material support:

- (aa) for the commission of a terrorist activity;
- (bb) to any individual the alien knows or reasonably should know has or will commit a terrorist activity;
- (cc) to a designated terrorist organization (Tier I/II) or to a member of a designated terrorist organization or
- (dd) to an undesignated terrorist organization (Tier III) or to a member of such an organization unless the actor can demonstrate by clear and convincing evidence that he or she did not know and should not reasonably have known that it was a terrorist organization.

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What is "material support"?

INA § 212(a)(3)(B)(iv)(VI)

I gave food to the rebels. I had to pay a ransom.

I donated to the party. They made me pay a war tax.

I'm a doctor so I gave them medical care.

I gave them housing for the night.

They were fighting for my people so I gave them weapons. I paid them at a checkpoint.

I sold bread to the fighters.

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What is "material support"?

FINA § 212(a)(3)(B)(iv)(VI)

The statutory definition of material support includes examples:

- safe house
- transportation
- communications
- funds, transfer of funds, or other material financial benefit
- false documentation or ID
- Weapons (including chemical, biological, or radiological) explosives
- training

This is not an exhaustive list.



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What is "material support"?

DHS and the Board of Immigration Appeals have interpreted the term "material support" broadly.

Material support also includes providing:

- food/water
- labor (cleaning, cooking, portering, etc.)
- any commercial transactions
- clothing
- information

There is no requirement that the support actually benefit the terrorist organization or terrorist activity.

There are no time, age, or quantity limitations or statutory exceptions for material support.




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Material Support Considerations

Information to elicit during the interview:

- What did the applicant give or do?
- How many times? Over what period?
- To one group or more than one?
- How the support was used?
- How was the support requested/demanded?
- Who else provided support? Under what circumstances?
- At the time the support was given, what did the applicant know (or what had the applicant heard) about the group or individual to whom support was given?

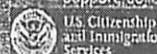


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Lack of Knowledge Exception

- **RULE:** If the applicant had no knowledge that the individual(s) to whom he or she provided material support belonged to any type of organization then TRIG does not apply at all.
- **Tier III RULE:** If the applicant knows the name of the organization at the time the support is given, even if they don't know what the organization is or does, TRIG applies.
- **Tier III RULE:** If the applicant knows the name of the organization at the time the support is given, but doesn't know what the organization engages in violent activity, an exception to TRIG might apply if the asserted lack of knowledge is reasonable.
- Only applies to undesignated organizations (Tier III) for material support, solicitation of funds and people and membership.



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TRIG Exceptions - Examples

A group of foreign tourists went hiking in the mountainous Kurdish region around the borders of Iraq/Iran/Syria/Turkey. They encountered a friendly sheep herder, who invited them into his home and served them food and drinks. As a gesture of thanks, the hikers left him some cash.

While sharing their meal together (before the hikers left cash)...

- The sheep herder told the hikers that he is a member of the Kurdistan Workers Party (PKK), a Tier II terrorist organization, and:
 - the hikers were aware that the PKK was a terrorist organization, or
 - the hikers had no idea what the PKK was and didn't ask.




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TRIG Exceptions - Examples

- The sheep herder told the hikers that he is a member of the People's Protection Unit (YPG), a Tier III terrorist organization, and:
 - the hikers were aware that the YPG carried out violent activity bringing it within the definition of a terrorist organization, or
 - the hikers had no idea what the YPG was and didn't ask.
- The sheep herder spoke about nothing but sheep herding and after the hikers left the sheep herder:
 - the hikers learned that the sheep herder is a member of the PKK, or
 - the hikers learned that the sheep herder is a member of the YPG.




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Material Support Interpretive Guidance

USCIS has developed specific guidance on material support in scenarios involving:

- Theft
- Performing household chores for family members who may be involved with terrorist organizations
- Ransom payments
- Material support does not include being raped or forced to perform sexual acts




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Ransom Payments and Material Support Interpretive Guidance

Contributing money/things of value to ransom (if ransom paid)	Providing to captors a phone number of someone they call to demand ransom
Delivering/dropping off of ransom	Calling your family or others and asking that they contribute money or pay ransom*
	Negotiating ransom with captors
	Collecting contributions to ransom from others (unless you deliver)

* Also not solicitation



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Let's Practice - TRIG?

Fact pattern

Applicant's son was kidnapped by Al Shabaab. In order to secure his son's release, the applicant contributed his own money, collected money from other family members, and delivered the ransom payment to Al Shabaab.

