



U.S. Citizenship
and Immigration
Services

MAR 26 2008

Memorandum

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

From: Jonathan Scharfen
Deputy Director

A handwritten signature in black ink, appearing to read "Jonathan Scharfen".

Subject: Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups

Purpose:

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

Background:

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

A. Categories of Cases to be Placed on Hold

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

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

Karen National Union/Karen Liberation Army (KNU/KNLA)
Chin National Front/Chin National Army (CNF/CNA)
Chin National League for Democracy (CNLD)
Kayan New Land Party (KNLP)
Arakan Liberation Party (ALP)
Tibetan Mustangs
Cuban Alzados
Karenni National Progressive Party (KNPP)
Appropriate groups affiliated with the Hmong¹
Appropriate groups affiliated with the Montagnards²

2. Applicants who are inadmissible under the terrorist-related provisions of the INA based on any activity or association that was *not under duress* relating to any other Tier III organization;
3. Applicants who are inadmissible under the terrorist-related provisions of the INA, other than material support, based on any activity or association related to a designated (Tier I or Tier II) or undesignated (Tier III) terrorist organization where the activity or association was *under duress*³;

¹ Appropriate groups affiliated with the Hmong means ethnic Hmong individuals or groups, provided there is no reason to believe that the relevant activities of the recipients were targeted against noncombatants.

² Appropriate groups affiliated with the Montagnards means the Front Unifie de Lutte des Races Opprimees (FULRO).

³ Adjudicators may adjudicate cases in which the applicant qualifies for the existing material support duress exemption for those Tier I or Tier II organizations already identified by the Secretary for consideration: the National Liberation Army of Colombia (ELN) and the Revolutionary Armed Forces of Colombia (FARC).

4. Applicants who voluntarily provided medical care to designated or undesignated terrorist organizations (Tier I, II, or III), to members of terrorist organizations, or to individuals who have engaged in terrorist activity; and
5. Applicants who are inadmissible under INA § 212(a)(3)(B)(i)(IX) as the spouses or children of aliens described above, whether or not those aliens have applied for an immigration benefit.

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

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

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

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

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

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

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

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

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

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

In addition, should an alien⁶ request the reopening or reconsideration of a case denied on or after December 26, 2007, that could benefit from the expanded exemption authority or a case denied at any time that involved one of the 10 groups granted relief by the CAA, the motion and any request for fee waiver should receive favorable consideration. Guidance on consideration of motions filed beyond the normal thirty day period as required by 8 CFR §103.5 as well as issues related to fee waiver consideration should be sought through the local chain of command and directed toward the appropriate Headquarters component.

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

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

⁵ Asylum offices will coordinate with the Headquarters Asylum Division to receive guidance on appropriate action to take on any case that falls within the hold categories and was referred to an immigration judge.

⁶ In the overseas refugee-processing context, such requests for reconsideration are likely to be raised to USCIS by Department of State or through the existing request for reconsideration process.