U.S. Citizenship and Immigration Services
Academy Training Center
BUILDING THE WORKFORCE OF TOMORROW

Terrorism-Related Inadmissibility Grounds (TRIG)

BSC 234

Instructor Guide
Revision Date: May 2017

OFFICE OF HUMAN CAPITAL AND TRAINING

USCIS, ACADEMY TRAINING CENTER
FEDERAL LAW ENFORCEMENT TRAINING CENTER| NORTH CHARLESTON, SC

BSC 234 - Terrorism-Related Inadmissibility Grounds (TRIG)

Revision Date: May 2017

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Instructor Preparation

Estimated Instructional Time	4 hours
Lesson Description	This course examines TRIG pursuant to INA § 212(a)(3)(B) as well as the currently available exceptions and exemptions for TRIG and its requirements and scope.
Terminal Objective	Upon completion of this module, you will be able to identify the TRIG grounds of inadmissibility and determine whether these grounds apply when adjudicating an application for an immigration benefit. If a TRIG ground does apply, you will be able determine if an exemption is available, and be able to apply the relevant inadmissibility ground(s) and USCIS policy to adjudicate the exemption(s).
Enabling Objectives	1. Identify the basic principles of TRIG, the scope of TRIG, and to which immigration benefits TRIG applies 2. Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i) 3. Identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi) 4. Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii) 5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv) 6. Identify the exceptions to TRIG 7. Identify the exemptions from TRIG 8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and demonstrate familiarity with the exception(s) to the TRIG Hold Policy
Training Facilities	Classroom to accommodate the requisite number of participants.
Methods of Instruction	The methods of instruction used in this lesson include: • Instructor presentation • Illustrative examples
Instructor References	The instructor will need the following documents to teach this lesson: • Instructor Guide
Participant Materials	The trainees will need the following materials to participate in this lesson: • Participant Guide
Training Aids	The instructor will need the following materials to teach this lesson: • PowerPoint Presentation • Instructor Guide
Equipment and Supplies	The instructor will need the following items to teach this lesson: • Laptop/computer for presentation • Projector for PowerPoint presentation • Projection screen (if applicable) • Cables to connect laptop/computer to projector • Presentation "clicker" to advance slides

Introduction

Introduction

TERRORISM RELATED
INADMISSIBILITY GROUNDS
(TRIG)

Course 234

This course examines TRIG pursuant to INA § 212(a)(3)(B) as well as the currently available exceptions and exemptions for TRIG and its requirements and scope. The material is very important as it relates to national security issues.

The TRIG grounds of inadmissibility are also grounds for deportability pursuant to INA § 237(a)(4)(B). INA § 237(a)(4)(B) renders an alien deportable if he or she is inadmissible under INA § 212(a)(3)(B).

Even when it is determined that an alien is not statutorily barred or inadmissible on the basis of TRIG, the factors that led to an examination of potential inadmissibility and statutory ineligibility may be applicable to discretionary benefit applications.

If a TRIG bar does apply to a benefit application, a USCIS Immigration Services Officer (ISO) must be able to identify which TRIG bar(s) apply, identify any applicable exception(s) or exemption(s) or lack thereof, and adjudicate the case to completion by using the TRIG Exemption Worksheet or placing the case on hold per USCIS policy.

New exemptions become available on an ongoing basis, and you must be aware of all available exemptions, applicable USCIS implementation guidance, the proper use of the USCIS TRIG ECN site, and USCIS hold policies.

Gain Attention

Immigrant Stories



Before getting started, I want to introduce to you three new people. Pay close attention and make notes as their stories are important. I will ask for three volunteers to read each of the three scenarios in Appendix A, which will be followed up with a discussion.

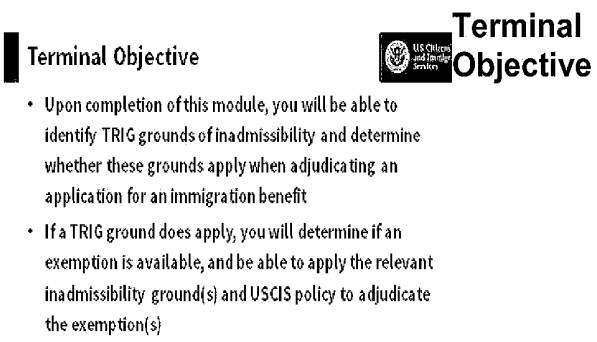
Instructor Note: Approach this activity by asking the class after each scenario is read if they think the person is inadmissible for terrorism related activities or if the person is not inadmissible.

Then tally the votes and place them on the board for each scenario, and task the class why they voted the way they voted for each scenario.

Tell the class that they will return to the scenarios later in the presentation.

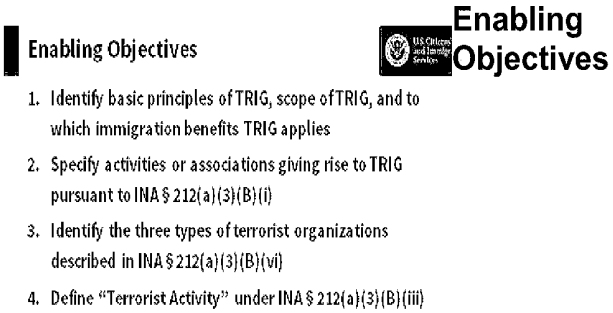
Return to the scenarios after EO #5 and ask the class what they think now, discussing whether their conclusions have changed, why they have changed, and who they now think is inadmissible and why.

After the EO #7, you may wish to return to the scenarios to discuss possible exemptions for each scenario with the class.



Upon completion of this module, you will be able to identify the TRIG grounds of inadmissibility and determine whether these grounds apply when adjudicating an application for an immigration benefit.

If a TRIG ground does apply, you will be able determine if an exemption is available, and be able to apply the relevant inadmissibility ground(s) and USCIS policy to adjudicate the exemption(s).



Our objectives for this lesson are as follows.

1. Identify the basic principles of TRIG, the scope of TRIG, and to which immigration benefits TRIG applies
2. Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)
3. Identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)
4. Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii)
5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
6. Identify the exceptions to TRIG
7. Identify the exemptions from TRIG
8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and demonstrate familiarity with the exception(s) to

Enabling Objectives *(cont'd)*

5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
6. Identify the exceptions to TRIG
7. Identify the exemptions from TRIG
8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy, and demonstrate familiarity with exceptions to the TRIG Hold Policy

the TRIG Hold Policy

Topic 1: Basic principles of TRIG, scope of TRIG, and applicable immigration benefits

Enabling Objective #1

Identify basic principles of TRIG, the scope of TRIG, and to which immigration benefits TRIG applies

Topic One: Principles, Scope and Benefits

Upon completion of this topic, you will be able to:

- Identify the basic principles of TRIG;
- Identify the scope of its provisions; and
- Identify to which benefits TRIG applies.

General Concepts

INA §§ 212(a)(3)(B) and (F) provide detailed circumstances giving rise to inadmissibility.

Comparable ground of deportability is INA § 237(a)(4)(B).

- An alien described in INA §§ 212(a)(3)(B) or (F) is also deportable.

Provisions discussed in this module therefore apply equally to inadmissibility and deportability.

- If someone is inadmissible, the same person would be deportable if admitted.

General Concepts

INA §§ 212(a)(3)(B) and (F) provide detailed circumstances giving rise to inadmissibility with the comparable ground of deportability found at INA § 237(a)(4)(B). Thus, an alien described in INA §§ 212(a)(3)(B) or (F) is also deportable.

The provisions discussed in this module, therefore, apply equally to inadmissibility and deportability.

If someone is inadmissible, the same person would be deportable if admitted.

Applicable Immigration Benefits

INA §§ 212(a)(3)(B) and 212(a)(3)(F) apply to most immigration benefits

- It does not matter when the activity occurred, with certain exceptions relating to the date of an asylum application.
- The law in effect at the time of the adjudication of the benefit is controlling.
- Includes adjustment of status under INA § 209 for asylees and refugees

Applicable Immigration Benefits

INA §§ 212(a)(3)(B) and 212(a)(3)(F) apply to most immigration benefits.

It does not matter when the activity occurred, with certain exceptions relating to the date of an asylum application.

The law in effect at the time of the adjudication of the benefit is controlling. This includes adjustment of status under INA § 209 for asylees and refugees.

The TRIG activity encountered in your adjudications often occurred in the past, although TRIG may apply to current activity or likely future activity as well.

Congress has amended INA § 212(a)(3)(B) several times over the years, broadening the reach and scope of the statute each time. All of these amendments are effective retroactively. Thus, an applicant who was eligible for asylum in 2000 may now be ineligible for adjustment of status due to a change in the law. If an exemption is currently unavailable, and the case falls within current USCIS hold guidance, then the case is placed on hold in the expectation that a future exemption may become available that would apply to the applicant.

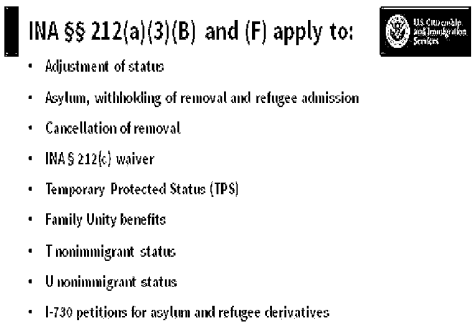
Note, however, that most of the major changes to this

section occurred in 2001, making many more cases ineligible for the benefit sought now than would have been ineligible previously. Later changes, such as in 2005, were not as sweeping and affected fewer cases.

- When the Form I-589 was filed may matter with respect to asylum and withholding eligibility. *See* 8 C.F.R §§ 208.13(c)(2)(i)(F),1208.13(c)(2)(i)(F).

- This is not true for the subsequent adjustment of status by a refugee or an asylee. *See* INA § 209; 8 C.F.R. §§ 209.1 (refugees), 209.2 (asylees).

Instructor Note: Unlike every other application, the regulations for asylum have special rules where an older version of the law is applied for applications filed before April 1, 1997. Though all of the TRIG grounds are now bars to asylum, this was not always the case. Prior to 2001, the TRIG grounds were considerably narrower. However, the current version of TRIG applies at the time of an asylee's adjustment application. There are, therefore, some aliens who are ineligible to adjust due to terrorist activities, who nonetheless, under the current regulations and the TRIG grounds that existed at the time of the grant, have valid asylee status.



Applicable Immigration Benefits

INA §§ 212(a)(3)(B) and(F) **apply to** the following benefits:

- Adjustment of status – INA §§ 209, 245(a)(2), 245(c)(6)
- Asylum – INA § 208(b)(2)(A)(v)
- Withholding of removal – INA § 241(b)(3)(B)
- Refugee admission – INA § 207(c)(3)
- Cancellation of removal – INA § 240A(c)(4)
- INA § 212(c) waiver (as it existed until 1997); 8 C.F.R. § 212.3(f)(3)
- Temporary Protected Status (TPS) – INA §§ 244(c)(2)(A)(iii)(III), 244(c)(2)(B)(ii)
- Family Unity – 8 C.F.R. § 236.13(c)
- T nonimmigrant status – 8 C.F.R. § 212.16(b)(1)
- U nonimmigrant status - 8 C.F.R. § 212.17(b)(1)
- I-730 Relative Petitions for asylum and refugee derivatives – 8 C.F.R. § 208.21(a)

INA §§ 212(a)(3)(B) & (F) do not apply to:

- Naturalization
- Employment authorization (EAD)
- Visa petitions (other than the I-730)
- Deferral of Removal under the Convention Against Torture (DCAT)

Inapplicable Immigration Benefits

INA §§ 212(a)(3)(B) and (F) **do not** apply to the following:

- Naturalization
- Employment authorization (EAD)
- Visa petitions (other than I-730s)
- Deferral of Removal under the Convention Against Torture (DCAT)

Instructor Note:

While not a bar to naturalization, TRIG is relevant to the analysis of Good Moral Character (GMC) within the requisite statutory period for naturalization. Depending on the timing of the activity, it may also be relevant to whether the naturalization applicant lawfully acquired permanent residence. *See* INA § 318.

Deferral of Removal under the Convention Against Torture (DCAT) is a form of relief from removal that one can never become ineligible for based on misconduct. There are no exceptions to DCAT if it is more likely than not that a person will be tortured upon return to his or her country. Withholding of Removal under CAT does have bars, but DCAT does not. These forms of relief are heard only in removal proceedings by an Immigration Judge of the Executive Office for Immigration Review (EOIR).

Scope of INA § 212(a)(3)(B)

Covers more conduct than over 20 other federal legal definitions of terrorism

- Expanded by both the USA PATRIOT Act and REAL ID Act
- Covers more than the general understanding of what is terrorism

Scope of INA § 212(a)(3)(B)

INA § 212(a)(3)(B) was created by the Immigration Act of 1990 (IMMACT 90) and has been amended several times since its enactment.

INA § 212(a)(3)(B) covers more conduct than any of the over 20 other federal legal definitions of terrorism.

It has been expanded by the USA PATRIOT and the REAL ID Acts, among others.

Scope *(cont'd)*

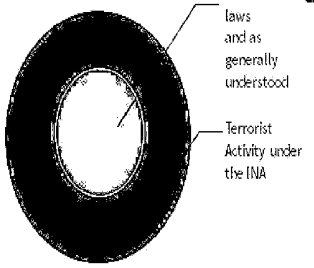
Many aliens are inadmissible under INA § 212(a)(3)(B), but might not be considered terrorists by:

- Other provisions of the law
- The media
- The general public

Many aliens are inadmissible under INA § 212(a)(3)(B) who would not be considered terrorists under other U.S. laws, the media, or the general public.

Therefore, terrorist activity under INA § 212(a)(3)(B) includes more than the general understanding of terrorism.

Scope *(cont'd)*



Scope *(cont'd)*

Comments on the scope of the provisions

"[T]he statutory language is breathtaking in its scope." *Matter of S-K-*, 23 I&N Dec. 936, 948 (BIA 2006) (Osuna, concurring).

". . . Congress's definition of 'terrorist activity' sweeps in not only the big guy, but also the little guy who poses no risk to anyone." *McAllister v. Attorney General*, 444 F.3d 178, 191 (3d Cir. 2006) (Barry, J., concurring).