At the time, Al Shabaab was listed as a Tier I organization.

TRIG: Applicant contributed his own funds toward the ransom payment and delivered the ransom payment to Al Shabaab. Therefore, he has provided material support to a Tier terrorist organization.

Not TRIG: Collecting funds from others for ransom is not solicitation under INA 212(a)(3)(B)(iv)(V). To fall under 212(a)(3)(B)(iv)(V), the solicitation must be directly for a terrorist activity for a terrorist organization. Collecting funds in this scenario is also not considered material support, because it was a preparatory act only.

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Who is inadmissible?

INA § 212(a)(3)(B)(i)

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Who is inadmissible?

Any alien who

- (I) has engaged in a terrorist activity (past);
- (II) the officer has reasonable ground to believe is engaged or likely will engage in terrorist activity (present and future);
- (III) has incited terrorist activity under circumstances indicating an intention to cause death or serious bodily harm (past).

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Who is inadmissible?

Any alien who—

- (IV) is a representative of a terrorist organization or a group that endorses or espouses terrorist activity.
*Representative is defined at INA 212(a)(3)(B)(v) and includes spokesmen and officers.
- (V) is a member of a Tier I/II designated terrorist organization;
- (VI) is a member of a Tier III undesignated terrorist organization unless that alien can demonstrate by clear and convincing evidence that he did not know or should not reasonably have known that the organization was a terrorist organization.

Note: the present tense in these inadmissibility grounds cover current affiliation as a representative or member, and do not apply to past affiliation.

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Who is inadmissible?

Any alien who -

- (VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization
- (VIII) has received military-type training from or on behalf of a terrorist organization

Military-type training is defined at 18 U.S.C. § 2339D(c)(1):

[The term "military-type training" includes 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, for assembly, of any explosive, firearm, or other weapon, including any weapon of mass destruction.

Marching and physical exercises alone are not considered military-type training.

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Who is inadmissible?

Any alien who -

- (IX) is the spouse or child of an alien who is inadmissible under § 212(a)(3)(B) if the activity making the alien inadmissible occurred within the last five years

INA § 212(a)(3)(B)(IX) (no exception - this inadmissibility ground does not apply if:

- (i) the applicant did not know or should not reasonably have known of the spouse's parent's activity; or
- (ii) there are reasonable grounds to believe that the applicant has renounced the spouse's parent's activity.

Note: the present tense - for the spouses of inadmissible aliens, this § 212(a)(3)(B)(IX) inadmissibility applies only to current spouses and does not apply to spouses who are divorced or widowed.

For children of inadmissible aliens, the INA § 101(b)(1) definition of a child limits the inadmissibility to children who remain unmarried and under 21.

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Most Common TRIG

- INA § 212(a)(3)(B)(i)

Engaging in terrorist activity through involuntary and voluntary material support to a terrorist organization (e.g. food, water, commercial transactions, paying membership dues, and medical care), as outlined under INA § 212(a)(3)(B)(i)(V).

- INA § 212(a)(3)(B)(ii)(VII)

Receiving military-type training - involuntary and voluntary

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TRIG?

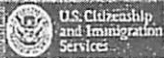
Based on your understanding after reviewing INA § 212(a)(3)(B), are these applicants inadmissible? If so, for which activities?

- 1) Applicant is a young girl who was kidnapped and held captive by members of an armed group at their camp in the bush. While suffering extreme abuse and rape, she was forced to gather firewood, cook, and clean.
- 2) Applicant is a subsistence farmer. One day, uniformed rebel soldiers passed by and asked him for water. He gave them each one glass of water.
- 3) Applicant is a doctor who provided treatment to anyone who came to his clinic. During the revolution in his country, he stitched and dressed the wounds of some rebel soldiers.
- 4) Applicant is a small boy who was kidnapped by a rebel group and forced to undergo combat training and fight for the group before he managed to escape.

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Exemptions for Terrorism- Related Grounds of Inadmissibility



Exemption Authority

Exemption authority provided under INA § 212(G)(3)(B)(i).

Delegates exemption authority to the Secretary of State or DHS Secretary in consultation with each other and the Attorney General.

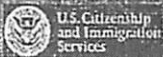
The exemption authority applies to most of the INA § 212(a)(3)(B) grounds, with some exceptions.



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How Does an Exemption Work?

