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

U.S. Citizenship and Immigration Services

March 13, 2015

PM-602-0109

Policy Memorandum

SUBJECT: Implementation of Section 1264(a)(1), Subtitle E, Title XII, of the National Defense Authorization Act for Fiscal Year 2015, and Updated Processing Requirements for Discretionary Exemptions to Terrorism-Related Inadmissibility Grounds for Activities and Associations Relating to the Kurdistan Democratic Party and the Patriotic Union of Kurdistan

Purpose

On December 19, 2014, the President signed into law the National Defense Authorization Act for Fiscal Year 2015 (NDAA FY 2015), Public Law (P.L.) 113-291, 128 Stat. 3292 (2014). Section 1264(a)(1) of the NDAA FY 2015 provides that the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) are excluded from the definition of Tier III organizations under the Immigration and Nationality Act (INA) section 212(a)(3)(B)(vi)(III). Previously, on September 21, 2009, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and with the Attorney General, exercised their authority not to apply the terrorism-related grounds of inadmissibility (TRIG) contained in INA § 212(d)(3)(B) for certain activities and associations involving the Iraqi National Congress (INC), the KDP, and PUK. On January 23, 2010, the U.S. Citizenship and Immigration Services (USCIS) Acting Deputy Director issued guidance on implementation of these exercises of discretionary authority.[1]

This Policy Memorandum (PM) explains the relevant changes in the law and modifies existing instructions for USCIS adjudicators for processing of benefit applications where an applicant is found to have activities or associations with the KDP and PUK.[2] Guidance regarding adjudication of cases relating to the INC contained in the January 23, 2010 PM remains in effect.

Scope

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

Authorities

- INA section 212(d)(3)(B); 8 U.S.C. § 1182(d)(3)(B).
- National Defense Authorization Act for Fiscal Year 2015, P.L. 113-291, § 1264, 128 Stat. 3292 (2014).

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[1] See Lauren Kielsmeier, Acting Deputy Director, USCIS, "Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities Related to the INC, KDP, and PUK," January 23, 2010.

[2] This PM expressly does not apply to persons whom a USCIS officer 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)(II).

- Exercise of Authority under section 212(d)(3)(B)(i) of the INA, regarding activities or associations relating to the KDP, signed September 21, 2009.
- Exercise of Authority under section 212(d)(3)(B)(i) of the INA, regarding activities or associations relating to the PUK, signed September 21, 2009.

Background

INA section 212(a)(3)(B) renders inadmissible and ineligible for most immigration benefits an alien who engages in terrorist activity with any organization that, at the time of the interaction, was a terrorist organization. In turn, INA section 212(d)(3)(B)(i) authorizes the Secretary to exempt such TRIG in certain cases. On September 21, 2009, Secretary Napolitano and Secretary Clinton issued exemptions that authorized USCIS and consular officers not to apply the TRIG to certain qualified aliens who had activities and affiliations with the INC, KDP, and PUK. On December 19, 2014, the President signed the NDAA FY 2015 into law. Section 1264(a)(1) of the NDAA FY 2015 provides that the KDP and PUK are excluded from the definition of a Tier III organization, under INA section 212(a)(3)(B)(vi)(III).

Policy

Pursuant to section 1264(a)(1) of the NDAA FY 2015, USCIS will no longer consider the KDP or PUK to be terrorist organizations under INA section 212(a)(3)(B)(vi)(III).[3] However, aliens having certain activities or associations with the KDP and PUK may continue to be inadmissible; such aliens may be eligible for and warrant an exemption from TRIG pursuant to the Exercises of Authority issued in 2009.[4]

Implementation

I. General Considerations

A. Identifying Individuals Who May Be Subject to TRIG Due to Activities or Associations with the KDP and PUK

Adjudicators will review benefit applications, supporting documentation, and testimony for indications of activities or associations relating to the KDP and PUK. In all cases, adjudicators will review for and elicit information about all TRIG-related activities or associations.

B. Country Conditions

When considering an application, adjudicators must familiarize themselves with country conditions information collected by the Refugee, Asylum, and International Operations Research Unit and/or research information made available through their headquarter (HQ) components. In addition to research products generated by USCIS, open source reference documents produced by other agencies

[3] The Secretaries of State and Homeland Security, in consultation with the Attorney General, may suspend application of section 1264(a)(1) for either or both the KDP or PUK in their sole unreviewable discretion. Such determinations must be reported to various congressional committees. NDAA FY 2015, P.L. 113-291, § 1264(a)(2), 128 Stat. 3292 (2014).
[4] As noted above, guidance for adjudicating cases relating to the INC contained in the January 23, 2010 PM remains in effect.

may be available from the Department of State (DOS) (*see, e.g.*, the annual DOS Country Reports on Human Rights Practices) or through the Department of Homeland Security (DHS) Library (available on the intranet through DHS Connect).

