U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

December 29, 2010 **PM-602-0025**

Policy Memorandum

SUBJECT: Implementation of New Discretionary Exemption Under INA Section 212(d)(3)(B)(i) For Activities and Associations Relating to the All Burma Students' Democratic Front (ABSDF)

Purpose

On December 16, 2010, following consultation with the Secretary of State and the Attorney General, the Secretary of Homeland Security (the Secretary) exercised her discretionary authority not to apply most[1] terrorism-related inadmissibility grounds to certain aliens for activities or associations relating to the All Burma Students' Democratic Front (ABSDF). *See* Attachment 1. This document guides USCIS adjudicators on implementation of the Secretary's exemption.[2]

Scope

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

Authority

Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA).

Background

INA section 212(a)(3)(B) renders inadmissible an alien who engages in terrorist activity and also defines acts and associations that constitute engagement in terrorist activity. In turn, INA section 212(d)(3)(B)(i) authorizes the Secretary to exempt certain terrorism-related grounds of inadmissibility (TRIG). On December 16, 2010, the Secretary issued an exemption that authorizes USCIS, in consultation with Immigration and Customs Enforcement (ICE), not to

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[1] This exemption expressly does not apply to persons whom a USCIS officer knows, or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity. INA § 212(a)(3)(B)(i)(II).

[2] The document supplements existing guidance on terrorism-related inadmissibility grounds (TRIG), including 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; and 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.

apply most terrorism-related inadmissibility grounds to certain aliens associated with the All Burma Students' Democratic Front (ABSDF). This exemption may be applied to immigration benefit and protection applications under the Immigration and Nationality Act (INA), including, but not limited to, asylum, refugee status, adjustment of status, and asylee and refugee following-to-join petitions. USCIS will consider an exemption only if the threshold requirements, listed below and in the Secretary's Exercise of Authority, are met.

Policy

Pursuant to the Secretary's exercise of authority under INA section 212(d)(3)(B)(i), USCIS will consider whether certain aliens are eligible for and warrant an exemption from terrorism-related inadmissibility grounds.

Implementation

I. Identifying Individuals Subject to Terrorism-Related Inadmissibility Grounds Due to Activities or Associations with the ABSDF

Adjudicators who consider an exemption must familiarize themselves with country conditions information on Burma related to the ABSDF by consulting the RAIO Virtual Library (RAIO-VL) Burma collection and/or the research information made available through and authorized by their HQ components.[3] In addition to research products generated by USCIS, open source reference documents produced by other agencies may be available from the U.S. Department of State (see, for example, the annual Burma Country Report on Human Rights Practices), or through the DHS Library available on the intranet through DHS Connect.

Adjudicators should be alert for indications -- in benefit applications, supporting documentation, and testimony – of activities or associations relating to the All Burma Students' Democratic Front (ABSDF). Adjudicators should elicit information about all activities and associations with ABSDF or any other activity that might fall within the terrorism-related inadmissibility grounds. If a case involves additional terrorism-related grounds unrelated to the ABSDF, adjudicators should refer the case to the appropriate headquarters program office for further instructions, including on whether to maintain the case on hold.

II. Aliens Whose Inadmissibility for TRIG Activities or Associations Relating to the ABSDF May Be Exempted as a Matter of Discretion

USCIS may consider a discretionary exemption for those cases on hold solely because of TRIG-related activities or associations relating to ABSDF, regardless of whether such conduct occurred under duress. To be considered for an exemption, an applicant must satisfy the following threshold requirements:

- Establish that he or she is otherwise eligible for the immigration benefit or protection being sought;
- Undergo and pass all required background and security checks;

[3] DHS employees may access the RAIO-VL's Country of Origin Information Collection.

- Fully disclose, 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), including those relating to organizations other than ABSDF;
- Establish that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;
- Establish that he or she poses no danger to the safety and security of the United States; and
- Establish that he or she warrants an exemption in the totality of the circumstances.

While most of these threshold requirements mirror those included in previous exercises of the Secretary's discretionary exemption authority, this exercise of the exemption authority contains a new requirement that the alien has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatants or U.S. interests.

III. Making the Exemption Determination

A. General

For those applicants who have met all other threshold requirements, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of circumstances. Factors to consider include the nature of the applicant's activities with the group, including whether the applicant participated in any violent activities; the frequency of support provided; the applicant's conduct since his or her arrival in the United States; and any other relevant factors.

A spouse or child is inadmissible under INA section 212(a)(3)(B)(i)(IX) if the related alien is inadmissible under INA section 212(a)(3)(B) for actions occurring within the last five years, unless the spouse or child qualifies for one of two statutory exceptions.[4] If the activity of the related alien may be exempted, USCIS may also consider an exemption for the spouse or child, even if the related alien is not also seeking admission or a benefit from USCIS.

B. Vetting Cases for Possible Security Risk

Adjudicators will follow existing agency procedures when a possible national security risk arises during the course of the adjudication, including through security checks. These procedures include coordination with local Fraud Detection and National Security-Immigration Officers (FDNS-IO), or with the SCOPS Threat Assessment Branch, for possible further review and vetting. Appropriate officers will manage necessary vetting with a record holder, as well as deconfliction with law enforcement or intelligence agencies.

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[4] A spouse or child is not inadmissible under INA section 212(a)(3)(B)(i)(IX) if (1) s/he did not know or should not reasonably have known of the TRIG activity or (2) an adjudicator has reasonable grounds to believe that the spouse or child has renounced the TRIG activity. INA § 212(a)(3)(B)(ii).

C. Documenting the Exemption Determination
Using the 212(a)(3)(B) Exemption Worksheet (revised Dec. 21, 2010), adjudicators will document exemption determinations as follows:

- Determine threshold eligibility;
- Describe the applicant's associations or activities with the group, noting any involvement in violence or other activities of concern;
- In Section IV, check the box marked "Other, Name:" and write in the name of the group, ABSDF; and
- In Section V, indicate whether the adjudicator recommends granting or denying the exemption.

Each Division will instruct its adjudicators on the requisite levels of review.

D. Record-Keeping Requirements
USCIS will maintain records on the number of cases considered under the ABSDF exemption and their outcome, and statistics will be consolidated on a quarterly basis, at a minimum. These statistics will be used to provide information to the interagency and stakeholders, and to inform the content of the required annual report to Congress.

E. 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.

F. Processing or Continued Hold of Certain Cases
If a case does not satisfy all threshold requirements for consideration of the exemption, the individual should be referred to the Immigration Court or denied after appropriate review in accordance with the above procedures.

If a case does meet threshold requirements, but an exemption is considered and denied in the totality of the circumstances, the individual should be referred or denied after appropriate review in accordance with the above procedures. If additional grounds of inadmissibility apply or if there are any questions about whether a case should remain on hold, adjudicators should refer the case to the appropriate headquarters program office for further instructions, including on whether to maintain the case on hold.

Use
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 at 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 about implementation of this exemption should be forwarded to the appropriate component representative on the USCIS TRIG Working Group.

Attachment:
1. Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (ABSDF)