1. An applicant is found to be inadmissible under INA § 212(a)(3)(B) for an activity or association that is covered by a TRIG exemption.
 2. The applicant establishes eligibility for the TRIG exemption.
 3. If the TRIG exemption is granted, the applicant will no longer be inadmissible.
- TRIG exemptions are not always available.
 - Even if a TRIG exemption is available, the exemption may be denied as a matter of discretion after considering the totality of the circumstances.



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Types of TRIG Exemptions

- Situational exemptions
 - Group-based exemptions
 - Individual exemptions
- Individual exemptions are granted by the DHS or DOS Secretary only.



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Threshold Requirements for Exemptions

In order to be considered for a TRIC exemption, the applicant must first establish that he or she satisfies the following threshold eligibility:

- Is otherwise eligible for benefit/protection sought
- Has undergone and passed all relevant background and security checks
- Has fully disclosed the nature and circumstances of each activity or association with a terrorist organization and
- Does not pose a danger to the safety and security of the United States

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Documenting Exemptions

All USCIS adjudicators document determinations on an INA § 212(a)(3)(B) Exemption Worksheet.

The worksheet:

- Reflects reviewer concurrence
- Becomes part of the A-file

TRIC must also be documented in interview notes and assessment:

- Refugee Assessment
- Inadmissibilities section
- Holds section
- Asylum Assessment
- Mandatory bars section

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The Exemption Worksheet (EWS)

Section II: Alien and Case Information

I. Alien and Case Information		
Full Name: [redacted]	DOB: [redacted]	COE#: [redacted]
A# Case #: [redacted]	Benefit Form Type: <input type="checkbox"/> I-485 <input type="checkbox"/> I-490	<input type="checkbox"/> I-730 <input type="checkbox"/> I-821 <input type="checkbox"/> Other:

- Make sure all information is correct.
- Note A# and Case # for refugee adjudications
- Make sure to check the correct benefit/form type

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The Exemption Worksheet (EWS)

II. Alien's Eligibility

Alien is otherwise eligible for the benefit sought, except for a finding of ineligibility 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 with the scope of INA § 212(a)(3)(B).

Alien poses no danger to the safety or security of the United States.

Alien meets all Manual requirements (except for the applicable Exemptions of Authority, where applicable). If not, explain in the Remarks section.

Findings: SAO and FP

- The applicant's threshold eligibility is noted in Section II.
- If a box is not checked, an explanation should be written in the "Description" section.

Tip: See threshold eligibility requirements chart, implementation memos, and exercises of authority.

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The Exemption Worksheet (EWS)

Section III: Facts of the Case

TITLE *Enter the title of the case*

DESCRIPTION *Describe the activity or activities 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 when, where, and how often the support is provided. Describe specific acts of duress, if any, provided under which the alien is inadmissible.*

The applicant is inadmissible under INA section 212(b)(3)(B)(i) for providing material support to the Mai Mai militia. The applicant was kidnapped by the Mai Mai in June 2011 and was held for two months. While detained, the applicant was forced to cook three times a day for members.

Section III - Facts of the Case must include the following:

- The INA ground under which the applicant is inadmissible
- A description of the specific activity the applicant engaged in and how often the applicant engaged in the activity
- The organization name (spelled out)
- The date(s) the activity occurred

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Situational Exemptions

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Situational Exemptions

- Duress
 - material support
 - military-type training
 - solicitation of individuals
 - solicitation of funds/other things of value
- Voluntary provision of medical care
- Certain Limited Material Support (CLMS)
 - Insignificant Material Support (IMS)
 - Participation in Iraqi uprisings
 - Limited General Exemption (LGE)

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Duress Exemptions

Available for:

- Material support
- Military-type training
- Solicitation of individuals
- Solicitation of funds or other things of value

Duress exemptions apply to all tiers – they include not only Tier III terrorist organizations, but also designated Tier I and Tier II terrorist organizations.

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Duress Considerations

Was there a reasonably-perceived threat of serious harm?

Factors to Consider:

- Whether applicant reasonably could have avoided or taken steps to avoid carrying out the TRIG
- Severity and type of harm inflicted or threatened
- To whom the threat of harm was directed
- Perceived imminence of the harm threatened
- Perceived likelihood that the threatened harm would be inflicted
- Any other relevant factor(s)

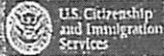


CHART-F010-14

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Let's Practice – TRIG Exemption?