Scope - Comments

Comments on the scope of INA § 212(a)(3)(B):

- "[T]he statutory language is breathtaking in its scope." *Matter of S-K-*, 23 I&N Dec. 936, 948 (BIA 2006) (Osuna, concurring).
- " . . . Congress's definition of 'terrorist activity' sweeps in not only the big guy, but also the little guy who poses no risk to anyone." *McAllister v. Attorney General*, 444 F.3d 178, 191 (3d Cir. 2006) (Barry, J., concurring).

Scope *(cont'd)*

Where do these activities occur? Anywhere in the world.



Scope - Unlimited

Terrorist activity is not limited to any one part of the world, but can be found anywhere the world.

Terrorist activity as defined in the INA can also be committed in the United States. This is unlike the grounds of inadmissibility for torture and extrajudicial killing which must occur outside of the U.S. *See* INA § 212(a)(3)(E)(iii).

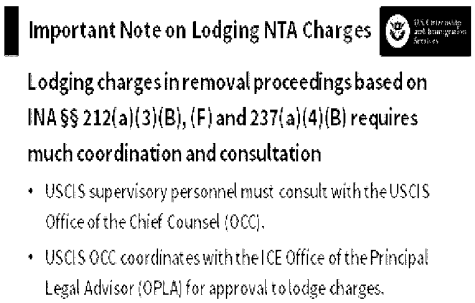
There is no exception for "freedom fighters," or groups the U.S. supports or has supported in the past. *See Matter of S-K-* at 941.

INA § 212(a)(3)(B) contains separate definitions for "terrorist activity," "engage in terrorist activity," and "terrorist organizations."

Instructor Note:

INA § 212(a)(3)(B) is extremely complex. The actual grounds of inadmissibility are found at INA § 212(a)(3)(B)(i), but the definition of "engage in terrorist activity" found at INA § 212(a)(3)(B)(iv) contains many of the primary activities that bring an applicant within TRIG.

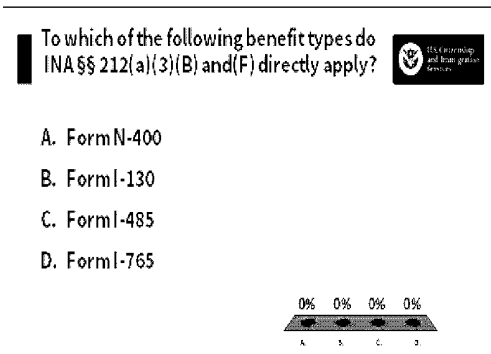
It is important to note that, while reference must be made to INA § 212(a)(3)(B)(iv) (which defines "engage in terrorist activity"), as well as INA § 212(a)(3)(B)(iii) (which defines "terrorist activity"), in order to ascertain if an applicant is ineligible under TRIG, the actual ground of inadmissibility cited will always be under INA § 212(a)(3)(B)(i), which sets out the inadmissibility grounds. The most common ground is INA § 212(a)(3)(B)(i)(I), "has engaged in terrorist activity."



Notice to Appear (NTA)

Lodging charges of inadmissibility or deportability in removal proceedings based upon INA §§ 212(a)(3)(B), (F) and 237(a)(4)(B) requires coordination and consultation with HQ USCIS.

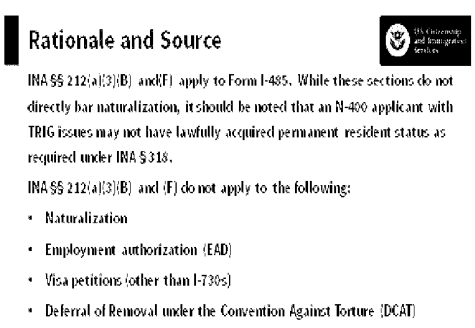
This requires USCIS supervisory approval in consultation with the USCIS Office of the Chief Counsel (OCC) and the approval of the ICE Office of the Principal Legal Advisor (OPLA) after consultation with OCC.



Progress Check Question

To which of the following benefit types do INA §§ 212(a)(3)(B) and(F) directly apply?

A. Form N-400
B. Form I-130
C. Form I-485
D. Form I-765



Rationale and Source

The correct answer is C.

Rationale: INA §§ 212(a)(3)(B) and(F) apply to Form I-485, Application to Register Permanent Resident or Adjust Status. While these sections do not directly bar naturalization, it should be noted that an N-400 applicant with TRIG issues may not have lawfully acquired permanent resident status as required under INA § 318.

INA §§ 212(a)(3)(B) and (F) **do not** apply to the

following:

- Naturalization
- Employment authorization (EAD)
- Visa petitions (other than I-730s)
- Deferral of Removal under the Convention Against Torture (DCAT)

Reference: Topic 1

Topic 2: Activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)

Enabling Objective #2

Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)

Topic Two:

INA § 212(a)(3)(B)(i)

Upon completion of this topic, you will be able to specify the activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i).

INA § 212(a)(3)(B)(i)

"In General . . . Any alien who – "

INA § 212(a)(3)(B)(i)

"In General . . . Any alien who –"

INA § 212(a)(3)(B)(i)(I)

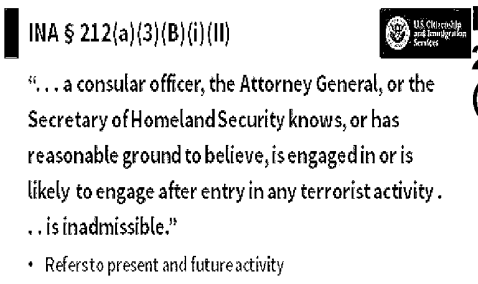
". . . has engaged in a terrorist activity . . . is inadmissible."

- Refers only to past activity

INA § 212(a)(3)(B)(i)(I)

". . . has engaged in a terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(I).

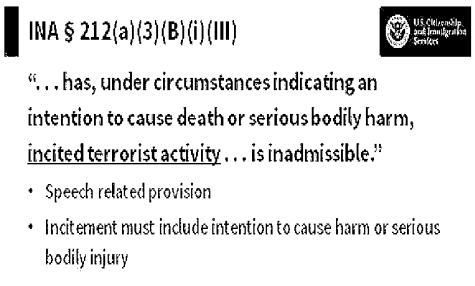
- This refers only to past activity.
- This is the most commonly cited TRIG ground.
- Both the definition of "terrorist activity" and "engaging in terrorist activity" are discussed later in this presentation.



INA § 212(a)(3)(B)(i)(II)

". . . a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(II).

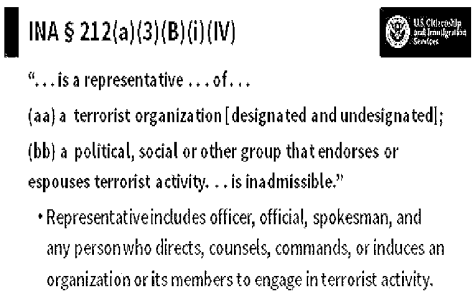
- This refers to present and future activity.
- The reasonable grounds standard is a lower standard than preponderance of the evidence and is satisfied when there is sufficient information for a reasonable person to believe that the alien may pose a danger to national security. *See In Re A-H-*, 23 I&N Dec. 774, 789 (A.G. 2005).
- This ground cannot be exempted. *See* INA § 212(d)(3)(B)(i). Exemptions are discussed later in this presentation.



INA § 212(a)(3)(B)(i)(III)

". . . has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(III).

- This is one of two speech-related provisions.
- This ground requires that the incitement of terrorist activity include an intention to cause harm or serious bodily injury.

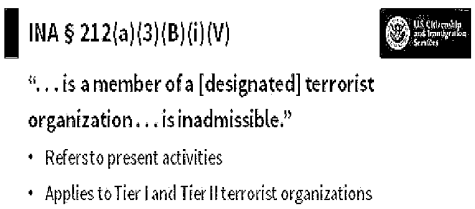


INA § 212(a)(3)(B)(i)(IV)

" . . . is a representative . . . of . . .

- (aa) a terrorist organization [designated and undesignated]; or
- (bb) a political, social or other group that endorses or espouses terrorist activity. . . is inadmissible." INA § 212(a)(3)(B)(i)(IV).

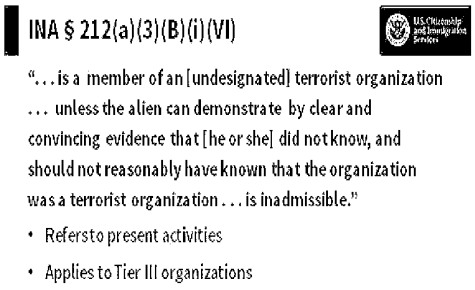
The term "representative" is broadly defined and ". . . includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity." INA § 212(a)(3)(B)(v).



INA § 212(a)(3)(B)(i)(V)

". . . is a member of a [designated] terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(V).

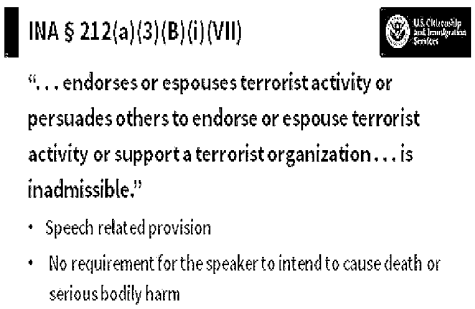
- Applies to Tier I and Tier II terrorist organizations.
- Language only refers to present activity, *i.e.*, "is a member."
- State Department Foreign Affairs Manual (FAM) also states that it only applies to current members (9 FAM § 40.34 N5.1).
- No knowledge of the nature of organization required.
- Contrast this with the following section regarding undesignated organizations.



INA § 212(a)(3)(B)(i)(VI)

". . . is a member of an [undesignated] terrorist organization . . . unless the alien can demonstrate by clear and convincing evidence that [he or she] did not know, and should not reasonably have known that the organization was a terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VI).

- Applies to Tier III terrorist organizations.
- The lack of knowledge exception is discussed in more detail later in Topic 6.
- The language here also only refers to present activity.



INA § 212(a)(3)(B)(i)(VII)

". . . endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VII).

- This is the second speech-related provision.
- Unlike the incitement provision, there is no requirement for the speaker to intend to cause death or serious bodily harm.

INA § 212(a)(3)(B)(i)(VIII)

"...has received military-type training...from or on behalf of any organization that, at the time the training was received, was a [designated or undesignated] terrorist organization...is inadmissible."

- Organization has to be a terrorist organization at the time of the training

INA § 212(a)(3)(B)(i)(VIII)

". . . has received military-type training . . . from or on behalf of any organization that, at the time the training was received, was a [designated or undesignated] terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VIII).

- Organization has to be a terrorist organization at the time of the training.
- Military-type training is defined to include "training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction." 18 U.S.C. § 2339D(c)(1).

INA § 212(a)(3)(B)(i)(IX)

"...is the spouse or child of an alien who is inadmissible ...if the activity causing the alien to be found inadmissible occurred within the last five years...is inadmissible."

- Term "child" means unmarried and under 21. See INA § 101(b)(1).
- "Spouse" means current spouse

INA § 212(a)(3)(B)(i)(IX)

". . . is the spouse or child of an alien who is inadmissible . . . if the activity causing the alien to be found inadmissible occurred within the last five years . . . is inadmissible." INA § 212(a)(3)(B)(i)(IX).

- The term "child" means unmarried and under 21. *See* INA § 101(b)(1).
- "Spouse" means current spouse.

Instructor Note: As this provision is in present tense, the age and marital status of the applicant is examined at the time of adjudication. Thus, a child who turns 21 or gets married would not fall within this provision. Similarly, a divorced spouse would not be subject to this provision.

INA § 212(a)(3)(B)(i)(IX) *(cont'd)*

The preceding ground of inadmissibility does not apply to a "spouse or child . . .

"(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe [the spouse or child] has renounced the activity causing the alien to be found inadmissible . . ." INA § 212(a)(3)(B)(ii)

INA § 212(a)(3)(B)(ii)

The preceding ground of inadmissibility does not apply to a "spouse or child . . .

- "(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
- (II) whom the consular officer or Attorney General has reasonable grounds to believe [the spouse or child] has renounced the activity causing the alien to be found inadmissible . . ." INA § 212(a)(3)(B)(ii).

Special Mention of the PLO

"[a]n alien who is an officer, official, representative, or spokesman of the Palestinian Liberation Organization [PLO] is considered . . . to be engaged in a terrorist activity."

- Only organization singled out by name in the INA

Mention of PLO

Note that "[a]n alien who is an officer, official, representative, or spokesman of the Palestinian Liberation Organization [PLO] is considered . . . to be engaged in a terrorist activity." INA § 212(a)(3)(B)(i).

- Language refers to present tense.
- An applicant who falls within this provision would be inadmissible under INA § 212(a)(3)(B)(i)(II) for being currently engaged in terrorist activity.
- This provision does not establish that the PLO is a terrorist organization, only that those falling within the provision are inadmissible.
- You would need to analyze the activities of the PLO to determine whether it meets the INA definition of a terrorist organization.

Instructor Note: The reference to the PLO is the only instance where the INA refers to an organization in the terrorism provisions. In separate legislation not in the INA, Congress explicitly stated that, for immigration purposes, the Taliban is to be considered a Tier I terrorist organization.

INA § 212(a)(3)(F)

"Any alien who the Secretary of State . . . or the Attorney General . . . determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible"

- Decision at the cabinet level by the Secretary of State, Secretary of Homeland Security or the Attorney General

INA § 212(a)(3)(F) – Associations With Terrorist Organizations

"Any alien who the Secretary of State . . . or the Attorney General . . . determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible." INA § 212(a)(3)(F).

- The decision to apply this inadmissibility ground is made at the cabinet level by the Secretary of State, Secretary of Homeland Security or the Attorney General.
- As a result, this inadmissibility ground is rarely used.

Which of the following activities or associations does NOT give rise to TRIG pursuant to INA § 212(a)(3)(B)?

A. Alien who has engaged in terrorist activity in the past
B. Alien who conspires to commit a human trafficking offense
C. Alien who the Secretary of Homeland Security knows is likely to engage in terrorist activity after entry
D. Alien who is an officer of a social group that endorses terrorist activity

0% 0% 0% 0%
A B C D

Progress Check Question

Which of the following activities or associations does NOT give rise to TRIG pursuant to INA § 212(a)(3)(B)?

