RELEASE IN PART
B7(E)

9 FAM 302.6

(U) INELIGIBILITIES BASED ON TERRORISM-RELATED GROUNDS

(CT:VISA-134; 05-17-2016)
(Office of Origin: CA/VO/L/R)

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9 FAM 302.6-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 302.6-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 101(b)(1) (8 U.S.C. 1101(b)(1)); INA 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)); INA 212(a)(3)(F) (8 U.S.C. 1182(a)(3)(F)); INA 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)); INA 212(d)(3)(B) (8 U.S.C. 1182(d)(3)(B)); INA 219 (8 U.S.C. 1189).

9 FAM 302.6-1(B) (U) United States Code

(CT:VISA-55; 02-23-2016)

(U) 18 U.S.C. 2339B(c)(1); 22 U.S.C. 2723.

9 FAM 302.6-1(C) (U) Public Laws

(CT:VISA-1; 11-18-2015)

(U) Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138, section 128; Homeland Security Act of 2002, Public Law 107-296; Consolidated Appropriations Act, 2008, Public Law 110-161, at section 691 of Title VI of Division D (the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008); An Act to Remove the African National Congress from Treatment as a Terrorist Organization for Certain Acts or Events, Provide Relief for Certain Members of the African National Congress Regarding Admissibility, and for Other Purposes, Public Law 110-257.

9 FAM 302.6-2 (U) TERRORIST ACTIVITIES - INA 212(A)(3)(B)

9 FAM 302.6-2(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (INA) renders ineligible any alien who:

(1) **(U)** has engaged in a terrorist activity;

(2) **(U)** you know, or have a reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity;

(3) **(U)** has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(4) **(U)** is a representative of:

(a) **(U)** a terrorist organization; or

(b) **(U)** a political, social, or other group that endorses or espouses terrorist activity;

(5) **(U)** is a member of a terrorist organization;

(6) **(U)** is a member of a terrorist organization, unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(7) **(U)** endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(8) **(U)** has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization;

(9) **(U)** 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 5 years.

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9 FAM 302.6-2(B) (U) Application

9 FAM 302.6-2(B)(1) (U) Summary

(CT:VISA-67; 03-01-2016)

a. **(U)** Section 212(a)(3)(B) of the INA describes visa ineligibilities related to terrorism. The ineligibilities hinge on terrorism-related definitions that were significantly expanded by post-9/11 legislation, most significantly, the USA PATRIOT Act (2001) and the REAL ID Act (2005). As a result of these amendments, the scope of activities covered by the phrase "engage in terrorist activity" is broad. As defined in INA 212(a)(3)(B)(vi), the term "terrorist organization" encompasses both organizations that have been designated previously by the Department of State as terrorist organizations and

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organizations that have never been so designated by the Department of State or any other U.S. Government agency, but that have engaged in any of the activities listed in INA 212(a)(3)(B)(iv)(I)-(IV). Because terms in INA 212(a)(3)(B) are defined broadly, you must take particular care in eliciting as much pertinent information from visa applicants as possible, including the names of all groups potentially covered by these provisions with which the applicant may be linked, for example, by current membership or past financial contributions or other support. You must also inquire into the nature and activities of those organizations, bearing in mind the definition of "terrorist organization" in INA 212(a)(3)(B)(vi), described in 9 FAM 302.6-2(B)(3) paragraph i and other FAM provisions referenced therein.

b. **(SBU)** The Department of Homeland Security (DHS) is a key player in the adjudication process. Section 428 of the Homeland Security Act of 2002 (Public Law 107-296) gives the Secretary of Homeland Security the authority to refuse visas in accordance with the law. The "Memorandum of Understanding (MOU) Between the Secretaries of State and Homeland Security Concerning the Implementation of Section 428" explicitly acknowledges that the Secretary of Homeland Security may refuse visas independently [redacted] B7(E)

[redacted]

9 FAM 302.6-2(B)(2) (U) Background

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.32 N12.2 CT:VISA-1902; 09-26-2012)

a. **(U)** The Immigration Act of 1990 (Public Law 101-649) generally amended INA 212(a) by replacing the previous 43 classes of excludable aliens with nine broad classes, each with subclasses. New INA 212(a)(3)(B), "Terrorist Activities," incorporated aspects of former INA 212(a)(27) and INA 212(a)(29).

b. **(U)** The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) expanded the scope of INA 212(a)(3)(B) to make inadmissible representatives and members of organizations designated by the Secretary under INA 219 as Foreign Terrorist Organizations (FTOs).

c. **(U)** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208) amended INA 212(a)(3)(B)(i) again to make inadmissible any alien who, "under circumstances indicating an intention to cause death or serious bodily harm," incited terrorist activity. The new provision applied retroactively to all such incitement activities, regardless of when they occurred.

d. **(U)** The Uniting and Strengthening America by Providing Appropriate Tools

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Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") (Public Law 107-56), enacted after the terrorist attacks on September 11, 2001, expanded the scope of INA 212(a)(3) in several important respects:

(1) **(U)** It gave the Secretary of State new authority to designate organizations as terrorist organizations for purposes of INA 212(a)(3)(B) if certain criteria are met. Organizations so designated are listed on the "Terrorist Exclusion List" or "TEL";

(2) **(U)** It defined "terrorist organization" for the first time, creating three categories. The first category is Foreign Terrorist Organizations (FTOs) designated under INA 219 (see INA 212(a)(3)(B)(vi)(I)) (Tier I); the second is entities designated under the Terrorism Exclusion List (TEL) authority included in the USA PATRIOT Act (Tier II) (see INA 212(a)(3)(B)(vi)(II)). The third category, referred to as "undesignated terrorist organizations," includes entities that engage in specified "terrorist activities" listed in the INA, but that have not been designated under FTO or TEL authorities (Tier III) (see INA 212(a)(3)(B)(vi)(III)); and

(3) **(U)** It created INA 212(a)(3)(F), "Association with Terrorist Organizations," which made aliens who have been associated with a terrorist organization, and who are engaged or likely to engage in certain activities that endanger the United States, inadmissible under certain circumstances.

e. **(U)** The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005 ("REAL ID Act") (Public Law 109-13) at sections 103 and 104 of Division B further expanded the scope of INA 212(a)(3)(B) by:

(1) **(U)** Broadening "terrorist organization" to capture undesignated groups with subgroups that "engage in terrorist activity";

(2) **(U)** Making it harder for an alien suspected of "engaging in terrorist activities" to escape inadmissibility based on an alleged lack of knowledge concerning an undesignated terrorist organization or how any contribution of material support might be used by a terrorist organization (see (5), (6), and (8) below);

(3) **(U)** Making inadmissible "representatives" of all three types of terrorist organizations, regardless of alien's knowledge or intent. Previously, only representatives of groups designated under INA section 219 (Tier I) were specified;

(4) **(U)** Making inadmissible all representatives of "a political, social, or other group that endorses or espouses terrorist activity." Previously the Secretary of State had to find that the group's public endorsement of acts of terrorist activity undermines U.S. efforts to reduce or eliminate terrorist activities;

