



9110-9M

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### Exercise of Authority under the Immigration and Nationality Act

**AGENCY:** Office of the Secretary, DHS

**ACTION:** Notice of determination

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

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by 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 paragraphs (iv)(IV), (iv)(V), (iv)(VI), and (i)(VIII) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply with respect to an alien not otherwise covered by the automatic relief provisions of section 691(b) of the Consolidated Appropriations Act, 2008 or by a more specific Exercise of Authority under section 212(d)(3)(B)(i) of the INA, 8 U.S.C. 1182(d)(3)(B)(i), who meets the specifications of paragraphs (a) through (d) of this determination.

- (a) Alien Qualification: To qualify under this determination, an alien must have:
- (1) solicited funds or other things of value for;
  - (2) solicited any individual for membership in;
  - (3) provided material support to; or
  - (4) received military-type training from, or on behalf of,
- an organization described in paragraph (b).

(b) Organization Qualification. An organization meets the specifications of paragraph (a) of this determination if, at any time during the alien's activities discussed in paragraph (a), it was a terrorist organization as described in subsection 212(a)(3)(B)(vi)(III), 8 U.S.C. 1182(a)(3)(B)(vi)(III), insofar as that organization:

(1) is not identified in either Executive Order 13224, as amended, or otherwise designated by the Secretary of State or the Secretary of the Treasury pursuant to the Specially Designated Nationals List (SDNL), or in lists established by United Nations Security Council Committee pursuant to Resolutions 1267 (1999) or 1988 (2011) concerning Al-Qaida and the Taliban and associated individuals and entities; and

(2) has at no time targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons; engaged in a pattern or practice of torture, as defined in 18 U.S.C. 2441(d)(1)(A), genocide, as described in 18 U.S.C. 1091(a), or the use of child soldiers, as described in 18 U.S.C. 2242; or been designated a terrorist organization as described in subsections 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II).

(c) Additional Qualifications. To meet the requirements of this determination, the alien must also meet the following specifications:

(1) on or before the date of this Exercise of Authority, was admitted as a refugee or granted asylum, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or granted a similar immigration benefit other than a non-immigrant visa; or

(2) is the beneficiary of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee.

(d) Evidentiary Requirements. An alien must satisfy the relevant agency authority that the alien:

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

(2) has undergone and passed all relevant background and security checks;

(3) 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 each instance of solicitation, material support, and military-type training, and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(4) has not knowingly provided material support to terrorist activities that targeted noncombatant persons, U.S. citizens, or U.S. interests;

(5) has not received training that itself poses a risk to the United States or United States interests (e.g., training on production or use of a weapon of mass destruction, as defined by 18 U.S.C. Section 2332a(c)(2), torture, or espionage);

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

(7) is not in removal proceedings or subject to a final order of removal, unless the alien is the beneficiary of an I-730 Refugee/Asylee Relative Petition; and

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

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), which shall ascertain, to its satisfaction and in its discretion, that the particular applicant meets each of the criteria set forth above.

When considering the totality of the circumstances, factors to be considered may include, among others: the nature of the activities committed by the terrorist organization, including the extent to which the activities have targeted noncombatant persons; the alien's awareness of those activities; the amount, type, and frequency of material support or solicitation provided; the length and nature of military-type training provided; the length of time since material support or solicitation was provided, or military-type training was received, and the alien's conduct since that time; and any other relevant factor.

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 creates no 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, 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: August 10, 2012

---

Janet Napolitano,  
Secretary of Homeland Security

[FR Doc. 2012-20278 Filed 08/16/2012 at 8:45 am; Publication Date: 08/17/2012]