

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

**Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and
Nationality Act**

AGENCY: Office of the Secretary, DHS

ACTION: Notice of determination

Authority: 8 U.S.C. 1182(d)(3)(B)(i)

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(i)(VIII) of the INA, 8 U.S.C. 1182(a)(3)(B)(i)(VIII), shall not apply, with respect to an alien, who received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) under duress from, or on behalf of, a terrorist organization as described in subsection 212(a)(3)(B)(vi), 8 U.S.C. 1182(a)(3)(B)(vi), provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature

and circumstances of each instance of military-type training and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C.

1182(a)(3)(B);

(d) has not received training that itself poses a risk to the United States or United States interests (e.g., training on production or use of a weapon of mass destruction, as defined by 18 U.S.C. Section 2332a(c)(2), torture, or espionage);

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

When determining whether the military-type training was received under duress, the following factors, among others, may be considered: whether the applicant reasonably could have avoided, or took steps to avoid, receiving military-type training, including whether the applicant left or escaped the training at the earliest opportunity, if one presented itself; the severity and type of harm inflicted or threatened and to whom the harm was directed; and the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: the length

and nature of the military-type training provided; the nature of the activities committed by the terrorist organization; the alien's awareness of those activities; the alien's conduct since the time of the military-type training; and any other relevant factor.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection applications, unless such exercise of authority has been revoked.

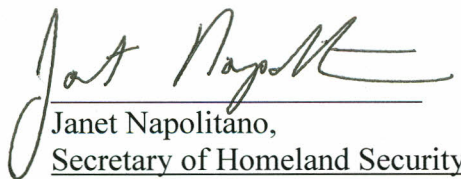
This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons

described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: January 7, 2011


Janet Napolitano,
Secretary of Homeland Security