

9 FAM 40.32 NOTES

(CT:VISA-734; 05-03-2005)

(Office of Origin: CA/VO/L/R)

9 FAM 40.32 N1 SCOPE OF INA 212(A)(3)(B)

9 FAM 40.32 N1.1 Background and Summary

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- a. The Immigration Act of 1990 (Public Law 101-649) generally amended subsection (a) of Immigration and Nationality Act (INA) 212 by replacing the previous 43 classes of excludable aliens with 9 broad classes, each with subclasses. New INA 212(a)(3)(B), Terrorist Activities, incorporated aspects of former INA 212(a)(27) and (29).
- b. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) expanded the scope of INA 212(a)(3)(B), to make inadmissible, representatives and members of organizations designated by the Secretary under INA 219 as foreign terrorist organizations (FTOs) (See 9 FAM 40.32 N2.3 (1)). That same year, the Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104-208) amended INA 212(a)(3)(B)(i) again to make inadmissible, any alien who, "under circumstances indicating an intention to cause death or serious bodily harm," incited terrorist activity. The new provision applied retroactively to all such incitement activities, regardless of when they occurred.
- c. Following the terrorist attacks on September 11, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), expanded the scope of INA 212(a)(3)(B) in several important respects:
 - (1) The Secretary was given new authority to designate organizations as terrorist organizations for purposes of INA 212(a)(3)(B) if certain criteria are met. Organizations so designated are listed on the "Terrorist Exclusion List" or "TEL." (See 9 FAM 40.32 N2.3(2)).
 - (2) A definition of "terrorist organization" was added for the first time. Under the definition, three categories of entities are considered "terrorist organizations" for purposes of section INA 212(a)(3)(B):
 - (a) The first category consists of entities designated by the

death or serious bodily harm.

- (2) The applicant, a professor, is a strong nationalist whose lectures regularly blame "foreigners" for his country's problems and argues that the only solution to these problems is that "foreigners" should be driven out of the country. During the school year, the press reports that some of the students at the school have been purchasing weapons and seeking to obtain and manufacture explosives. Police notify the faculty that they are investigating several students for weapons-related offenses. At the end of a week of particularly strong anti-foreign sentiment, the applicant gives a special lecture entitled "A Call to Action." With the knowledge that the students under investigation are in the audience, the applicant begins his lecture with: "The time has come for action!" He then reiterates throughout his lecture that: "The only solution to the country's problems is to purge our great land of these foreigners once and for all through whatever means necessary." Shortly thereafter, some of his students detonated a truck bomb outside a restaurant frequented by foreign nationals, killing several foreign nationals and injuring many restaurant employees.

Analysis: The use of any explosive with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property is a terrorist activity. In the example, the applicant helps foster anti-foreign sentiments and then, during a particularly tense period, urges students to act to drive "foreigners" from the country "through whatever means necessary." Under these circumstances, you would have reasonable ground to believe that the applicant's speech incited terrorist activity. The fact that the applicant knew that several students likely had access to weapons and/or explosives and that those students were in attendance at his special lecture would provide you with reasonable ground to believe that the applicant intended to cause death or serious bodily harm.

Note: The Patriot Act amended INA 212(a)(3)(B)'s definition of engaging in terrorist activity to also include incitement (see INA 212(a)(3)(B)(iv)(I)). As a result, a person who is inadmissible under INA 212(a)(3)(B)(i)(III) for inciting terrorist activity will also now be inadmissible under INA 212(a)(3)(B)(i)(I), for committing a terrorist activity.

- (3) **Public Endorsement** - An alien may be excludable if the alien uses the alien's position of prominence with 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. This provision does not require a finding of specific intent (as is the case in the incitement provisions discussed in paragraph (1) above); rather it is directed at irresponsible expressions of opinion by prominent aliens who are able to influence the actions of others. An example might be a community leader who publicly praised Al Qaida in the wake of a terrorist attack for which it claimed responsibility, and who urged the community not to cooperate with efforts by law enforcement officials to bring those responsible to justice. You may not find an alien inadmissible under this provision without the necessary determination by the Secretary of State. Accordingly, if you believe that an alien in a position of prominence may be inadmissible under this provision, report all of the relevant facts to us and request a determination of whether the alien's activities undermine U.S. efforts to reduce or eliminate terrorist activities. Referral to the Department in such cases ensures that relevant foreign policy and national security concerns are considered.

9 FAM 40.32 N7 THE PALESTINE LIBERATION ORGANIZATION (PLO)

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Any alien who is an officer, official, representative, or spokesperson of the PLO is considered to be engaged in terrorist activity and therefore inadmissible under INA 212(a)(3)(b)(i). INA 212(a)(3)(B)(i) applies only to those individuals who are currently PLO officers, officials, representatives, or spokespersons. Applicants who no longer occupy such positions, and persons who are merely current or former members or employees, but are not officers, officials, representatives, or spokespersons, are not ineligible under this section. You should be alert to the possibility, however, that such applicants may be ineligible under INA 212(a)(3)(B) for other reasons, such as having participated in preparing, planning, or conducting terrorist activities.