U.S. Citizenship and Immigration Services

TERRORISM RELATED INADMISSIBILITY GROUNDS (TRIG)

Course 234

Immigrant Stories

U.S. Citizenship and Immigration Services



Terminal Objective

U.S. Citizenship and Immigration Services

- Upon completion of this module, you will be able to identify 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 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

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1. Identify basic principles of TRIG, 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)

Enabling Objectives *(cont'd)*

U.S. Citizenship and Immigration Services

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

Enabling Objective #1



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

General Concepts

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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.

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

INA §§ 212(a)(3)(B) and (F) apply to:



- Adjustment of status
- Asylum, withholding of removal and refugee admission
- Cancellation of removal
- INA § 212(c) waiver
- Temporary Protected Status (TPS)
- Family Unity benefits
- T nonimmigrant status
- U nonimmigrant status
- I-730 petitions for asylum and refugee derivatives

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)

Scope of INA § 212(a)(3)(B)

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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

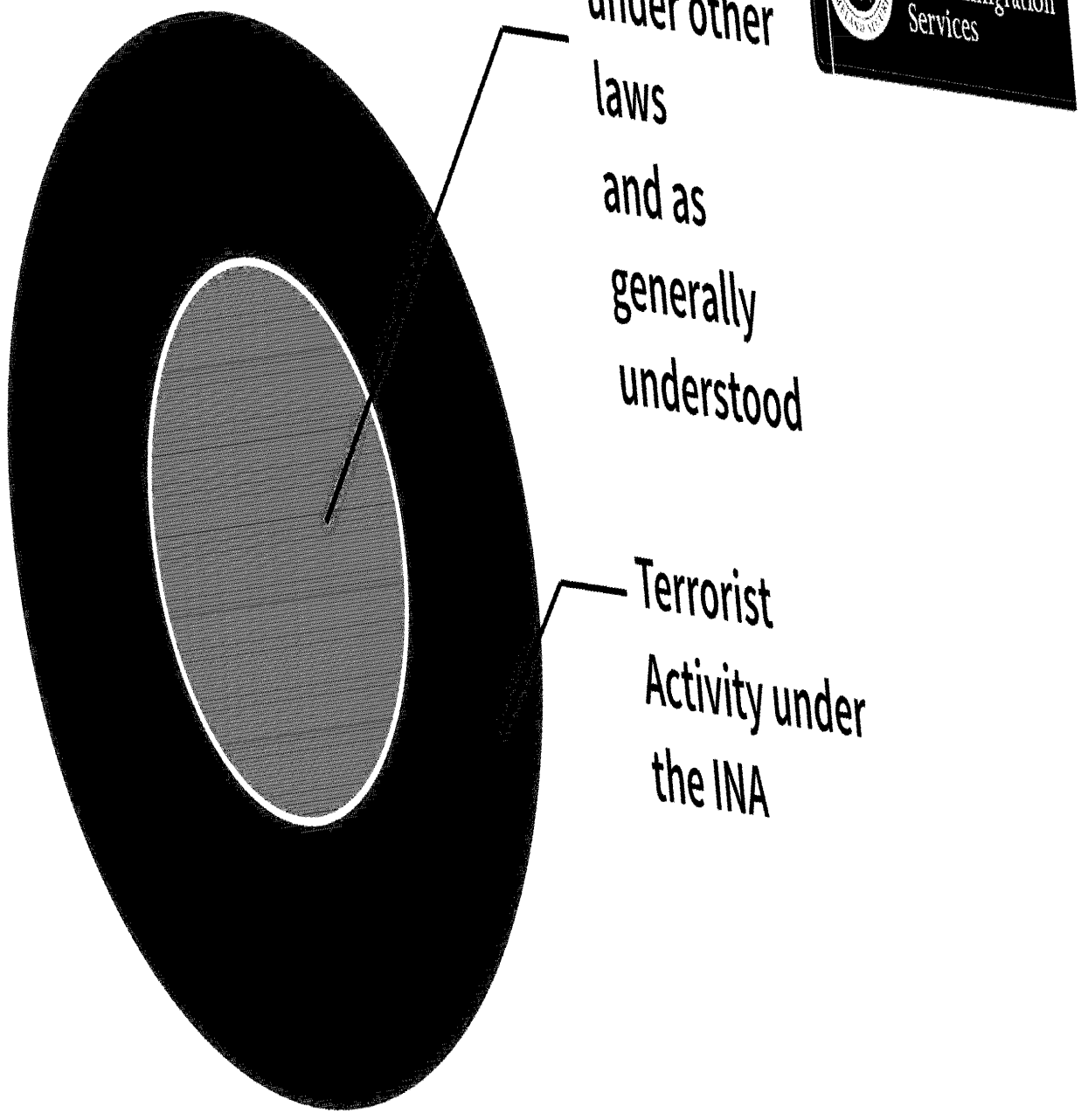
Scope *(cont'd)*

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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