(5) **(U)** Eliminating the knowledge defense to inadmissibility for members of entities designated for the Terrorism Exclusion List (TEL) (Tier II) and

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raising the standard to "clear and convincing evidence" for an alien to avoid inadmissibility for being a member of an undesignated terrorist organization on the grounds that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(6) **(U)** Raising the standard to "clear and convincing evidence" for an alien to avoid inadmissibility for soliciting funds or members for an undesignated terrorist organization on the grounds that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(7) **(U)** Expanding the "material support" bar to admissibility for knowingly providing support to any terrorist organization or its members, except, with respect to undesignated terrorist organizations, where an alien presents "clear and convincing evidence" that the alien lacked knowledge of any terrorist activity. The amendment eliminated the requirement that the alien intended to support terrorist activity;

(8) **(U)** Making inadmissible any alien who commits an act the alien knows or reasonably should know provides material support to an undesignated terrorist organization or a member of an undesignated terrorist organization, unless the alien can demonstrate "by clear and convincing evidence" that he did not know, and should not reasonably have known, that the organization was a terrorist organization. Prior to amendment, the provision did not include material support afforded to a member of an undesignated terrorist organization. The REAL ID Act added the "clear and convincing evidence" standard for an alien attempting to prove lack of knowledge of an undesignated group's terrorist activity;

(9) **(U)** Making inadmissible any alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization." Before amendment, the provision covered only persons who used their position of prominence to endorse or espouse terrorist activity or to persuade others to support terrorist activity or a terrorist organization in a way the Secretary of State determined undermined U.S. efforts to reduce or eliminate terrorist activities;

(10) **(U)** Making inadmissible any alien who has "received military-type training" from or on behalf of a terrorist organization; and

(11) **(U)** Applying the terrorism provisions of the REAL ID Act amendments to actions taken by an alien before, on, or after the date of enactment, May 11, 2005.

f. **(U)** The Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844, at section 691 of Title VI of Division J (the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008) amended the discretionary authority of the Secretary of Homeland Security and the Secretary of State, under INA 212(d)(3)(B)(i), to exempt an alien from most of the terrorism-related bars to admissibility under INA 212(a)(3)(B) and to exempt a

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group from treatment as an undesignated terrorist organization under INA 212(a)(3)(B)(vi)(III). The amendment also provided that certain groups should not be considered terrorist organizations on the basis of any act or event occurring before the amendment's enactment on December 26, 2007, and that the Taliban must be considered to be a designated foreign terrorist organization, under INA 212(a)(3)(B)(vi)(I), for immigration purposes. (See 9 FAM 302.6-2(B)(3) paragraph i.) The amendments were effective upon enactment and apply to acts before or after enactment.

9 FAM 302.6-2(B)(3) (U) Definitions

(CT:VISA-67; 03-01-2016)

a. **(U)** This section explains terms used in INA 212(a)(3)(B) in alphabetical order. Where listed terms are specifically defined in the statute, the statutory reference follows immediately after the term.

b. **(U) CLEAR AND CONVINCING EVIDENCE:**

(1) **(U)** The phrase "clear and convincing evidence" appears several times in INA 212(a)(3)(B) with reference to undesignated terrorist organizations. The INA places the burden of proof on the applicant to establish that he or she did not know, or should not have reasonably known, that the undesignated terrorist organization was, in fact, a terrorist organization. (Applicants are deemed to know that designated terrorist organizations are terrorist organizations regardless of their actual knowledge or belief).

(2) **(U)** You must consider the following in determining whether a visa applicant can demonstrate by "clear and convincing evidence" that he or she did not know, and should not reasonably have known, that an undesignated organization was a terrorist organization:

(a) **(U)** Facts particular to the individual, such as residence, profession, education, and people with whom and groups with which the applicant has associated;

(b) **(U)** The public availability of information about the organization and more specifically, about the activities that make it a terrorist organization under the INA's broad definition; and

(c) **(U)** The extent to which the organization is actively and overtly engaged in the activities that make it a terrorist organization under the INA.

(3) **(SBU)** [redacted] B7(E)

c. **(U) ENDORSING OR ESPOUSING TERRORISM:**

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(1) **(U)** An alien is inadmissible under INA 212(a)(3)(B)(i)(VII) if the alien endorses or espouses terrorist activity or persuades others to endorse or support terrorist activity or a terrorist organization.

(2) **(SBU)** B7(E)

d. **(SBU)**

(1) **(U)** A safe house;

(2) **(U)** Transportation;

(3) **(U)** Communications;

(4) **(U)** Funds;

(5) **(U)** Transfer of funds or other material financial benefit;

(6) **(U)** False documentation or identification;

(7) **(U)** Weapons, including chemical, biological, or radiological weapons;

(8) **(U)** Explosives; or

(9) **(U)** Training.

e. **(U) MEMBER OF A TERRORIST ORGANIZATION:**

(1) **(U)** Aliens who are members of designated FTOs or entities on the Terrorism Exclusion List are inadmissible. The INA does not require the alien to know that the organization has been designated. Members of undesignated terrorist organizations are inadmissible, but there is a narrow exception based on lack of knowledge (see 9 FAM 302.6-2(B)(3) paragraph i).

(2) **(U)** Evidence of membership in a terrorist organization might include the individual's taking of an oath or performance of some act that is a prerequisite of membership. A formal induction is not necessary for a finding of membership.

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(3) **(U)** Membership must be determined in light of all relevant facts, including, but not limited to, the following:

(a) **(U)** Acknowledgment of membership;

(b) **(U)** Frequent association with other members;

(c) **(U)** Participation in the organization's activities, even if lawful;

(d) **(U)** Actively working to further the organization's aims and methods in a way suggesting close affiliation constituting membership;

(e) **(U)** Occupying a position of trust in the organization, past or present;

(f) **(U)** Receiving financial support from the organization (e.g., scholarships, pensions, salary;

(g) **(U)** Contributing money to the organization;

(h) **(U)** Determination of membership by a competent court;

(i) **(U)** Voluntarily displaying symbols of the organization; or

(j) **(U)** Receiving honors and awards given by the organization.

(4) **(U)** No single factor necessarily determines that an alien was a member of an organization.

(5)

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(6)

(7) **(U)** Note that former members will still be inadmissible if they have previously provided material support (such as membership fees), raised money, or solicited members for the organization.

f. **(U) INCITEMENT OF TERRORISM:**

(1) **(U)** "Incitement with intent to cause bodily harm" renders an alien

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inadmissible under INA 212(a)(3)(B)(i)(III) if he or she has incited terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

(2) **(U)** "Incited" in the context of INA 212(a)(3)(B) is speech that induces or otherwise moves another person to undertake terrorist activity. Normally speech will not rise to the level of "inciting" unless there is a clear link between the speech and an actual effort to undertake the terrorist activity. It connotes speech that is not merely an expression of views but that directs or induces action, typically in a volatile situation.

(3) **(U)** The applicant may have incited terrorist activity even if a terrorist attack does not actually occur (e.g., because an attempt to commit such activity was thwarted).