Facts of the case:

A Colombian applicant worked as a truck driver in his hometown. One day while making a delivery, he was approached by two armed Revolutionary Armed Forces of Colombia (FARC) guerrillas. They ordered him to transport boxes to a neighboring town. He reluctantly agreed after being threatened at gunpoint by the guerrillas. Following the first incident, he was approached several more times to transport goods for the FARC and he did so. When he refused to continue doing so, the FARC threatened to kill him and his family.

All the time of the applicant's involvement, the FARC was designated a Tier I organization.

Exemption?

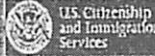


CHART-F010-14

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Assessment:

Applicant provided material support under duress to the FARC, a Tier I terrorist organization.

In April 2007, the Secretaries of Homeland Security and State exercised their discretionary authority not to apply the terrorist-related inadmissibility grounds to applicants that provided material support under duress to the Tier I and II terrorist organizations, such as the FARC. (A separate exercise of authority also exempts material support under duress to Tier III groups).

Thus, applicant may be eligible for a TRIG exemption if there was sufficient duress. each occasion she assisted the FARC.



CHART-F010-14

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The Exemption Worksheet (EWS)

Section I/A Exemption Eligibility

I. Exemption Eligibility

A. Eligible for Group-Based, Individual, or Situational Exemptions (Form I-602, 22 CFR 121.61 Exemptions, §§ 21.6-6)

GROUP-BASED EXEMPTION, Group Name: _____

INDIVIDUAL EXEMPTION AUTHORIZED, File number(s) of Legal Interest of Authority: _____

SITUATIONAL EXEMPTION

Organization Name (Applicable insert: "terrorist" / "apprehension, Mai Mai") _____

Tier I Tier II Tier III

Exemption Type:

Long Exemption Material Support under Duress to Tier I-II Organization Material Support under Duress to Tier III Organization Medical Care Permit of Military Duty Seeking under Duress Release of Funds Other (Type of Release of Funds)

(For the Limited General Exemption, the Current Limited Material Support Exemption, and the Inapplicable Material Support Exemption, complete Section II B-D below, as applicable.)

Definition: In this space, briefly describe the circumstances under which the alien including ground factors as an issue under duress that was necessary to the alien's survival, if applicable, circumstances that qualify as a "duress" under the law of the alien's country, and if any other relevant factors, including whether the applicant qualifies for an exemption on the basis of the circumstances.

The Mai Mai is an armed militia that engages in terrorist activity, such as kidnapping and violence against local populations and it therefore meets the definition of an undesignated terrorist organization. The applicant cooked for Mai Mai members only when she was being held captive by them. The applicant was beaten daily by the Mai Mai members who told her that if she refused to cook for them, they would kill her. The applicant saw the Mai Mai members hit other captives who refused their orders. Therefore the material support was given under duress and an exemption should be granted in the totality of the circumstances.



DIAT-F010-12

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The Exemption Worksheet (EWS)

Section IV.A. Exemption Eligibility. Situational Exemption must include the following:

- The organization name and if Tier III, why it qualifies as such
- The correct exemption type checked
- If a duress exemption, a description of the duress factors
- If a voluntary medical care exemption, an explanation of how the applicant's activities qualify for the exemption
- If an Iraqi Uprising exemption, an explanation of how the applicant's activities qualify for the exemption
- Whether the applicant qualifies for the exemption in the totality of the circumstances

U.S. Citizenship and Immigration Services DRAFT FOLD 01

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Military-Type Training Under Duress

Additional exemption requirements:

- Must establish that he or she has not received training that poses a risk to the U.S. or U.S. interests (e.g., training on production or use of a weapon of mass destruction, torture or espionage)

The activity undertaken must fit within the definition of military-type training.

This exemption does not apply to combat under duress.

U.S. Citizenship and Immigration Services DRAFT FOLD 01

b(5)

Certain Limited Material Support (CLMS) & Insignificant Material Support (IMS) Exemptions

- Exemptions cover limited forms of voluntary material support to Tier III groups
 - **These exemptions are only available for material support to tier III groups**
- Both require a lack of knowledge that the support could be directly used to engage in violent or terrorist activity

U.S. Citizenship and Immigration Services DRAFT FOLD 01

b(5)

Certain Limited Material Support Exemption (CLMS)

1) Routine commercial transactions (RCT)

- Most commonly seen by USCIS, shop and restaurant owners
- Support must be incidental to a routine commercial transaction
- Applicant must be the provider of services/vendor/seller and not the customer
- Transaction must occur on substantially the same terms as other transactions and in the course of the applicant's normal business activities (Tier III members cannot receive special treatment)
- Transaction cannot be motivated by the goals/methods of the organization or the applicant's connection to the organization