A. Alien who has engaged in terrorist activity in the past
B. Alien who conspires to commit a human trafficking offense
C. Alien who the Secretary of Homeland Security knows is likely to engage in terrorist

activity after entry

D. Alien who is an officer of a social group that endorses terrorist activity

Rationale and Source

- INA § 212(a)(3)(B)(i)(I) - has engaged in terrorist activity
- Human trafficking offenses described in INA §212(a)(2)(H)(i) do not fall within purview of TRIG
- INA § 212(a)(3)(B)(i)(II) - alien who Secretary of DHS 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)(IV)(bb) - representative of political, social or other group that endorses or espouses terrorist activity

Rationale and Source

The correct answer is B.

Rationale: INA § 212(a)(3)(B)(i)(I) states that any alien who has engaged in a terrorist activity is inadmissible.

Human trafficking offenses described in INA §212(a)(2)(H)(i) do not fall within the purview of TRIG.

INA § 212(a)(3)(B)(i)(II) states that any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity is inadmissible.

INA § 212(a)(3)(B)(i)(IV)(bb) states that any alien who is a representative of a political, social or other group that endorses or espouses terrorist activity is inadmissible.

References: INA §§ 212(a)(3)(B)(i)(I), (II) and (IV)

Topic 3: Three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)

Enabling Objective #3

Identify the three types of terrorist organizations under the INA described in INA § 212(a)(3)(B)(vi)

Topic Three: Types of Terrorist Organizations

Upon completion of this topic, you will be able to identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi).

Terrorist Organizations - The Tiers

3 categories of terrorist organizations defined in the INA

"Tier I" - Foreign Terrorist Organizations

"Tier II" - Terrorist Exclusion List

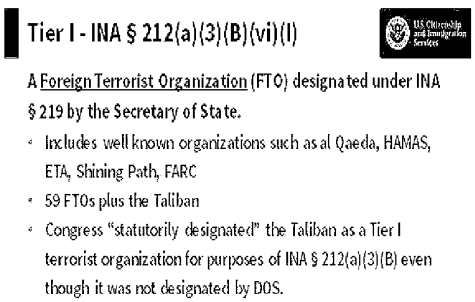
"Tier III" - Undesignated Terrorist Organizations

Types of Terrorist Organizations

There are three categories of terrorist organizations defined in INA § 212(a)(3)(B)(vi) that are frequently referred to as "The Tiers":

- "Tier I" – Foreign Terrorist Organizations
- "Tier II" – Terrorist Exclusion List
- "Tier III" – "Undesignated" Terrorist Organizations

Instructor Note: Tier I and Tier II organizations are considered "designated" terrorist organizations.



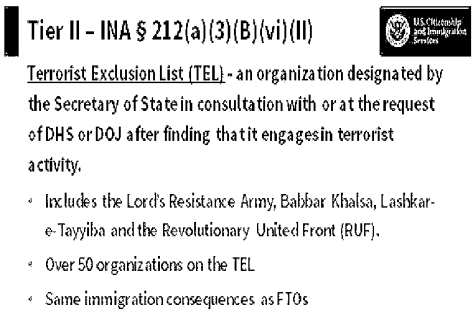
Tier I Terrorist Organizations

The term "terrorist organization" includes those "terrorist organizations" designated pursuant to INA § 219. *See* INA § 212(a)(3)(B)(vi)(I).

Those "terrorist organizations designated under INA § 219 are commonly referred to as Tier I organizations.

The Foreign Terrorist Organization (FTO), Tier I List, includes well-known terrorist organizations such as al Qaeda, Hamas, ETA, Shining Path, FARC, and can be found at https://www.state.gov/j/ct/rls/other/des/123085.htm

Although it is not an FTO designated by the Department of State, Congress mandated that the Taliban is to be considered a Tier I terrorist organization for purposes of INA § 212(a)(3)(B) in the "Consolidated Appropriations Act, 2008," Pub. L. No. 110-161 (Dec. 26, 2007). The Taliban is a militant group that controlled a great deal of territory in Afghanistan between 1996 and 2001, and it continues to engage in conflict with the government of Afghanistan and others.



Tier II Terrorist Exclusion List

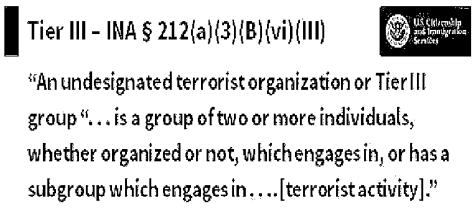
DOS also maintains another listing of terrorist organizations call the Terrorist Exclusion List (TEL) or Tier II List.

This list includes organizations designated by the Secretary of State in consultation with or at the request of DHS or DOJ after a finding that it engages in terrorist activity. *See* INA § 212(a)(3)(B)(vi)(II).

The TEL includes, but is not limited to, the Lord's Resistance Army, Babbar Khalsa, Lashkar-e-Tayyiba, and the Revolutionary United Front (RUF), and can be found at http://www.state.gov/j/ct/rls/other/des/123086.htm.

Membership on the TEL includes the same immigration consequences as FTOs on the Tier I list.

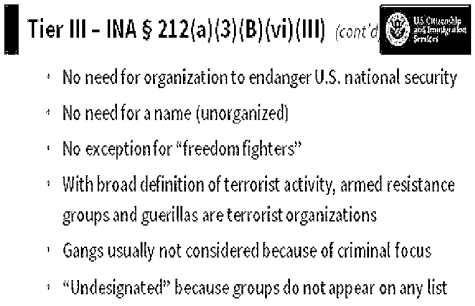
> **Instructor Note:** The term "Terrorist Exclusion List" is not in the statute but has been adopted by the State Department as the title for the list. While the process and requirements for groups to be added to the list vary, the immigration consequences are identical to those on the Tier I list. There are many more consequences outside of immigration law for the FTOs than for TEL groups, but not in immigration law.



Tier III Terrorist Organizations

An undesignated terrorist organization or Tier III group ". . . is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in . . . [terrorist activity] . . ." INA § 212(a)(3)(B)(vi)(III).

Because of the broad sweep of the definition of "terrorist activity" at INA § 212(a)(3)(B)(iii)(V)(b) ("use of an explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property"), armed resistance groups and guerillas meet the definition of undesignated terrorist organizations.



Tier III Terrorist Organizations

Note the following with respect to TIER III groups:

- There is no need for an organization to endanger U.S. national security. Indeed, the organization can even be helping the United States and qualify as a terrorist organization.

- No need even for a name (unorganized).

- No exception for "freedom fighters." *Matter of S-K-*, *supra*.

- Gangs usually are not considered Tier III terrorist organizations because of their criminal focus (i.e., their activities further personal monetary gain).

    - Criminal organizations whose violent activities are motivated purely by a desire for monetary gain are generally not considered Tier III organizations because their activities fall within the statutory exception at INA § 212(a)(3)(B)(iii)(V)(b).

    - If you have any questions regarding whether a criminal gang or other organized criminal group may fall within this exception, please contact your supervisor for referral of the issue to the appropriate TRIG Point of Contact (POC).

- Called "undesignated" because these groups do not appear on any list.

Instructor Note: INA § 212(a)(3)(B) does not include activity of a recognized and duly constituted foreign government within the definition of "terrorist activity" or "engaging in terrorist activity." Political parties that participate in, or have representation in, a government generally are not considered synonymous with the government of a country for purposes of this determination. Also, entities in *de facto* control of an area may not be recognized as the government of that area. If you have questions as to whether an entity should be considered the government for purposes of this determination or other questions related to this issue, please contact your supervisor for referral of the issue to appropriate TRIG POC and local counsel.

Issue Spotting for Tier III Cases

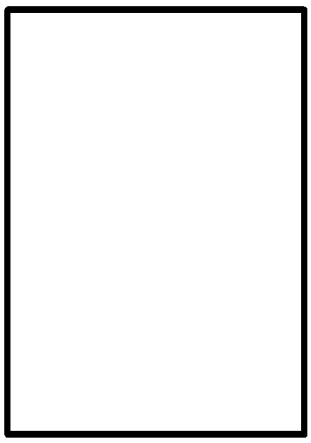
Key words in Tier III issue spotting:



Tier III Issue Spotting

(b)(7)(e)

For issue spotting Tier III Terrorist Organizations, key words to look for include but are not limited to the following:



Tier III Issue Spotting *(cont'd)*

If a group is involved, determine as much as possible about group:



Tier III - Research

(b)(7)(e)

If a group is involved, determine as much as possible about the group such as the following:



Specially Designated Global Groups

Specially Designated Global Groups "SDGT" List

- Different U.S. government list of persons and organizations
- No immigration consequences
- List includes groups & individuals who have committed, or pose a significant risk of committing terrorism
- SDGT list has hundreds of members

Specially Designated Global Terrorists Entities (SDGT) List

There are several other government lists designating terrorist organizations, most notably the Specially Designated Global Terrorists Entities (SDGT) List. The SDGT list is included in the Specially Designated Nationals List (SDNL) which is posted by the Treasury Department's Office of Foreign Assets Control (OFAC) and is found at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.

The INA does not contain immigration consequences for being on this list. The SDGT list is authorized by Executive Order 13224, but it is included in the SDNL that is published by OFAC. The SDNL contains names of persons and organizations designated by OFAC under various sanctions programs, not all of which are specific to terrorism issues.

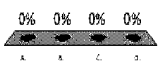
Inclusion on the SDGT list may be evidence in support of a determination that a group meets the definition of an undesignated terrorist organization.

The SDNL includes both groups and individuals who have committed, or pose a significant risk of committing, acts of terrorism.

> **Instructor Note**: The SDNL is an integrated listing of individuals and entities designated by OFAC under OFAC's various sanctions programs, not all of which are related to terrorism issues. If you come across an individual or entity listed on the SDNL, then you should raise the issue through appropriate channels in order to determine why the person or entity was listed on the SDNL.

An applicant for refugee status was found inadmissible under INA § 212(a)(3)(B)(i)(VI) for being a member of an armed militia. The alien is a member of a:

A. Tier I terrorist organization
B. Tier II terrorist organization
C. Tier III terrorist organization
D. Terrorist group on SDGT list



Progress Check Question

An applicant for refugee status was found inadmissible under INA § 212(a)(3)(B)(i)(VI) for being a member of an armed militia. The alien is a member of a:

A. Tier I terrorist organization
B. Tier II terrorist organization
C. Tier III terrorist organization
D. Terrorist group on the SDGT list

Rationale and Source

Undesignated (Tier III) - group of 2 or more individuals, whether organized or not, which engages in, or has subgroup which engages in terrorist activity. An unnamed armed militia meets this definition.

Tier I terrorist organizations appear on the Foreign Terrorist Organization list. Tier II terrorist organizations appear on the Terrorist Exclusion List. Tier I and II terrorist organizations are designated organizations.

Rationale and Source

The correct answer is C.

Rationale: An undesignated terrorist organization or Tier III group is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in terrorist activity. An unnamed armed militia meets the definition of a Tier III terrorist organization.

Tier I terrorist organizations appear on the Foreign Terrorist Organization (FTO) list. Tier II terrorist organizations appear on the Terrorist Exclusion List (TEL). Tier I and II terrorist organizations are designated organizations.

References: INA §§ 212(a)(3)(B)(vi)(I), (II) and (III)

Topic 4: Definition of "Terrorist Activity" under INA § 212(a)(3)(B)(iii)

Enabling Objective #4

Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii)

Topic Four:

INA § 212 (a)(3)(B)(iii)

Upon completion of this topic, you will be able to define "Terrorist Activity" under INA § 212(a)(3)(B)(iii).

Terrorist Activity – INA § 212(a)(3)(B)(iii)

Under the INA, ". . . the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:"....."

INA § 212 (a)(3)(B)(iii)

Under the INA, ". . . the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:" INA § 212(a)(3)(B)(iii).

- The activity does not require a conviction, but must be either illegal in the U.S. or illegal where it occurred and involve the activities listed below.

INA § 212(a)(3)(B)(iii)(I)

"(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)."

- Includes piracy and mutiny of ships

INA § 212 (a)(3)(B)(iii)(I)

"(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)." INA § 212(a)(3)(B)(iii)(I).

- This includes piracy and mutiny of ships.

INA § 212(a)(3)(B)(iii)(II)

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a government organization) to do or abstain from doing any act as an explicit or implicit condition for release of the individual seized or detained."

INA § 212 (a)(3)(B)(iii)(II)

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a government organization) to do or abstain from doing any act as an explicit or implicit condition for release of the individual seized or detained." INA § 212(a)(3)(B)(iii)(II).

- Compelling the detained person to do something is not included. It must be a person other than the kidnapped victim who is being compelled to act. For example, kidnapping a nurse to make the nurse give medical care does not qualify as terrorist activity under this particular provision of the INA.

- Kidnapped individuals who are compelled to work or carry out activities for their captors may have given material support or engaged in other terrorist activities under duress.

INA § 212(a)(3)(B)(iii)(III)

"(III) A violent attack upon an internationally protected person . . . or upon the liberty of such a person."

- Head of State or Foreign Minister when outside of his/her country, or
- Diplomat, or other government or international organization employee

INA § 212 (a)(3)(B)(iii)(III)

"(III) A violent attack upon an internationally protected person . . . or upon the liberty of such a person." INA § 212(a)(3)(B)(iii)(III).

This provision of the statute concerns the following:

- Heads of State or Foreign Ministers and their family members when outside of their country

- Diplomats or other government or international organization employees and their family members.

Instructor Note: The term "Internationally protected person" ". . . means-- (A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is *in a country other than his [or her] own* and any member of his family accompanying him [or her]; or (B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his [or her] person, freedom, or dignity, and any member of his [or her] family then forming part of his [or her] household." 18 U.S.C. § 116(b)(4)(A)-(B) (emphasis added).

INA § 212(a)(3)(B)(iii)(IV)

"(IV) An assassination."

- Usually means the targeted killing of a head of state or other high-ranking official
- No requirement that the head of state be outside of his or her country

INA § 212 (a)(3)(B)(iii)(IV)

"(IV) An assassination." INA § 212(a)(3)(B)(iii)(IV).

- "Assassination" is not defined but usually means the targeted killing of a head of state or other high-ranking official.
- Unlike the violent attack provision, there is no requirement that the head of state be outside of his or her country.

INA § 212(a)(3)(B)(iii)(V)

"(V) The use of any–
(a) biological agent, chemical agent, or nuclear weapon or device, or
(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain)
with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property."

INA § 212 (a)(3)(B)(iii)(V)

"(V) The use of any—

- (a) biological agent, chemical agent, or nuclear weapon or device, or
- (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain)
- with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." INA § 212(a)(3)(B)(iii)(V).