(4) **(U)** An applicant who has "incited" terrorist activity must also have acted in circumstances indicating an intention to cause death or serious bodily harm to be inadmissible under INA 212(a)(3)(B). In other words, the alien's speech must not only have induced others to undertake terrorist activity, but it must also have been made with the specific intent that such activity would result in death or serious bodily injury.

(5) **(U)** Incitement and the requisite intent to cause bodily harm could be inferred in the following situations:

(a) **(U)** Widespread opposition to Country A's policies and actions lead to a series of protests, some violent, outside Country A's embassy in Country B. The applicant goes to the embassy, stands on a box, and shouts to the crowd to join him in standing up to Country A and humiliating it. Shortly afterwards, when he sees an embassy vehicle approaching, he yells "Don't let them in! Make them pay for what they have done!" The crowd blocks the car and removes occupants (including a diplomat working at Country A's embassy), from the car, beating them severely and taking them hostage.

(U) Analysis: Diplomatic hostage-taking and violent attacks on diplomats are terrorist activities. Given the alien's urging the crowd to stop the embassy vehicle and "make them pay," you would have reasonable ground to believe that the applicant's speech incited terrorist activity. The alien's "make them pay" statement, when viewed against the backdrop of previous violent protests and his general comments about standing up to Country A and humiliating it, would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

(b) **(U)** The applicant is an ardent nationalist whose opinions voiced to a particular audience regularly blame "foreigners" for his country's problems and who argues that the only solution to these problems is that "foreigners" should be driven out of the country. Press reports

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say that some of those in the targeted audience have been purchasing weapons and seeking to obtain and manufacture explosives. Police notify the applicant or those associated with the applicant that they are investigating several of those in the targeted audience for weapons-related offenses. At the end of a week of particularly strong anti-foreign sentiment, the applicant gives a special speech entitled "A Call to Action." With the knowledge that those under investigation are in the audience, the applicant begins his speech with: "The time has come for action!" He then reiterates throughout his speech that "The only solution to the country's problems is to purge our great land of these foreigners once and for all through whatever means necessary." Shortly thereafter, some of those in the target audience detonate a truck bomb outside a restaurant frequented by foreign nationals, killing several foreign nationals and injuring many restaurant employees.

(U) Analysis: The use of any explosive with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property is a terrorist activity. In the example, the applicant helps foster anti-foreign sentiments and then, during a particularly tense period, urges students to act to drive "foreigners" from the country "through whatever means necessary." Under these circumstances, you would have reasonable ground to believe that the applicant's speech incited terrorist activity. The fact that the applicant knew that several students likely had access to weapons and/or explosives and that those students were in attendance at his special lecture would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

(U) NOTE: The USA PATRIOT Act amended INA 212(a)(3)(B)'s definition of "engaging in terrorist activity" also to include incitement (see INA 212(a)(3)(B)(iv)(I)). As a result, a person who is inadmissible under INA 212(a)(3)(B)(i)(III) for inciting terrorist activity will also now be inadmissible under INA 212(a)(3)(B)(i)(I) for engaging in terrorist activity.

g. **(U) REPRESENTATIVE:** A "representative" is defined in INA 212(a)(3)(B)(v) as "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."

h. **(U) SUBGROUP:** A group (Group X), even if not organized, can be a "subgroup" of another organization (Group Y) if there are reasonable grounds to believe that either (1) Group X as a whole or (2) the members of Group X are affiliated with Group Y. If a subgroup engages in terrorist activities, then both groups are terrorist organizations. (See 9 FAM 302.6-2(B)(3) paragraph i(1)(c).) A subgroup relationship may be found where there are reasonable grounds to believe that Group X is subordinate to, or affiliated with, Group Y

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and Group X is dependent on, or otherwise relies upon, Group Y in whole or in part to support or maintain its operations. As an example, Group X would be a subgroup of Group Y if the latter establishes rules or guidelines that Group X generally follows and Group X relies on Group Y as a source of funds for Group X operations.

i. **(U) TERRORIST ORGANIZATION:**

(1) **(U)** "Terrorist organization," as defined in INA 212(a)(3)(B)(vi), includes both designated terrorist organizations (paragraphs (a) and (b), below) and undesignated terrorist organizations (paragraph (c), below):

(a) **(U)** An organization designated by the Secretary of State as a "foreign terrorist organization" (FTO) under INA 219. This designation has implications beyond the INA, including penalties under U.S. criminal law. Aliens who engage in certain activities in connection with these organizations can be rendered inadmissible under the INA. Organizations currently designated as FTOs and information about the designation process can be found on the S/CT website.

(b) **(U)** An organization designated by the Secretary of State for inclusion in the Terrorist Exclusion List (TEL), pursuant to INA 212(a)(3)(B)(vi)(II). The TEL designation is for immigration purposes only. Information about the designation process can be found on the S/CT website.

(c) **(U)** An organization that has not been designated but is a group of two or more individuals, whether organized or not, that engages in, or has a subgroup (see 9 FAM 302.6-2(B)(3) paragraph h) that engages in, terrorist activity as described in the INA 212(a)(3)(B)(iv)(I) – (VI). With respect to undesignated terrorist organizations:

(i) **(SBU)** [redacted] B7(E)

[redacted]

(ii) **(SBU)** [redacted]

[redacted]

(iii) **(U)** Where a finding of inadmissibility would involve an undesignated terrorist organization, the alien may overcome the finding by demonstrating, by clear and convincing evidence (see 9 FAM 302.6-2(B)(3) paragraph b), that the alien did not know,

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and should not reasonably have known, that the organization was a terrorist organization (except with respect to representatives of undesignated terrorist organizations, those who persuade others to support an undesignated terrorist organization, and those who receive military-type training on behalf of an undesignated terrorist organization, for whom there is no such defense); and,

(2) **(U)** Pursuant to section 691(b) of Fiscal Year 2008 Department of State, Foreign Operations and Related Programs Appropriations (Division J of the Omnibus Appropriations Act, HR 2764) ("FY08 Appropriations Act"), the following groups are not considered terrorist organizations under INA 212(a)(3)(B)(vi) for acts or events that occurred prior to December 26, 2007:

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

As a result of this legislation, an alien who did any of the following prior to December 26, 2007, is no longer inadmissible on account of the following terrorism-related grounds of inadmissibility:

- **(U)** Solicited funds or other things of value on behalf of one of these named groups (INA 212(a)(3)(B)(iv)(IV)(cc))
- **(U)** Solicited an individual for membership in one of these named groups (INA 212(a)(3)(B)(iv)(V)(cc))
- **(U)** Committed an act that provided material support, including transfer of funds, false documentation, weapons or training to one of these named terrorist groups (INA 212(a)(3)(B)(iv)(VI)(dd))
- **(U)** Is a representative of one of these named groups (INA 212(a)(3)(B)(i)(IV)(aa))
- **(U)** Is a member of one of these named terrorist groups (INA 212(a)(3)(B)(i)(VI))

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- **(U)** Persuaded others to endorse or support one of these named terrorist groups (INA 212(a)(3)(B)(i)(VII))
- **(U)** Received military-type training from one these named terrorist groups (INA 212(a)(3)(B)(i)(VIII))

(3) **(U)** Pursuant to 691(d) of the FY08 Appropriations Act, as of December 26, 2007, the Taliban must be treated as a designated terrorist organization described in INA 212(a)(3)(B)(vi)(I) (an "FTO") for purposes of immigration law.

