



April 15, 2019

Policy Memorandum

SUBJECT: Implementation of the Discretionary Exemption Authority Under Immigration and Nationality Act (INA) section 212(d)(3)(B)(i) for Activities and Associations Relating to the Lebanese Forces militias or to the Kataeb militias

Purpose

On March 21, 2019, the Secretary of State, following consultations with the Secretary of Homeland Security and Attorney General, exercised his discretionary authority to exempt the application of section 212(a)(3)(B) of the INA, excluding subclause (i)(II),¹ to certain aliens for voluntary activities or associations relating to the Lebanese Forces militias or to the Kataeb militias. *See Attachments.*

This policy memorandum (PM) guides USCIS adjudicators on the implementation of the Secretary's Exercise of Authority.²

Scope

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

Authorities

- INA § 212(d)(3)(B)(i); 8 U.S.C. § 1182(d)(3)(B)(i)

Background

Section 212(a)(3)(B) of the INA (the "terrorism-related inadmissibility grounds") renders inadmissible any alien who has engaged in activities or with associations described therein. In turn,

¹ These Exercises of Authority expressly do not apply to persons whom a U.S. Citizenship and Immigration Services (USCIS) officer 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).

² This PM supplements existing guidance on the INA § 212(a)(3)(B) terrorism-related inadmissibility grounds (TRIG). *See* Jonathan Scharfen, Deputy Director, USCIS, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007; Michael L. Aytes, Acting Deputy Director, USCIS, "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," July 28, 2008; Michael Aytes, Acting Deputy Director, USCIS, "Revised Guidance on the Adjudication of Cases Involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases," February 13, 2009; and PM-602-0051, "Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases," November 20, 2011.

section 212(d)(3)(B)(i) of the INA authorizes the Secretary of State or the Secretary of Homeland Security, after consultation with one another and the Attorney General, to exempt the application of most terrorism-related inadmissibility grounds in certain cases. On March 21, 2019, the Secretary of State issued exemptions authorizing USCIS and U.S. consular officers to exempt the application of most terrorism-related inadmissibility grounds to certain qualified aliens associated with the Lebanese Forces militias or the Kataeb militias.

These exemptions may be applied to immigration benefit and protection applications that are subject to section 212(a)(3)(B) of the INA, including, but not limited to, asylum, refugee status, adjustment of status, and asylee and refugee follow-to-join petitions.

Policy

Pursuant to the Secretary of State's Exercises of Authority under section 212(d)(3)(B)(i) of the INA, USCIS will consider whether certain aliens are eligible for and warrant a discretionary exemption from the application of the terrorism-related inadmissibility grounds (TRIG). USCIS may consider an exemption only if the threshold requirements are met.

Implementation

I. Identifying Individuals Subject to TRIG Due to Activities or Associations with the Lebanese Forces militias or the Kataeb militias

Adjudicators will review benefit applications, supporting documentation, and testimony for indications that an applicant's activities or associations may be described under the provisions at section 212(a)(3)(B) of the INA, and relate to the Lebanese Forces militias or the Kataeb militias.

II. Specific Considerations for the Exemptions for Activities or Associations Relating to the Lebanese Forces Militias or Kataeb Militias

Threshold Eligibility

To be considered for an exemption for activities or associations relating to the Lebanese Forces militias or Kataeb militias, an individual applicant must first establish to the satisfaction of the adjudicator that he or she:

- Is otherwise eligible for the benefit or protection being sought;
- Has undergone and passed all relevant background and security checks;
- 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 all activities or associations falling within the scope of INA section 212(a)(3)(B)(i), 8 U.S.C. § (a)(3)(B)(i);
- Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

- Has not engaged in terrorist activity, not otherwise exempted, outside the context of the Lebanese civil war of 1975-1990;
- Poses no danger to the safety and security of the United States; and
- Warrants an exemption in the totality of the circumstances.

Discretion

For those applicants who have met all threshold requirements, adjudicators will consider whether the applicant merits a discretionary exemption in the totality of circumstances. When considering the totality of the circumstances, factors to be considered may include: (1) the length and nature of the TRIG-related activity or association; (2) the amount, type, frequency, and nature of the applicant's activity or association; (3) the nature of the organization's terrorist activities and the alien's awareness of those activities; (4) the alien's conduct since the association with the Lebanese Forces militias or Kataeb militias; (5) the length of time that has elapsed since the alien engaged in the TRIG-related activity; and (6) any other relevant factors.

III. Making the Exemption Determination

Vetting Cases for Possible National Security Concerns

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

Documenting the Exemption Determination

Adjudicators will document the exemption determination using the 212(a)(3)(B) Exemption Worksheet. Two levels of review beyond the adjudicator's recommendation are required.

Record-Keeping Requirements

USCIS will maintain records on the number of cases considered under these exemptions and their outcome. Statistics will be consolidated on a quarterly basis, at a minimum. These statistics will be used to provide information to interagency partners and to stakeholders, as well as to inform the content of the required annual report to Congress.³

Effect of Exemption on Future Adjudications

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

Exemption Denial

If an application meets all requirements, but an exemption is denied in the totality of the circumstances, the application should be denied (or, if pertaining to an asylum application, referred as applicable) after appropriate review in accordance with the above procedures. The applicant may be issued a Notice to Appear (NTA) in appropriate cases after review, in accordance with standard operating procedures, including the USCIS NTA policy.

Use

³ Adjudicators will report statistics according to procedures directed by their component.

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions should be directed through the component chain of command to the component USCIS TRIG Working Group point of contact.

Attachments:

1. Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (Lebanese Forces militias, March 21, 2019).
2. Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (Kataeb militias, March 21, 2019).