

## The Tier III List

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Pursuant to INA 212 (a) (3) (B)

B) Terrorist activities-

(i) IN GENERAL.-Any alien who-

(I) has engaged in a terrorist activity,

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)),

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity,

(IV) is a representative (as defined in clause (v)) of-

(aa) a foreign terrorist organization, as designated by the Secretary of State under section 219, or

(bb) a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities,

(V) is a member of a foreign terrorist organization, as designated by the Secretary under section 219, or is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(VI) has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities, or

(VII) is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

(ii) EXCEPTION- Subclause (VII) of clause (i) does not apply to a spouse or child-

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) **TERRORIST ACTIVITY DEFINED.**-As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United

States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any-

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED- As used in this chapter, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization-

(I) to commit or to 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 that he did not know, and should not reasonably have known, that the solicitation would further the organization’s terrorist activity;

(V) to solicit any individual-

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

(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 that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity; 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 clause (vi)(I) or (vi)(II); or

(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity.

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, concludes in his sole unreviewable discretion, that this clause should not apply.

(v) REPRESENTATIVE DEFINED.-As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED- As used in clause (i)(VI) and clause (iv), the term ‘terrorist organization’ means an organization–

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to further terrorist activity; or

(III) that is 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).

### **Tier III group**

USCIS has placed on hold the following categories of aliens for which exemptions are not yet available (and the only ground for referral or denial is a terrorist-related inadmissibility provision): (1) an alien associated with 1 of the 10 named groups benefitted by the CAA who would remain inadmissible despite the CAA's “automatic relief” provision; (2) an alien who is inadmissible under the Act's terrorism provision based on activity associated with a Tier III group not under duress; (3) an alien who is inadmissible under the terrorism-related provisions of the Act, other than material support, based on any activity or association with a Tier I, II, or III Group that was under

duress; (4) a voluntary provider of medical care to any Tier I, II, or III organizations, to their members, or to individuals who have engaged in terrorist activity; and (5) an alien who is inadmissible as the spouse or child of aliens described above, whether or not the aliens have applied for an immigration benefit.

The Tier III list, comprises of 8 (or 10 groups?) groups per USCIS-Memo-Processing-of-Asylum-Division-Cases-Involving-Material-Support published on June 1, 2007. See: <http://www.ansarilawfirm.com/docs/USCIS-Memo-Processing-of-Asylum-Division-Cases-Involving-Material-Support.pdf>

CAA § 691(b), 121 Stat. at 2365. The 10 named groups that benefitted from the CAA's "automatic relief" provision as well as from the Secretary's June 2008 exercise of authority are: Karen National Union/Karen National Liberation Army ("KNU/KNLA"); Chin National Front/Chin National Army ("CNF/CNA"); Chin National League for Democracy ("CNLD"); Kayan New Land Party ("KNLP"); Arakan Liberation Party ("ALP"); Tibetan Mustangs; Cuban Alzados; Karenni National Progressive Party ("KNPP"); and groups affiliated with the Hmong and Montagnards. See also Matter of S-K-, 24 I&N Dec. 475 (BIA 2008). On July 1, 2008, Congress added the African National Congress to the previously named groups. See Pub. L. No. 110-257, 122 Stat. 2426 (2008).

See: <http://www.usdoj.gov/eoir/vll/ILA-Newsletter/ILA%20Vol%202/vol2no12.pdf>

Pub. L. No. 110-257, 122 Stat. 2426 (2008) is available at:

<http://www.archives.gov/federal-register/laws/past/110-second-session.txt>

You may also want to see:

<http://www.rcusa.org/uploads/pdfs/LIRS%20Q&As%20on%20terrorism-material%20support.%208-13-08.pdf>

Here's one more:

<http://www.humanrightsfirst.info/pdf/08130-asy-new-amendmensts-ina.pdf>

My finding: CPN-M does not make it to the Tier III organisation. It comes under TEL and FTO.

The following groups of concern have not been designated as Foreign Terrorist Organizations under 8 USC Section 1189, although many have been designated under other U.S. Government counterterrorism authorities.

Al-Badhr Mujahedin (al-Badr)

Al-Ittihad al-Islami (AIAI)

Alex Boncayao Brigade (ABB)

Anti-Imperialist Territorial Nuclei (NTA)

Army for the Liberation of Rwanda (ALIR)

Cambodian Freedom Fighters (CFF)

Communist Party of India (Maoist)

Communist Party of Nepal (Maoist)/United People's Front

See: Page 47 at <http://www.state.gov/documents/organization/65479.pdf>

Individual aliens providing support to or associated with TEL-designated organizations may be found "inadmissible" to the U.S., i.e., such aliens may be prevented from entering the U.S. or, if already in U.S. territory, may in certain circumstances be deported. Examples of activity that may render an alien inadmissible as a result of an organization's TEL designation include:

- \* membership in a TEL-designated organization;
- \* use of the alien's position of prominence within any country to persuade others to support an organization on the TEL list;
  - \* solicitation of funds or other things of value for an organization on the TEL list;
  - \* solicitation of any individual for membership in an organization on the TEL list; and
- \* commission of an act that the alien knows, or reasonably should have known, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material for financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training to an organization on the TEL list.