U.S. Citizenship and Immigration Services DRAFT FOLD 01

b(5)

Let's Practice

Facts of the case: Applicant, a citizen of Mexico, owned a small grocery store. She regularly sold groceries to persons she knew were members of the Union para el Bienestar Social de la Region Triqui (UBISORT), a Tier III organization.	Analysis: Is there TRIG? Which activities constitute TRIG? Under which ground(s) is the applicant inadmissible? Are there possible exemptions? What will you ask during interview?
---	--

U.S. Citizenship and Immigration Services | DRAFT FOUR

b(5)

Certain Limited Material Support Exemption (CLMS)

2) Routine social transactions (RST)

- Most commonly seen by USCIS: serving food/drinks to Tier III members in one's home.
- Support must be incidental to a **routine social transaction**.
- Support must be motivated by a specific, compelling, and well-established family, social, or cultural obligation or expectation.
- Support cannot have been motivated by the goals/methods of the organization.

U.S. Citizenship and Immigration Services | DRAFT FOUR

b(5)

The Exemption Worksheet (EWS)

Section IV C: CLMS Exemption

CLMS Exemption

CERTAIN LIMITED MATERIAL SUPPORT EXEMPTION

Organization Name: UBISORT (Tier III)

Limited Material Support: Routine Social Transactions Financial Transactions Other

Other Criteria:

Support was "incidental" to a routine social transaction of the same nature and purpose as provided.

Support was not reasonably foreseeable to the organization, and the support provided would be detrimental to the organization's mission.

Applicant has the same or similar relationship to the organization as the person providing the support.

Applicant is not a member of the organization.

Applicant is not a member of the organization's governing body.

Conclusion: In this case, the applicant's actions were not motivated by the goals or methods of the organization. Therefore, in the totality of the circumstances, a CLMS-RST exemption should be granted.

U.S. Citizenship and Immigration Services | DRAFT FOUR

b(5)

The Exemption Worksheet (EWS)

Section IV C: CLMS Exemption must include the following:

- The organization name and why it qualifies as a Tier III organization.
- The type of limited support that was provided (RST, RST, CHA, or Sub-duress).
- A description of how each of the CLMS criteria are met.
- Whether an exemption is warranted in the totality of the circumstances.

U.S. Citizenship and Immigration Services | DRAFT FOUR

b(5)

Certain Limited Material Support Exemption (CLMS)

3) Certain Humanitarian Assistance (CHA)

- Most commonly seen by USCIS: assistance during or after an environmental disaster
- Support must be incidental to certain humanitarian assistance
- Support must be provided to address basic needs (e.g. food, water, shelter)
- Support must be short-term and triggered by an emergency situation, not long-term due to a protracted conflict/displacement
- Support must be distinct from ongoing development assistance
- Support must be provided impartially and not motivated by the goals/methods of the third party organization or as a desire of affinity of its members
- If the support is provided on behalf of an organization (e.g. Red Cross), the organization must be vetted by HQ pre-adjudication. Pre-vetting is not necessary if the applicant is providing support in an individual capacity

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b(5)

Certain Limited Material Support Exemption (CLMS)

4) Sub-Duress

- Most commonly seen by USCIS: paying utilities and paying at checkpoints
- Support must be provided under sub-duress/pressure
- There was a reasonably-perceived, but not necessarily immediate or direct, threat of physical or economic harm, restraint or serious harassment, leaving little or no reasonable alternative
- Providing the support the only reasonable means by which the applicant was able to carry out important activities of daily life

U.S. Citizenship and Immigration Services DRAFT FCIM 03

b(5)

Insignificant Material Support Exemption (IMS)

- Covers material support that is:
 - Minimal in amount
 - Support must be minimal in amount. Consider local value of support, value to applicant, and value to recipient at time/place it was given/received AND consider the relative value, fungibility, quantity and volume, and duration and frequency of the support
 - Inconsequential in effect
 - The applicant must reasonably believe that the support would be inconsequential in effect. Look at impact of support and how important/useful to recipients
- Must not have had intent to support violent or terrorist activity

U.S. Citizenship and Immigration Services DRAFT FCIM 03

b(5)

The Exemption Worksheet (EWS)

Section IV.D: IMS Exemption

Eligible for an Insignificant Material Support Exemption

INSIGNIFICANT MATERIAL SUPPORT EXEMPTION

Organization Name (if applicable, enter "unknown" if appropriate): Hizb-e-Wahdat

Yes I Yes II Yes III

Alien provided material support that was insignificant.