INA § 212(a)(3)(B)(iii)(V) *(cont'd)*

- No requirement that the use of weapons be targeted at civilians to be terrorist activity
- No exception for self-defense or repelling an attack
- Makes armed resistance groups terrorist organizations

INA § 212 (a)(3)(B)(iii)(V)

The explosive, firearm or other weapon provision –

- Has no requirement that the use of weapons be targeted at civilians to be terrorist activity.
- Has no exception for self-defense or repelling an attack. However, the act must be illegal to qualify as terrorist activity.
- Makes resistance groups that use violence "terrorist organizations".

Instructor Note: The use of firearms or other dangerous devices is one of the most inclusive provisions of the section. This is one of many provisions which subjects applicants to the TRIG grounds.

INA § 212(a)(3)(B)(iii)(VI)

"(VI) A threat, attempt, or conspiracy to do any of the foregoing."

INA § 212 (a)(3)(B)(iii)(VI)

"(VI) A threat, attempt, or conspiracy to do any of the foregoing." INA § 212(a)(3)(B)(iii)(VI).

Always remember that the terrorist activity must either be against the law where it is committed or be illegal in the U.S. had it been committed in the U.S.

Remember also that the definition of "terrorist activity" is different from the definition of "engage in terrorist activity," which is broader.

Under INA § 212(a)(3)(B)(iii), which of the following is considered terrorist activity?

A. A threat to engage in an activity that is legal in the United States
B. Seizing an individual off the street and making the person work for his captors
C. Use of a licensed AK-47 for target practice at a rifle range
D. Piracy of a ship

Progress Check Question

Under INA § 212(a)(3)(B)(iii), which of the following is considered terrorist activity?

A. A threat to engage in an activity that is legal in the United States
B. Seizing an individual off the street and making the person work for his captors
C. Use of a licensed AK-47 for target practice at a rifle range
D. Piracy of a ship



Rationale and Source

INA § 212(a)(3)(B)(iii) - Terrorist activity is any activity unlawful under laws of place where committed (or if it had been committed in United States, would be unlawful under U.S. or state laws.) Includes hijacking or sabotage of any conveyance; includes piracy and mutiny of ships. Kidnapping is considered a terrorist activity only if person was seized or detained in order to compel a third person to do or abstain from doing any act as an explicit or implicit condition for the release of the kidnapped person. Use of a firearm is terrorist activity if it was used with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

Rationale and Source

The correct answer is D.

Rationale: Under INA § 212(a)(3)(B)(iii), the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and includes:

Hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle) also includes piracy and mutiny of ships.

Kidnapping a person is considered a terrorist activity only if the person was seized or detained in order to compel a third person to do or abstain from doing any act as an explicit or implicit condition for the release of the kidnapped person.

Use of a firearm is terrorist activity if it was used with an intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

References: INA §§ 212(a)(3)(B)(iii)(I), (II) and (V).

Topic 5: Definition of "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)

Enabling Objective #5

Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)

Topic Five: INA § 212 (a)(3)(B)(iv)

Upon completion of this topic, you will be able to define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv).

INA § 212(a)(3)(B)(iv)

"The term "engage in terrorist activity" means, in an individual capacity or as a member of an organization…"

INA § 212 (a)(3)(B)(iv)

"The term "engage in terrorist activity" means, in an individual capacity or as a member of an organization —

INA § 212(a)(3)(B)(iv)(I)

"(I) To commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity."

INA § 212 (a)(3)(B)(iv)(I)

"(I) To commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity." INA § 212(a)(3)(B)(iv)(I).

INA § 212(a)(3)(B)(iv)(II)

"(II) To prepare or plan a terrorist activity."

INA § 212 (a)(3)(B)(iv)(II)

"(II) To prepare or plan a terrorist activity." INA § 212(a)(3)(B)(iv)(II).

INA § 212(a)(3)(B)(iv)(III)

"(III) To gather information on potential targets for terrorist activity."

INA § 212 (a)(3)(B)(iv)(III)

"(III) To gather information on potential targets for terrorist activity." INA § 212(a)(3)(B)(iv)(III).

INA § 212(a)(3)(B)(iv)(IV)

"(IV) to solicit funds or other things of value for–
(aa) a terrorist activity;
(bb) a designated terrorist organization [Tier I or Tier II] . . . OR
(cc) an undesignated [Tier III] terrorist organization unless alien can show by clear and convincing evidence that he or she did not know and should not reasonably have known that it was a terrorist organization."

INA § 212 (a)(3)(B)(iv)(IV)

"(IV) to solicit funds or other things of value for –

- (aa) terrorist activity;
- (bb) A designated terrorist organization [Tier I or Tier II] . . .; or
- (cc) [an undesignated] terrorist organization . . . unless the alien can show by clear and convincing evidence that he or she did not know and should not reasonably have known that it was a terrorist organization." INA § 212(a)(3)(B)(iv)(IV).

INA § 212(a)(3)(B)(iv)(V)

(v) To solicit any individual–
- (aa) To engage in [a terrorist activity];
- (bb) for membership in a [designated] terrorist organization; or
- (cc) for membership in [an undesignated] terrorist organization unless [alien] can demonstrate by clear and convincing evidence that he [or she] did not know and should not reasonably have known, that the organization was a terrorist organization."

INA § 212 (a)(3)(B)(iv)(V)

(V) To solicit any individual—

- (aa) To engage in [a terrorist activity];
- (bb) for membership in a [designated] terrorist organization; or
- (cc) for membership in [an undesignated] terrorist organization unless [alien] can demonstrate by clear and convincing evidence that he [or she] did not know and should not reasonably have known, that the organization was a terrorist organization." INA § 212(a)(3)(B)(iv)(V).

The lack of knowledge exception is discussed in more detail in Topic 6.

INA § 212(a)(3)(B)(iv)(VI)

"(VI) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives or training . . . "

INA § 212 (a)(3)(B)(iv)(VI)

"(VI) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives or training . . ."

- (aa) for the commission of a terrorist activity;

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

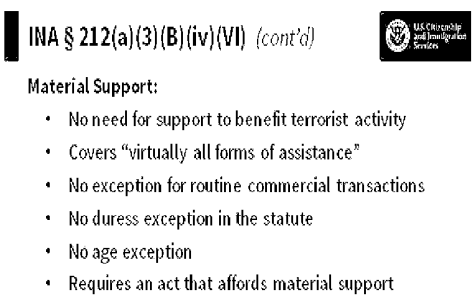
- (aa) for the commission of a terrorist activity;
- (bb) to any individual who the [alien] knows or reasonably should know, has committed or plans to commit a terrorist activity;
- (cc) to a [designated] terrorist organization . . . or to a member of a [designated] organization; or
- (dd) to an [undesignated] terrorist organization . . . or to any member of such an organization, unless the [alien] can demonstrate by clear and convincing evidence that [he or she] did not know and should not reasonably have known that the organization was a terrorist organization."

- (bb) to any individual who the [alien] knows or reasonably should know, has committed or plans to commit a terrorist activity;
- (cc) to a [designated] terrorist organization . . . or to a member of a [designated] organization; or
- (dd) to an [undesignated] terrorist organization . . . or to any member of such an organization, unless the [alien] can demonstrate by clear and

convincing evidence that [he or she] did not know and should not reasonably have known that the organization was a terrorist organization." INA § 212(a)(3)(B)(iv)(VI).

The lack of knowledge exception is discussed in more detail in Topic 6.

Instructor Note: The material support provision discussed is the most applied part of the definition of engaging in terrorist activity for USCIS and, arguably, of INA § 212(a)(3)(B). Most of the aliens in our cases who are subject to INA § 212(a)(3)(B) are inadmissible for providing something that falls within the definition of material support. This provision is significantly broader than the criminal law on material support which is limited to fewer organizations and fewer activities.



Material Support

Consider the following with respect to material support:

- No need for the support to benefit a terrorist activity.
- Covers "virtually all forms of assistance", *i.e.*, no "de minimis" exception. *See Matter of S-K-*, *supra*.
- No exception for routine commercial transactions.

(b)(7)(e) [redacted]

- No duress exception in the statute.
- No age exception, although capacity issues may be considered.
- Requires an affirmative act that affords material support. For example,

(b)(7)(e) [redacted]

(b)(7)(e)

- Remember that material support is not the only way to engage in terrorist activity.

- Lack of knowledge will be considered and discussed in Topic 6.

- Please note that in captive situations, applicants

(b)(7)(e)

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

Material support issue spotting:

Testimony or evidence that an applicant provided:

Material Support Issue Spotting

(b)(7)(e)

Material support issue spotting – look for testimony or evidence that an applicant did one of the following:

(b)(7)(e)

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

Questions to determine if material support provided:

(b)(7)(e)

Material Support Questions

Possible material support questions to address in an interview or Request for Evidence (RFE)

n

d

Which of the following activities would be considered providing material support to a terrorist organization?

A. Providing safe house to person that the actor does not know or could not have known is planning to commit a terrorist activity
B. Voluntarily providing a ride to a known member of an undesignated terrorist organization
C. Having a purse snatched by a member of a Tier I organization
D. Being raped by a member of a terrorist organization, while being held captive

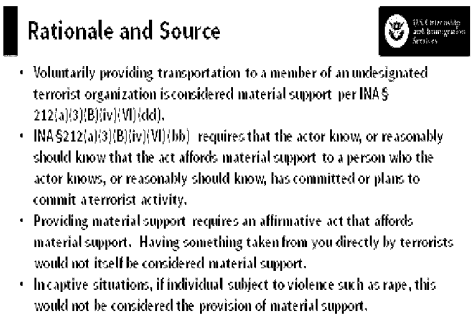
0% 0% 0% 0%

A B C D

Progress Check Question

Which of the following activities would be considered the provision of material support to a terrorist organization?

A. Providing a safe house to a person that the actor does not know and could not have known is planning to commit a terrorist activity
B. Voluntarily providing a ride to a known member of an undesignated terrorist organization
C. Having a purse snatched by a member of a Tier I organization
D. Being raped by a member of a terrorist organization, while being held captive



Rationale and Source

The correct answer is B.

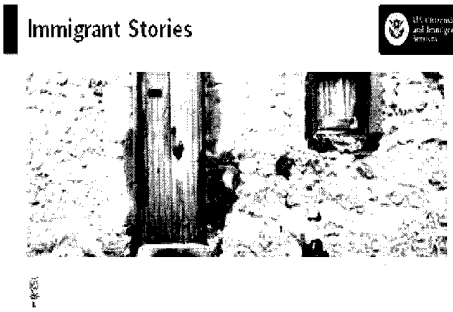
Rationale: Voluntarily providing transportation to a member of an undesignated terrorist organization is considered material support per INA § 212(a)(3)(B)(iv)(VI)(dd).

INA §212(a)(3)(B)(iv)(VI)(bb) requires that the actor know, or reasonably should know that the act affords material support to a person who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity.

Providing material support requires an affirmative act that affords material support. For example, having something taken from you directly by terrorists would not itself be considered material support (though the act of handing over something over would qualify as material support).

In captive situations, applicants may have been forced to carry out various activities, and also may have been the victims of violent acts. To the extent that kidnapped/captive individuals are required to carry out various routine activities by their captors, such as cooking, cleaning, carrying luggage/cargo, and the like, their provision of labor is considered the provision of material support under duress. However, to the extent that such individuals may have been subjected to violence, including rape and other forms of sexual violence, this would not be considered the provision of material support.

Reference(s): INA § 212 (a)(3)(B)(iv)(VI)



Immigrant Stories

Instructor Note: Return to the initial scenarios in Appendix A read by the volunteers and ask the class what they think now, discussing whether their conclusions have changed, why they have changed, and who they now think is inadmissible and why.

Enabling Objective #6

Identify the exceptions to TRIG

Topic Six: Exceptions to TRIG

Upon completion of this topic, you will be able to identify the exceptions to TRIG.

Individual Exceptions

Lack of Knowledge Exception for Undesignated Terrorist Organizations

- Membership in terrorist organization
- Soliciting funds
- Soliciting people
- Providing material support to undesignated organization
- Unless the alien "can demonstrate by clear and convincing evidence that [he or she] did not know, and should not reasonably have known, that the organization was a terrorist organization."

Lack of Knowledge Exception for Tier III Organization

As noted in our discussion several of the TRIG grounds contain a lack of knowledge exception. The exception applies if the applicant did not know, or should not have reasonably known, that the group was a Tier III organization. These exceptions apply to the following activities:

- Membership in a terrorist organization. *See* INA § 212(a)(3)(B)(i)(VI).
- Engaging in terrorist activity by soliciting funds for a terrorist organization. *See* INA § 212(a)(3)(B)(iv)(IV)(cc).
- Soliciting people for membership in a terrorist organization. *See* INA § 212(a)(3)(B)(iv)(V)(cc).
- Providing material support for an undesignated organization (Tier III). *See* INA § 212(a)(3)(B)(iv)(VI)(dd).

Unless the alien "can demonstrate, by clear and convincing evidence that he [or she] did not know, and should not reasonably have known, that the organization was a terrorist organization."

Individual Exceptions *(cont'd)*

Lack of knowledge exception for undesignated terrorist organizations:

- Requires both actual lack of knowledge (subjective) and that a reasonable person would not have known (objective)
- Turns on what the applicant knew or did not know of the organization's activities, not whether he or she subjectively considered the actions to be terrorism

Lack of Knowledge Exception for Tier III Organization

These "lack of knowledge" carve-outs refer to the applicant's lack of knowledge that the organization at issue carries out activities of the type that bring it within the definition of a Tier III terrorist organization, not to a lack of knowledge that a U.S. government entity finds that the group is a Tier III organization under the INA.

This distinction is important because it clarifies that the inquiry rests with what the applicant knew, or reasonably should have known, about the group's activities at the time of his or her act or association with the group.

Also, this "lack of knowledge" exception carries a higher burden of proof for the applicant. The applicant must

Individual Exceptions *(cont'd)*

Lack of knowledge exception for undesignated terrorist organizations:

- Does not apply to designated (Tier I & II) organizations, no matter how reasonable the lack of knowledge
- Does not apply to being a representative of or attending terrorist training camp of or on behalf of an undesignated terrorist organization

demonstrate by clear and convincing evidence his or her own lack of knowledge (subjective) and that a reasonable person would not have known (objective).

As noted, this exception only applies to undesignated Tier III organizations. It does not apply to designated (Tier I and II) organizations, no matter how reasonable the lack of knowledge.

