

EXHIBIT 35

~~FILED UNDER SEAL~~

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

Attachment A – Guidance for Identifying National Security Concerns

I. Introduction

USCIS seeks to ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security. It is important, therefore, that officers be able to identify certain indicators of a National Security (NS) concern. A NS concern exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act (the Act). This includes, but is not limited to, terrorist activity; espionage; sabotage; and the illegal transfer of goods, technology, or sensitive information.

The officer should consider the *activities, individuals, and organizations* described in sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act as examples of indicators of a NS concern and for determining whether a NS concern exists. When evaluating whether a NS indicator or NS concern exists, however, the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability. This guidance provides examples of indicators of a NS concern that are intended as signals to alert the officer to consider the totality of circumstances in determining whether a NS concern exists. While this document is not exhaustive, it is intended to serve as a reference tool for all officers when evaluating cases that may have NS concerns.

This guidance does not apply to one type of NS concern: Known or Suspected Terrorist (KST) NS hits,¹ which automatically indicate the presence of a NS concern. Rather, officers must refer to this guidance when assessing whether a *Non-KST* NS concern exists in any given case. The Non-KST category refers to all other NS concerns, regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved in providing material support to terrorists or terrorist organizations, and agents of foreign governments. Individuals and organizations that fall into this category may also pose a serious threat to national security.

¹A **Known or Suspected Terrorist (KST)** is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted when queried in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State.

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

1

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000084

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

II. Process for Identifying Cases that May Include a NS Concern

At any stage of the screening or adjudicative processes, an officer may identify an indicator of a NS concern with respect to an individual or organization. Such information may be identified through the following:

- Security check results, e.g., information obtained from FBI Name Checks, FBI Fingerprint Checks, The Enforcement Communications System/Interagency Border Inspection System (TECS/IBIS), Consular Lookout Automated Support System (CLASS), Department of State Security Advisory Opinions (SAOs), United States Visitor and Immigrant Status Indicator Technology/Automated Biometric Identification System (US-VISIT/IDENT), and other system checks;
- Testimony elicited during an interview;
- Review of the petition or application, supporting documents, the A-file, or related files;
- Leads from other US Government agencies or foreign governments; and
- Other sources, including open source research.

Once an indicator is identified, the officer must evaluate whether a NS concern exists. The officer must consider the totality of circumstances to determine whether an articulable link exists between the individual or organization and prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

III. Indicators of a NS Concern

An indicator of a NS concern may be identified at any stage of the screening or adjudicative processes through the review of USCIS security checks, file information, site visit results, and any other relevant sources. The guidance below provides examples of indicators of a NS concern that appear in the Act and in non-statutory sources.

A. Statutory Indicators

1. Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act contain comprehensive definitions of activities (including inchoate acts of threat, attempt, or conspiracy), associations, and organizations that may imply NS concerns:
 - “Terrorist Activity” is defined at section 212(a)(3)(B)(iii) of the Act.
 - Conduct that constitutes “engaging” in terrorist activity is defined at section 212(a)(3)(B)(iv) of the Act.
 - “Terrorist Organizations” are defined at section 212(a)(3)(B)(vi) of the Act. See the Department of State website (www.state.gov/s/ct/list/) for lists of Tier I and Tier II

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

2

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000085

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

terrorist organizations. See the Department of Treasury listing of Specially Designated Global Terrorist Entities pursuant to Executive Order 13224 (www.state.gov/s/ct/list/) for some organizations likely to meet the Tier III undesignated terrorist organization definition.

2. Other sections of the Act whose reference in a record may imply NS concerns, and therefore may require further research to determine whether NS concerns exist, include:

- 208(b)(2)(A) Exceptions to Asylum Eligibility;
- 212(a)(2)(F) Inadmissible Aliens – Money Laundering;
- 221(g) Issuance of visas – Revocation of visas or other documents;
- 235(c) Removal of aliens inadmissible on security and related grounds;
- 236A Mandatory detention of suspected terrorists; habeas corpus; judicial review; and
- 237(a)(2)(D) Deportable Aliens – Miscellaneous crimes.

B. Non-Statutory Indicators

1. Employment, Training, or Government Affiliations

Certain types of employment, training, government affiliation, and/or behavior may (or may not) be indicators of a NS concern, depending on the circumstances of the case, and require additional scrutiny to determine whether a NS concern exists. For example, an individual may have been employed by a foreign government to engage in espionage or intelligence gathering, may have received training in such activities, or may have served as an official or diplomat in a hostile foreign government. Officers may also need to consider proficiency in particular technical skills gained through formal education, training, employment, or military service, including foreign language or linguistic expertise, as well as knowledge of radio, cryptography, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems.