Other Criteria:

Organization was not designated Tier I or Tier II terrorist organization at the time the material support was provided

Alien did not know or reasonably should have known that the support provided could be directly used to engage in terrorist activity

Alien did not have the intent to further violent or terrorist activity

Alien was not an exempt person at the time of the circumstances

Development: Reviewers should describe the activities that qualify as insignificant support, or terrorist organizations, if applicable. It also can help if the criteria are met, and if any other relevant factors

In 1999, the applicant cooked and served a meal for four Hizb-e-Wahdat members who were traveling through the area. Hizb-e-Wahdat is an armed resistance movement that participated in multiple coups and therefore meets the definition of an un-designated terrorist organization. The support was insignificant as feeding the members the meal was a minimal amount of support and had an inconsequential effect on the members. The applicant provided the meal because she supported Hizb-e-Wahdat as they protected her area. The applicant did not intend to further violent or terrorist activity by providing the meal and had no knowledge or intent that she should have known that the meal she provided could be directly used to engage in terrorist activity. Due to the totality of the circumstances, the applicant should be granted an IMS exemption]

U.S. Citizenship and Immigration Services DRAFT FCIM 03

b(5)

The Exemption Worksheet (EWS)

Section IV.B. IMS Exemption must include the following:

- The organization name and why it qualifies as a Tier III organization
- A description of how each of the IMS criteria are met
- Whether an exemption is warranted in the totality of the circumstances

U.S. Citizenship and Immigration Services DRAFT FCID 8

b(5)

Let's Practice

Facts of the case:

Applicant, a native and citizen of Syria, sympathized with the Free Syrian Army's goal of overthrowing the government of Bashar al-Assad. To show her support, she provided food and assisted in setting up shelter for members of the FSA.

At the time of these activities, the FSA met the definition of a Tier III terrorist organization.

Analysis

Is there TRIG?

Which activities constitute TRIG?

Under which ground(s) is the applicant inadmissible?

Are there possible exemptions?

What will you ask during interview?

U.S. Citizenship and Immigration Services DRAFT FCID 8

b(5)

Voluntary Medical Care Exemption

What does it exempt?	What does it not exempt?
<ul style="list-style-type: none"> Voluntary provisions of medical care to members of Tier I, II, or III terrorist organizations Medical professionals as well as good Samaritans/first-aid givers Medical care provided while working for/on behalf of a Tier III terrorist organization 	<ul style="list-style-type: none"> Medical care provided while working for/on behalf of a Tier I or Tier II terrorist organization Transport of an individual or provision of medical supplies alone without administration of medical care or provision of medical advice

U.S. Citizenship and Immigration Services DRAFT FCID 8

b(5)

Iraqi Uprisings

After the First Gulf War, the Shia Iraqis in the south and Kurds in the north of Iraq (and others who may have joined) rebelled against the government of Saddam Hussein, believing that Saddam Hussein and his security forces were vulnerable following their defeat in Kuwait.

Applicants who participated in the 1991 Iraqi uprisings may be eligible for this exemption based on their participation if the applicant:

- Did not participate in, or knowingly provide material support to, terrorist activities that targeted noncombatant persons not affiliated with Saddam Hussein's regime from March 1 through April 6 of 1991, or U.S. interests;
- Did not engage in terrorist activity, not otherwise exempted, outside the context of resistance activities directed against Saddam Hussein's regime from March 1 through April 6 of 1991.

APPLIES TO ALL ACTIVITIES EXCEPT FUTURE INTENT TO ENGAGE AFTER ENTRY TO THE U.S.

U.S. Citizenship and Immigration Services DRAFT FCID 8

b(5)

Limited General Exemption (LGE)

1. Aliens who currently possess lawful status in the U.S. received before 8/10/12

2. Beneficiaries of an I-730 Refugee/Asylee Relative Petition filed at any time by an asylee or refugee who received their status before 8/10/12

Exempts the following voluntary activities:

- Soliciting funds or other things of value for
- Soliciting any individuals for membership in
- Providing material support to, or
- Receiving military-type training from, or on behalf of, a qualified Tier III terrorist organization

Applies only to qualifying Tier III organizations (no use of child soldiers, no torture, no genocide, no targeting of U.S. persons or interests)

U.S. Citizenship and Immigration Services

DRAFT FOUR

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The Exemption Worksheet (EWS)