II. Aliens Who Are No Longer Inadmissible for Activities or Associations Relating to the KDP and PUK, Pursuant to Section 1264(a)(1) of the NDAA FY 2015

As a result of this legislation, the KDP and PUK are excluded from the definition of undesignated terrorist organizations under INA section 212(a)(3)(B)(vi)(III). Therefore, an alien who carried out any of the following activities in association with the KDP or PUK at any time is no longer inadmissible on account of the following TRIG, and does not require an exemption:[5]

- Solicited funds or other things of value on behalf of the KDP or PUK– INA § 212(a)(3)(B)(iv)(IV)(cc);
- Solicited an individual for membership in the KDP or PUK – INA § 212(a)(3)(B)(iv)(V)(cc);
- Committed an act that provided material support to the KDP or PUK – INA § 212(a)(3)(B)(iv)(VI)(dd);
- Is a representative of the KDP or PUK – INA § 212(a)(3)(B)(i)(IV)(aa);
- Is a member of the KDP or PUK – INA § 212(a)(3)(B)(i)(VI);
- Persuaded others to support the KDP or PUK – INA § 212(a)(3)(B)(i)(VII); or
- Received military-type training from the KDP or PUK – INA § 212(a)(3)(B)(i)(VIII).

III. Aliens Whose Inadmissibility for TRIG Activities or Associations Relating to the KDP and PUK May Be Exempted as a Matter of Discretion

A. Continuing Applicability of the KDP and PUK Exercises of Authority

Aliens may be exempted from the activities listed below under the KDP or PUK Exercises of Authority, if committed in association with either of these groups, as applicable, with the requirement that no such activity targeted civilians. Special care must be taken in such cases to determine whether civilians were targeted or harmed during the alien's activities and whether the applicant merits an exemption under the totality of the circumstances, in the exercise of discretion, when any of the following inadmissibility grounds are applicable, where the alien:

- Committed or incited to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity - INA § 212(a)(3)(B)(iv)(I);
- Prepared or planned a terrorist activity - INA § 212(a)(3)(B)(iv)(II);
- Gathered information on potential targets for terrorist activity - INA § 212(a)(3)(B)(iv)(III);
- Solicited funds or other things of value for a terrorist activity - INA § 212(a)(3)(B)(iv)(IV)(aa);

[5] Section 1264(b) of the NDAA FY 2015, relating to aliens with activities undertaken in opposition to the regime of the Arab Socialist Ba'ath Party and Saddam Hussein, and relating to aliens who serve or served as senior officials of the Kurdistan Regional Government or the federal government of the Republic of Iraq, applies only to applicants for nonimmigrant visas. NDAA FY 2015, P.L. 113-291, § 1264(b)(1)-(2), 128 Stat. 3292 (2014). Therefore, these provisions are inapplicable to USCIS benefit adjudications.

- Solicited an individual to engage in conduct otherwise described in INA § 212(a)(3)(B)(iv), other than those involving activity carried out on behalf of a "terrorist organization" - INA § 212(a)(3)(B)(iv)(V)(aa);
- Committed an act the alien knew, or reasonably should have known, afforded material support for the commission of a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(aa); or to any individual who the alien knew, or reasonably should have known, has committed or plans to commit a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(bb);
- Has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity - INA § 212(a)(3)(B)(i)(III);
- Is a representative of a political, social, or other group that endorses or espouses terrorist activity - INA § 212(a)(3)(B)(i)(IV)(bb); or
- Endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity - INA § 212(a)(3)(B)(i)(VII).

B. Other Possible TRIG Inadmissibilities

While this guidance is limited to certain activities or associations relating to the KDP and PUK, if additional terrorism-related grounds apply, adjudicators must verify whether other available exemptions exist for those other grounds and determine whether the applicant is eligible for those exemptions. Earlier Exercises of Authority that provide for exemption of particular activities or associations remain in effect and may be used as appropriate for activity not covered by this exemption. *See* relevant implementation guidance for any other applicable Exercises of Authority.

All applicable exemptions must be adjudicated according to the guidance issued for each exemption. An adjudicator may grant an exemption for the provision of insignificant material support under this policy memo only if there are available exemptions for all applicable TRIG-related activities, and the adjudicator has recommended an exemption for each inadmissibility ground. If an exemption is not available for each inadmissibility ground, the adjudicator should refer the case to the appropriate headquarters program office for further instructions, including whether to place the case on hold.