2. Other Suspicious Activities

Certain other types of suspicious activities may (or may not) be indicators of a NS concern, depending on the circumstances of the case, and require additional scrutiny to determine whether a NS concern exists. These include but are not limited to:

- Unusual travel patterns and travel through or residence in areas of known terrorist activity;
- Criminal activities such as fraudulent document manufacture; trafficking or smuggling of persons, drugs, or funds; or money laundering;
- Large scale transfer or receipt of funds; and

FOR OFFICIAL USE ONLY (FOUO) – LAW ENFORCEMENT SENSITIVE

3

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000086

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

- Membership or participation in organizations that are described in, or that engage in, activities outlined in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

3. Family Member or Close Associate

In some instances, the officer may be aware that the petitioner, beneficiary, applicant, dependent, or derivative is a family member or close associate of a subject with a NS concern. Such information may impact the individual's eligibility for the benefit sought and/or may indicate a NS concern with respect to the individual. In these cases, the officer must determine if the NS concern relates to the individual, and if so, if it gives rise to a NS concern for the individual. A close associate includes but is not limited to a roommate, co-worker, employee, owner, partner, affiliate, or friend.

C. Indicators of a NS Concern as Contained in Security Check Results

1. FBI Name Check

The following terms may be contained in FBI name check responses (Letterhead Memoranda (LHMs)). They relate to law enforcement investigations,² and are examples of indicators of a NS concern:

- Foreign Counterintelligence
- Acts of Terrorism
- International Terrorism
- Domestic Terrorism
- Hostage-Taking - Terrorism
- Money Laundering or suspicious financial transactions with some link to a NS activity
- Violations of Arms Control Treaty Measures
- Sabotage
- Bombings and Explosives Violations
- Threats or Attempts to Use, Possess, Produce, or Transport Weapons of Mass Destruction (WMD)
- Use, Possession, Production, or Transport of WMD

² Please note that reference to a "closed" law enforcement investigation does not necessarily mean that there is no NS concern or that the NS concern was resolved during the course of the investigation. Law Enforcement Agencies (LEAs) close investigations for a number of reasons, some substantive and others administrative. Officers need to gather additional information to determine whether a NS concern remains despite closure of an investigation.

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

4

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000087

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

Exception: In some instances, a LHM may indicate that upon completion and closure of the investigation, the case agent made a definitive finding of no nexus to national security in relation to the USCIS subject. No NS concern exists if the LHM indicates a definitive finding of no nexus to national security to the USCIS subject, and no other indicator of a NS concern exists.

2. FBI Fingerprint or NCIC Criminal History Check (NN16):³

The following are examples of indicators of a NS concern present in responses to the FBI Fingerprint Check or the NCIC Criminal History Check:

- Classified by the Attorney General as a known terrorist;
- Charged in immigration court with an inadmissibility/removability ground in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act; or
- Arrested/detained by the U.S. military overseas (e.g., detainees in Iraq or Guantanamo).

Note: A criminal charge of “terroristic threats” is not necessarily an indicator of a NS concern. For example, the “terroristic threats” offense is often used by local prosecuting authorities to charge a domestic violence crime. A request for additional documents such as certified police reports or court dispositions may be required to determine if the charge or conviction is an indicator.

3. US-VISIT/IDENT

Various government agencies, including DHS Components (USCIS, CBP, and ICE), DOS, the FBI, and the National Ground Intelligence Center (NGIC), load biographical and biometric information into US-VISIT/IDENT. The US-VISIT/IDENT Watchlist includes, but is not limited to, biographic and/or biometric information for KSTs; fingerprints for military detainees held in Afghanistan, Pakistan, and Guantanamo; and individuals inadmissible or removable under sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

IV. TECS/IBIS

The following TECS/IBIS and NCIC Status Codes and Code Descriptions may (or may not) be indicators of a NS concern, depending on the circumstances of the case. Further inquiry by the officer is needed. These codes should not be considered a complete list of codes that the officer may encounter. The officer must verify any unfamiliar codes encountered.

³ See CIS policy memorandum, *Accessing National Crime Information Center Interstate Identification Index (NCIC III) Data*, dated June 3, 2005 indicating that “it is acceptable and in fact necessary to conduct an NCIC III query when fraud is articulated, or when background check processes, interviews, and/or informants indicate national security concerns or that an applicant may have a criminal record or may be involved in criminal activity.”