(4) **(U)** Public Law No. 110-257, codified at 8 U.S.C. 1182 note, added the African National Congress to the list of groups in subparagraph (A) above, that are not considered terrorist organizations.

(5) **(U)** In determining whether an organization may be designated terrorist organization; i.e., that it "engaged in terrorist activities" as described in INA 212(a)(3)(B)(iv)(I) – (VI), Post must evaluate information obtained in the visa interview, take advantage of available local resources, as appropriate, and check relevant databases, including:

(a) **(U)** The United Nations 1267 Committee's list of individuals and entities belonging or related to the Taliban, Osama Bin Laden and the Al-Qaida organization.

(b) **(U)** Terrorists and groups identified under E.O. 13224.

(SBU) [redacted] B7(E)

(6) [redacted]

9 FAM 302.6-2(B)(4) (U) Inadmissibility Under INA 212(a)(3)(B)

(CT:VISA-1257; 05-09-2016)

a. **(U) OVERVIEW:**

(1) **(U)** INA 212(a)(3)(B) generally identifies as grounds for inadmissibility "engaging in terrorist activities" and having certain links to "terrorist organizations." The standards apply even if the relevant acts or associations preceded enactment of the law and regardless of any link to an actual terrorist attack. The section defines "terrorist activities" to include a broad range of violent acts (see INA 212(a)(3)(B)(iii)), while also making inadmissible representatives and members of groups engaging in

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listed activities; those endorsing, espousing, or promoting terrorism; those who have received military-type training from terrorist organizations; and immediate family members of any covered persons – with certain exceptions.

(2) **(U)** It also explicitly makes PLO officers, officials, representatives, and spokesmen inadmissible. INA 212(a)(3)(B) next defines "engaging in terrorist activities," which covers a broad range of activities that support or promote the commission of terrorist activities or groups that engage in them (see INA 212(a)(3)(B)(iv)). See 9 FAM 302.6-2(B)(4) paragraph b for more detail.

b. **(SBU) TERRORIST ACTIVITY:** "Terrorist activity" (INA 212(a)(3)(B)(iii)) means any of the acts listed below, if unlawful where committed or which would be unlawful if committed in the United States under the laws of the United States or any State. B7(E)

(1) **(SBU)** The hijacking or sabotage of any conveyance (including an aircraft, vessel or vehicle);

(2) **(SBU)** The seizing or detaining, and threatening to kill, injure, or continue to detain, any person in order to compel a third party (including governmental organizations) to act or to refrain from acting as a condition for releasing the detained individual;

(3) **(SBU)** A violent attack upon an internationally protected person (as defined in 18 U.S.C. 1116(b)(4)) or upon his or her liberty (questions as to whether a person is an internationally protected person should be referred to VO/L/R);

(4) **(SBU)** An assassination

(5) **(SBU)** The use of any biological or chemical agent, nuclear weapon or device, or explosive or firearm or other weapon or dangerous device (other than for mere personal monetary gain) with intent to endanger, directly or indirectly, the safety of another individual or individuals or to cause substantial property damage; or

(6) **(SBU)** A threat, attempt, or conspiracy to do any of the above actions.

c. **(U) ENGAGED IN TERRORIST ACTIVITY:**

(1) **(U)** After defining the violent acts that constitute terrorist activity (see INA 212(a)(3)(B)(iii)), the INA identifies the acts that render aliens inadmissible because of their connections to those violent acts or to those who commit them. (See definition of "engage in terrorist activity" INA

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212(a)(3)(B)(iv)).

(2) **(U)** An alien is inadmissible on any of the grounds identified below if either the alien has engaged in terrorist activity in the past or you or the Secretary of Homeland Security or the Attorney General knows or has reason to believe that the alien currently is engaged in, or likely after entry to engage in, a terrorist activity. (See INA 212(a)(3)(B)(i)(I)-(II)).

(3) **(U)** An alien is inadmissible for "engaging in terrorist activity" if the alien acts, as an individual or as a member of a group, to:

(a) **(U)** Commit or incite to commit a terrorist activity, under circumstances that indicate an intention to cause death or serious bodily injury;

(b) **(U)** Prepare or plan a terrorist activity;

(c) **(U)** Gather information on potential targets for terrorist activity;

(d) **(U)** Solicit funds or other things of value for a terrorist activity or solicit any individual to engage in terrorist activity;

(e) **(U)** Solicit funds or other things of value for, or solicit any individual for membership in, a terrorist organization. If the terrorist organization is undesignated at the time the solicitation occurred, (see 9 FAM 302.6-2(B)(3) paragraph i(3));

(f) **(U)** Commit an act that the actor knows, or reasonably should know, affords material support for the commission of a terrorist activity;

(g) **(U)** Commit an act that the actor knows, or reasonably should know, affords material support to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity; or

(h) **(U)** Commit an act that the actor knows, or reasonably should know, affords material support to an entity that was a terrorist organization (i.e., engaged in terrorist activity) at the time the material support was provided or to a member of a terrorist organization, without regard to how the contribution was to be used. If the terrorist organization was undesignated at the time material support was provided, (see 9 FAM 302.6-2(B)(3) paragraph i(3)).

(4) **(SBU) Leaders:** B7(E)

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B7(E)

(5) **(U)** Current representatives of the following are inadmissible:

(a) **(U)** A terrorist organization (designated or undesignated; there is no defense based on lack of knowledge concerning the organization's activities); or

(b) **(U)** A political, social, or other similar group that endorses or espouses terrorist activity, regardless of whether the group's endorsement or espousing undermines U.S. efforts.

(6) **(U)** Current members of a terrorist organization are inadmissible. (See 9 FAM 302.6-2(B)(3) paragraph e) If the terrorist organization is undesignated, the alien is not admissible if the applicant 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 (See 9 FAM 302.6-2(B)(3) paragraph b).

(7) **(U)** Endorsing or espousing terrorist activity or persuading others to endorse or espouse terrorist activity or support a terrorist organization, whether designated or undesignated, renders an alien is inadmissible. (See 9 FAM 302.6-2(B)(3) paragraph c)

(8) **(U)** Military-type training, received from or on behalf of any organization that, at the time the training was received, was a terrorist organization, makes an alien inadmissible. "Military-type training," as defined in 18 U.S.C. 2339D(c)(1), includes 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.

d. **(U) PALESTINE LIBERATION ORGANIZATION (PLO) AND OTHER PALESTINIAN ENTITIES:**

(1) **(U)** An alien who is an officer, official, representative, or spokesperson of the PLO is considered to be engaged in terrorist activity and therefore inadmissible. See INA 212(a)(3)(B)(i). This provision applies only to those individuals who are currently PLO officers, officials, representatives, or spokespersons. Although not covered by the PLO-specific provisions, past officers, officials, representatives, or spokespersons likely would be inadmissible under the other provisions of INA 212(a)(3)(B). "PLO Officials" would be individuals with substantive or policy-making responsibility in the PLO. Members of the PLO Executive Committee, PLO Representatives at Missions around the world, and PLO Representatives to the United Nations and other International Organizations clearly would be

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inadmissible under this provision.

