



Report on the Secretary's Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

Annual Report to Congress
Fiscal Year 2014



Homeland
Security

U.S. Citizenship and Immigration Services



**Homeland
Security**

September 24, 2015

Foreword

I am pleased to present the following report, “Report on the Secretary’s Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act,” prepared by U.S. Citizenship and Immigration Services. The report provides information on the number of aliens on whose behalf the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, has determined in his sole unreviewable discretion that section 212(a)(3)(B) of the Immigration and Nationality Act shall not apply. Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary of the Senate

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary of the Senate

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary of the House of Representatives

The Honorable John J. Conyers, Jr.
Ranking Member, Committee on the Judiciary of the House of Representatives

The Honorable Robert P. Corker
Chairman, Committee on Foreign Relations of the Senate

The Honorable Benjamin L. Cardin
Ranking Member, Committee on Foreign Relations of the Senate

The Honorable Edward R. Royce
Chairman, Committee on Foreign Affairs of the House of Representatives

The Honorable Eliot L. Engel
Ranking Member, Committee on Foreign Affairs of the House of Representatives

The Honorable Michael T. McCaul
Chairman, Committee on Homeland Security of the House of Representatives

The Honorable Bennie G. Thompson
Ranking Member, Committee on Homeland Security of the House of Representatives

Inquiries relating to this report may be directed to me at (202) 447-5890.

Respectfully,

A handwritten signature in black ink that reads "M. Tia Johnson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

M. Tia Johnson
Assistant Secretary for Legislative Affairs

Executive Summary

This report was prepared in accordance with section 212(d)(3)(B)(ii) of the Immigration and Nationality Act. As in past reports, it summarizes the total numbers of aliens for whom the Secretary of Homeland Security has determined to exercise the discretionary authority provided at Immigration and Nationality Act section 212(d)(3)(B)(i).



Report on the Secretary’s Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

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I. Legislative Language

Section 212(d)(3)(B) of the Immigration and Nationality Act provides:

(B) (i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

II. Data Report

During Fiscal Year 2014, U.S. Citizenship and Immigration Services (USCIS) applied 1,519 exemptions to individual applicants under the Secretary of Homeland Security's exercises of discretionary authority.¹ Of those 1,519 exemptions:

- 806 were processed for refugee applicants,
- 19 were processed for asylum applicants,
- 614 were processed for applicants for lawful permanent resident status,
- 29 were processed for beneficiaries of petitions for derivative refugee or asylum status,
- 34 were processed for applicants for Temporary Protected Status,
- 9 were processed for applicants for Nicaraguan Adjustment and Central American Relief Act (NACARA); and
- 7 were processed for applicants for relief before the U.S. Department of Justice Executive Office for Immigration Review (EOIR).

Regarding the reasons for the 1,519 exemptions:

- 627 were processed for an applicant's provision of material support, while under duress, to an undesignated terrorist organization as defined at INA section 212(a)(3)(B)(vi)(III), 8 U.S.C. § 1182(a)(3)(B)(vi)(III) (Tier III terrorist organization), under the Secretary of Homeland Security's February 26, 2007 exercise of authority relating to Tier III organizations,
- 189 were processed for an applicant's provision of material support, while under duress, to a designated terrorist organization as defined under INA section 212(a)(3)(B)(vi)(I)-(II), 8 U.S.C. § 1182(a)(3)(B)(vi)(I)-(II) (Tier I or II terrorist organization), under the Secretary's April 27, 2007 exercise of authority relating to Tier I and Tier II organizations,
- 9 were processed for an applicant's receipt of military-type training, while under duress, from a terrorist organization, under the Secretary's January 7, 2011 exercise of authority relating to Tier I, Tier II and Tier III organizations,
- 28 were processed for an applicant's provision of voluntary medical care to members of a terrorist organization in the course of their professional responsibilities without assisting in the violent activities of an organization or individual, under the Secretary's October 13, 2011 exercise of authority relating to Tier I, Tier II and Tier III organizations,

¹ In certain instances, an applicant may have been the recipient of more than one exemption, if the activities rendering him or her inadmissible under the terrorism-related inadmissibility grounds required multiple exemptions.

- 37 were processed for certain qualified aliens with existing immigration benefits under the Limited General Exemption² who: provided material support to, solicited funds for, solicited individuals for membership in or received military-type training from certain qualified Tier III terrorist organizations, under the Secretary’s August 10, 2012 exercise of authority relating to certain Tier III organizations;³ and
- 628 were processed for applicants who had certain activities or affiliations with specific groups which the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has approved for consideration of an exemption.⁴

Exemptions allow certain refugees and other aliens the opportunity to receive a benefit or protection following the successful completion of a thorough vetting process. USCIS procedures require that all applicants’ names and fingerprints be checked against a broad array of records of individuals known to be security threats, including the terrorist watch list, and those of law enforcement concern. In addition to rigorous background vetting, including checks coordinated across several government agencies, the Secretary of Homeland Security’s discretionary authority is only applied on a case-by-case basis after careful review of all factors and all security checks have cleared.