This exception does not apply to receiving military type training or being a representative of an undesignated terrorist organization.

Individual Exceptions *(cont'd)*

Lack of knowledge exception – Questions to ask:

Lack of Knowledge Exception for Tier III Organization

(b)(7)(e)

What is reasonable lack of knowledge?

Individual Exceptions *(cont'd)*

Lack of knowledge exception – Clear and Convincing standard:

- More than preponderance of the evidence
- Less than beyond a reasonable doubt

Remember: Lack of knowledge exception only applies to involvement with undesignated organizations.

Lack of Knowledge Exception for Tier III Organization

(b)(7)(e)

What is "clear and convincing evidence?" It is more than preponderance of the evidence but less than beyond a reasonable doubt.

Instructor Note: Consider this example:

Individual Exceptions *(cont'd)*

Material Support Knowledge Element in INA § 212 (a)(3)(B)(iv)(VI):

"to commit an act that the actor knows or reasonably should know affords material support . . ."

- Applies to knowledge that the act afforded support
- Possible, although unlikely, that an individual could supply material support to a member of a terrorist organization and not know it was material support

Material Support Knowledge Element

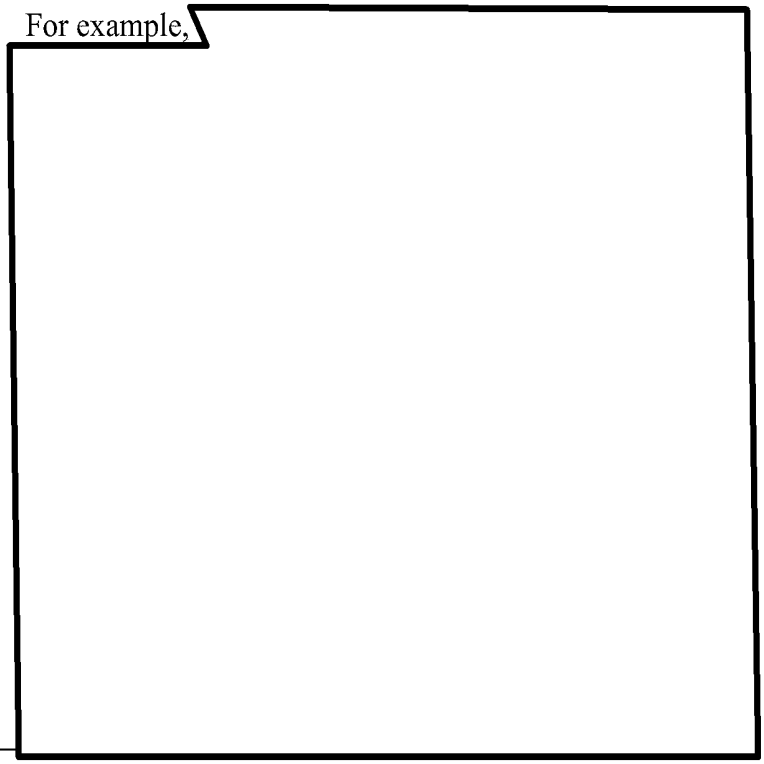
Additionally, the material support provision also contains a knowledge element found at INA § 212(a)(3)(B)(iv)(VI). It reads "to commit an act that the actor knows or reasonably should know affords material support . . ." INA § 212(a)(3)(B)(iv)(VI).

This is not the same as the lack of knowledge exception regarding knowledge that the organization was a Tier III organization; rather, it applies to knowledge that the applicant's act itself afforded material support to any organization at all, or for the commission of a terrorist activity, or to an individual that has committed or plans to commit a terrorist activity.

It is possible, although unlikely, that an individual could supply material support to a member of a terrorist organization (Tier I, II, or III), for the commission of a terrorist activity, or to an individual that has committed or will commit a terrorist activity and not know that it constituted material support to or for any of these specified organizations, activities, or individuals. If so, the applicant would not have provided material support as defined in the statute, and there would be no TRIG for such activity.

For example,

(b)(7)(e)



An applicant did not know, or should not have reasonably known that the group she was involved in was a Tier III organization. For which of the following activities would the applicant qualify for a Lack of Knowledge exception?

A. Membership in a Tier III organization
B. Soliciting funds for a Tier II organization
C. Soliciting members for a Tier I organization
D. Receiving military-type training from a Tier III organization

0% 0% 0% 0%

Progress Check Question

An applicant did not know, or should not have reasonably known that the group she was involved in was a Tier III organization. For which of the following activities would the applicant qualify for a Lack of Knowledge exception?

A. Membership in a Tier III organization
B. Soliciting funds for a Tier II organization
C. Soliciting members for a Tier I organization
D. Receiving military-type training from a Tier III organization

---

Rationale and Source

A lack of knowledge exception applies if the applicant did not know, or should not have reasonably known, that the group was a Tier III organization. Exceptions apply to the membership in a terrorist organization, soliciting funds for a terrorist organization, soliciting people for membership in a terrorist organization, and providing material support for an undesignated organization. This exception only applies to undesignated Tier III organizations.

Rationale and Source

The correct answer is A.

Rationale: A lack of knowledge exception applies if the applicant did not know, or should not have reasonably known, that the group was a Tier III organization. Exceptions apply to the membership in a terrorist organization, soliciting funds for a terrorist organization, soliciting people for membership in a terrorist organization, and providing material support for an undesignated organization. This exception only applies to undesignated Tier III organizations. It does not apply to designated (Tier I and II) organizations, no matter how reasonable the lack of knowledge. This exception does not apply to receiving military type training or being a representative of an undesignated terrorist organization.

Reference(s): INA § 212(a)(3)(B)(i)(VI), INA § 212(a)(3)(B)(iv)(IV)(cc), INA § 212(a)(3)(B)(iv)(V)(cc), INA § 212(a)(3)(B)(iv)(VI)(dd)

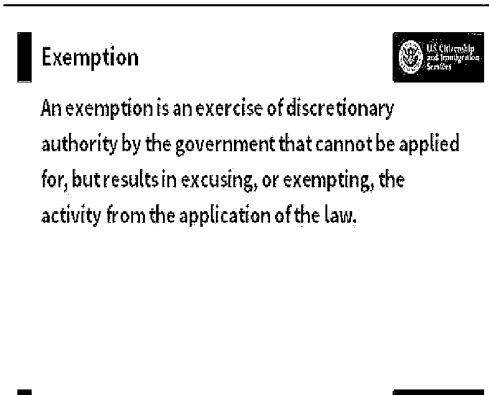
Topic 7: Exemptions from TRIG

Enabling Objective #7

Identify the exemptions from TRIG

Topic Seven: Exemptions

Upon completion of this topic, you will be able to identify the exemptions from TRIG.

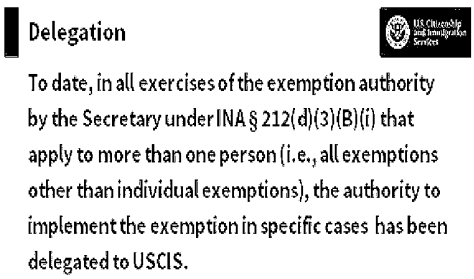


Realizing the broad scope of TRIG, Congress included an exemption provision for INA § 212(a)(3)(B) since the USA PATRIOT Act of 2001, though it has changed and expanded over time.

The USA PATRIOT Act included an exemption provision in the material support provision itself. The REAL ID Act of 2005 created a broader stand-alone exemption provision at INA § 212(d)(3)(B)(i), and the Consolidated Appropriations Act of 2008 (CAA) expanded the discretionary exemption authority at INA § 212(d)(3)(B)(i) to include most of INA § 212(a)(3)(B). Certain TRIG grounds, however, cannot be exempted.

Under INA § 212(d)(3)(A), there is an exemption provision relating to nonimmigrants that can be exercised by the Secretary of Homeland Security or the Secretary of State.

Under INA § 212(d)(3)(B)(i), the Secretary of Homeland Security and the Secretary of State, after consultation with each other and the Attorney General, have the discretionary authority to exempt certain activities and associations from TRIG as they relate to individuals, and to determine that certain groups will not be considered undesignated terrorist organizations (Tier III). Authority not to apply the terrorist organization definition to exempt a group only extends to Tier III organizations.



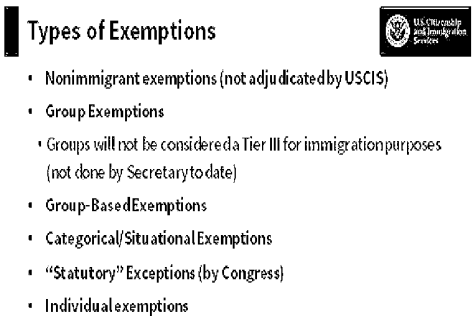
In each of the exercises of exemption authority to date, the Secretary of Homeland Security delegated to USCIS, in consultation with ICE, the authority to determine whether a particular alien meets the criteria required for the exercise of the exemption.

This authority also usually applies to consular officers for DOS adjudications. Within DHS, USCIS adjudicates Secretarial exemptions under the INA § 212(d)(3)(B)(i) exercises of the exemption authority. Neither ICE nor CBP personnel have this delegated authority. The Department of Justice, including the Executive Office for Immigration Review (EOIR), has no authority under the statute to exercise the exemption authority or grant exemptions under existing exercises of the exemption authority.

As a general matter, once the Secretary signs the exemption documents for an exemption under INA § 212(d)(3)(B)(i), and the USCIS Director issues implementing guidance, USCIS posts (via the USCIS Intranet) the exemption document along with a

corresponding policy memorandum or fact sheet that provides further guidance to adjudicators on implementing the new discretionary exemption.

Congress has also created a number of statutory exceptions clarifying that certain groups should not be treated, for the purposes of TRIG, as falling within the Tier III definition. These are different from Secretarial exemptions and may be applied by entities adjudicating benefit applications, including USCIS officers and immigration judges.



Types of TRIG Exemptions

There are six types of Secretarial exemptions for TRIG.

1. Nonimmigrant. *See* INA § 212(d)(3)(A).

2. Group Exemptions. *See* INA § 212(d)(3)(B)(i).

   - Groups will not be considered Tier III for immigration purposes (not done by Secretary to date)

3. Group-Based Exemptions. *See* INA § 212(d)(3)(B)(i).

   - Pertain to individuals having associations or activities with a particular group or groups

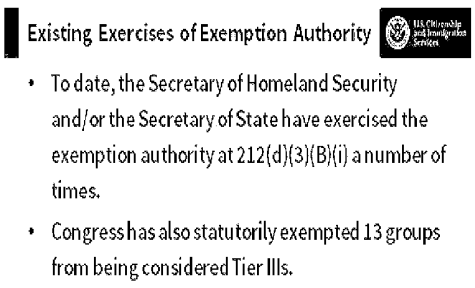
4. Categorical/Situational Exemptions. *See* INA § 212(d)(3)(B)(i).

   - Relate to a certain activity, such as providing material support or medical care

5. "Statutory" exceptions designated by Congress.

6. Individual. *See* INA § 212(d)(3)(B)(i).

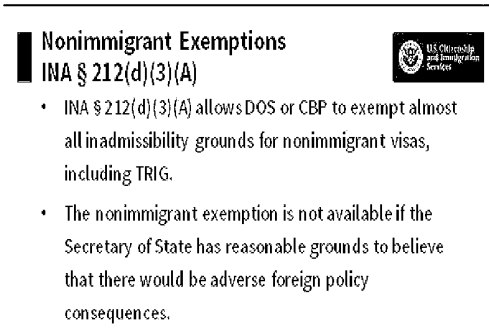
   - Pertain to a specific applicant



Existing Exercises of the Exemption Authority

There have been a number of exemptions issued to date by the Secretaries under INA § 212(d)(3)(B)(i), which USCIS adjudicates with regard to applicants for immigration benefits.

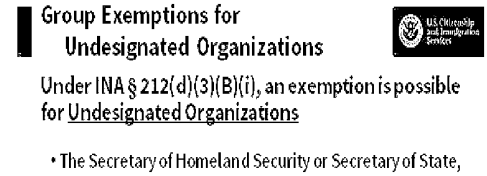
Congress has also statutorily exempted 13 groups from being considered Tier IIIs.



Nonimmigrant Exemptions

Nonimmigrants can be admitted for temporary visits under INA § 212(d)(3)(A) in the discretion of the Secretary of Homeland Security or Secretary of State.

- Despite terrorism-related grounds or any other ground of inadmissibility except for some of the other security-related provisions at INA § 212(a)(3).
- Under such conditions as appropriate including the payment of bond to regulate the admission and return of the alien.
- Note that USCIS does not adjudicate this provision. CBP and the Department of State (DOS) apply these provisions in concert with one another.

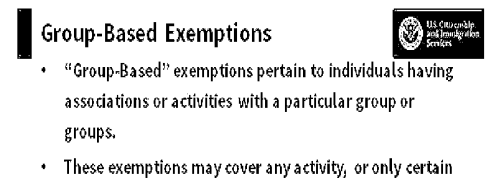


Group Exemptions for Undesignated Organizations

The Secretaries may issue a "group exemption" stating that a certain group will not be considered a Tier III for INA § 212(a)(3)(B) purposes. This has not been done to date. *See* INA § 212(d)(3)(B)(i).

The Secretaries may also exempt almost any INA § 212(a)(3)(B) activity for Tier IIIs; they have a somewhat more limited ability to exempt activity relating to Tier I and Tier II organizations.

Frequently, such exemptions are issued with reference to a particular group (such as all exemptible activity relating to the All Burma Students Democratic Front, or ABSDF). These are referred to often as "group-based" exemptions, to distinguish them from actual "group exemptions."



Group-Based Exemptions

"Group-Based" exemptions pertain to individuals having associations or activities with a particular group or groups.

These exemptions are designed to exempt an individual's activities or affiliations with specified terrorist groups or organizations. Additionally, each group-based exercise of authority and its implementing guidance specifies how exemptions should be applied, including specifically which grounds of inadmissibility are covered. The group based exemptions vary in terms of what grounds they cover; some are broad while others are to be applied more narrowly.