Scope (cont'd)


Terrorism under other laws and as generally understood
Terrorist Activity under the INA
U.S. Citizenship and Immigration Services

Scope *(cont'd)*

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Comments on the scope of the provisions

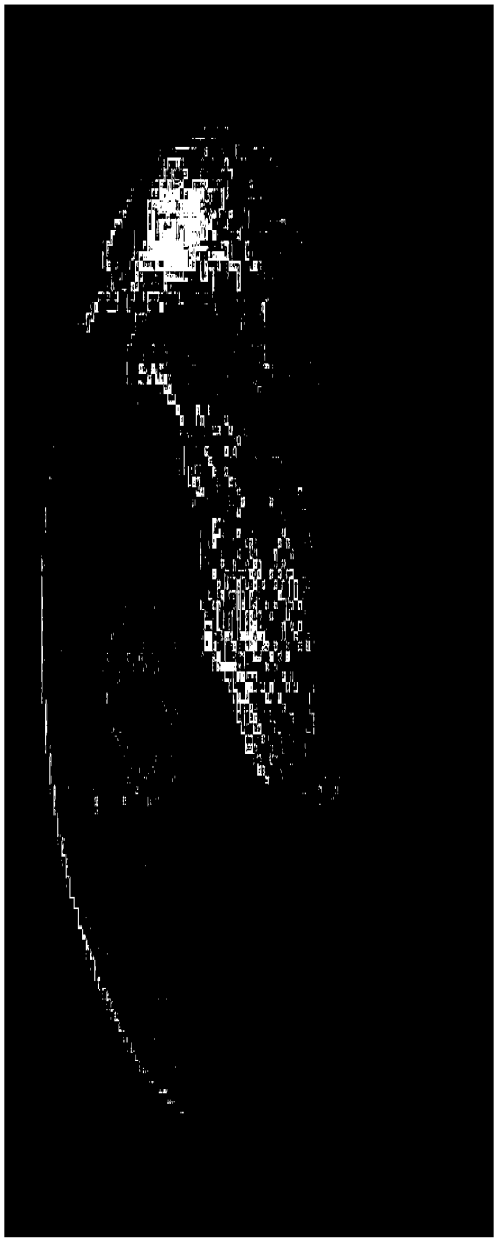
"[T]he statutory language is breathtaking in its scope." *Matter of S-K-*, 23 I&N Dec. 936, 948 (BIA 2006) (Osuna, concurring).

"... 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 *(cont'd)*

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Where do these activities occur? Anywhere in the world.



Important Note on Lodging NTA Charges

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Lodging charges in removal proceedings based on INA §§ 212(a)(3)(B), (F) and 237(a)(4)(B) requires much coordination and consultation

- USCIS supervisory personnel must consult with the USCIS Office of the Chief Counsel (OCC).
- USCIS OCC coordinates with the ICE Office of the Principal Legal Advisor (OPLA) for approval to lodge charges.

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

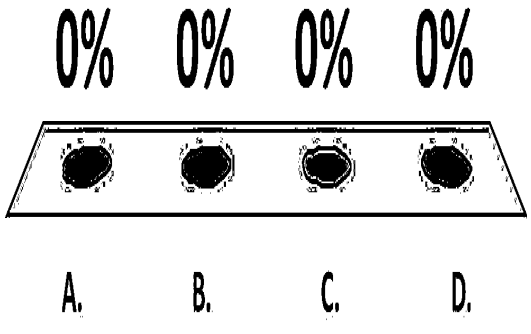
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A. Form N-400

B. Form I-130

C. Form I-485

D. Form I-765



Rationale and Source



INA §§ 212(a)(3)(B) and(F) apply to Form I-485. 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)

Enabling Objective #2

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

INA § 212(a)(3)(B)(i)

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"In General . . . Any alien who – "

INA § 212(a)(3)(B)(i)(I)

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

- Refers only to past activity

INA § 212(a)(3)(B)(i)(II)

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"…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."

- Refers to present and future activity

INA § 212(a)(3)(B)(i)(III)

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"…has, under circumstances indicating an intention to cause death or serious bodily harm, <u>incited terrorist activity</u>…is inadmissible."