(2) **(U)** Applicants who no longer occupy official positions with the PLO and persons who may be viewed as current or former members or employees, but are not officers, officials, representatives, or spokespersons, are not inadmissible under the PLO-specific provision. You should be alert to the possibility that applicants with present or past associations with the PLO may be inadmissible under INA 212(a)(3)(B) for other reasons.

(3) [redacted] B7(E)

(4) **(U) Composition of the Palestine Liberation Organization (PLO)**

(a) **(SBU)** [redacted]

(b) **(SBU)** [redacted]

B7(E)

(i) **(SBU)**
(ii) **(SBU)**
(iii) **(SBU)**
(iv) **(SBU)**
(v) **(SBU)**
(vi) **(SBU)**
(vii) **(SBU)**
(viii) **(SBU)**
(ix) **(SBU)**
(x) **(SBU)**
(xi) **(SBU)**
(xii) **(SBU)**

(5) **(U) Implications for Other Palestinian Entities:**

(a) **(SBU)**

(b) **(SBU)**

(c) **(SBU)**

B7(E)

e. **(U) SPOUSE AND CHILDREN OF AN INADMISSIBLE ALIEN:**

(1) **(U)** Spouses and children of aliens found inadmissible under INA 212(a)(3)(B) are also inadmissible if the activity causing the alien to be inadmissible occurred within the last five years. However, there are exceptions to this inadmissibility.

(2) **(U)** INA 101(b)(1) defines child as an unmarried person under twenty-one years of age.

(3) **(SBU)**

(4) **(U)** This ground of inadmissibility does not apply to a spouse or child who did not know or should not reasonably have known of the alien's activity that caused the alien to be found inadmissible. It also does not apply if you or the Secretary of Homeland Security finds that there are reasonable grounds to believe that spouse or child has renounced the activity causing the alien to be found inadmissible. The statutory exception to spouse and child inadmissibility applicable in cases where the spouse or child didn't know of the terrorist activity or renounced the activity is found in INA 212(a)(3)(B)(ii).

(5) **(U)**

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9 FAM 302.6-2(B)(5) (U) Exemptions

(CT:VISA-134; 05-17-2016)

a. **(U) EXEMPTION VERSUS WAIVER:** Both of these discretionary authorities allow an alien to receive an immigration benefit, even though the alien would not otherwise qualify for the benefit. One significant difference is that when using a waiver authority, the Department first determines that the alien is not qualified to receive a benefit (e.g., a visa) and then follows the applicable procedures for obtaining a waiver of the disqualification from the Department of Homeland Security (DHS). The waiver authority, found in INA 212(d)(3)(A), is available only for non-immigrant visas. In contrast, when exemption authority is exercised, the Secretary, following interagency consultations, determines that the disqualification (which must arise under the INA's terrorism-related grounds for inadmissibility) "shall not apply" in the particular case. Exemptions are available for both NIV and IV cases, as well as other immigration-related benefits. These authorities are further discussed below.

b. **(U) EXEMPTION AUTHORITY FOR INDIVIDUALS UNDER** INA 212(d)(3)(B)(i)**:**

(1) **(U)** Under INA 212(d)(3)(B)(i), the Secretaries of Homeland Security and State, in consultation with each other and the Attorney General, each are authorized to conclude, in their sole and unreviewable discretion, that almost any of the terrorism-related provisions under INA 212(a)(3)(B) should not apply to an alien. If the alien is in the United States, however, and removal proceedings have commenced, only the Secretary of Homeland Security has the authority to apply the exemption.

(2) **(U)** INA 212(d)(3)(B)(i) exemptions cannot be granted to:

(a) **(U)** Aliens for whom there are reasonable grounds to believe are engaged in (present activities) or likely to engage after entry in (future activities) terrorist activity (INA 212(a)(3)(B)(i)(II));

(b) **(U)** Members of Tier I and Tier II terrorist organizations (designated by the State Department) (INA 212(a)(3)(B)(i)(V));

(c) **(U)** Representatives of Tier I and Tier II terrorist organizations (designated by the State Department) (INA 212(a)(3)(B)(i)(IV)(aa));

(d) **(U)** Aliens who voluntarily and knowingly engaged in terrorist activity on behalf of a Tier I or Tier II group (INA 212(a)(3)(B)(i)(I), as defined by INA 212(a)(3)(B)(iv));

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(e) **(U)** Aliens who voluntarily and knowingly endorsed or espoused terrorist activity or persuaded others to do so on behalf of a Tier I or Tier II group (INA 212(a)(3)(B)(i)(VII));

(f) **(U)** Aliens who voluntarily and knowingly received military-type training from a Tier I or II terrorist organization (INA 212(a)(3)(B)(i)(VIII)).

(3) **(U)** It is important to note that with respect to past activities, the limitations on the exemption authority relate only to aliens with ties to designated (Tier I and Tier II) terrorist organizations. The exemption potentially may overcome inadmissibility for any past terrorist activity associated with an undesignated (Tier III) terrorist organization.

(4) **(U)** By including "voluntarily or knowingly" in the statute, Congress made clear that exemptions may be used to overcome inadmissibility for past terrorist activity associated with a designated (Tier I or II) terrorist organization, if the alien acted under duress or without the relevant knowledge.

(5) **(U)** Although exercises of the exemption authority require action by the Secretary following interagency consultations and, therefore, will not be commonplace, you may recommend that the Department pursue an exemption from provisions of INA 212(a)(3)(B) for a nonimmigrant visa applicant, if politically justified, or an immigrant visa applicant. Such requests must be submitted to the Department with a detailed assessment explaining why an exemption is appropriate and any balancing considerations.

c. **(U) EXEMPTION AUTHORITY FOR INDIVIDUALS ASSOCIATED WITH THE AFRICAN NATIONAL CONGRESS:**

(1) **(U) In General**:

(a) **(U)** Under Public Law No. 110-257, codified at 8 U.S.C. 1182 note, the Secretaries of State and Homeland Security, in consultation with each other and the Attorney General, each are authorized to determine, in their sole and unreviewable discretion, that (2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (i)(II)) of INA 212(a), must not apply to an alien with respect to activities undertaken in association with the African National Congress in opposition to apartheid rule in South Africa. This authority operates the same as the general individual exemption authority described in 9 FAM 302.6-2(B)(5) paragraph b, but for activities that may fall within the scope of this law, only this exemption should be considered. An exemption under the Public Law may cover both terrorism-related and some of the criminal-related grounds of inadmissibility. The same law also establishes that the ANC must not be treated as a terrorist organization, for purposes of section 212(a)(3)(B) of the INA, based on past actions. See 9 FAM 302.6-

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2(B)(3) paragraph i.

