

Standard Language

A. Applicability

An alien is ineligible for asylum, withholding of removal, adjustment of status, cancellation of removal, a waiver under former section 212(c), Temporary Protected Status, voluntary departure and relief pursuant to NACARA if s/he is described in INA § 212(a)(3)(B) or (F), that is s/he is someone involved in terrorists activities, a member of a terrorist organization, or is associated with a terrorist organization. See INA §§ 208(b)(2)(A)(v), 241(b)(3)(B)(iv), 245(c)(6), 240A(c)(4), 212(c), 244(c)(2), 240B and NACARA § 203, respectively.

B. Engaged in a Terrorist Activity

A terrorist activity is an activity that is unlawful under the laws of the place where it was committed or which if it had been committed in the United States, would be unlawful under the laws of the United States. INA §212(a)(3)(B)(iii). Terrorist activities include: highjacking or sabotage of any conveyance; an assassination; the use of any explosive or dangerous device with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property; a violent attack on an internationally protected person; the seizing or detaining, and threatening to kill, injure or continue to detain, another individual in order to compel a third person to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained, and; a threat, attempt or conspiracy to do any of the above. INA §212(a)(3)(B)(iii)(I)-(VI).

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, has 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.").

To "engage in a terrorist activity" means that the person, in an individual capacity or as a member of an organization, prepares or plans a terrorist activity, gathers information on potential targets for terrorist activity, solicits any individual, funds, or things of value for a terrorist activity or a terrorist organization, or commits an act that the actor knows, or reasonably should know, affords material support for the commission of a terrorist activity or to a terrorist organization. See INA § 212(a)(3)(B)(iv).

Providing material support to a terrorist organization or for the commission of a terrorist activity includes providing: a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons, explosive or training. INA §212(a)(3)(B)(iv)(VI). See also *Hosseni v. Gonzales*, 471 F.3d 953 (9th Cir. 2006) (holding that an 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); *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004) (finding that an alien who raised money that reached Sikh resistance organizations in India and who had phone conversations with Sikh terrorists engaged in a terrorist activity, but a respondent who sent money to aid Sikh widows and orphans, without more, did not engage in a terrorist activity); *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006) (holding that a

respondent who contributed \$685 dollars over an 11-month period to the Chin National Front, a terrorist organization, provided material support to that organization). 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. at 943-45.

An alien who has solicited funds or any individual for, or provided to material support to, an undesignated terrorist organization will not be deemed to have "engaged in terrorist activity" if such alien can "demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization." See INA §§ 212(a)(3)(B)(i)(VI), (iv)(IV)(cc), (iv)(V)(cc) and (iv)(VI)(dd). In *Matter of S-K-* the BIA concluded that the respondent could not meet the standard of the exception when "there was sufficient evidence in the record to conclude that [the organization] uses firearms and/or explosives to engage in combat with the Burmese military" and therefore qualifies as a terrorist organization. 23 I&N Dec. at 941; see also *Daneshvar v. Ashcroft*, 355 F.3d 615, 626 (6th Cir. 2004) (holding that the BIA was required to consider evidence regarding the respondent's state of mind such as the alien's youth, stated lack of knowledge of the organization's activities and voluntary disassociation with the organization, when determining whether the exception applied).

C. Membership in a Terrorist Organization

A terrorist organization is one which has been so designated by the Secretary of State or a group of two or more individuals, whether organized or not, that engages in activities described as terrorist activities under INA §212(a)(3)(B)(iv), subclauses (I) (a terrorist act intended to cause death or serious bodily injury), (II) (to prepare or plan a terrorist activity) or (III) (to gather information on potential targets of terrorist activity). See INA §212(a)(3)(B)(vi).

Neither the Act nor the regulations define "membership in a terrorist organization." However, according to a Department of State cable that was later reprinted in Interpreter Releases, membership should be determined from facts which include, but are not limited to:

- acknowledgment of membership from by the organization, by other members, or by the applicant;
- actively working to further the organization's aims and methods in a way suggesting close affiliation constituting membership;
- occupying a position of trust in the organization, past or present;
- receiving financial support from the organization, e.g., scholarships, pensions, salary;
- contributing money to the organization;
- determination of membership by a competent court;
- frequent association with other members;
- participation in the organization's activities, even if lawful;
- voluntarily displaying symbols of the organization, and;
- receiving honors and awards given by the organization

See "Senate Holds Hearing on Terrorism, State Department Implements Designated Terrorist Group List," 75 No.8 Interpreter Releases 294, 296-97 (March 2, 1998). These factors should be considered in the entirety. *Id.* The law is written in the present tense and requires that a person be a member of a terrorist organization at the time of the application. However, if the Court can determine that an alien was a member in the past,

current membership can be inferred unless the alien can establish that s/he is no longer a member. See *id.*