

Retroactive Application of the REAL ID Act and the PATRIOT Act

I. The PATRIOT Act

- The USA PATRIOT Act expanded the terrorism ground of inadmissibility, specifically the definitions of “engaging in a terrorist activity” and a terrorist organization by adding:

- INA § 212(a)(3)(B)(i)(IV)(bb) — representative of a political, social, or other group that endorses or espouses terrorist activity
- INA § 212(a)(3)(B)(i)(VI)— has used position of prominence to endorse or espouse terrorist activity
- INA § 212(a)(3)(B)(i)(VII)— rendering inadmissible the spouse or child of an alien who is inadmissible because of terrorist activities
- INA § 212(a)(3)(F)— association with terrorist organizations ground of inadmissibility
- INA § 212(a)(3)(B)(vi)(III)— redefining a “terrorist organization to include a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).

- Changes made to the definition of terrorist activity and terrorist organization in the USA PATRIOT Act apply retroactively to any action taken on, before, or after October 26, 2001 AND to all aliens, without regard to the date of entry or attempted entry into the United States, in removal proceedings on or after to such date or seeking admission to the United States on or after such date. See INA § 212, Note 1 (2006).

- Exceptions to retroactivity:

- An alien will not be considered inadmissible or deportable for having engaged in a terrorist activity—

- described in [subclauses \(IV\)\(bb\), \(V\)\(bb\) or \(VI\)\(cc\) of section 212\(a\)\(3\)\(B\)\(iv\)](#) (for soliciting funds or any individual or for affording material support to a designated terrorist organization) if the terrorist organization was not a designated terrorist organization at that time.

- Also, PATRIOT Act waiver

II. The REAL ID Act

- The REAL ID Act amended the terrorism-related grounds of deportation to include any alien who is described in either of the terrorism -related grounds of inadmissibility.

- INA § 208(b)(2)(v) (asylum bar) covers all of the terrorism-related grounds of inadmissibility by reference to aliens “described in . . . section 237(a)(4)(B)”

- The changes made by the REAL ID Act apply to removal proceedings instituted before, on or after May 11, 2005, and apply to acts and conditions constituting a ground of inadmissibility or deportation existing before, on or after May 11, 2005.