(b) **(U)** Effective March 30, 2011, the Secretary of State, following consultations with the Secretary of Homeland Security and the Attorney General, exercised her discretionary authority under Public Law 110-257 to determine that INA 212(a)(2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (i)(II)) shall not apply to individuals for activities undertaken in association with the African National Congress (ANC) in opposition to apartheid rule in South Africa (the "ANC categorical exemption"). The ANC categorical exemption sets out conditions for eligibility, described below, that must be applied by consular officers and other relevant U.S. Government officials in accordance with the procedures below. Please see CA Web Exemption Authorities for the complete text.

(2) **(SBU)** B7(E)

(a) **(SBU)**

(b) **(SBU)**

(c) **(SBU)**

(d) **(SBU)**

(3) **(U) Requirements for ANC Exemptions:**

(a) **(SBU)** As required by the Public Law, you must determine that the applicant's activities were:

(i) **(SBU)** Undertaken in association with the ANC; and

(ii) **(SBU)** In opposition to apartheid rule in South Africa.

(b) **(SBU)** "Undertaken in association with the ANC - If the applicant's activities were not associated with the ANC, the exemption does not apply to the applicant's activities and/or association in question.

(c) **(SBU)** "In opposition to apartheid rule" - You must determine that the individual engaged in activities in association with the ANC "in

opposition to apartheid rule." B7(E)

(d) **(SBU)**

(i) **(SBU)**

(ii) **(SBU)** The Public Law also precludes any exemption if you know or have a reasonable ground to believe the applicant is engaged in or is likely to engage in terrorist activity as defined in clause (iv) of INA 212(a)(3)(B) after entry into the United States.

(4) **(SBU)**

(a) **(SBU)**

(b) **(SBU)**

(c) **(SBU)**

(d) **(SBU)**

B7(E)

(i) **(SBU)**

(ii) **(SBU)**

(iii) **(SBU)**

(iv) **(SBU)**

(f) **(SBU)**

(SBU)

(g) **(SBU)**

(i) **(SBU)**

(A) **(SBU)**

(B) **(SBU)**

(C) **(SBU)** Engaged in, acquiesced in, or directed torture-like

(1) **(SBU)**

(2) **(SBU)**

- **(SBU)**
- **(SBU)**
- **(SBU)**
- **(SBU)**

(3) **(SBU)**

(iii) **(SBU)**

(iv) **(SBU)**

e. **(U) EXEMPTION AUTHORITY FOR UNDESIGNATED TERRORIST ORGANIZATIONS (TIER III) UNDER** INA 212(d)(3)(B)(i)**:** The Secretaries of State and Homeland Security, in consultation with each other and the Attorney General, each are authorized, in their sole and unreviewable discretion, to exempt any group from being treated as an undesignated terrorist organization, with two exceptions:

(1) **(U)** Groups that have engaged in terrorist activity against the United States or another democratic country; and

(2) **(U)** Groups that have purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians.

f. **(U) EXEMPTION AUTHORITY FOR KURDISTAN DEMOCRATIC PARTY, IRAQI NATIONAL CONGRESS, AND PATRIOTIC UNION OF KURDISTAN:**

(1) **(U) Background:**

(a) **(SBU)** The KDP, the PUK, and, for a period prior to 2004 (but not for any period after 2004), the INC, were found to fall within the INA definition of a "terrorist organization," pursuant to INA 212(a)(3)(B)(vi)(III), ("Tier III").

(b) **(SBU)** B7(E)

the Secretaries of Homeland Security and State granted exemptions under INA section 212(d)(3)(B)(i) for a category of qualified individuals, as described above, from grounds of inadmissibility applicable as a result of any activity or association relating to the KDP, the PUK, and the INC (the "categorical exemptions").

(c) **SBU)** This guidance is intended for consular officers considering visa applications of those who may fall within the scope of the categorical exemptions.

(SBU) B7(E)

(d) **(SBU)** The categorical exemptions set out several conditions that must be met by any individual being considered for exemption. Under the terms of the categorical exemptions, eligibility of an individual must be determined by consular or DHS officials, as appropriate, with respect to applicants for visas or other immigration benefits. The full texts of the categorical exemptions are set out in Exhibit II of this Note. The terms of these three exemptions are identical.

(e) **(SBU)** Note that there is a congressional reporting requirement for individuals exempted under the categorical exemptions relating to the KDP, INC, and PUK. Refer to 9 FAM 302.6-2(B)(6) paragraph c. Not later than 90 days after the end of each fiscal year, the Secretaries of State and Homeland Security must submit a report to specified congressional committees on all individuals exempted under INA 212(d)(3)(B)(i).

(2) **(U) In General:** In September 2009, the Secretary of Homeland Security and Secretary of State granted an exemption under Immigration and Nationality Act (INA) Section 212(d)(3)(B)(i) covering the category of

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individuals who meet certain conditions, as determined by consular or DHS officials, as appropriate, from certain inadmissibility grounds in Section 212(a)(3)(B) of the INA with respect to any activities or associations related to the Kurdistan Democratic Party (KDP), the Patriotic Union of Kurdistan (PUK) or the Iraqi National Congress (INC) (hereinafter the "categorical exemption"). Please see CAWeb Exemptions for the full text of the exemption.

(3) **(U) Procedures:**

(a) **(SBU)** [redacted] B7(E)

(b) **(SBU)** [redacted]

(c) **(SBU)** [redacted]

(d) **(SBU)** [redacted]

(e) **(SBU)** [redacted]

(f) **(SBU)** [redacted]

B7(E)

(g) **(SBU)**

(4) **(SBU)**

(a) **(SBU)**

(i) **(SBU)**

(ii) **(SBU)**

(iii) **(SBU)**

(v) **(SBU)**

(v) **(SBU)**

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(vi) **(SBU)**

(vii) **(SBU)**

(viii) **(SBU)**

(ix) **(SBU)**

(x) **(SBU)**

(b) **(SBU)**

g. **(U) APPLICATION OF EXEMPTION FOR INDIVIDUALS ASSOCIATED WITH KOSOVO LIBERATION ARMY (KLA):**

(1) (U) Exemption Authority- General Application:

(a) **(SBU)**

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(b) **(SBU)**

(c) **(SBU)**

(d) **(SBU)**

(e) **(SBU)**

(2) **(SBU)**

(a)

(b) **(U)** The applicant is seeking a benefit or protection under the INA, which may include a non-immigrant visa, and is otherwise eligible for the benefit or protection.

(SBU)

(d) **(U)** The applicant has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of INA section

212(a)(3)(B).

(e) **(SBU)** [redacted] B7(E)

(U) (NOTE: a conviction is not required; rather, an indictment will suffice to make the applicant ineligible for the exemption. If you are unsure whether the applicant was or is subject to indictment, email you CA/VO/SAC analyst. See Who's Who in VO for your point of contact in CA/VO/SAC.)