Exemptions by Type and Application Type

FY2014 Exemption Type by Application Type	
EXEMPTION	Application Type
Group-based Exemption - related to the All Burma Students’ Democratic Front (ABSDF)	I-485 (12)

² Qualified aliens are those who currently possess lawful status in the United States, other than a nonimmigrant visa, and who are not in removal proceedings or subject to a final order of removal. This exemption also applies to beneficiaries of asylees or refugees who have filed an I-730 Refugee/Asylee Relative Petition. This exemption does not apply to applicants for refugee or asylum status.

³ Tier III terrorist organizations qualified for the Limited General Exemption are those that have never: (1) targeted U.S. interests or persons, including planned or attempted attacks on U.S. interests or persons; (2) 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; (3) have been 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; or (4) been previously designated, or are currently designated as a Tier I or Tier II terrorist organization, as described in sections 212(a)(3)(B)(vi)(I) and (II) of the INA, 8 U.S.C. §§ 1182(a)(3)(B)(vi)(I) or (II).

⁴ In FY2014, exemptions were processed under the Secretary’s exercise of authority for certain activities or affiliations with: certain Burmese groups (the All Burma Students’ Democratic Front (ABSDF), the Chin National Front/Chin National Army (CNF/CNA); the Karen National Union/Karen National Liberation Army (KNU/KNLA), and the Karenni National Progressive Party (KNPP)); the Cuban Alzados; certain Ethiopian and Eritrean groups (Oromo Liberation Front (OLF), Eritrean Liberation Front (ELF), Democratic Movement for the Liberation of Eritrean Kunama (DMLEK), Ethiopian People’s Revolutionary Party (EPRP), and Tigray People’s Liberation Front (TPLF)); certain Salvadoran groups (Nationalist Republican Alliance (*Alianza Republicana Nacionalista* or ARENA; Farabundo Marti National Liberation Front (FMLN)); Hmong-affiliated groups; certain Iraqi groups that opposed the Saddam Hussein regime (Iraqi National Congress (INC), the Kurdistan Democratic Party (KDP), and the Patriotic Union of Kurdistan (PUK)); The Iraqi Uprisings in 1991; and the Kosovo Liberation Army (KLA).

Group-based Exemption - related to the Alzados	Refugee (14)
Group-based Exemption - to the Nationalist Republican Alliance (Alianza Republicana Nacionalist or ARENA)	I-485 (1) TPS (2)
Group-based Exemption - related to the Farabundo Marti National Liberation Front (Farabundo Marti para la Liberacion National or FMLN)	Asylum (1) NACARA (2) I-485 (16) TPS (8)
Group-based Exemption - related to the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)	Refugee (27)
Group-based Exemption - related to the Eritrean Liberation Front (ELF)	Refugee (8) I-485 (26) I-730 (1)
Group-based Exemption - related to the Ethiopia People's Revolutionary Party (EPRP)	I-485 (32)
Group-based Exemption - related to the Iraqi National Congress (INC), Kurdish Democratic Party (KDP), and Patriotic Union of Kurdistan (PUK)	Refugee (49) I-485 (17)
Group-based exemption - related to the Kosovo Liberation Army (KLA)	I-485 (1)
Group-based Exemption - related to the Karenni National Progressive Party (KNPP)	Refugee (15) I-485 (1)
Group-based Exemption - related to the Karen National Union/Karen National Army (KNU/KNA)	Refugee (8) I-485 (2)
Group-based exemption - related to the Oromo Liberation Front (OLF)	Refugee (17) I-485 (345) I-730 (2)
Group-based exemption - related to the Tigray Peoples Liberation Front (TPLF)	I-485 (7)
Indiv. exemption - related to Chin National Front/Chin National Army (CNF/CAN)	I-485 (1)
Indiv. exemption - related to Hmong	I-485 (1)
Indiv. exemption - related to KNU/KNA	I-485 (9)
Indiv. exemption - related to KNPP	I-485 (2)
Iraqi Uprising Exemption	Refugee (1)
Limited General Exemption	I-485 (36) I-730 (1)
Exemption for Material Support to Tier I or II Under Duress	Asylum (4) Refugee (156) I-485 (21) I-730 (4) Referred from immigration proceedings (4)
Exemption for Material Support to Tier III Under Duress	Asylum (10) NACARA (7) Refugee (496) I-485 (86) I-730 (12)

	TPS (14) Referred from immigration proceedings (2)
Exemption for Medical Care Exemption	Asylum (4) Refugee (14) I-730 (9) Referred from immigration proceedings (1)
Exemption for Receipt of Military Type Training Under Duress from Tier I, II, or III Organization	Refugee (1) I-485 (6) TPS (2)
TOTAL	1519