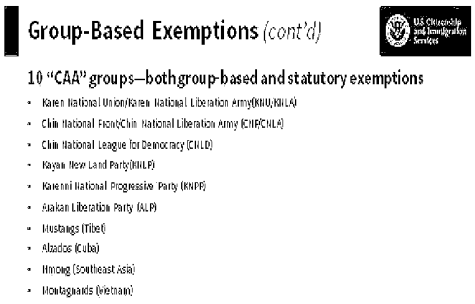
Some groups have been the subject of both "group-based" exemptions and Congressional "statutory" exceptions. This may be because the congressional action looks to activity for a certain period of time (*e.g.*, up until the passage of a Congressional act), and the companion

Secretarial exemption extends the authority to not apply the inadmissibility ground to present time, or for a larger range of grounds. For groups that have both group-based and "statutory" exemptions, it must be determined whether an exemption is needed or not.

A few important notes to bear in mind with respect to group-based exemptions:

- Group-based exemptions for Tier III organizations apply to voluntary activity. This is in contrast to a general duress exemption, which we will discuss shortly.

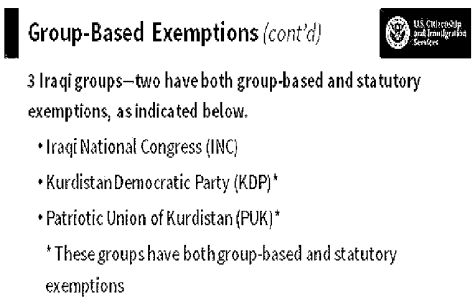
- Each Secretarial exercise of authority, and accompanying implementation guidance, may contain additional requirements for certain groups (such as not targeting noncombatant persons or U.S. interests).



Group-Based Exemptions- 10 CAA Groups

These groups have been the subject of both group-based and "statutory" exemptions. All are Burmese opposition groups unless otherwise indicated. The groups are as follows:

- Karen National Union/Karen National Liberation Army (KNU/KNLA)
- Chin National Front/Chin National Liberation Army (CNF/CNLA)
- Chin National League for Democracy (CNLD)
- Kayan New Land Party (KNLP)
- Karenni National Progressive Party (KNPP)
- Arakan Liberation Party (ALP)
- Mustangs (Tibet)
- Alzados (Cuba)
- Hmong (Southeast Asia)
- Montagnards (Vietnam)



Group-Based Exemptions – Iraqi Groups

There are three Iraqi Groups which have group-based exemptions. Two of these are also the subject of "statutory" exemptions. These groups are as follows:

- Iraqi National Congress (INC)
- Kurdistan Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)

KDP and PDK also have "statutory exemptions. Please contact your supervisor if you encounter the KDP or PUK.

Group-Based Exemptions *(cont'd)*

- All Burma Students Democratic Front (ABSDF)
- All India Sikh Student Federation-Bittu faction (AISSF-Bittu)
- Democratic Movement for the Liberation of Eritrean Kunama (DMLEK) (Eritrea)
- Eritrean Liberation Front (ELF) (Eritrea)
- Ethiopian People's Revolutionary Party (EPRP)(Ethiopia)
- Farabundo Marti National Liberation Front (FMLN)(El Salvador)

Group-Based Exemptions - Other

Additionally, there are other group-based exemptions as follows:

- All Burma Students Democratic Front (ABSDF)
- All India Sikh Student Federation Bittu faction (AISSF-Bittu)
- Democratic Movement for the Liberation of Eritrean Kunama (DMLEK) (Eritrea)
- Eritrean Liberation Front (Eritrea)
- Ethiopian People's Revolutionary Party (EPRP) (Ethiopia)
- Farabundo Marti National Liberation Front (FMLN) (El Salvador)

Group-Based Exemptions *(cont'd)*

- Kosovo Liberation Army (KLA)
- Nationalist Republican Alliance (ARENA) (El Salvador)
- Oromo Liberation Front (OLF) (Ethiopia)
- Tigray People's Liberation Front (TPLF) (Ethiopia)

Group-Based Exemptions - Other

- Kosovo Liberation Army (KLA)
- Nationalist Republican Alliance (ARENA) (El Salvador)
- Oromo Liberation Front (OLF) (Ethiopia)
- Tigray People's Liberation Front (TPLF) (Ethiopia)
- Certain Burmese Groups (see USCIS Policy Memo 602-0135 for complete list)

Categorical/Situational Exemptions

- Most INA § 212(a)(3)(B) grounds can be exempted by the Secretary of DHS or Secretary of State.
- Exemptions for certain activities committed under duress
- Exemptions for certain activities that were voluntary
- Not group specific, but may apply to certain type of terrorist organization (such as Tier III)
- Certain grounds cannot be exempted

Categorical/ Situational Exemptions

Most, though not all, TRIG grounds can be exempted by the Secretaries under INA § 212(d)(3)(B)(i).

Categorical or situational exemptions pertain to a certain activity, such as providing material support or medical care, and are not group specific. However, they may apply only to a particular type of terrorist organization (such as a Tier III organization).

Some situational exemptions require that the activity took place under duress. Duress-based exemptions require an examination into the duress factors to determine eligibility for the exemption.

Material Support under Duress Exemption

Applies to material support given under duress to:

- Tier III organizations
- Tier I and II organizations

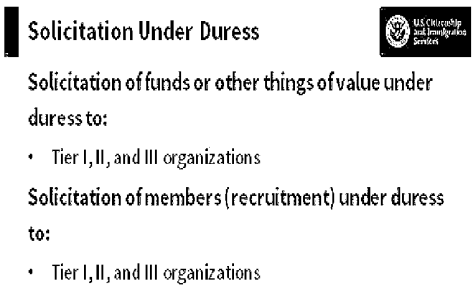
Material Support Under Duress

Exemptions may be granted for applicants who provided material support under duress to designated or undesignated terrorist organizations, which, at minimum require that the material support was provided in response to a reasonably-perceived threat of serious harm.

- For the provision of material support to Tier III organizations
- For the provision of material support to Tier I or Tier II organizations

(b)(7)(e)

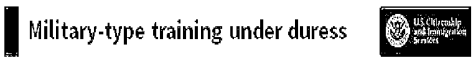
An example of material support under duress could



Solicitation Under Duress

Exemptions may be granted to certain applicants who, under duress, solicited funds or members for a terrorist organization.

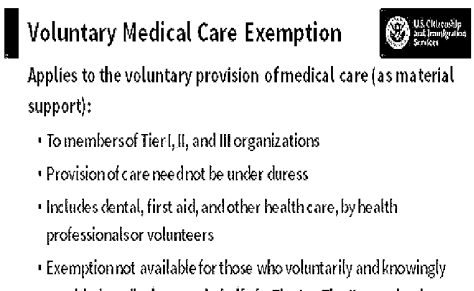
- For the solicitation of funds or other things of value under duress (Tier I, II, or III organizations)
- For the solicitation of members under duress (recruitment) (Tier I, II, or III organizations)



Military Type Training Under Duress

Exemptions may be granted to certain applicants who, under duress, received military-type training from, or on behalf of, a terrorist organization.

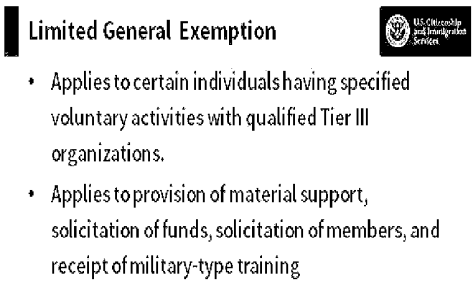
- For the receipt of military-type training under duress (Tier I, II, or III organizations)



Voluntary Medical Care Exemption

Exemptions can be granted to certain applicants who provided medical care to individuals that the applicant knew, or reasonably should have known, committed or planned to commit a terrorist activity, or to members of a terrorist organization as described in INA § 212(a)(3)(B)(vi).

- Applies to the voluntary provision of medical care to members of Tier I, II, or III organizations
- Includes medical, dental, and first aid care by medical professionals or volunteers
- Is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (*e.g.*, staff doctors)



Limited General Exemption

The Limited General Exemption is a unique exercise of authority that applies to certain applicants with *existing immigration benefits* but who have been unable to be granted further status, such as lawful permanent residency.

This exemption can be granted for certain applicants with existing immigration benefits who are currently inadmissible under INA § 212(a)(3)(B)(i). Applicants eligible for this exemption must have only select

voluntary, nonviolent associations or activities with certain undesignated terrorist organizations, as described by the relevant Secretarial exercise of authority and accompanying implementation guidance.

This exemption may be applied only to applicants who currently possess lawful status in the United States by the date the exercise of authority was issued, August 10, 2012. Generally, applicants with asylee or refugee status, temporary protected status, or those who adjusted status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or a similar immigration benefit (other than a nonimmigrant visa), and those who are beneficiaries of a Form I-730, Refugee/Asylee Relative Petition, filed at any time by such an asylee or refugee, may qualify.

- Applies to certain individuals having specified voluntary activities with qualified Tier III organizations
- There are both individual and group qualifications for this exemption.
- Applies to the provision of material support; solicitation of funds; solicitation of members; and the receipt of military-type training.

Iraqi Uprisings Exemption

Applies to certain applicants who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991

Iraqi Uprisings

The Iraqi Uprisings Exemption applies to certain applicants who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991.

Certain Limited Material Support (CLMS)

Applies to minimal amounts of material support given to Tier III organizations. May include:

[redacted]

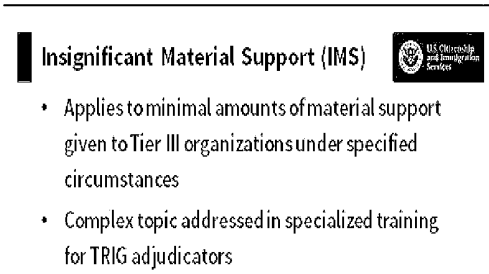
Certain Limited Material Support (CLMS)

(b)(7)(e)

The Certain Limited Material Support (CLMS) Exemption can be granted not to apply the material support inadmissibility ground to certain applicants who provided certain limited material support to an undesignated terrorist organization (Tier III), or to a member of such an organization.

Limited material support may include:

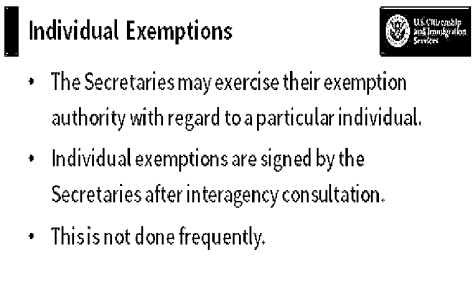
[redacted]



Insignificant Material Support (IMS)

The Insignificant Material Support (IMS) Exemption can be granted not to apply the material support inadmissibility ground to applicants who provided insignificant material support to an undesignated terrorist organization (Tier III), or to a member of such an organization.

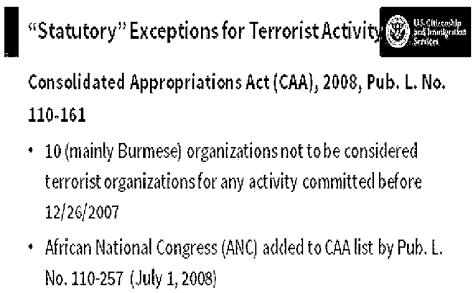
> **Instructor Note**: Due to their complexity, follow-up training with respect to the CLMS and IMS exemptions is provided to TRIG adjudicators.



Individual Exemptions

Individual exemptions pertain to a specific applicant.

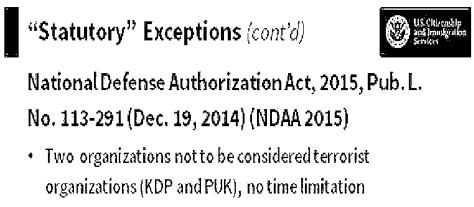
- These are signed by one of the Secretaries, and must go through interagency consultation.
- These are complex to adjudicate and have been rare in the past; if you have any questions about whether a particular case may merit an individual exemption, please contact your supervisor and TRIG component POC.



Statutory Exceptions - CAA

Congress may state that a particular undesignated or Tier III group should not be considered a terrorist organization for immigration purposes, via legislation.

- Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161 (Dec. 26, 2007) ("CAA of 2008"): Among other things, the CAA stated that 10 groups should not be considered Tier III terrorist organizations for activity committed prior to December 26, 2007.
- The African National Congress (ANC) was added to the CAA list by Pub. L. No. 110-257 (July 1, 2008).



Statutory Exemptions - NDAA

- National Defense Authorization Act 2015 (Pub. L. No. 113-291) (Dec. 19, 2014) ("NDAA 2015"): Stated that two groups—the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) should not be considered terrorist organizations under the INA. No time limit.

Exemption Guidance

See: https://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissibility-grounds-trig

Exemption Guidance

Each of the above-mentioned Secretarial exercises of authority has USCIS implementation guidance instructing adjudicators on how it should be adjudicated.

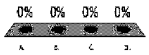
This guidance is available on the ECN, and for the most part on the uscis.gov website.

To review the exemptions and their specific requirements, please refer to https://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissibility-grounds-exemptions.

> **Instructor Note**: When discussing exemption processing, show the students the exemption worksheet.

Which of the following TRIG grounds may qualify for an exemption?

A. Voluntarily providing food and supplies to a Tier II organization
B. Providing medical care as staff doctor to a Tier I organization
C. Providing money to a Tier III organization under duress
D. Voluntarily receiving military-type training from a Tier III organization



Progress Check Question

Which of the following TRIG grounds may qualify for an exemption?

A. Voluntarily providing food and supplies to a Tier II organization
B. Providing medical care as staff doctor to a Tier I organization
C. Providing money to a Tier III organization under duress
D. Voluntarily receiving military-type training from a Tier III organization

Rationale and Source

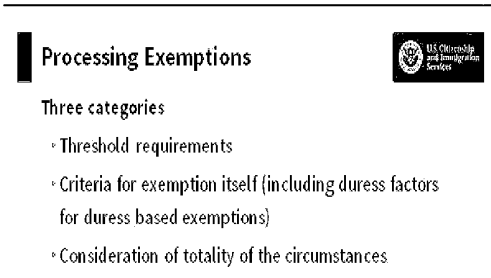
Exemptions may be granted for applicants who provided material support under duress to designated or undesignated terrorist organizations, which require that material support was provided in response to a reasonably-perceived threat of serious harm. An exemption is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (e.g., staff doctors). Exemptions may be granted to certain applicants who received military-type training under duress from or on behalf of a Tier I, II or III organization. See INA § 212(d)(3)(B)(i)

Rationale and Source

The correct answer is C.