C. Threshold Eligibility

To be considered for an exemption, an applicant must satisfy the following threshold requirements:

- Establish that he or she is otherwise eligible for the immigration benefit or protection being sought;
- Undergo and pass all required background and security checks;
- Fully disclose in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of all activities or associations falling within the scope of INA section 212(a)(3)(B);[6]
- Establish that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons;

[6] To fully disclose TRIG-related activities and associations entails credible, persuasive, consistent, and complete representations by the applicant of all involvement in such activities. If this level of disclosure has not been provided, the applicant has failed to meet this threshold criterion and is ineligible for exemption consideration.

- Establish that he or she poses no danger to the safety and security of the United States; and
- Establish that he or she warrants an exemption in the totality of the circumstances as discussed in the following paragraph.

Questions relating to the threshold requirements for this exercise of the exemption authority must be directed through the component chain of command to the component TRIG Working Group point of contact.

D. Discretion

For those applicants who have met all other threshold requirements, adjudicators will consider whether the applicant warrants a discretionary exemption in the totality of the circumstances. When considering the totality of the circumstances, factors to be considered, in addition to the threshold factors stated above, may include, among others:

- The length and nature of the TRIG-related activity;
- The amount, type, frequency, and nature of the applicant's activity;
- The nature of the organization's activities and the applicant's awareness of those activities;
- The applicant's conduct since engaging in the TRIG-related activity;
- The length of time that has elapsed since the applicant engaged in the TRIG-related activity;
- Whether the applicant's activities targeted U.S. interests; and
- Any other relevant factors.

IV. Making the Exemption Determination

A. Family Members

The inadmissibility of family members should be reviewed in accordance with existing law and agency policies. Under INA section 212(a)(3)(B)(i)(IX), a spouse or child is inadmissible if the related alien is inadmissible under INA section 212(a)(3)(B) for actions occurring within the last 5 years, unless the spouse or child qualifies for one of two statutory exceptions.[7] In accordance with agency policy, a spouse or child may be considered for an exemption if the activity of the related alien may be exempted, even if the related alien is not seeking a benefit or protection from USCIS. Furthermore, a spouse or child does not require an exemption relative to any acts for which the related alien has already been or is being exempted.[8]

B. Vetting Cases for Possible National Security Concern

Adjudicators will follow existing agency procedures when a possible national security concern arises during the course of the adjudication, including through security checks.

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

[8] *See* Jonathan Scharfen, Deputy Director, USCIS, "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations," May 24, 2007.

C. Documenting the Exemption Determination

Using the 212(a)(3)(B) Exemption Worksheet (revised August-10-2012), adjudicators will document exemption determinations as follows:

- Determine threshold eligibility;
- Describe the applicant's associations or activities with the group, noting any involvement in violence or other activities of concern;
- In Section IV, check "Group Based Exemption" and enter "KDP" or "PUK," as applicable; and
- In Section V, indicate whether the adjudicator recommends granting or denying the exemption.

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

D. Record-Keeping Requirements

USCIS will maintain records on the number of cases considered under the KDP and PUK exemptions and their outcome. Statistics will be consolidated on a quarterly basis, at a minimum. These statistics will be used to provide information to the interagency and stakeholders as well as to inform the content of the required annual report to Congress.

E. Effect of Exemption on Future Adjudications

An exemption determination made under the KDP and PUK Exercises of Authority can inform but shall not control a decision regarding any subsequent benefit or protection application.

F. Processing or Placement on Hold of Certain Cases

If a case involving an applicant or beneficiary considered under the PUK or KDP Exercises of Authority does not satisfy all threshold requirements for consideration of an exemption and does not meet the requirements of the hold policy, the requested benefit should be denied. The applicant should be issued a Notice to Appear (NTA) in appropriate cases after review in accordance with standard operating procedures, including USCIS' NTA policy.

If a case does meet the threshold requirements but an exemption is denied in the totality of the circumstances, the application should be denied (or, if pertaining to an asylum application, referred as appropriate) after appropriate review in accordance with the above procedures. The applicant should be issued an NTA in appropriate cases after review in accordance with standard operating procedures, including USCIS' NTA policy.

If it is determined that the case does not meet the threshold requirements listed above, but otherwise meets the criteria enumerated under the current hold policy, the application should be placed on hold pending future exercises of the Secretary's discretionary exemption authority. This includes cases being held under the current hold policy involving applicants who do not qualify for this exercise of the exemption authority. The applicant should be issued an NTA in appropriate cases after review in accordance with standard operating procedures, including USCIS' NTA policy.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions relating to this PM must be directed through the component chain of command to the component TRIG Working Group point of contact.

Attachments
1. NDAA FY 2015, Section 1264
2. Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (KDP)
3. Exercise of Authority under Section 212(d)(3)(B)(i) of the INA (PUK)

(f) TERMINATION.—The authority and requirements of this section expire at the close of September 30, 2018.

