



U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: ASYLUM OFFICE DIRECTORS
ASYLUM OFFICE DEPUTY DIRECTORS
SUPERVISORY ASYLUM OFFICERS
QUALITY ASSURANCE/TRAINING ASYLUM OFFICERS
ASYLUM OFFICERS

HQASM 120/16.1

From: Joseph E. Langlois
Chief, Asylum Division
Office of Refugee, Asylum, and International Operations

A handwritten signature in black ink, appearing to read "Joseph E. Langlois", written over the typed name and title.

Date: JUN 01 2007

Re: Processing of Asylum Division Cases Involving Material Support

On February 26, 2007, DHS Secretary Chertoff exercised his authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act not to apply the material support inadmissibility ground to individuals who provided material support to an undesignated terrorist organization (Tier III terrorist organization¹) under duress. This is in addition to the Secretary's February 20, 2007 exercise of authority not to apply the material support inadmissibility provision with respect to certain aliens applying for immigration benefits who had provided material support to eight undesignated² terrorist organizations ("group-based exemptions"), regardless of whether the support was provided under duress.

The purpose of this memorandum is to provide Asylum Division-specific implementing instructions in accordance with the May 24, 2007 USCIS memo entitled "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations (Exemption memo)." The first section of this memo establishes new procedures for submitting to the HQASM Training, Research, and Quality (TRAQ) Branch affirmative asylum and NACARA cases in which the applicant has provided material support to any terrorist organization. The second section identifies and provides guidance

¹ A Tier III terrorist organization is defined at INA § 212(a)(3)(B)(III) as: "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" ...terrorist activity.

² The eight groups are:

Karen National Union/Karen National Liberation Army (KNU/KNLA), Chin National Front/Chin National Army (CNF/CAN), Chin National League for Democracy (CNLD), Kayan New Land Party (KNLP), Arakan Liberation Party (ALP), Tibetan Mustangs, Cuban Alzados, or Karenni National Progressive Party (KNPP).

for handling cases ineligible for asylum for reasons unrelated to material support that have been on hold at TRAQ due to material support issues.

Submission Procedures for Cases Eligible for Asylum but for the Provision of Material Support

Where an applicant who has provided material support to any terrorist organization is found to be otherwise eligible for asylum or NACARA, the adjudicating asylum officer will fill out the Material Support Exemption Worksheet (attached to the Exemption memo) and sign as the adjudicating officer. The case materials, including the Worksheet, will then be routed, per current operating procedures, to a Supervisory Asylum Officer (SAO) who will review the worksheet as the first-line reviewer. The case materials will then be routed by a Quality Assurance/Training Officer to TRAQ. TRAQ will act as the second-line reviewer. Prior to submitting a material support case to TRAQ for review, the case should be placed on HQ HOLD in RAPS and flagged with a SECO "Security Concern" flag.

These procedures apply to all cases otherwise eligible for asylum or NACARA in which the applicant has provided material support, regardless of whether the terrorist organization to which the support was provided is designated under section 212(a)(3)(B)(vi)(I) (Foreign Terrorist Organization List) or 212(a)(3)(B)(vi)(II) (Terrorist Exclusion List), often referred to as "Tier I" and "Tier II" terrorist organizations³, respectively, or is an undesignated "Tier III" terrorist organization.

The Quality Assurance Referral Sheet will serve as the cover page to the submitted materials and should indicate the relevant submission category as "National Security Related—Material Support Provided to a Terrorist Organization." The case packet should include the Worksheet, officer assessment or adjudication worksheet, I-589 or I-881 application, interview notes, relevant supporting documents, and security checklist, ABC checklist (if applicable), preferably in this order. The case materials packet should be transmitted as a scanned attachment to the appropriate Outlook client mailbox (ASYLUM QA-AFFIRMATIVE or ASYLUM QA-NACARA) in accordance with current procedures. The subject line in the e-mail should clearly indicate that the case involves material support.