(It should be noted that individual aliens may also found inadmissible on the basis of other types of terrorist activity unrelated to TEL-designated organizations; see 8 U.S.C. §1182(a)(3)(B).)

See: <http://www.state.gov/s/ct/rls/other/des/123086.htm>

Releases > Terrorism Designations>Terrorist Exclusion List

Office of the Coordinator for Counterterrorism

December 29, 2004

Section 411 of the USA PATRIOT ACT of 2001 (8 U.S.C. § 1182) authorized the Secretary of State, in consultation with or upon the request of the Attorney General, to designate terrorist organizations for immigration purposes. This authority is known as the "Terrorist Exclusion List (TEL)" authority. A TEL designation bolsters homeland security efforts by facilitating the USG's ability to exclude aliens associated with entities on the TEL from entering the United States.

### **Designation Criteria**

An organization can be placed on the TEL if the Secretary of State finds that the organization:

- \* commits or incites to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
  - \* prepares or plans a terrorist activity;
- \* gathers information on potential targets for terrorist activity; or
  - \* provides material support to further terrorist activity.

Under the statute, "terrorist activity" means any activity that is unlawful under U.S. law or the laws of the place where it was committed and involves: hijacking or sabotage of an aircraft, vessel, vehicle or other conveyance; hostage taking; a violent attack on an internationally protected person; assassination; or the use of any biological agent, chemical agent, nuclear weapon or device, or explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property. The definition also captures any threat, attempt, or conspiracy to do any of these activities.

### **Designation Process**

The Secretary of State is authorized to designate groups as TEL organizations in consultation with, or upon the request of the Attorney General. Once an organization of concern is identified, or a request is received from the

Attorney General to designate a particular organization, the State Department works closely with the Department of Justice and the intelligence community to prepare a detailed “administrative record,” which is a compilation of information, typically including both classified and open sources information, demonstrating that the statutory criteria for designation have been satisfied. Once completed, the administrative record is sent to the Secretary of State who decides whether to designate the organization. Notices of designations are published in the Federal Register.

## **Effects of Designation**

### *Legal Ramifications*

Individual aliens providing support to or associated with TEL-designated organizations may be found “inadmissible” to the U.S., i.e., such aliens may be prevented from entering the U.S. or, if already in U.S. territory, may in certain circumstances be deported. Examples of activity that may render an alien inadmissible as a result of an organization’s TEL designation include:

- \* membership in a TEL-designated organization;
- \* use of the alien’s position of prominence within any country to persuade others to support an organization on the TEL list;
  - \* solicitation of funds or other things of value for an organization on the TEL list;
  - \* solicitation of any individual for membership in an organization on the TEL list; and
- \* commission of an act that the alien knows, or reasonably should have known, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material for financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training to an organization on the TEL list.

(It should be noted that individual aliens may also found inadmissible on the basis of other types of terrorist activity unrelated to TEL-designated organizations; see 8 U.S.C. §1182(a)(3)(B).)

## **Other Effects**

1. Deters donation or contributions to named organizations.
2. Heightens public awareness and knowledge of terrorist organizations.
3. Alerts other governments to U.S. concerns about organizations engaged in terrorist activities.
4. Stigmatizes and isolates designated terrorist organizations.

## **Background**

Secretary of State Colin Powell, in consultation with the Attorney General, designated the following organizations, thereby placing them on the Terrorist Exclusion List (TEL). Ten groups were added to the TEL on April 29, 2004.

### **Terrorist Exclusion List Designees (alphabetical listing)**

- \* Afghan Support Committee (a.k.a. Ahya ul Turas; a.k.a. Jamiat Ayat-ur-Rhas al Islamia; a.k.a. Jamiat Ihya ul Turath al Islamia; a.k.a. Lajnat el Masa Eidatul Afghania)
- \* Al Taqwa Trade, Property and Industry Company Ltd. (f.k.a. Al Taqwa Trade, Property and Industry; f.k.a. Al Taqwa Trade, Property and Industry Establishment; f.k.a. Himmat Establishment; a.k.a. Waldenberg, AG)
  - \* Al-Hamati Sweets Bakeries

- \* Al-Ittihad al-Islami (AIAI)
  - \* Al-Manar
  - \* Al-Ma'unah
  - \* Al-Nur Honey Center
  - \* Al-Rashid Trust
- \* Al-Shifa Honey Press for Industry and Commerce
- \* Al-Wafa al-Igatha al-Islamia (a.k.a. Wafa Humanitarian Organization; a.k.a. Al Wafa; a.k.a. Al Wafa Organization)
  - \* Alex Boncayao Brigade (ABB)
  - \* Anarchist Faction for Overthrow
- \* Army for the Liberation of Rwanda (ALIR) (a.k.a. Interahamwe, Former Armed Forces (EX-FAR))
  - \* Asbat al-Ansar
  - \* Babbar Khalsa International
- \* Bank Al Taqwa Ltd. (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa)
  - \* Black Star
- \* Communist Party of Nepal (Maoist) (a.k.a. CPN(M); a.k.a. the United Revolutionary People's Council, a.k.a. the People's Liberation Army of Nepal)

See more of the list at <http://www.state.gov/s/ct/list/>

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