

## What does “engage in a terrorist activity” mean?

### As defined by § 212(a)(3)(B)(iii):

As used in this Act, the term “engaged in terrorist activity” means, in an individual capacity or as a member of an organization—

(I) *to commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;*

(II) *to prepare or plan a terrorist activity;*

(III) *to gather information on potential targets for terrorist activity;*

(IV) *to solicit funds or other things of value for—*

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not have reasonably known, that the organization was a terrorist organization;

(V) *to solicit any individual—*

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not have reasonably known, that the organization was a terrorist organization; or

(VI) *to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—*

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such organization; or

(dd) or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

### Examples of engaging in terrorist activity:

- Alien who sold newspapers for the Iranian dissident group MEK and who called MEK members to facilitate recruiting a confidential informant engaged in a terrorist activity. *Hossemi v. Gonzales*, 471 F.3d 953 (9th Cir. 2006).
- Alien who raised money that reached Sikh resistance organizations in India and who had phone conversations with Sikh terrorists engaged in a terrorist activity. *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004).
- Alien who sent money to aid Sikh widows and orphans, without more, did NOT engage in a terrorist activity. *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004).
- Alien who contributed \$685 dollars over an 11-month period to the Chin National Front, a terrorist organization, provided material support to that organization and therefore engaged in a terrorist activity. *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006).
- Alien who provided food and shelter and transporting funds to members of the Khalistan Commando Force materially supported terrorists and therefore engaged in a terrorist activity . *Singh v. Gonzales*, 2007 WL 870357 (9th Cir. 2007). \*\*\*unpublished\*\*\*
- Alien who provided assistance to known terrorists by permitting them to use his family's workshop to repair their weapons, and who repaired their weapons himself and joined the terrorists on cross-country trips to help them recover their weapons materially supported terrorists and therefore engaged in a terrorist activity. *Pathak v. Gonzales*, 203 Fed. Appx. 829 (9th Cir. 2006).  
\*\*\*unpublished\*\*\*
- Alien who, as a member of the Irish National Liberation Army ("INLA"), acted as an armed look-out while other members of the INLA used firearms to shoot a Royal Ulster Constabulary ("RUC") officer and who acted as a member of a conspiracy to shoot and kill a RUC officer engaged in terrorist activity as a member of an organization. *McAllister v. Attorney General of the United States*, 444 F.3d 178 (3d Cir. 2006).
- Alien who provided food to and set up shelter for persons the alien should have reasonably known committed or planned to commit terrorist activity against the Indian government, materially supported terrorists and therefore engaged in terrorist activity. *Singh-Kaur v. Ashcroft*, 385 F.3d 292 (3d Cir. 2004).

#### Reasonable ground to believe standard

- Under INA § 212(a)(3)(B)(i)(II), any alien who the "consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity" is inadmissible. In *Matter of U-H-*, 23 I&N Dec. 355, 356 (BIA 2002), the BIA found that this "reasonable ground to believe standard" is akin to the "probable cause" standard. See also *Adams v. Baker*, 909 F.2d 643, 649 (1st Cir. 1990)(finding that a reasonable belief may be formed if the evidence "is sufficient to justify a reasonable person in the belief that the alien falls within the proscribed category.").

#### Exception for trivial or unsubstantial amounts of assistance?

- In *Matter of S-K-*, the BIA noted that the respondent's argument that there should be an independent showing that the type of assistance or amount of contribution is "material" is not frivolous. The BIA did not need to resolve the issue of whether there is an exception for de minimis contributions since it deemed the respondent's contribution of \$685, or one-eighth of her income, as substantial. See 23 I&N Dec. at 944-45.

- In *Hosseni v. Gonzales*, the Ninth Circuit noted that the respondent's evidence of fund-raising, selling MEK newspapers to raise funds at a rally, was "minimal." However, in considering both the fund-raising and the respondent's recruitment efforts together, the Court could not say that his assistance was "so insignificant" to compel a contrary result. See 471 F.3d at 959.

Totality of circumstances not an applicable test:

- The statutory language of the Act does not allow a "totality of the circumstances" test to be employed in determining whether an organization is engaged in terrorist activity, so factors such as an organization's purposes or goals and the nature of the regime that the organization opposes may not be considered. *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006).

- Neither an alien's intent in making a donation to a terrorist organization nor the intended use of the donation by the recipient is considered in determining whether the alien provided material support to a terrorist organization. *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006).

- The BIA did not err when it failed to consider whether or not an alien had targeted non-combatants and whether the situation in Northern Ireland had risen to the level of a Geneva Convention Article 3 conflict because the INA's definition of "engaging in terrorist activity" does not address either of these factors. *McAllister v. Attorney General of the United States*, 444 F.3d 178 (3d Cir. 2006)