Section IV.B. Exemption Eligibility: LGE

B. Eligibility for the Limited General Exemption (LGE) (Existing Beneficiaries ONLY)

LIMITED GENERAL EXEMPTION Organization Name: Democratic Union Party (PYD)

- Organization has never been designated a Tier I or Tier II terrorist organization
- Organization has never been identified on lists by the United Nations pursuant to Resolutions 1267 or 1911 concerning Al Qaeda or the Taliban and associated individuals and entities
- Organization has at no time targeted U.S. interests or persons
- Organization has at no time engaged in a pattern or practice of torture, genocide, or use of child soldiers
- Alien warrants an exemption in the totality of the circumstances

Directions: In this space, briefly describe all key relevant factors related to the above. Any relevant factors related to the organization, if applicable, determine its eligibility as an untargeted group as eligible for the Limited General Exemption, and/or other requirements.

The PA is the beneficiary of an I-730 Refugee Relative Petition that was filed by a refugee who received their status in May 2010, therefore before 8/10/12. In March 2012, the PA collected money five times on behalf of the PYD in Syria. The PYD has an armed wing, the People's Protection Unit (YPG), which is the largest armed Kurdish group in Syria, and therefore meets the definition of an untargeted terrorist organization. The PYD has never been designated Tier I or Tier II, has never targeted U.S. persons or interests, and has never engaged in a pattern or practice of torture, genocide, or the use of child soldiers. The PA's activities with the PYD are therefore LGE eligible and an exemption is merited in the totality of the circumstances.

U.S. Citizenship and Immigration Services

DRAFT FIVE

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The Exemption Worksheet (EWS)

Section IV.B. Exemption Eligibility: LGE must include the following:

- The organization name and why it qualifies as a Tier III organization
- An explanation of how the applicant qualifies for an LGE exemption (received or was the beneficiary of someone who received asylee or refugee status prior to 8/10/12 AND engaged in a qualifying activity)
- An explanation of the activities that qualify the organization as LGE eligible (no use of child soldiers, no torture, no genocide, no targeting of U.S. persons or interests)
- Whether an exemption is warranted in the totality of the circumstances

U.S. Citizenship and Immigration Services

DRAFT FIVE

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Group-Based Exemptions

U.S. Citizenship and Immigration Services

DRAFT FIVE

The Exemption Worksheet (EWS)

Section IV Exemption Eligibility: Group-Based Exemptions must include the following:

- The organization name and if legal, why it qualifies as such
- A description of how the applicant's activities qualify them for the group-based exemption based on the additional requirements listed in the exemption's exercise of authority (i.e. certain activities, dates, cannot have targeted U.S. persons or interests, etc.)
- Whether an exemption is warranted in the totality of the circumstances

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The Exemption Worksheet (EWS)

Section IV Exemption Eligibility: Group-Based Exemptions

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Group-Based Exemptions

Group-based exemptions vary in scope, conduct, exempted date restrictions, additional threshold requirements, and for details on applying group-based exemptions, read the USCIS implementation memo.

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Group-Based Exemptions

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- Burma
 - Numerous Burmese groups
 - Democratic Unionist Veterans (DUIV)
 - Human Rights Foundation (HRF)
 - Democratic Front for the Liberation of Palestine (DFLP)
 - Human Rights Foundation (HRF)
 - Democratic Front for the Liberation of Palestine (DFLP)
 - Human Rights Foundation (HRF)
 - Democratic Front for the Liberation of Palestine (DFLP)
- India
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
- Japan
 - Democratic Front for the Liberation of Palestine (DFLP)
 - Democratic Front for the Liberation of Palestine (DFLP)
 - Democratic Front for the Liberation of Palestine (DFLP)
 - Democratic Front for the Liberation of Palestine (DFLP)
- United States
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
 - Students for a Democratic Society (SDS)
- Various other groups

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The Consolidated Appropriations Act (CAA)

- Enacted 12/26/07
- Includes 10 groups that are not to be considered Tier III terrorist organizations, as long as they do not re-engage in terrorist activities
- Provides automatic relief (no exemption/worksheet needed) for certain TRIC activities and associations undertaken prior to 12/26/07 in which terrorist organization is an element
- Secretaries authorized group based exemption for activities not eligible for automatic relief (worksheet needed)
- African National Congress was later added to the list of 10 named groups

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DRAFT 2-2008-11

b(5)

