



HQ 70/2.1

February 13, 2009

Memorandum

TO: FIELD LEADERSHIP

FROM: Michael Aytes /s/
Acting Deputy Director

SUBJECT: Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases

1. Purpose

This memorandum provides instruction to all field offices to consider and adjudicate cases where an alien provided material support to a terrorist organization described in sections 212(a)(3)(B)(vi)(I) or (II) of the Immigration and Nationality Act (INA). This memo also removes this category of cases from the hold directive established in the March 26, 2008 memo¹ and modifies the hold guidance to allow for certain cases to be elevated for a determination as to whether the hold should be lifted.

2. Background

On April 27, 2007, the Secretary of Homeland Security exercised his discretionary authority under Section 212(d)(3)(B)(i) of the INA not to apply subsection 212(a)(3)(B)(iv)(VI) to certain individuals who have provided material support under duress to certain terrorist organizations described in subsections 212(a)(3)(B)(vi)(I) and (II) (designated terrorist organizations, often referred to as Tier I and Tier II organizations) if warranted by the totality of the circumstances.² The authority not to apply subsection 212(a)(3)(B)(iv)(VI) of the INA in certain circumstances was delegated to USCIS in consultation with United States Immigration and Customs Enforcement (ICE). When this exemption authority was exercised, the Department of Homeland

¹ See USCIS Memorandum, "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," March 26, 2008.

² See 72 FR 26138 (May 8, 2007)

Security (DHS) agreed in the interagency process that the exemption authority would be exercised only with respect to applicants who provided material support under duress to specific Tier I or Tier II organizations agreed upon by the interagency after completion of an examination of the national security implications of applying the exemption authority in the case of the specific Tier I or Tier II organization under consideration (i.e., an IC assessment).

On December 19, 2008, the Secretary authorized USCIS, in consultation with ICE, to exercise his exemption authority with respect to material support provided under duress to any Tier I or Tier II organization, regardless of whether an IC assessment has been completed for that group. In cases where insufficient open source information is available to determine the national security implications of applying the exemption authority to a particular Tier I or Tier II organization, USCIS will coordinate with ICE and DHS to obtain additional information on the group to assist in adjudication.

3. Headquarters Review and Oversight Procedures

USCIS continues to require two levels of supervisory review for all duress-based material support exemptions. Each USCIS component will issue component-specific guidance regarding required levels of supervisory review. In order to ensure agency-wide consistency in implementation of the material support duress exemption for cases covered by this memorandum, components may present cases to the material support working group for review and concurrence before proceeding with final adjudication. In addition, the Material Support Working Group may make recommendations to components regarding particular classes of cases to be presented to the Working Group.

4. Revised Hold Policy

As indicated above, it is no longer necessary to hold cases involving individuals who provided material support to a Tier I or Tier II terrorist organization under duress, as previously required by the March 26 memorandum, unless USCIS specifically requests an intelligence community (IC) assessment on a particular organization. Under this revised policy, the following categories of cases must remain or be placed on hold pending further instruction:

1. 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 Tier III organization, other than those for which an exemption currently exists³;
2. 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 Those groups are: 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 Hmong; and appropriate groups affiliated with the Montagnards.

3. 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
4. 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.

If the adjudicating office receives a request from the beneficiary and/or attorney of record to adjudicate a case on hold per this policy (including the filing of a mandamus action in federal court), or if it is otherwise determined that a particular case should be considered for adjudication (for example, if there are compelling circumstances surrounding the case), the case should be elevated through the chain of command to appropriate Headquarters personnel. Guidance will be provided by USCIS headquarters on whether or not the case should be adjudicated.

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.

4. Contact Information

Questions should be directed through the component chain of command to the Material Support Working Group.