- Speech related provision
- Incitement must include intention to cause harm or serious bodily injury

INA § 212(a)(3)(B)(i)(IV)

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

(aa) a terrorist organization [designated and undesignated];

(bb) a political, social or other group that endorses or espouses terrorist activity...is inadmissible."

- Representative includes officer, official, spokesman, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

INA § 212(a)(3)(B)(i)(V)



"…is a member of a [designated] terrorist organization…is inadmissible."

- Refers to present activities
- Applies to Tier I and Tier II terrorist 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."

- Refers to present activities
- Applies to Tier III organizations

INA § 212(a)(3)(B)(i)(VII)

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"... endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization ... is inadmissible."

- Speech related provision
- No requirement for the speaker to intend to cause death or serious bodily harm

INA § 212(a)(3)(B)(i)(VIII)

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"…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)(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) *(cont'd)*

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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

INA § 212(a)(3)(F)

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"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

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

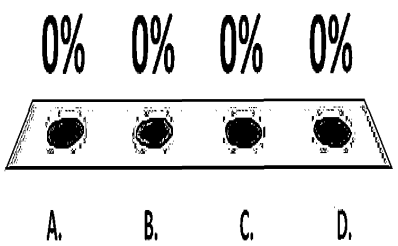
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A. Alien who has engaged in terrorist activity in the past

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

U.S. Citizenship and Immigration Services

- 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

Enabling Objective #3

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Identify the three types of terrorist organizations under the INA 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

Tier I - INA § 212(a)(3)(B)(vi)(I)



A Foreign Terrorist Organization (FTO) designated under INA § 219 by the Secretary of State.

- Includes well known organizations such as al Qaeda, HAMAS, ETA, Shining Path, FARC
- 59 FTOs plus the Taliban
- Congress "statutorily designated" the Taliban as a Tier I terrorist organization for purposes of INA § 212(a)(3)(B) even though it was not designated by DOS.

Tier II – INA § 212(a)(3)(B)(vi)(II)

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Terrorist Exclusion List (TEL) - an organization designated by the Secretary of State in consultation with or at the request of DHS or DOJ after finding that it engages in terrorist activity.

- Includes the Lord's Resistance Army, Babbar Khalsa, Lashkar-e-Tayyiba and the Revolutionary United Front (RUF).
- Over 50 organizations on the TEL
- Same immigration consequences as FTOs

Tier III – INA § 212(a)(3)(B)(vi)(III)



"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]."

Tier III – INA § 212(a)(3)(B)(vi)(III) *(cont'd)*

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- No need for organization to endanger U.S. national security
- No need for a name (unorganized)
- No exception for "freedom fighters"
- With broad definition of terrorist activity, armed resistance groups and guerillas are terrorist organizations
- Gangs usually not considered because of criminal focus
- "Undesignated" because groups do not appear on any list

Issue Spotting for Tier III Cases

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Key words in Tier III issue spotting:

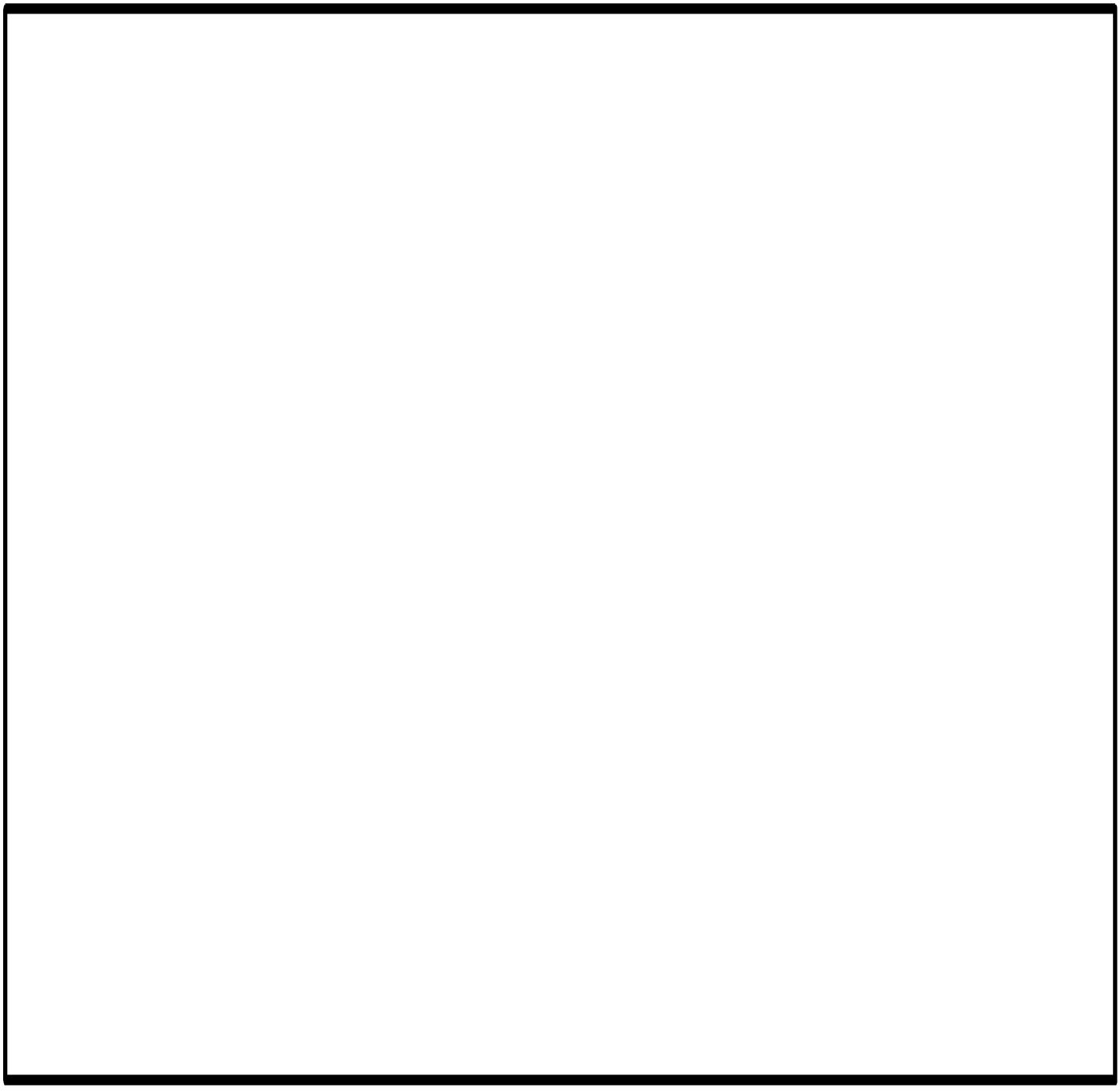
(b)(7)(e)

Tier III Issue Spotting *(cont'd)*

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

(b)(7)(e)



Specially Designated Global Groups

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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

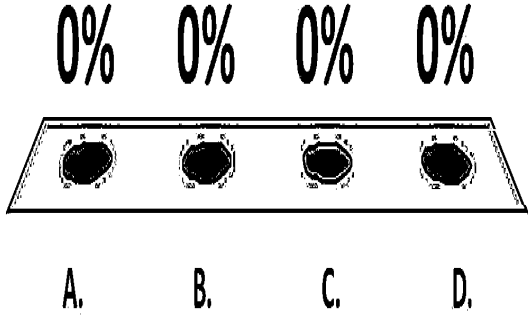
An applicant for refugee status was found inadmissible under INA § 212(a)(3)(B)(i)(VI) for being a member of an armed militia. The alien is a member of a:

A. Tier I terrorist organization

B. Tier II terrorist organization

C. Tier III terrorist organization

D. Terrorist group on SDGT list



Rationale and Source

U.S. Citizenship and Immigration Services

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.

Enabling Objective #4

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

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

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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)(I)

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"(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)(II)

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"(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)(III)

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"(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)(IV)

U.S. Citizenship and Immigration Services

"(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)(V)

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" (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) *(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)(VI)

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

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

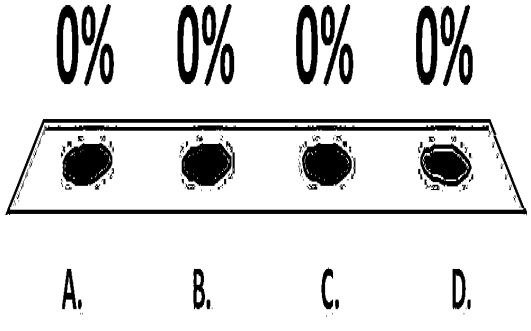
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A. A threat to engage in an activity that is legal in the United States

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

U.S. Citizenship and Immigration Services

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.

Enabling Objective #5

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

INA § 212(a)(3)(B)(iv)

U.S. Citizenship and Immigration Services

"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)

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"(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)(II)

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

INA § 212(a)(3)(B)(iv)(III)

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

INA § 212(a)(3)(B)(iv)(IV)

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"(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)(V)

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(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)(VI)

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"(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) *(cont'd)*

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- (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."