(f) **(U)** The applicant has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or United States interests.

(U) (NOTE: for further information on material support, see 9 FAM 302.6-2(B)(3).)

(g) **(U)** The applicant has established to your satisfaction that he or she poses no danger to the safety and security of the United States.

(h) **(U)** The applicant warrants an exemption from the relevant inadmissibility provisions in the totality of the circumstances.

(U) (NOTE: The exemption gives you broad latitude to consider any relevant factors and determine that an applicant who might otherwise appear eligible for the exemption should not benefit based on the totality of circumstances.)

(i) **(SBU)** [redacted]

(j) **(SBU)** [redacted]

(3) [redacted]

(a) [redacted]

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

(b) **(SBU)** [redacted]

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B7(E)

(4) **(SBU)**

(a) **(SBU)**

(b) **(SBU)**

(c) **(SBU)**

(d) **(SBU)**

(e) **(SBU)**

(f) **(SBU)**

(SBU)

(5) **(SBU) Confidentiality under** INA 222(f)**:** You may not discuss the proposed exemption with the applicant. See 9 FAM 603.2 for further information on INA section 222(f).

(6) **(SBU)**

B7(E)

9 FAM 302.6-2(B)(6) (U) Reports to Congress

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.32 N5 CT:VISA-2173; 09-16-2014)

a. **(U) Report on 3B Denials:** Section 128 of Public Law 102-138 of October 28, 1991, added to the law a permanent requirement that the Secretary of State report, on a timely basis, to the Judiciary Committees of the House and Senate, the House Foreign Affairs Committee, and the Senate Foreign Relations Committee every denial of a visa "on grounds of terrorist activity, along with a brief description of the factual basis for the denial.

b. **(U) Report on 3B Waivers:** The Secretary of State also must report on all aliens inadmissibility under INA 212(a)(3)(B) to whom the Department issued a visa, or failed to object to the issuance of a visa. This report, required by section 51 of the State Department Basic Authorities Act, as amended by Section 231 of the Foreign Relations Authorization Act, Fiscal Year 2003, must be submitted to appropriate committees on a semi-annual basis. The requirement for these reports may be found at 22 U.S.C. 2723.

c. **(U) Report on Exemptions under** INA 212(d)(3)(B)**:** Not later than 90 days after the end of each fiscal year, the Secretaries of State and Homeland Security must submit a report to specified congressional committees on all individuals exempted under INA 212(d)(3)(B)(i). Exemptions for groups must be reported within one week (INA 212(d)(3)(B)(ii)).

9 FAM 302.6-2(C) (SBU)

9 FAM 302.6-2(C)(1) (SBU)

(CT:VISA-55; 02-23-2016)

a. **(SBU)**

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b. **(SBU)** [redacted] B7(E)

c. **(SBU)** [redacted]

d. **(SBU)** [redacted]

e. **(SBU)** [redacted]

f. **(SBU) Leaders:** [redacted]

g. **(SBU)** [redacted]

(1) **(SBU)** [redacted]

B7(E)

(2) **(SBU)**

(3) **(SBU)**

h. **(SBU)**

i. **(SBU)**

j. **(SBU)**

9 FAM 302.6-2(C)(2) (SBU)

B7(E)

(CT:VISA-55; 02-23-2016)

a. **(SBU)**

(1) **(SBU)**

(2) **(SBU)**

(3) **(SBU)**

(4) **(SBU)**

(5) **(SBU)**

b. **(SBU)**

(1) **(SBU)**

(a) **(SBU)**

B7(E)

(b) **(SBU)**

(c) **(SBU)**

(2) **(SBU)**

(a) **(SBU)**

(b) **(SBU)**

(c) **(SBU)**

(d) **(SBU)**

(e) **(SBU)**

(f) **(SBU)**

9 FAM 302.6-2(C)(3) (SBU)

B7(E)

(CT:VISA-55; 02-23-2016)

a. **(SBU)**

b. **(SBU)**

c. **(SBU)**

d. **(SBU)**

e. **(SBU)**

f. **(SBU)**

g. **(SBU)**

h. **(SBU)**

B7(E)

i. **(SBU)**

9 FAM 302.6-2(C)(4) (U) Exemption Authority for Individuals or Activities Associated with the Kosovo Liberation Army (KLA)

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.32 N7 CT:VISA-2040; 01-02-2015)

a. On June 4, 2012, Homeland Security Secretary Napolitano, following consultations with the Secretary of State and the Attorney General, exercised her authority under INA section 212(d)(3)(B)(i), not to apply certain inadmissibility grounds under INA section 212(a)(3)(B) for certain activities or associations relating to the Kosovo Liberation Army (KLA). Prior to applying this "exemption" to a visa applicant, there are several issues that must be considered. These are described below and differ for immigrant and non-immigrant visa applicants.

b. The exemption cannot be applied to any immigrant or non-immigrant visa applicant you know or have reasonable grounds to believe is engaged in or is likely to engage after entry into the United States in any terrorist activity, as defined in INA section 212(a)(3)(B)(iv).

9 FAM 302.6-2(D) (U) Waivers

9 FAM 302.6-2(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.6 Exhibit I CT:VISA-2316; 08-19-2015)

(U) No waivers are available for immigrant visa applicants.

9 FAM 302.6-2(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.32 N4.1(b) CT:VISA-1942; 11-15-2012)

(U) You may request that a finding of INA 212(a)(3)(B) inadmissibility be waived for a nonimmigrant in a particular case. Such requests must be submitted to the Department with a detailed assessment explaining why a waiver is appropriate and any balancing considerations. Where appropriate, the Department will forward the

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request with a recommendation to Department of Homeland Security (DHS) Washington to grant the waiver. You may not request waivers from DHS attachés at post.

(U) NOTE: The Department may request a waiver from DHS on its own initiative if it believes a waiver is appropriate under the circumstances in a particular case. The Department will advise you whenever a waiver has been approved, and you must annotate the visa in accordance with 9 FAM 403.8.

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9 FAM 302.6-3 (U) ASSOCIATION WITH TERRORIST ORGANIZATIONS - INA 212(A)(3)(F)

9 FAM 302.6-3(A) (U) Grounds

(CT:VISA-1; 11-18-2015)

(U) Section 212(a)(3)(F) of the Immigration and Nationality Act (INA) renders inadmissible any alien who the Secretary of State, after consultation with the Secretary of Homeland Security, 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.

9 FAM 302.6-3(B) (U) Application

9 FAM 302.6-3(B)(1) (U) Background and Summary

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.36 N1 CT:VISA-1443; 06-15-2010)

a. **(U)** Subsection (F) of section 212(a)(3) of the Immigration and Nationality Act (INA) was added by section 411(a)(2) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of October 26, 2001 (Public Law 107-56) (USA PATRIOT ACT). It was proposed by the Executive Branch and modeled in part on former INA 212(a)(27) and (28).

b. **(U)** Subsection (f) was added to provide a flexible legal basis for denying entry to aliens who have been associated with terrorist organizations and whose travel to the United States would be inconsistent with the welfare, safety, or security of the United States. To ensure its use only in appropriate circumstances, it applies only if the Secretary of State, after consultation with the Secretary of Homeland Security, or Secretary of Homeland Security after consultation with the Secretary of State, determines that the alien 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. The Secretary of State's authority to make such a determination has not been delegated to consular officers. Thus this provision can be used to deny visas only when such use is approved by the Department after a determination is made by the Secretary or an official to whom the Secretary's authority has been delegated.