Rationale: Exemptions may be granted for applicants who provided material support **under duress** to designated or undesignated terrorist organizations, which, at minimum require that the material support was provided in response to a reasonably-perceived threat of serious harm. An exemption is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (*e.g.*, staff doctors). Exemptions may be granted to certain applicants who received military-type training **under duress** from or on behalf of a Tier I, II or III organization.

Reference(s): INA § 212(d)(3)(B)(i)

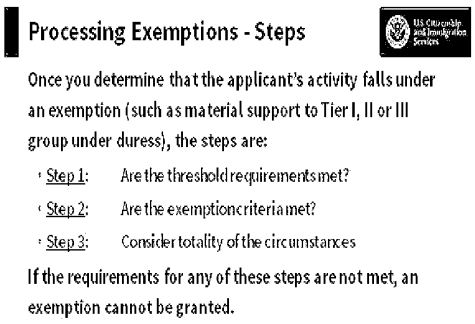


Exemption Guidance-Criteria

In processing exemptions, you should be mindful to ensure that applicants meet the specific requirements, which generally fall within the following categories:

- Threshold requirements
- Criteria for the exemption itself (including duress factors for duress-based exemptions)
- Consideration of the totality of the circumstances, if all other criteria have been met.

The implementation guidance for each exemption sets forth the applicable criteria and should be consulted when adjudicating exemptions. The implementation guidance can be found on the USCIS RAIO TRIG ECN site.

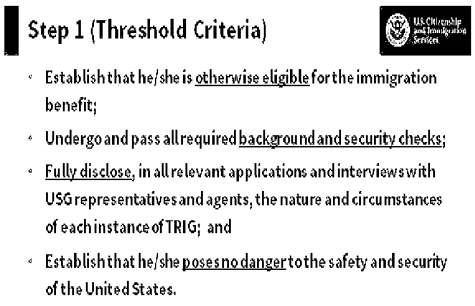


Exemption Guidance-Processing Steps

Generally, once you determine that the applicant's activity falls under an existing exemption (such as material support to Tier I, II or III group under duress), the steps for processing an exemption are:

- Step 1: Are the threshold requirements met?
- Step 2: Are the exemption criteria met?
- Step 3: Consider the totality of the circumstances.

If the requirements for any of these steps are not met, an exemption cannot be granted.



Step 1 - Threshold Criteria

In order to be considered for any existing exemption from TRIG, an applicant must meet the following threshold requirements:

- Establish that he or she is otherwise eligible for a visa or the immigration benefit or protection being sought.
    - Otherwise eligible means that but for TRIG, an applicant would be eligible for or granted the benefit.
    - For example, the applicant must be credible and must not be barred or inadmissible on another basis.
- Undergo and pass all required background and security checks.
    - Background and security checks must be complete.

- Fully disclose, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each TRIG activity or association.

Instructor Note: You may get question regarding an applicant who did not provide information, for example at an airport interview, because he was not asked about TRIG activity. Best answer: If not asked in person or on application, not a failure to disclose.

- Establish that he or she poses no danger to the safety and security of the United States.

Step 2 (Exemption Criteria)

- Each exemption has specific requirements that must be met (e.g. group associations) or certain activities or circumstances that are necessary for the exemption to apply
- Carefully review exemption requirements in the implementation guidance available on uscis.gov for specific information

Step 2 - Exemption Criteria

Some exemptions contain additional requirements.

If the applicant meets the threshold requirements, then the next step is to consider whether the applicant meets the requirements of the exemption itself.

For example, (b)(7)(e)

Step 2 (Exemption Criteria) *(cont'd)*

- Duress-specific considerations (if applicable)
- If there is no duress when considering a duress-based exemption, and if applicant is not found to merit exemption in totality of the circumstances, an exemption is not granted, and case will be denied/referred

Step 2 – Duress Considerations

If you find there is no duress when you are considering a duress-based exemption, and/or if you find that the applicant does not merit an exemption in the totality of the circumstances, you should deny the exemption, and you may deny the case and/or refer it, depending on what kind of application you are adjudicating.

Step 2 - What is duress?

At a minimum, material support must have been provided in response to reasonably-perceived threat of imminent harm. Considerations:

- Whether applicant reasonably could have avoided, or took steps to avoid, providing activity at issue
- Severity and type of harm inflicted or threatened
- To whom threat of harm was directed
- Perceived imminence of harm threatened
- Perceived likelihood that the threatened harm would be inflicted
- Reasonable steps taken to stop the TRIG activity

Step 2 – What is Duress?

For duress-based exemptions, you will consider specific duress factors in the adjudication of the exemption. The factors vary slightly, but at the minimum, there has to have been a reasonably-perceived threat of serious harm under which the activity at issue was carried out.

In general, the duress-based exemptions all require consideration of the following issues:

- Whether the applicant could have reasonably avoided the TRIG activity, *e.g.*, providing material support;

- The severity and type of harm inflicted or threatened;
- To whom the threat of harm was directed, *e.g.*, the applicant, the applicant's family, the applicant's community, etc.;
- The perceived imminence of the harm threatened; and
- The perceived likelihood that the threatened harm would be carried out, *e.g.*, based on instances of past harm to the applicant, to the applicant's family, to the applicant's community, and the manner in which harm was threatened, etc.
- In addition, country conditions play a significant role in this determination. For example, if a group's atrocities against those it perceives as resisting its demands are well known, then overt threats of violence are not required.
- Any steps the applicant took to stop the TRIG activity, *e.g.*, moving, escape, reporting to authorities, etc.
- The test here is one of reasonableness. USCIS does not require attempts to escape or other actions if to do so would make the threatened harm more likely and/or more severe.

Step 2 - What is duress? *(cont'd)*

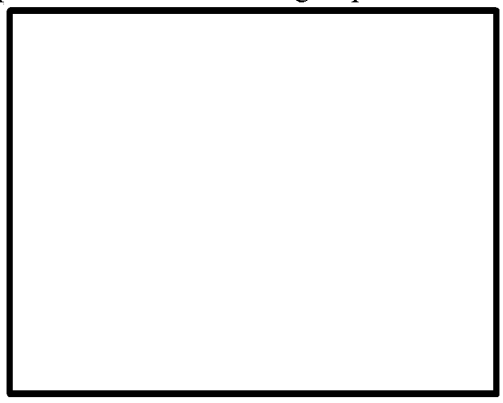
Additional questions to consider with respect to when the applicant encountered the group:



Step 2 – Duress Factors - Questions

(b)(7)(e)

Additional questions to consider with respect to when the applicant encountered the group:



Instructor Note: The prototypical example of duress is a gun to the head. However, not all cases will involve such a direct and immediate threat. You may need to look at country conditions to determine how the group treated individuals who refused to comply (such as if it was well-known that the group carried out reprisals against those who refused its demands). Note that in captive situations, we would not require an attempt to escape (risk could be too grave). In non-captive situations, we don't require resistance. Fair questions though. If no duress, duress exemption may not be granted, and case will be referred or denied in accordance with the material support exemption implementation instructions. Please note that these duress factors are not requirements for an exemption; they are simply factors to be considered in individual cases.

Step 3 - Totality of Circumstances

- Threshold requirements met
- TRIG activity
- To a terrorist organization
- Under duress *(if applicable)*
- Then must consider whether the totality of the circumstances justifies the exercise of authority as a matter of discretion

Totality of the Circumstances

Finally, if the threshold requirements and the criteria for the exemption itself have been met and there has been a determination of duress (if required), you must then consider whether the applicant merits an exemption in the totality of the circumstances.

Step 3 - Totality of Circumstances *(cont'd)*

Factors to consider . . .

[redacted]

Totality of Circumstances - Factors

(b)(7)(e)

This is a general discretionary analysis that takes into account any and all relevant factors (positive and negative) in considering whether an exemption is warranted.

A non-exhaustive list of appropriate factors includes:

[redacted]

Please note that the "totality of the circumstances" factors are not requirements; they are simply factors to be considered in individual cases.

Documenting the Exemption

How do you document the exemption determination?

- Use the USCIS Exemption Worksheet if considering the exemption
- Submit for supervisory review
- Worksheet becomes part of the A-file

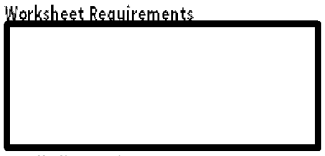
Documenting the Exemption

All USCIS exemptions that are considered are processed using the USCIS Exemption Worksheet.

All exemption worksheets should be submitted for further supervisory review.

Documenting the Exemption *(cont'd)*

Worksheet Requirements

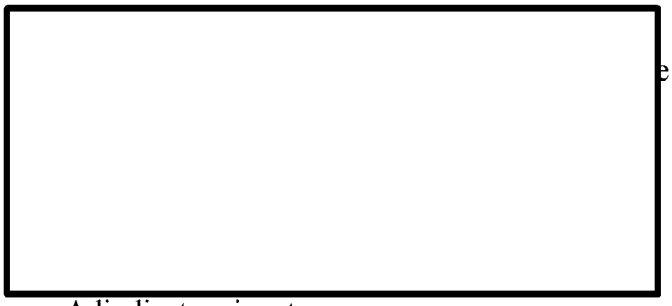


Adjudicator signature
Signature of first and second-line reviewers
Supervisor's signature

Exemption Worksheet

(b)(7)(e)

The exemption worksheet becomes part of the A-file. It requires the following:



- Adjudicator signature
- Signatures of first and second-line reviewers
- Supervisor's signature

Instructor Note: At this time return to the scenarios in Appendix A to discuss possible exemptions for each scenario with the class.

Exemption Guidance - Future

Additional exercises of exemption authority continue to be considered.

Process for all new exercises of exemption authority require interagency consultation

Complex and lengthy process

Guidance on new exercises of exemption authority will be issued in accordance with agency policy

Exemption Guidance - Future

Additional exercises of the exemption authority continue to be considered.

However, the process for all new exercises of the exemption authority, require interagency consultation (per INA § 212(d)(3)(B)(i)). This is a complex and lengthy process.

Guidance on new exercises of the exemption authority will be issued in accordance with agency policy.

In order to be considered for any existing exemption from TRIG, an applicant must meet certain threshold requirements. Which of the following is NOT one of the threshold requirements?

A. Establish to satisfaction of adjudicator that he/she merits exemption in totality of circumstances
B. Establish that he/she is otherwise eligible for immigration benefit being sought
C. Undergo and pass all required background and security checks
D. Fully disclose in all applications and interviews nature and circumstances of each TRIG activity/association

0% 0% 0% 0%

A B C D

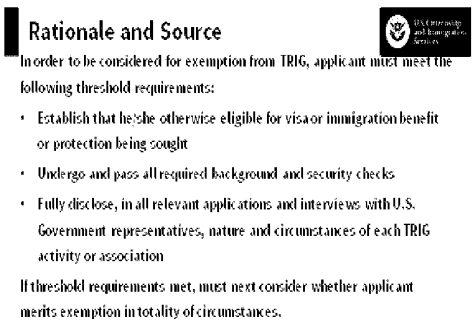
Progress Check Question

In order to be considered for any existing exemption from TRIG, an applicant must meet certain threshold requirements. Which of the following is NOT one of the threshold requirements?

A. Establish to the satisfaction of the adjudicating officer that he/she merits an exemption in the totality of circumstances
B. Establish that he or she is otherwise eligible for the immigration benefit being sought
C. Undergo and pass all required background and

security checks

D. Fully disclose in all applications and interviews the nature and circumstances of each TRIG activity/association



Rationale and Source

The correct answer is A.

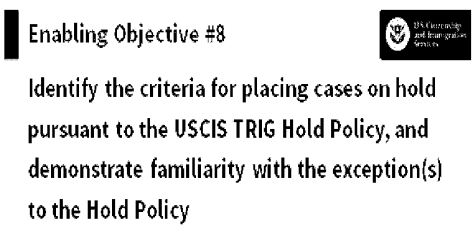
Rationale: In order to be considered for any existing exemption from TRIG, an applicant must meet the following threshold requirements:

- Establish that he or she is otherwise eligible for a visa or the immigration benefit or protection being sought
- Undergo and pass all required background and security checks
- Fully disclose, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each TRIG activity or association

If the threshold requirements and the criteria for the exemption itself have been met and there has been a determination of duress (if required), you must then consider whether the applicant merits an exemption in the totality of the circumstances. The "totality of the circumstances" factors are not requirements; they are simply factors to be considered in individual cases.

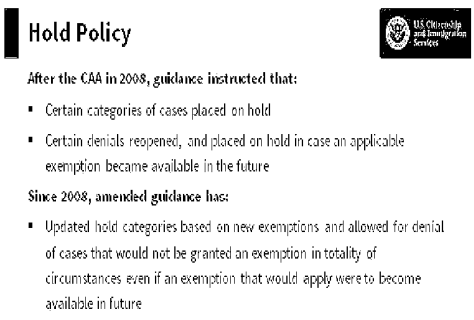
Reference(s): TRIG Exemption Worksheet Instructions

Topic 8: USCIS TRIG Hold Policy



Topic Eight: USCIS TRIG Hold Policy

Upon completion of this topic, you will be able to identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy, and demonstrate familiarity with the exception(s) to the Hold Policy.



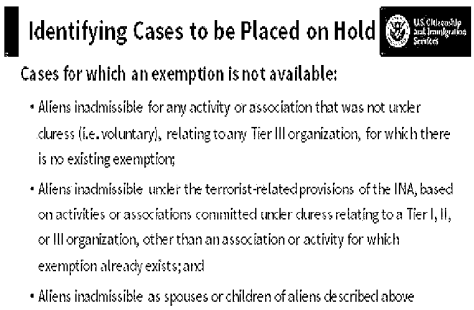
USCIS TRIG Hold Policy - History

After the CAA 2008 was passed, which expanded the exemption authority at INA § 212(d)(3)(B)(i), USCIS issued a memorandum announcing a TRIG hold policy.

Under the hold policy, the following was required:

- Certain cases inadmissible for TRIG for which there were no available exemptions, but for which an applicable exemption might be authorized in the future, were required to be placed on hold. This was so that these applications could benefit from a future applicable exemption if one became available.
- Certain cases denied for TRIG were reopened and placed on hold.

Since USCIS issued the original TRIG hold memorandum in March 2008, other memoranda have revised and updated it. As new exemptions have been issued, certain categories of cases are no longer required to be held for TRIG, including all refugee, asylum, and NACARA applications.