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

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Material Support:

- No need for support to benefit terrorist activity
- Covers "virtually all forms of assistance"
- No exception for routine commercial transactions
- No duress exception in the statute
- No age exception
- Requires an act that affords material support

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

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Material support issue spotting:

Testimony or evidence that an applicant provided:

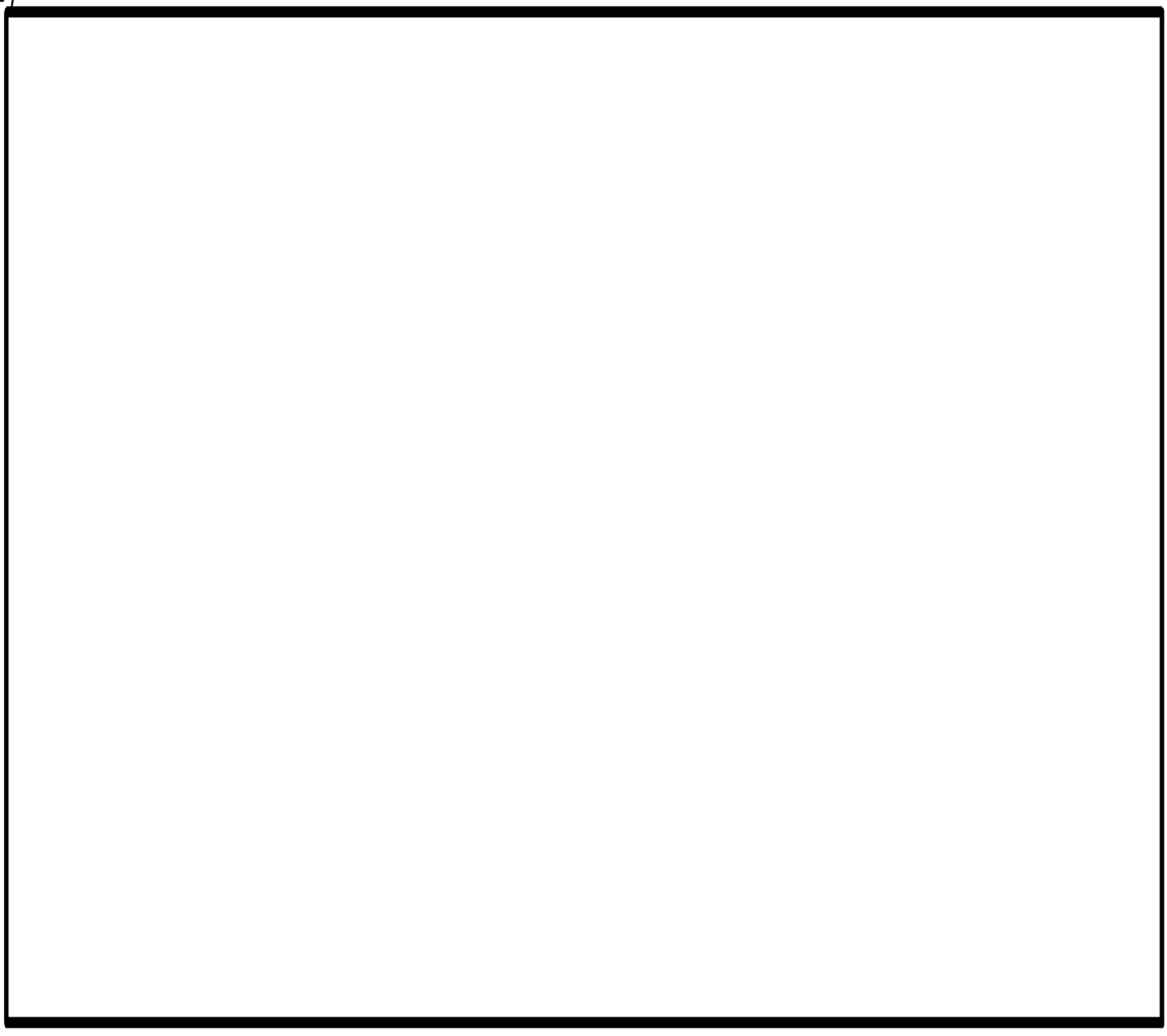
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INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

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Questions to determine if material support provided:

(b)(7)(e)



Immigrant Stories

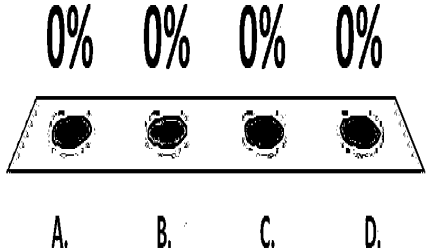
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Which of the following activities would be considered providing material support to a terrorist organization?

