

Advanced Asylum & Refugee Issues



Moderator:

- *Rosie Milano, AILA NE Asylum Liaison*

Panelists:

- *Anwen Hughes, Deputy Legal Director, Human Rights First*
- *David McHaffey, AILA National & AILA NE Asylum Liaison*
- *Anita P. Sharma, PAIR Executive Director & AILA NE Asylum Liaison*

Recent Executive Orders



- The Executive Orders – what did they do with respect to asylum and refugee issues?
- What is currently happening?
- What do we expect might be next?

Security-related Bars to Asylum



- Asylum is a discretionary form of relief under the INA
- An asylum-seeker is subject to many bars to relief, including bars related to national security
- This presentation will focus on the terror-related bars

Bars to Asylum-security



- Persecutor of others - *Ordered, incited, assisted, or participated* in the **persecution** of any person on account of race, religion, national security, social group, and political opinion
- Pose a danger to the security of the United States
- Terror-related grounds

Impact of TRIG



An asylum-seekers may not receive a grant of asylum if:

- “Reasonable grounds” for regarding him or her as a “danger to the security of the United States.”
- Per INA §212(a)(3)(B): will be barred from asylum and withholding of removal if found to have:

Impact of TRIG



(1) membership in a **“foreign terrorist organization”**

(2) engaging in **“terrorist activities”** or

(3) providing **“material support”** to a terrorist organization

Impact of TRIG



- Have persuaded others to support terrorist activity or organization
- Have received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization
- Are the spouse or child of an individual who is inadmissible for any of the above within the last 5 years

Foreign Terrorist Org.



Three criteria to be considered an FTO:

- (1) It must be a **foreign** organization
 - (2) The organization **must engage** in “terrorist activity,” as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism, **or be capable of** and **intend** to engage in terrorist activity or terrorism; and
 - (3) The organization’s terrorist activity or terrorism must **threaten the security of U.S.** nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.
- USA PATRIOT Act established three categories of FTOs codified in INA §212(a)(3)(B)(vi)(I-III):
 - Tier I – Mainstream terror group
 - Tier II - State Department’s Terrorist Exclusion List (“TEL”)
 - Tier III – Undesignated, catch-all. Case-by-case determination by adjudicator

“Engaging in terrorist activities”



The INA defines “engaging in terrorist activities” to include offering “material support” to a terrorist organization.

Types of Acts:

- Weapons (including chemical, biological, or radiological weapons), explosives, or training.
- Safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification

Practice Tip



If your client has been involved in any of the above, you need to consider:

- Kinds of & level of activity – details!
- Client’s intent in carrying out the activity
- Whether exemption applies

“Material Support”



- 212(a)(3)(B)(iv)(VI)
- “Engage in terrorist activity” to include a person who **commit[s]**, plans, incites an act that the actor knows, or reasonably should know, *affords material support*.

Material Support



- Mandatory bar
- Barred from asylum and withholding of removal in sections 208(b)(2)(A)(v) and 241(b)(3)(B)(iv) of the Act and to withholding of removal under the Convention Against Torture. 8 C.F.R. § 1208.16(d)(2) (2010).
- Deferral of removal under the Convention Against Torture possible

Material Support



Situational Exemptions:

<https://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissability-grounds-exemptions>

Material Support



De Minimus Act?

- Matter of S-K, 23 I&N Dec. 936 (BIA 2006), found that , a Burmese Christian and ethnic Chin who gave the equivalent of **\$685** (USD) to the Chin National Front, had given material support to terrorists
- *Matter of L-H-* (BIA 2009) (unpublished)- items taken from the respondent = one packed lunch and the equivalent of about \$4 U.S. dollars

Material Support



- The BIA has held that “material support” requires a person to commit to an **affirmative act**
- Political rebellion against a dictatorial regime is not a defense to the material support bar.
- No freedom fighter exception

Exceptions to Terror Bar



- While there has been recent favorable actions by the U.S. government in recognizing exemptions for those who provide **limited** material support, the status and procedures of the exemptions remain **uncertain**
- Remember, **ONLY** Department of Homeland Security, Office of the Secretary, has sole discretion to issue such a waiver. INA §212(a)(3)(B)(i).

Tips to Deal with Terror Bars



- The terrorism bar is complicated
- DEVELOP the record
- Do NOT wait for the government to flag potential issues.
- Have a clear and strong understanding of your client's involvement with foreign group
- Research the group
- The client needs to be forthcoming

Tips to Deal with Terror Bars



- When filing the I-589 or drafting the client's declaration, be careful about the terminology your client uses.
- Client may boast that they were a part of a rebel group against a dictatorial regime
- If the client talks about have to pay a bribe, extortion, or *renta*, or served as a servant, slave or wife to a group, even if all was done under threat, could be MATERIAL SUPPORT
- Ask your client about compulsory military service in his or her home country
- Did the client ever receive any type of military or weapons training

Terror Bar vs. Persecutor Bar



- What is the difference?
- Practical considerations

Parting Thoughts and Tips