9 FAM 302.6-3(B)(2) (U) Recommending a Finding

(CT:VISA-55; 02-23-2016)

a. **(U)** The authority to determine whether an alien is inadmissible under INA 212(a)(3)(F) rests with the Secretary of State or the Secretary of Homeland Security, each in consultation with the other. Accordingly, if you believe that an individual may be inadmissible under this provision, you must refer the matter back to us for decision.

b. **(U)** You should address the following in any request for a determination of inadmissibility under this provision:

(1) **(U) Terrorist organization(s) involved:** If the organization involved has been designated as a foreign terrorist organization under INA 219 as a Terrorist Exclusion List (TEL) organization under INA 212(a)(3)(B)(vi)(II) or under Executive Order 13224, or has been defined by INA 212(a)(3)(B)(vi)(III) as a Tier III terrorist organization, provide the name of the organization and note the relevant designation(s). If an organization has not been designated under any of these authorities, explain why the organization is considered to be a terrorist organization and provide as much information as possible regarding the nature and structure of the organization and its activities. Include information on the nature, timing, and relevant circumstances surrounding the organization's terrorist activities;

(U) NOTE: "Terrorist Organization" is defined in INA 212(a)(3)(B)(vi) and references the definition of "engaged in terrorist activity" under INA 212(a)(3)(B)(iv) and "terrorist activity" as defined in INA 212(a)(3)(B)(iii);

(2) **(U) Nature of the alien's association:** We believe that for an alien to be inadmissible under INA 212(a)(3)(F), the association must be meaningful. Therefore, provide information concerning:

(a) **(U)** The frequency, duration, and level of the alien's contacts with the organization;

(b) **(U)** The nature and purpose of the alien's contacts with the organization; and

(c) **(U)** The alien's awareness of association. Because terrorist organizations often operate in secret, provide your assessment of:

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(i) **(U)** Whether the alien knew or should have known that the organization was a terrorist organization (see 9 FAM 302.6-2(B)(3) paragraph e for relevant factors to consider);

(ii) **(U)** Whether the alien knew or should have known that the person(s) with whom the alien had contact was a member, representative, or affiliate of a terrorist organization; and

(iii) **(U)** Whether the alien knew or should have known that the person(s) with whom the alien had contact was engaged in terrorist activity;

(3) **(U)** Alien's activities in the United States: Provide as much information as possible regarding the alien's proposed activities in the United States and explain why these activities are cause for concern – i.e., why the determination required under subsection F should be made; and

(4) **(SBU)** [redacted] B7(E)

[redacted]

(U) NOTE: Subsection (F) applies to an alien who "has been" associated with a terrorist organization, regardless of when that association occurred. Therefore, an alien whose association with a terrorist group took place prior to enactment of subsection (F) could be found inadmissible. On the other hand, the inadmissibility can be triggered only if the alien intends while in the United States to engage in activities that could endanger the welfare, safety, or security of the United States.

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9 FAM 302.6-3(B)(3) (U) Findings

(CT:VISA-1[illegible] 11-18-2015)
(Previous Location: 9 FAM 40.36 N3 CT:VISA-1649; 05-13-2011)

a. **(U)** In order to find an alien inadmissible under subsection (F), the Secretary of State or Homeland Security, each in consultation with the other (or their delegee(s)) must find:

(1) **(U)** That the alien has been associated with a terrorist organization; and

(2) **(U)** That the alien 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.

b. **(U)** Within the Department, Consular Affairs will normally take the lead in coordinating the necessary interagency consultations and ensuring that a determination, if made, is made by an appropriate Department official with delegated authority. Generally, a determination will be made only if INA

212(a)(3)(B) is not applicable.

c. **(U)** As noted above, we believe that "associated with" requires a meaningful association. Generally, to be found inadmissible, an alien must have had contact over a period of time with individuals who the alien knew or should have known were members or representatives of a terrorist organization. A single meeting with a terrorist operative could be sufficient for finding that an alien has been "associated with" a terrorist organization, however. For example, we would likely find an alien was associated with a terrorist organization if the alien had made a commitment at a single meeting with a known recruiter for a terrorist organization to act on the organization's behalf.

d. **(U)** A finding that an alien "intends while in the United States to engage in activities that could endanger the welfare, safety, or security of the United States" can be made in appropriate cases by inferring the necessary intent from the relevant facts and circumstances. For example, an alien who has extensive knowledge of explosives who has been meeting regularly with well-known members of a terrorist organization and seeks to travel to the United States could be found inadmissible under subsection (F). Similarly, an alien who has received flight training, or has received counter surveillance training from a terrorist organization (as defined in INA 212(a)(3)(B)(vi)) could be found to have such an intent based on these and other relevant facts, and therefore be found inadmissible under subsection (F).

e. **(U)** It is not necessary that the alien intend to engage in activities that would be illegal or otherwise prohibited under the laws and regulations in the United States for us to find the alien inadmissible under INA 212(a)(3)(F). For example, an alien who intends to attend flight school in the United States – a lawful activity – could be found inadmissible under subsection (F) if the facts are sufficient to permit the Secretary or her delegate to determine that the alien has been associated with a terrorist organization and that the alien's attendance at the flight school could endanger the security of the United States.

9 FAM 302.6-3(B)(1) (U) Not a Permanent Bar

(CT:VISA-67; 03-01-2016)

(SBU) B7(E)

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9 FAM 302.6-3(C) (SBU)

B7(E)

(CT:VISA-55; 02-23-2016)

(SBU)

9 FAM 302.6-3(D) (U) Waivers

9 FAM 302.6-3(D)(1) (U) Waivers for Immigrants

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.6 Exhibit I CT:VISA-2316; 08-19-2015-2010)

(U) No waiver is available for immigrant visa applicants.

9 FAM 302.6-3(D)(2) (U) Waivers for Nonimmigrants

(CT:VISA-1; 11-18-2015)
(Previous Location: 9 FAM 40.6 Exhibit I CT:VISA-2316; 08-19-2015)

(U) An INA 212(d)(3)(A) waiver is available for nonimmigrant visa applicants.

9 FAM 302.6-4 (SBU)

9 FAM 302.6-4(A) (SBU)

9 FAM 302.6-4(A)(1) (U) Background and Summary

(CT:VISA-42; 02-01-2016)

a. **(SBU)**

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B7(E)

b. **(SBU) State Sponsors of Terrorism:** The following nations are on the Department's list of state sponsors of terrorism:

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

c. **(SBU)**

d. **(SBU)**

e. **(SBU)** B7(E)

f. **(SBU)**

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