As required by the Exemption memo, for the next 90 days, all cases involving material support in which the applicant is otherwise eligible for the benefit sought and an exemption is considered will be reviewed by the USCIS Material Support Working Group after submission to TRAQ. TRAQ will perform the initial case review, and if necessary, ask the submitting office for revisions prior to taking the case to the Material Support Working Group. After final review of the case by TRAQ and the Material Support Working Group, TRAQ will provide the adjudicating office with feedback and guidance on the case in a quality assurance response.

At the expiration of the 90-day period, HQASM will require that all cases described above continue to be submitted to TRAQ and placed on hold pending a response indicating that a final decision may be issued.

For cases currently on hold with TRAQ that appear eligible for a grant of asylum but for the material support issue, TRAQ will review those cases for the possible application of an exemption. For these cases, TRAQ

³ Tier I organizations refer to those on the Foreign Terrorist Organizations List. Tier II organizations refer to those on the Terrorist Exclusion List. Both lists may be accessed on the Department of State Office of Counterterrorism's website at <http://www.state.gov/s/ct/list/>.

Processing of Affirmative Asylum Applications Involving Material Support

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asylum officers will act as the adjudicating officer, the TRAQ SAO will serve as the first-line reviewer, and the Asylum Division Deputy Chief or Chief will serve as the second-line reviewer.

Processing of Cases Otherwise Ineligible for Asylum

Per the Exemption memo, it is no longer necessary to continue to hold cases involving material support where the applicant is not otherwise eligible for a grant of asylum.

Since 2004, TRAQ, per DHS instruction, has held all asylum cases involving material support, including those found ineligible based on lack of credibility, lack of nexus, lack of well-founded fear, internal relocation, and other ineligibility grounds. TRAQ has removed from hold those cases submitted to TRAQ where the applicant was found ineligible for asylum for a reason unrelated to the provision of material support.

In addition, we have attached the list of the otherwise ineligible asylum cases identified and released from hold by TRAQ. A Material Support Exemption Worksheet does not need to be completed for these cases prior to decision issuance. It is appropriate to include in the assessment a reference to the possible applicability of the material support bar so that it is flagged for the ICE trial attorneys who will review the assessment in preparation for proceedings. In preparing these cases for referral or denial, should your office identify any of these cases that would be eligible for a grant of asylum but for the material support issue, please contact the TRAQ Branch by sending an e-mail to the Outlook mailbox ASYLUM QA-AFFIRMATIVE.

Please note that some of these cases were originally submitted as Notices of Intent to Deny (NOIDs). Please rewrite these NOIDs as referrals and issue the appropriate Notices to Appear if these applicants have fallen out of legal status since original submission.

In addition, offices should notify the local ICE Special Agent in Charge (SAC Office) of these cases prior to service of a referral or denial to determine whether ICE would like to meet with the applicant or coordinate other action prior to decision issuance. Should ICE request a delay in decision issuance, the case should be placed on hold using the "Security Concern" SECO command.

Future "otherwise ineligible" material support cases do not need to be submitted to TRAQ for review, nor does a Worksheet need to be completed. These cases can be referred or denied as appropriate after notification of the local ICE SAC Office. In addition, the National Security Risk, Persecutor, or Human Rights Violator Notification form should be submitted to TRAQ for our records (see ISCPM, Section VIII.A.3 and Appendix 18).

We are in the process of updating the ISCPM to reflect this change in procedure. We are also examining how to modify RAPS to allow us to track our decision regarding the applicability of a material support exemption, and we will solicit comments from your offices to assist in the development of that capability.

Should you have any questions regarding the above, please send your queries by e-mail to ASYLUM QA-AFFIRMATIVE. You may also contact Jedidah M. Hussey, TRAQ Chief, at 202-272-1614 or Karen Sohrakoff, TRAQ Asylum Officer, at 202-272-1614. For questions specific to NACARA case processing, send your queries by e-mail to ASYLUM QA-NACARA, or contact Ellen Whalen, TRAQ Asylum Officer, at 202-272-1634.

Attachment: List of Ineligible Affirmative Asylum Cases Involving Material Support. by office

References: 1) USCIS memorandum of May 24, 2007. "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations."
2) Material Support Exemption Worksheet