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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



Rationale and Source

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- 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. Having something taken from you directly by terrorists would not itself be considered material support.
- In captive situations, if individual subject to violence such as rape, this would not be considered the provision of material support.

Enabling Objective #6



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."*

Individual Exceptions *(cont'd)*

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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

Individual Exceptions *(cont'd)*

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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

Individual Exceptions *(cont'd)*

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Lack of knowledge exception – Questions to ask: (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.

Individual Exceptions *(cont'd)*

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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

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?

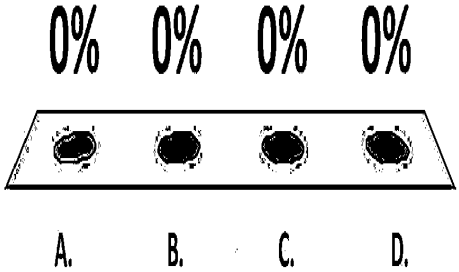
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A. Membership in a Tier III organization

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.

Enabling Objective #7



Identify the exemptions from TRIG

Exemption



An exemption is an exercise of discretionary authority by the government that cannot be applied for, but results in excusing, or exempting, the activity from the application of the law.

INA § 212(d)(3)(B)(i)

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Pursuant to INA § 212(d)(3)(B)(i), the Secretary of Homeland Security and the Secretary of State have the discretionary authority to exempt:

- Most TRIG as it applies to individuals, or
- Groups from being considered Tier III organizations

Congress has also exempted certain groups from being considered Tier IIIs by statute.

Delegation

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To date, in all exercises of the exemption authority by the Secretary under INA § 212(d)(3)(B)(i) that apply to more than one person (i.e., all exemptions other than individual exemptions), the authority to implement the exemption in specific cases has been delegated to USCIS.

Types of Exemptions



- Nonimmigrant exemptions (not adjudicated by USCIS)
- Group Exemptions
  - Groups will not be considered a Tier III for immigration purposes (not done by Secretary to date)
- Group-Based Exemptions
- Categorical/Situational Exemptions
- "Statutory" Exceptions (by Congress)
- Individual exemptions

Existing Exercises of Exemption Authority



- To date, the Secretary of Homeland Security and/or the Secretary of State have exercised the exemption authority at 212(d)(3)(B)(i) a number of times.
- Congress has also statutorily exempted 13 groups from being considered Tier IIIs.

onimmigrant Exemptions
NA § 212(d)(3)(A)



- INA § 212(d)(3)(A) allows DOS or CBP to exempt almost all inadmissibility grounds for nonimmigrant visas, including TRIG.

- The nonimmigrant exemption is not available if the Secretary of State has reasonable grounds to believe that there would be adverse foreign policy consequences.

Group Exemptions for Undesignated Organizations

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Under INA § 212(d)(3)(B)(i), an exemption is possible for Undesignated Organizations

- The Secretary of Homeland Security or Secretary of State, after consultation with each other and the Attorney General, may determine that an organization should not be considered a terrorist organization.

- To date this provision has not been exercised.

Group-Based Exemptions

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- "Group-Based" exemptions pertain to individuals having associations or activities with a particular group or groups.
- These exemptions may cover any activity, or only certain activities in association with the group.
- Some groups have been the subject of group-based exemptions and Congressional statutory exceptions; for these groups applicants may not need an exemption.

Group-Based Exemptions *(cont'd)*

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10 "CAA" groups–both group-based and statutory exemptions

- 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 *(cont'd)*

U.S. Citizenship and Immigration Services

3 Iraqi groups—two have both group-based and statutory exemptions, as indicated below.

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

* These groups have both group-based and statutory exemptions

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 *(cont'd)*



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

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

Material Support under Duress Exemption



Applies to material support given under duress to:

- Tier III organizations
- Tier I and II organizations

Solicitation Under Duress



Solicitation of funds or other things of value under duress to:

- Tier I, II, and III organizations

Solicitation of members (recruitment) under duress to:

- Tier I, II, and III organizations

Military-type training under duress

U.S. Citizenship and Immigration Services

To Tier I, II, and III organizations

Voluntary Medical Care Exemption



Applies to the voluntary provision of medical care (as material support):

- To members of Tier I, II, and III organizations
- Provision of care need not be under duress
- Includes dental, first aid, and other health care, by health professionals or volunteers
- Exemption not available for those who voluntarily and knowingly provided medical care on behalf of a Tier I or Tier II organization

Limited General Exemption



- Applies to certain individuals having specified voluntary activities with qualified Tier III organizations.
- Applies to provision of material support, solicitation of funds, solicitation of members, and receipt of military-type training

Iraqi Uprisings Exemption

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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)

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

- Routine commercial and social transactions
- Humanitarian assistance
- Material support provided under substantial pressure not rising to level of duress

Insignificant Material Support (IMS)



- Applies to minimal amounts of material support given to Tier III organizations under specified circumstances
- Complex topic addressed in specialized training for TRIG adjudicators

Individual Exemptions

U.S. Citizenship and Immigration Services

- The Secretaries may exercise their exemption authority with regard to a particular individual.
- Individual exemptions are signed by the Secretaries after interagency consultation.
- This is not done frequently.