FOR OFFICIAL USE ONLY (FOUO) -- LAW ENFORCEMENT SENSITIVE

5

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000088

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

TECS/IBIS TABLE CODE CODE DESCRIPTION

LE

NCIC OFFENSE CODE CODE DESCRIPTION

LE

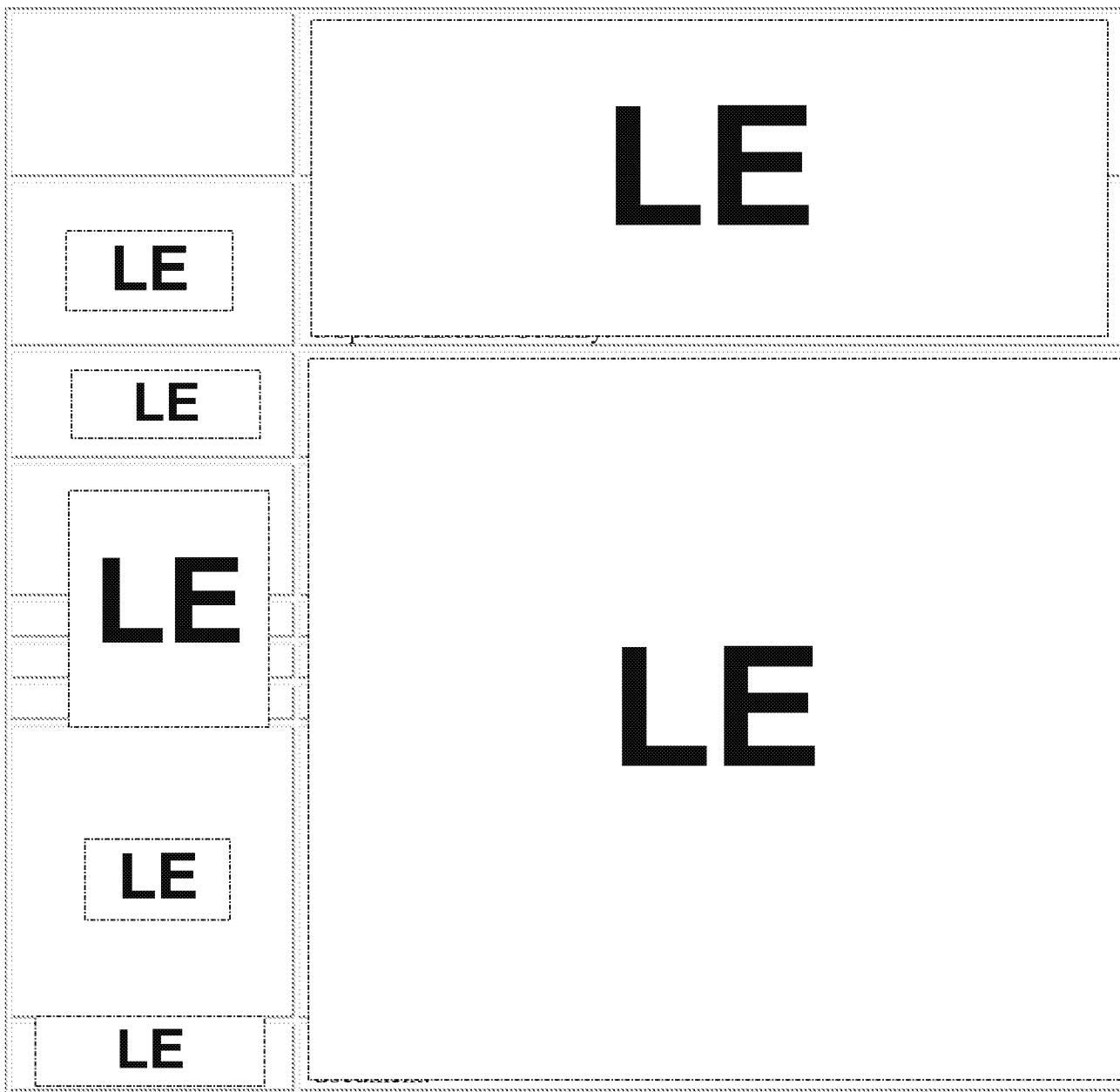
The following table contains terms and acronyms related to TECS/IBIS which may (or may not) be indicators of a NS concern, depending on the circumstances of the case. Further inquiry by the officer is needed.

CTR	Counter-Terrorism Response; this indicates that the subject has been identified, referred by or to a CTR team as a possible terrorist interest.
LE	LE
LE	LE
LE	LE
LE	LE
LE	LE
LE	LE

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE



FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000090

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

LE

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

8

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.

CAR000091

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE

LE

TIDE

Terrorist Identities Datamart Environment. This refers to a counter-terrorism database that coordinates the use of sensitive interagency intelligence for watch listing terrorists. This database was formerly known as TIPOFF and managed by the Department of State.

LE

FOR OFFICIAL USE ONLY (FOUO) -- LAW ENFORCEMENT SENSITIVE

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO. It contains information that may be exempt from release under the Freedom of Information Act (5 U.S.C. § 552). This information shall not be distributed beyond the original addressees without prior authorization of the originator.