SEC. 1264. TREATMENT OF THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN UNDER THE IMMIGRATION AND NATIONALITY ACT.

(a) REMOVAL OF THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN FROM TREATMENT AS TERRORIST ORGANIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Kurdistan Democratic Party and the Patriotic Union of Kurdistan shall be excluded from the definition of terrorist organization (as defined in section 212(a)(3)(B)(vi)(III) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(III))) for purposes of such section 212(a)(3)(B).

(2) EXCEPTION.—The Secretary of State, after consultation with the Secretary of Homeland Security and the Attorney General, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may suspend the application of paragraph (1) for either or both of the groups referred to in paragraph (1) in such Secretary's sole and unreviewable discretion. Prior to or contemporaneous with such suspension,

the Secretary of State or the Secretary of Homeland Security shall report their reasons for suspension to the Committees on Judiciary of the House of Representatives and of the Senate, the Committees on Appropriations in the House of Representatives and of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

(b) RELIEF REGARDING ADMISSIBILITY OF NONIMMIGRANT ALIENS ASSOCIATED WITH THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN.—

(1) FOR ACTIVITIES OPPOSING THE BA'ATH REGIME.—Paragraph (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien with respect to activities undertaken in association with the Kurdistan Democratic Party or the Patriotic Union of Kurdistan in opposition to the regime of the Arab Socialist Ba'ath Party and the autocratic dictatorship of Saddam Hussein in Iraq.

(2) FOR MEMBERSHIP IN THE KURDISTAN DEMOCRATIC PARTY AND PATRIOTIC UNION OF KURDISTAN.—Paragraph (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien applying for a nonimmigrant visa, who presents themselves for inspection to an immigration officer at a port of entry as a nonimmigrant, or who is applying in the United States for nonimmigrant status, and who is a member of the Kurdistan Democratic Party or the Patriotic Union of Kurdistan and currently serves or has previously served as a senior official (such as Prime Minister, Deputy Prime Minister, Minister, Deputy Minister, President, Vice-President, Member of Parliament, provincial Governor or member of the National Security Council) of the Kurdistan Regional Government or the federal government of the Republic of Iraq.

(3) EXCEPTION.—Neither paragraph (1) nor paragraph (2) shall apply if the Secretary of State or the Secretary of Homeland Security (or a designee of one of such Secretaries) determine in their sole unreviewable discretion that such alien poses a threat to the safety and security of the United States, or does not warrant a visa, admission to the

United States, or a grant of an immigration benefit or protection, in the totality of the circumstances. This provision shall be implemented by the Secretary of State and the Secretary of Homeland Security in consultation with the Attorney General.

(c) PROHIBITION ON JUDICIAL REVIEW.—Notwithstanding any other provision of law (whether statutory or nonstatutory), section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), sections 1361 and 1651 of title 28, United States Code, section 2241 of such title, and any other habeas corpus provision of law, no court shall have jurisdiction to review any determination made pursuant to this section.

SEC. 1265. PROHIBITION ON INTEGRATION OF MISSILE DEFENSE SYSTEMS OF CHINA INTO MISSILE DEFENSE SYSTEMS OF UNITED STATES AND SENSE OF CONGRESS CONCERNING INTEGRATION OF MISSILE DEFENSE SYSTEMS OF RUSSIA INTO MISSILE DEFENSE SYSTEMS OF NATO.

(a) PROHIBITION.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2015 for the Department of Defense may be obligated or expended to integrate a missile defense sys-

[Billing Code]

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

DEPARTMENT OF STATE

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS; Office of the Secretary, DOS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

The Secretary of Homeland Security and the Secretary of State, following consultations with the Attorney General, hereby conclude, as a matter of discretion in accordance with our respective authorities under section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply, with respect to an alien, for any activity or association relating to the Kurdistan Democratic Party (KDP), provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed relevant background and security checks;

(c) has fully disclosed, in applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or

procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: 9-21-09

Janet Napolitano,
Secretary of Homeland Security.

Hillary Rodham Clinton,
Secretary of State.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

DEPARTMENT OF STATE

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS; Office of the Secretary, DOS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

The Secretary of Homeland Security and the Secretary of State, following consultations with the Attorney General, hereby conclude, as a matter of discretion in accordance with our respective authorities under section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply, with respect to an alien, for any activity or association relating to the Patriotic Union of Kurdistan (PUK), provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed relevant background and security checks;

(c) has fully disclosed, in applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or

procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: 9-21-09

Janet Napolitano,
Secretary of Homeland Security.

Hillary Rodham Clinton,
Secretary of State.