"Statutory" Exceptions for Terrorist Activity



Consolidated Appropriations Act (CAA) 2008, Pub. L. No. 110-161

- 10 (mainly Burmese) organizations not to be considered terrorist organizations for any activity committed before 12/26/2007
- African National Congress (ANC) added to CAA list by Pub. L. No. 110-257 (July 1, 2008)

"Statutory" Exceptions *(cont'd)*

U.S. Citizenship and Immigration Services

National Defense Authorization Act, 2015, Pub. L. No. 113-291 (Dec. 19, 2014) (NDAA 2015)

- Two organizations not to be considered terrorist organizations (KDP and PUK), no time limitation

Exemption Guidance

U.S. Citizenship and Immigration Services

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

Processing Exemptions

U.S. Citizenship and Immigration Services

Three categories

- Threshold requirements
- Criteria for exemption itself (including duress factors for duress based exemptions)
- Consideration of totality of the circumstances

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

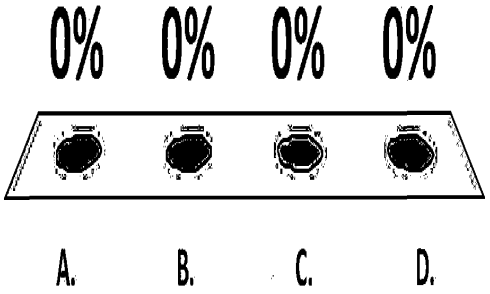
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A. Voluntarily providing food and supplies to a Tier II organization

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

U.S. Citizenship and Immigration Services

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 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)

Processing Exemptions - Steps

U.S. Citizenship and Immigration Services

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

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

e requirements for any of these steps are not met, an

ption cannot be granted.

Step 1 (Threshold Criteria)



- Establish that he/she is otherwise eligible for the immigration benefit;
- Undergo and pass all required background and security checks;
- Fully disclose, in all relevant applications and interviews with USG representatives and agents, the nature and circumstances of each instance of TRIG; and
- Establish that he/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) *(cont'd)*

U.S. Citizenship and Immigration Services

- 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 - What is duress?

U.S. Citizenship and Immigration Services

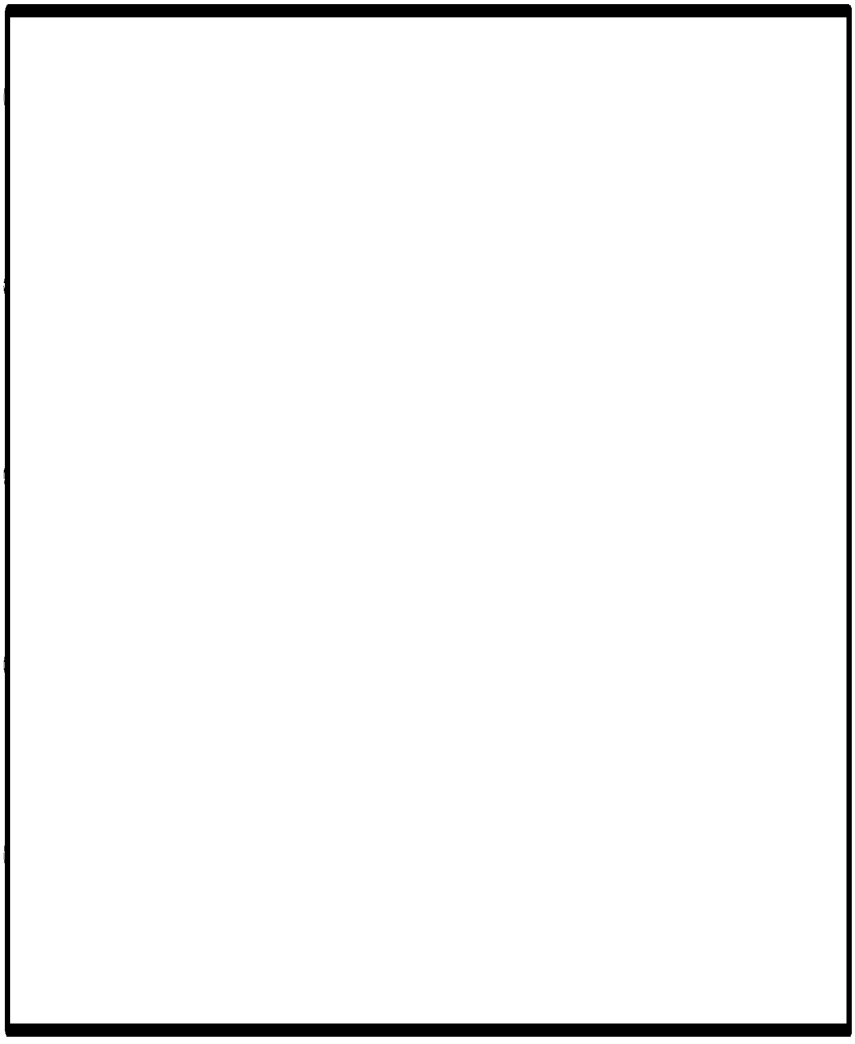
At a minimum, material support must have been provided in response to reasonably-perceived threat of imminent harm. Considerations:

- 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? *(cont'd)*

U.S. Citizenship and Immigration Services

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



(b)(7)(e)

Step 3 - Totality of Circumstances

U.S. Citizenship and Immigration Services

- 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

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

U.S. Citizenship and Immigration Services

Factors to consider . . .

(b)(7)(e)

Documenting the Exemption

U.S. Citizenship and Immigration Services

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 *(cont'd)*

U.S. Citizenship and Immigration Services

Worksheet Requirements



(b)(7)(e)

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

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

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?

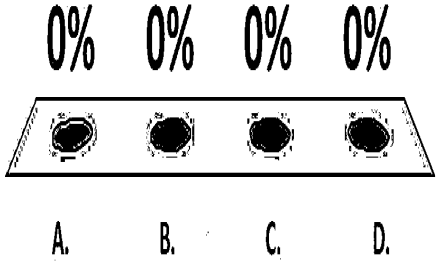
U.S. Citizenship and Immigration Services

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



Rationale and Source

U.S. Citizenship and Immigration Services

To be considered for exemption from TRIG, applicant must meet following threshold requirements:

- Establish that he/she otherwise eligible for visa or 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, nature and circumstances of each TRIG activity or association

If threshold requirements met, must next consider whether applicant merits exemption in totality of circumstances.

Enabling Objective #8

U.S. Citizenship and Immigration Services

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

Hold Policy

U.S. Citizenship and Immigration Services

After the CAA in 2008, guidance instructed that:

- Certain categories of cases placed on hold
- Certain denials reopened, and placed on hold in case an applicable exemption became available in the future

Since 2008, amended guidance has:

- Updated hold categories based on new exemptions and allowed for denial of cases that would not be granted an exemption in totality of circumstances even if an exemption that would apply were to become available in future

Identifying Cases to be Placed on Hold

U.S. Citizenship and Immigration Services

Cases for which an exemption is not available:

- Aliens inadmissible for any activity or association that was not under duress (i.e. voluntary), relating to any Tier III organization, for which there is no existing exemption;
- Aliens inadmissible under the terrorist-related provisions of the INA, based on activities or associations committed under duress relating to a Tier I, II, or III organization, other than an association or activity for which exemption already exists; and
- Aliens inadmissible as spouses or children of aliens described above

Identifying Hold Cases *(cont'd)*



- You generally cannot approve or deny cases within these categories without DHS approval (unless case is one that would be denied as a matter of discretion).
- With exception of cases that we would deny in totality of circumstances, permission must be obtained to deny cases within the hold categories.
- Note that the hold policy does not apply to refugee cases overseas. Refugee cases should only be held if there is an applicable exemption pending or an individual exemption is being considered.

Summary

U.S. Citizenship and Immigration Services

Today, we discussed the following topics:

- Basic principles of TRIG, scope of the provisions, and to which benefits TRIG applies
- Activities or associations giving rise to TRIG issues pursuant to INA § 212(a)(3)(B)(i)
- Three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)

Summary *(cont'd)*

U.S. Citizenship and Immigration Services

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

- Definition of "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
- Exceptions to TRIG
- Exemptions from TRIG
- TRIG Hold Policy

Level 1 Evaluation

U.S. Citizenship and Immigration Services

Please provide end-of-module feedback on this course via the survey on the course page.

Thank you!

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- Date of last revision: March 21, 2017
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