Groups Named in CAA

- Karen National Union/Karen National Army (KNU/KNUA) (Burma)
- Karenni National Progressive Party (KNPP) (Burma)
- Chin National Front/Chin National Army (CNE/CNA) (Burma)
- Chin National League for Democracy (CNLD) (Burma)
- Kayan New Found Party (KNFP) (Burma)
- Arakan Liberation Party (ALP) (Burma)
- Mustangs (Tibet)
- Alzados (Cuba)
- Hmong groups (primarily Laos)
- Montagnard groups (Vietnam)
- African National Congress (added in 7/08) (South Africa)

HAVE REENGAGED and considered Tier III as of 12/26/07

U.S. Citizenship and Immigration Services
DRAFT 2-2008-11

b(5)

KDP & PUK Exceptions and Exemptions

- Per FY15 National Defense Authorization Act, the KDP and PUK are excluded from the definition of a Tier III terrorist organization (no time limitation)
- Similar to the CAA, provides automatic relief (no exemption/worksheet needed) for certain TRIC activities and associations in which terrorist organization is an element
- All other activities associated with KDP/PUK except for intent to engage in terrorist activity in the future are exemptible, but require an exemption/worksheet as relief is not automatic

U.S. Citizenship and Immigration Services
DRAFT 2-2008-11

b(5)

Let's Practice - Is applicant inadmissible?

- Applicant received military type training from the KNU in 2006 (Same, but in 2008)
- Applicant engaged in combat with the KNPP in 2006 (Same, but in 2008)
- Applicant sabotaged government equipment with the Cuban Alzados in 1965
- Applicant provided food to the KDP in 2015

U.S. Citizenship and Immigration Services
DRAFT 2-2008-11

b(5)

TRIG?

Based on your understanding after reviewing the TRIG exemptions, are these activities covered by an exemption? Are there any activities that are not covered by an exemption?

- 1) Applicant is a young girl who was kidnapped and held captive by members of an armed group at their camp in the bush. While suffering extreme abuse and rape, she was forced to gather firewood, cook and clean.
- 2) Applicant is a subsistence farmer. One day, uniformed rebel soldiers passed by and asked him for water. He gave them each one glass of water.
- 3) Applicant is a doctor who provided treatment to anyone who came to his clinic. During the revolution in his country, he stitched and dressed the wounds of some rebel soldiers.
- 4) Applicant is a small boy who was kidnapped by a rebel group and forced to undergo combat training and fight for the group before he managed to escape.

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Totality of the Circumstances Analysis

Factors to consider:

- Amount and type
- Frequency
- Length of time that has passed
- Nature of applicant's activities
- Nature of activities committed by the terrorist organization
- Applicant's awareness of those activities
- Applicant's conduct since TRIG support
- Any other relevant factor(s)

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The Exemption Worksheet (EWS)

Section V: Adjudicator's Recommendation

V. Adjudicator's Recommendation

GRANT EXEMPTION: Alien qualifies for and meets an exemption. Explain in Section II above.

DENY EXEMPTION: The alien does not meet the eligibility requirements. Explain in Section II above.

The exemption considered into formation to apply. Refer to any USCIS advising circumstances that require review.

An exemption may be applicable, but alien does not meet a discretionary exemption under the totality of the circumstances. Refer to any USCIS advising circumstances that require review. Explain why.

An exemption is not currently available, and the alien may be subject to USCIS hold policy, but under the hold policy, evidence in the record of the record merits, any future existing discretionary exemption would not be granted. Explain why.

HOLD: An exemption is not currently available, and the alien is subject to the USCIS hold policy. The factors of the hold policy and the way it impacts the alien, but has not been determined. Explain below and specify any other relevant information for exemption.

Initial Adjudicator's Name/Signature: J. Leah Date: 1/1/2011

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Hold Categories

- Voluntary activity/association with Tier III (where no exemption currently exists)
- Activities/associations under duress related to any terrorist organization (where no exemption currently exists) i.e. activities other than material support, military-type training and solicitation (under duress)
- Spouses or children of aliens subject to above two categories

The USCIS Hold Policy does not apply to refugee (I-590) or asylum (I-589) case adjudications

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Denials

Mandatory

- Voluntary activities/associations for Tier I and II organizations
 - Except for medical care

Discretionary

- Exemption exists, but applicant does not merit exemption based on totality of circumstances
- Subject to hold policy as no exemption exists, but even if an exemption that would apply were to become available in the future, applicant would not merit an exemption in the totality of the circumstances do not recommend, even if exemption available

If an exemption is denied, the case is denied.



ICAT/2010/07

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