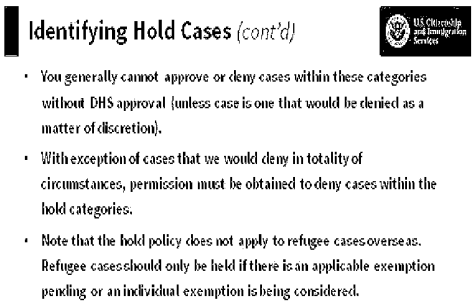
Current TRIG Hold Policy

Aside from refugee, asylum, and NACARA applications, there are currently three categories of benefit applications that should be placed on hold:

1. Voluntary association/activity with a Tier III organization other than association/activity for which an exemption currently exists (*i.e.*, group-based exemptions, voluntary medical care).

2. Any association/activity with any designated (Tier I/II) or undesignated (Tier III) terrorist organization under duress, other than association/activity for which an exemption currently exists (*i.e.*, material support, solicitation, and military type training), which may be adjudicated.

3. Spouses and children of TRIG inadmissible aliens whether or not the inadmissible aliens have applied for an immigration benefit.



TRIG Hold Policy – Exception

An applicant in one of the three categories above can be denied without being placed on hold if an exemption would be denied in the totality of the circumstances.

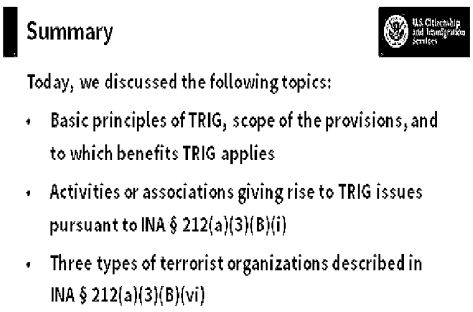
This is true even if an applicable exemption becomes available. Adjudicators must describe in detail why the case should be denied in the totality of the circumstances as part of the adjudication process; this is not frequently done. To deny an exemption in the totality of the circumstances, you must document:

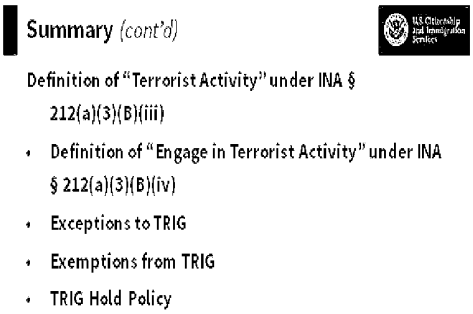
- Nature of an applicant's association or activities with the group,
- Identity and nature of the group, and
- Factors warranting a denial of the exemption in the exercise of discretion.

If a case is within a hold category, you must obtain authorization to adjudicate (and deny) the case if it does not fall into the exception above; you may not deny such cases without appropriate authorization. Contact your supervisor and component TRIG POC for any questions relating to denials of cases that fall within the TRIG Hold categories.

As noted, the hold policy described above does not apply to refugee cases overseas, or asylum or NACARA cases. Those cases should only be held if there is an applicable exemption pending or an individual exemption is being considered. *See PM-602-0132 (May 5, 2016) Revised Guidance for Processing Refugee Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to the Hold Policy for Such Cases; PM-602-0137, "Revised Guidance for Processing Asylum Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to Hold Policy for Such Cases," dated October 5, 2016.*

Summary





Summary

Today, we discussed the following topics

- The basic principles of TRIG, the scope of the provisions, and to which benefits TRIG applies
- The activities or associations giving rise to TRIG issues pursuant to INA § 212(a)(3)(B)(i)
- The three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)
- The definition of "Terrorist Activity" under INA § 212(a)(3)(B)(iii)
- The definition of "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
- The exceptions to TRIG
- The exemptions from TRIG
- The criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and the exception(s) to the TRIG Hold Policy

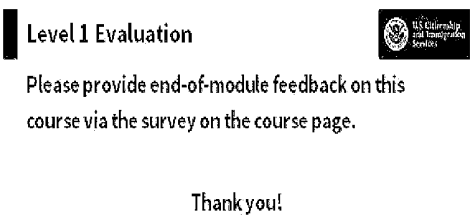
Re-Motivation

TRIG is complex, both as a matter of law and a matter of application. To summarize INA § 212(a)(3)(B) please see the TRIG Job Aid in your student materials.

In addition, you should take care to properly identify applications, for which an exemption is available, and properly adjudicate it if so, or place the case on hold or deny it in other appropriate instances. For material providing a general overview of TRIG and its exemptions, go to TRIG at www.uscis.gov.

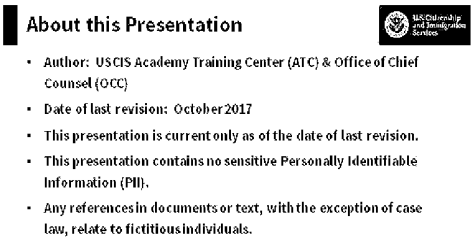
You are also directed to your component-specific guidance regarding the details of TRIG processing and the use of the USCIS TRIG ECN site.

You should raise novel and/or complex issues through the appropriate component point of contact to the USCIS TRIG Working Group, which is responsible for examining such issues and issuing guidance, either on a case-by-case basis, or USCIS wide, as necessary.



Level 1 Evaluation

(Remind participants to please provide end-of-module feedback via the survey on the course page.)



About this Presentation

- Author: Office of the Chief Counsel; Academy Training Center
- Date of last revision: October 2017. This presentation is current only as of the date of last revision.
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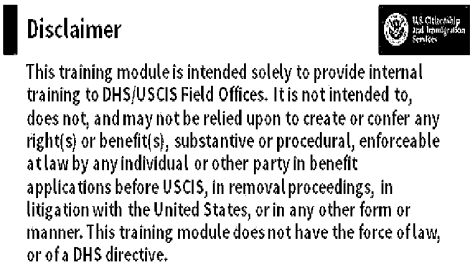

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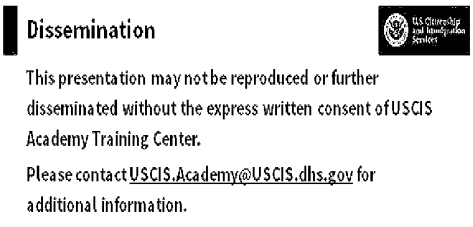

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Transition

Now that we have discussed TRIG, let's review the material with the exercises found at Appendix B and C.

Appendix A: Scenarios

Instructor Note: Wait until after the discussion of each scenario before having the volunteer read the answer below. As noted above, the instructor may wish to wait until after EPO #5 to return to this scenario, ask the class what they think now, and ask the volunteer to read the answer. The instructor may wish to wait until after EPO #7 to discuss the possible application of exemptions to this scenario.

(b)(7)(e)

Scenario #1

(b)(7)(e)

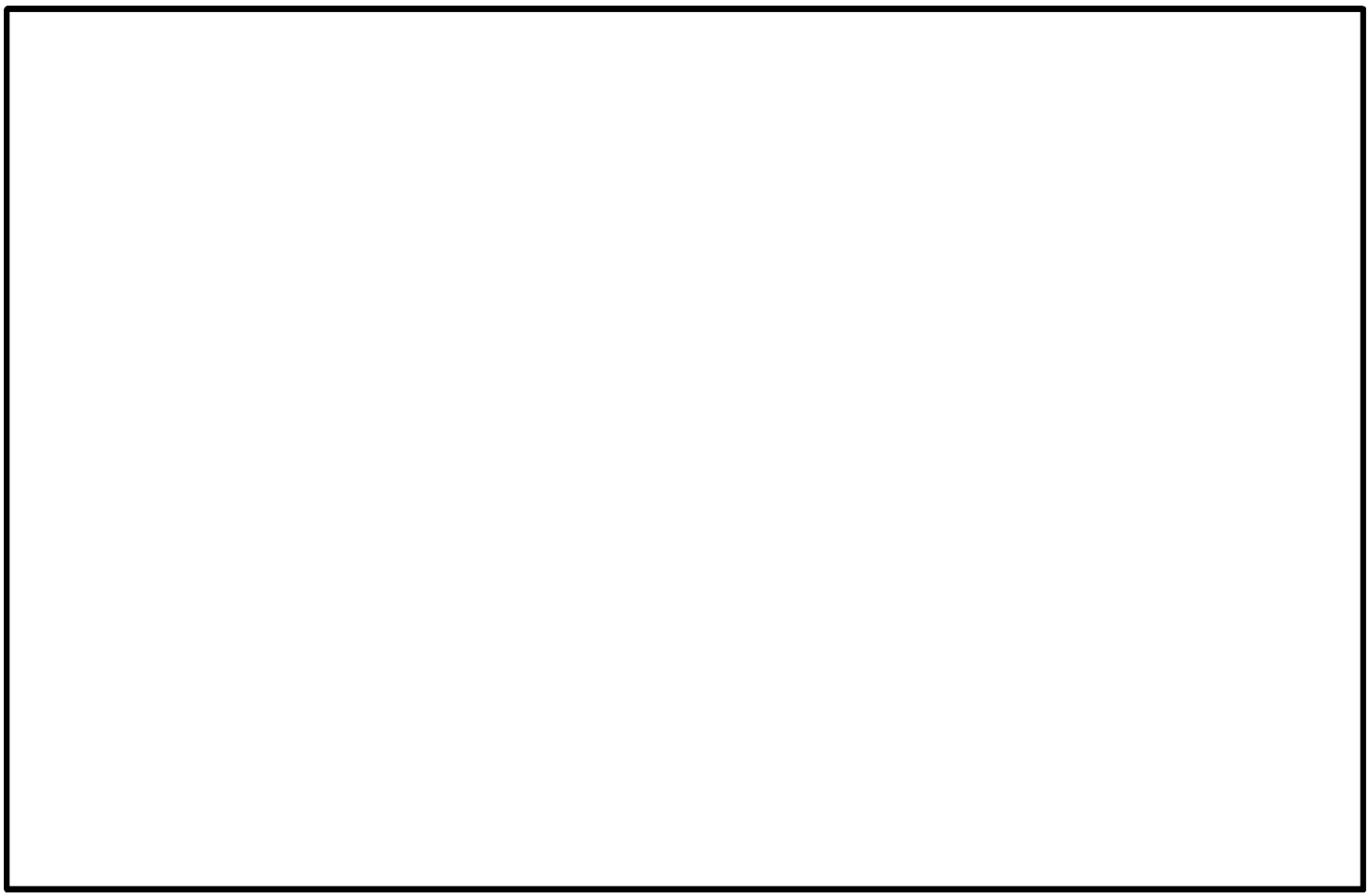
Scenario #2

(b)(7)(e)



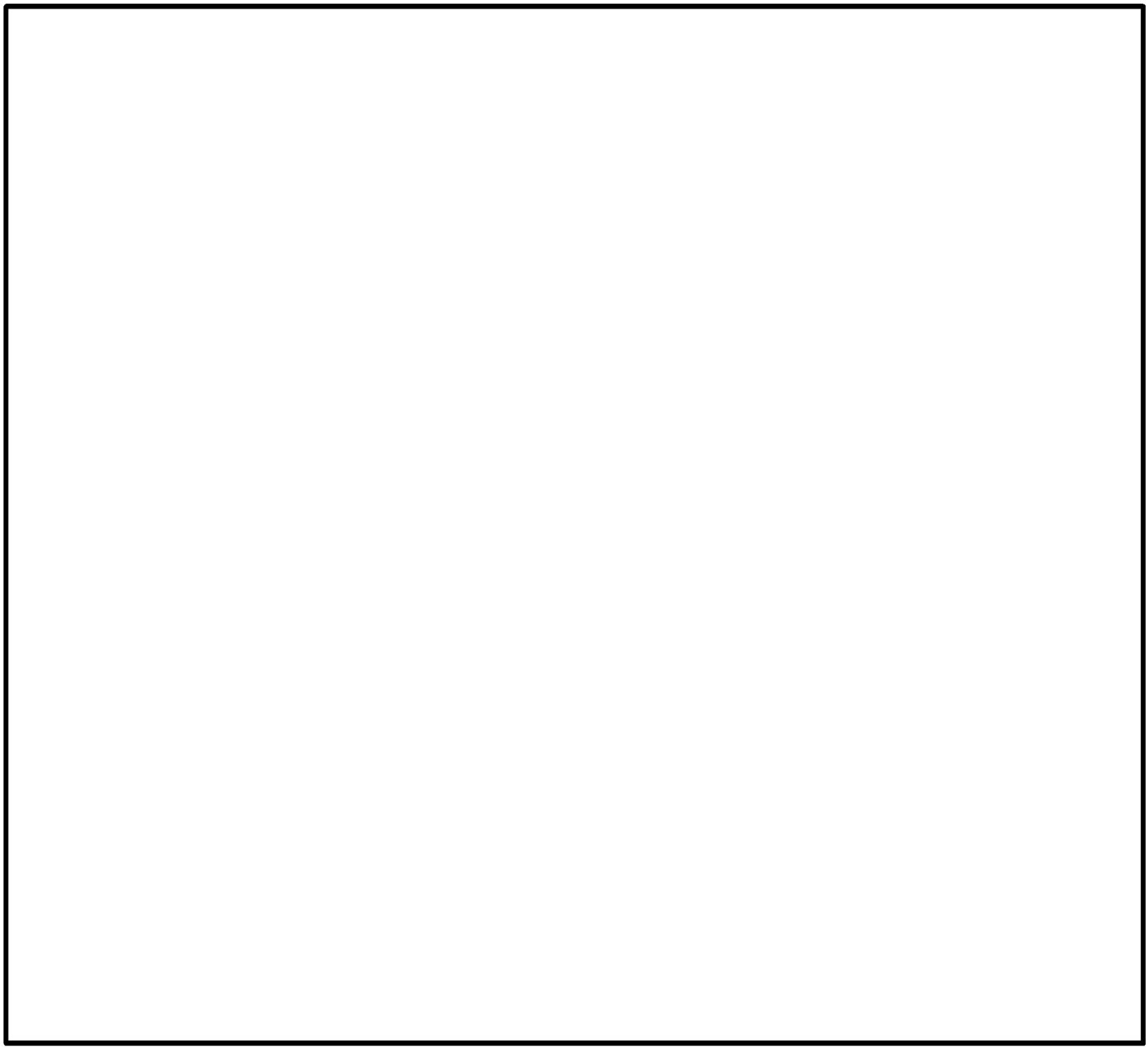
Scenario #3

(b)(7)(e)



Appendix B: Laboratory

(b)(7)(e)



Appendix C: Practical Exercises

(b)(7)(e)

